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The Implementation of the Kyoto Protocol and the impact of national laws and policies of sustainable development: Analysis on the Malaysian situation

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Abstract

The Kyoto Protocol's commitment period ended at the end of 2012. The literature discussing the implementation of the Kyoto Protocol in developing countries such as Malaysia is rare and limited. This is due to the fact that the Protocol only requires commitments from developed countries in order to reach its objective. The only relevant provisions to be discussed under the Protocol relevant to developing nations such as Malaysia are article 10 and 12, the former being the general obligations of Parties to the Protocol and the latter the Clean Development Mechanism (CDM). The purpose of this paper is to evaluate and analyze the Malaysian national implementation of the Kyoto Protocol of the United Nations Framework Convention on Climate Change (UNFCCC) and 'green' developments such as the CDM and the latest feed-in-tariff system implemented in Malaysia. Various national policies and laws such as the National Renewable Energy Policy and Action Plan 2009 and the Renewable Energy Act 2011 will be looked into to ascertain whether such policies and laws do support the spirit and purpose of the Convention. Analysis is also conducted on the current list of all relevant Malaysian CDM projects. With the findings, recommendations are made, especially on the legal perspective in order to make the Malaysian national implementation better so that the ultimate objective of the Convention can be achieved.

Keywords: Environmental Law, Climate Change, Kyoto Protocol, National Law and Policy.

Introduction

The World Commission on Environment and Development (WCED)'s Our Common Future ('the Brundtland Report') defines sustainable development as development that meets the needs of the present, without compromising the ability of future generations to meet their own needs. To achieve this, the report acknowledges the inseparability between the environment and development. It is an accepted wisdom that development will cause environmental degradation due to anthropogenic activities and thus the need to strike balance between the two agendas.

In acknowledging the need for developing nations such as Malaysia to move forward, the application and implementation of the environmental international law principle 'common but differentiated responsibility' is lauded. This principle enables a country to pursue sustainable development according to its own capacity. It is said that the main contributor of climate change is caused by development in particular industry. Industrialization as a phase of development is a necessary evil for a country to develop. With it greenhouse gases (GHG) are emitted into the globally common atmosphere thus causing climate change.

To mitigate this problem, nations have banded together under the United Nations by establishing an international environmental treaty called the United Nations Framework Convention on Climate Change (UNFCCC) produced at the United Nations Conference on Environment and Development (UNCED), which is informally known as the Earth Summit. The objective of UNFCCC is to achieve "stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system."

To achieve this objective the Kyoto Protocol was then adopted under the UNFCCC and was brought into force on the 16th February 2005. The Kyoto Protocol allows several flexible mechanisms to reduce anthropogenic greenhouse gases emission. One of the mechanisms is the Clean Development Mechanism (CDM).

Malaysia is a party to UNFCCC and also the Kyoto Protocol. As a developing nation and a country not under Annex I of the Kyoto Protocol, Malaysia have the privilege to actively tap into the CDM programme and the benefits that entails so that the nation's quest for sustainability can be strived for if not achieved.

Malaysia under the Kyoto Protocol

Malaysia ratified and became member of the Kyoto Protocol on 4 September 2002. Malaysia as a developing nation is currently placed under the Non-Annex I group. This means that Malaysia is not subjected to any of the specific commitments under the Kyoto Protocol towards reducing GHG emissions other than the obligations mentioned in its Article 10. Since its ratification, the Malaysian government through its Natural Resources and Environment Ministry (MNRE) has actively implementing its obligations under the Kyoto Protocol, albeit being a country under the Non-Annex I group.

To see such implementation, it is best to see first Malaysia's obligation under the Protocol. Article 10 of the Protocol listed down various obligations of its Parties that

should be observed by the all parties to the Protocol, including Malaysia. In general a Party needs to do the following within its national perspective (see Table 1 below):

Table 1: Obligations applicable to Developing Country Parties of the Kyoto Protocol based on National Perspective

No.	Obligations
1	Formulate national programmes to improve the quality of local emission factors, which reflect the national socio-economic conditions.
2	Formulate, implement, publish and regularly update national programmes containing measures to mitigate climate change and measures to facilitate adaptation to climate change.
3	Strengthen development in scientific and technical research with regards to climate change.
4	Promote capacity building and public awareness to climate change
5	Provide information on programmes and activities undertaken in the National Communications.

The Malaysian Implementation of the Kyoto Protocol

Malaysia has actively embarked upon a voluntary effort in making reduction of its national GHG emissions. This voluntary commitment was put forward at COP-15 of the UNFCCC in Copenhagen. This voluntary reduction amounts to 40% less in the year 2020 compared to 2005. In general the Malaysian government's effort in reducing GHG emissions is covered under three main programmes, which are energy efficiency, renewable energy and solid waste management.

The National Policy on Climate Change 2009

In order to fight against climate change the Ministry of Natural Resources and Environment Malaysia (MNRE) has prepared the National Policy on Climate Change (NPCC). It has been approved by the Malaysian cabinet of Ministers on 20 November 2009.

The NPCC reiterate the country's firm stand that climate change is one of the main issues facing the world today that are caused by both human activities and natural processes (NPCC 2009). Under the NPCC, it recognizes that climate change should be addressed through two approaches i.e. adaptation and mitigation. It states that "adaptation refers to actions taken to help communities and ecosystems cope with actual or expected impacts of climate change. Mitigation refers to actions taken to reduce greenhouse gas emissions, which are one of the main causes of global warming, and enhance carbon sinks to lessen the impacts of climate change. In addressing climate change, particularly its impacts on humans, both adaptation and mitigation should be implemented in an integrated and balanced manner."

The objectives of the NPCC are as follows:

1. Mainstreaming climate change through wise management of resources and enhanced environmental conservation resulting in strengthened economic competitiveness and improved quality of life;
2. Integration of responses into national policies, plans and programmes to strengthen the resilience of development from arising and potential impacts of climate change; and
3. Strengthening of institutional and implementation capacity to better harness opportunities to reduce negative impacts of climate change.

In responding to the challenges of climate change, the NPCC states that the Malaysian government undertakes to mainstream national responses that consolidate economic, social and environmental development goals based on five principles (see table 2 below).

Table 2: Principles under the NPCC

No.	Principle	Explanation
1	Development on a Sustainable Path	Integrate climate change responses into national development plans to fulfil the country's aspiration for sustainable development.
2	Conservation of Environment and Natural Resources	Strengthen implementation of climate change actions that contribute to environmental conservation and sustainable use of natural resources.
3	Coordinated Implementation	Incorporate climate change considerations into implementation of development programmes at all levels.
4	Effective Participation	Improve participation of stakeholders and major groups for effective implementation of climate change responses.
5	Common but Differentiated Responsibilities and Respective Capabilities	International involvement on climate change will be based on the principle of common but differentiated responsibilities and respective capabilities.

Source: NPCC

This policy is drafted in a way to highlight the efforts that need to be done by various Ministries and Agencies in fighting against climate change. From this policy it can be seen that the onus of implementing the country's obligation under the Kyoto Protocol does not rest on the MNRE alone due to fact that in complying with those obligations, another ministry that is the Ministry of Energy, Green Technology and Water (KeTTHA) participation is also required.

The National Renewable Energy Policy and Action Plan 2009 (NREPAP)

The NREPAP was drafted by the Ministry of Energy, Green Technology and Water (KeTTHA). In its executive summary, it states that under the context of electricity generation, efforts towards renewable energy must be made since the past "business-as-usual" approach in energy generation is not sustainable, appropriate nor

productive. This is due to the fact that in Malaysia, the total GHG emissions for the year 2006 amounted to 169,829 GgCO₂ and the power sector is identified as one of the major and largest contributors with 56,203 GgCO₂ accounting for 33% of the emissions. Thus give rise to the need to revert to renewable energy in order to cut down on GHG emissions.

The policy vision of the NREPAP is to enhance the utilisation of indigenous renewable energy resources to contribute towards national electricity supply security and sustainable socioeconomic development. It provides 5 objectives to be met, which are as follows:

1. To increase Renewable Energy contribution in the national power generation mix;
2. To facilitate the growth of the Renewable Energy industry;
3. To ensure reasonable Renewable Energy generation costs;
4. To conserve the environment for future generations; and
5. To enhance awareness on the role and importance of Renewable Energy.

The Malaysian government interest in Renewable Energy is not without basis. This is due to the fact that Malaysia is blessed with many indigenous renewable energy sources. The NREPAP 2009, has laid down several identified renewable energy sources that are relevant to be exploited in Malaysia, which includes, palm oil biomass wastes, mini-hydro, solar power, solid waste and land fill gas, wind energy and geothermal, and finally wastes and gases from agriculture-based and farming industries.

Based on the NREPAP and its recommendations on strengthening the legislative aspect of the renewable energy in the country, the Malaysian parliament enacted a legislation to cover the area of renewable energy in Malaysia that is the Renewable Energy Act 2011. It is an Act to provide for the establishment and implementation of a special tariff system to catalyse the generation of renewable energy and to provide for related matters.

Furthermore, on the aspect of strengthening national institutional framework with regards to renewable energy based on the NREPAP recommendations, the Sustainable Energy Development Authority Act 2011 was enacted. It is an Act to provide for the establishment of the Sustainable Energy Development Authority of Malaysia (SEDA) and to provide for its functions and powers and for related matters. The key role of SEDA is to administer and manage the implementation of the feed-in tariff mechanism (FiT) which is mandated under the Renewable Energy Act 2011.

The NREPAP has also give rise to other related national policy that is the National Green Technology Policy 2009.

National Green Technology Policy 2009 (NGTP)

The NGTP was prepared by the Malaysian Ministry of Energy, Green Technology and Water (KeTTHA). Under the NGTP, it is stated as its policy statement that green technology shall be a driver to accelerate the national economy and promote sustainable development. It introduces the four pillars of the NGTP which are:

1. Energy – seek to attain energy independence and promote efficient utilization;

2. Environment – conserve and minimize the impact on the environment;
3. Economy – enhance the national economic development through the use of technology; and
4. Social – improve the quality of life for all.

The objectives of the NGTP centred heavily on the principle of sustainable development and they are as follows:

1. To reduce the energy usage rate and at the same time increase economic growth;
2. To facilitate the growth of the green technology industry and enhance its contribution to the national economy;
3. To increase national capability and capacity for innovation in green technology development and enhance Malaysia's competitiveness in green technology in the global arena;
4. To ensure sustainable development and conserve the environment for future generations; and
5. To enhance public education and awareness on green technology and encourage its widespread use.

The NGTP has ignited a series of the Malaysian government initiatives in order to achieve its objectives. These initiatives revolve around the strategic thrusts as described by the NGTP as follows:

1. Strengthen the institutional frameworks;
2. Provide a conducive environment for green technology development;
3. Intensify human capital development in green technology;
4. Intensify green technology research and innovations; and
5. Promotion and public awareness.

In response to the five strategic thrusts, the Malaysian government initiated a series of initiatives to reflect them. In order to strengthen institutional framework of the NGTP, a National Green Technology Council (NGTC) was formed. The Council's objective is to provide high level coordination among Ministries, Agencies, the private sector and all other stakeholders in the implementation of the NGTP. The NGTC will take a consolidated approach, providing a national strategic focus and plan to pave directions for the development and application of green technology in Malaysia.

Another initiative in strengthening institutional framework is the restructuring of the National Energy Centre or Pusat Tenaga Malaysia (PTM) to become the Malaysian Green Technology Corporation (MGTC). This restructuring exercise was done in order to enhance the position of the MGTC to become a focal point for green technology development in Malaysia.

In providing a facilitative environment for green technology and development, the Malaysian government introduced the Green Technology Financing Scheme (GTFS). Based on the announcement of the Malaysian Government Budget 2010 the GTFS is backed by RM1.5 billion fund to be distributed via soft loan system, where 2 percent of the loan interest is subsidised by the government. This soft-loan is intended for manufacturers and nationwide consumers of green technology. The GTFS starts

effective in January 2010 and all applications of the loan under the scheme are administered by MGTC.

Financial incentive in the form of income tax exemption¹ is also given to building owners who have been certified the Green building Index (GBI) from 24 October 2009 to 31 December 2014. This goes the same to home buyers who had received GBI certificate from the developer property will be given duty stamp exemption on documents of transfer of the said property². In order to acquire GBI certificate, one need to prove that the building owned is energy efficient, amongst others.

Furthermore, there are several others government initiatives that involve KeTTHA as the originator of the NGTP to work together with other Ministries. Firstly, KeTTHA is working with the Ministry of Finance (MOF) to develop a mechanism for Green Procurement to be implemented in government agencies. Under this context of Green Procurement Mechanism, KeTTHA also works together with Standards and Industrial Research Institute of Malaysia (SIRIM) to develop standards, certifications and labelling mechanisms including Green Procurement manuals and procedure to enable government and private sector to embark on “green” procurement and purchasing.

In order to evaluate the success of the NGTP and its initiatives a National Key Indicator shall be applied. Amongst others the reduction of the GHG emissions is one of the required indicators, followed by indicators that cover sustainable development and the improvement of living quality in Malaysia. These indicators seem to have most of the spirit of the Kyoto Protocol especially its ultimate objective that is GHG emissions reduction and the implementation of the principle of sustainable development. Thus it can be said that the NGTP and its initiatives is an implementation of the Kyoto Protocol article 10. Currently there are still no regulations and legislations in place for the NGTP to support its activities.

Refer table 4 below to see the Malaysian government’s post ratification response towards obligations given by the Kyoto Protocol.

Table 4: Implementation of the Kyoto Protocol in Malaysia.

No.	Obligations	Implementation
1	Formulate national programmes to improve the quality of local emission factors which reflect the national socio-economic conditions.	NPCC NREPAP NGTP
2	Formulate, implement, publish and regularly update national programmes containing measures to mitigate climate change and measures to facilitate adaptation to climate change.	NPCC NREPAP NGTP
3	Strengthen development in scientific and technical research with regards to climate change.	NGTP

¹ Tax exempted is equal to the amount of expenditure in obtaining the GBI certificate.

² KeTTHA, Incentives and Financial Support, 24 Oct 2011, 9 Dec 2011
<<http://www.kettha.gov.my/en/content/incentives-and-financial-support>>

4	Promote capacity building and public awareness to climate change	NGTP
5	Provide information on programmes and activities undertaken in the National Communications.	Malaysia Initial National Communication to the UNFCCC Malaysia Second National Communication to the UNFCCC

Renewable Energy Act 2011 (REA)

The REA came into force in Malaysia on 2 June 2011. So far this is the only legislation that directly support the mitigation and adaptation approach of the UNFCCC, together with its complimentary Sustainable Energy and Development Authority Act 2011 (SEDA) that provides the administrative aspect of administration of renewable energy in Malaysia. Still in its infancy, renewable energy generation in Malaysia is confined to the feed-in tariff system of small renewable energy power producers. Coming in force in 2011, it also covers and acknowledges the renewable energy projects that already been registered and running under the CDM scheme. One criticism that can be directed to this law is that it provides a limit of energy generation by renewable energy rather than allowing the market forces to act upon this matter. This can be viewed as a protectionist policy implemented by the government in order to protect non-renewable energy power producers.

Implementation of CDM in Malaysia

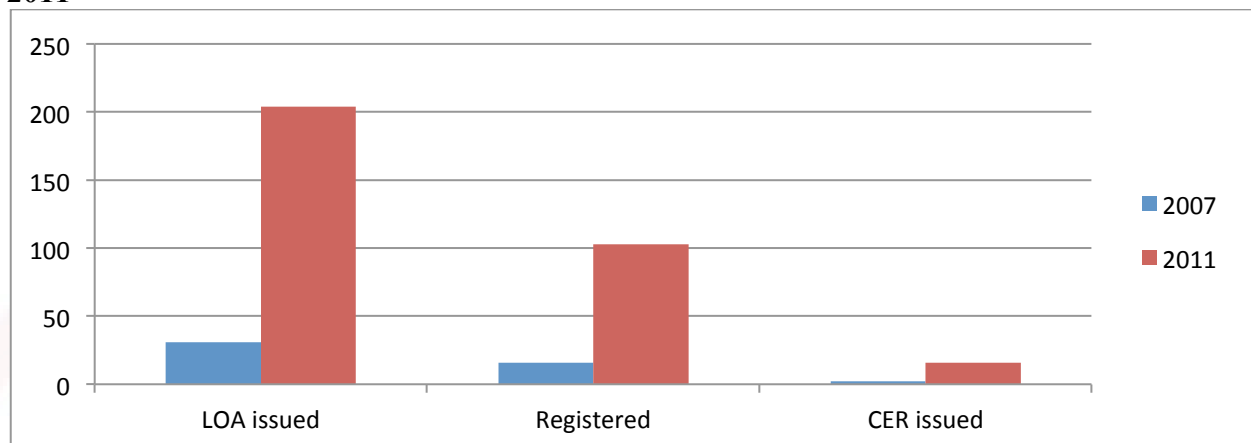
Currently, in Malaysia 204 projects are given LOA by the DNA. From that number, only 103 projects have been registered under the UNFCCC CDM Registry while 2 projects are requesting for registration (Refer Appendix C for full list of CDM projects in Malaysia)³. The remaining 99 projects are either rejected from being registered, have withdrawn their request for registration or have their validation terminated. From this data it can be seen that currently only 50.4% of the whole CDM bound projects are registered.

In 2007, the numbers of CDM projects implemented in Malaysia is very small compared to the recent development⁴. By 2007 only 31 projects were given LOA, 16 projects registered with the CDM and only 2 projects accredited with CER issuance. (See table for comparison)

³ UNEP Riso Centre, CDM Pipeline, 15 Dec 2011 < <http://cdmpipeline.org/>>

⁴ Azhar bin Noraini, "Climate Change and CDM in Malaysia", *Seminar on CDM Potential in TNB*, (Bangi, 27 July 2007)

Chart 1: Comparison of the number of CDM Projects in Malaysia in 2007 and 2011



From the table above we can see that there is a huge increase in the numbers of CDM projects implemented in Malaysia. It seems that after 4 years, the numbers have increased more than 6 times. This shows that Malaysia is very serious in implementing the CDM. In 2010 Malaysia ranked 5th in the world, behind CDM giants China and India, for registered CDM projects⁵.

Conclusion and Recommendation

On Kyoto Protocol

The implementation of Kyoto Protocol and CDM in Malaysia can be viewed under two perspectives, which are the implementation made by the government through its ministries and agencies for the former and the participation by the private sector for the latter. As a party to the Kyoto Protocol, the Malaysian government has the duty to observe its provisions, which are relevant, albeit the fact that Malaysia as a Non-Annex I country is not imposed by the specific commitments of the Protocol. This means that even though most of the obligations are not applicable to Malaysia, commitment must still be given to fulfil the ultimate objective of the Protocol and in the same time the general obligations provided under article 10. On this aspect Malaysia has proven itself to go beyond its obligations. Though not required under the Protocol to reduce GHG emission, the Malaysian government voluntarily gave commitment to reduce its GHG emission in quite a large number.

Since the ratification of the UNFCCC and later the Kyoto Protocol, the Malaysian government had initiated various national policies and programmes which serve both the Convention and the Protocol ultimate objective. These national policies are further strengthened with adequate institutional frameworks that oversee the implementation of the policies. However, it must be noted that even though Malaysia had formulated several national policies relevant to the Convention and Protocol, it lacks the legislation that would help enforce the effort of reducing national GHG emissions. The current legislations that deal with emissions in Malaysia are not adequate since

⁵ Bernama, Malaysia Tempat Kelima Dunia Untuk Projek-Projek CDM, *Bernama.com*, 7 June 2010, 20 August 2011 <http://web6.bernama.com/bernama/v3/news_lite.php?id=504046>.

they are more focus on vehicle emissions rather than industrial emissions that form the other huge part of GHG emissions production⁶.

It is submitted that in order for Malaysia to actually achieve its voluntary commitment of GHG reduction target, new laws or regulations must be passed so that it is possible for emissions reduction to be enforced. However, one may argue that such enforcement would mean that the industry sector will be burdened and bound with heavy obligations, and may cause negative growth on part of the industrial sector. In the light of such argument, I submit that such new laws should keep in mind and observe the principle of sustainable development. This will require a juggling act between enforcing GHG emissions reduction and protecting the interest of those tied to the industry.

Thus the new legislation on enforcement of GHG reduction should include the following:

1. It must identify the major GHG emitters;
2. The major GHG emitters must be required to submit yearly GHG emissions report so that its amount can be observed. Failure to submit such report shall constitute as an offence; and
3. Major GHG emitters must comply with a national emissions standard. Non-compliance shall constitute an offence.

This legislation by itself will look quite harsh to the industries. Thus in order to protect their interest and in the same time observing the principle of sustainable development, government-backed initiatives can be implemented. These initiatives can be in the form of tax cuts to reward compliance, and encouragement for industries to adopt green or more efficient technology. In simple terms, the new law must be strict enough to enforce compliance and the initiatives must be attractive enough to encourage compliance.

On CDM

In the context of CDM implementation in Malaysia, the focus is more onto the private sector that builds and manages the project rather than the government. However it must be noted that the government still need to provide a good institutional framework including sound rules and regulations to facilitate CDM projects implementation. In Malaysia, the government has established the MGTC, or previously known as PTM to oversee CDM projects while in the same time making the agency as a focal point for implementation of green technology. This combined purpose of the MGTC is like killing two birds with one stone. It is a one stop centre that is supposed to making things easier for CDM and green technology projects. This will of course benefit the country and any participating party.

On the ground perspective, CDM implementation in Malaysia has not cause any adverse impact on any aspect except for certain minor issues, as has been discussed above. This is unlike the situation in other countries such as India and Thailand where implementation of CDM projects has cause great misfortune to those who dwell near

⁶ Environmental Quality (Control of Emission from Petrol Engines) Regulations 1996; Environmental Quality (Control of Emission from Diesel Engines) Regulations 1996; Environmental Quality (Control of Emission from Motorcycles) Regulations 2003.

the vicinity of the projects⁷. Stories of residents being evicted from their land by CDM projects existed in India⁸. While in Thailand, a lot of people who live near a CDM project plant suffer skin diseases believed to be caused by the burning of paddy husks for the purpose of generating Biomass electricity⁹.

It is submitted that these problems existed is not due to the fault of the CDM regime, but it is caused by the weakness of the CDM project country host parties including their Annex I country partners in facilitating such project so as to ensure that no adverse impact will occur to the environment. In order to stop such bad things from happening, the host country party must have sound law, regulations and rules to ensure compliance with enforcement and in the same time protects those who are affected, at least directly, from the CDM project.

I further submit that a national legislation with regard to CDM projects should include the following:

1. Every application for CDM registration should be provided with an extensive environmental impact assessment (EIA);
2. All application should be made public so that the CDM project can be commented upon by relevant NGOs and stakeholders; and
3. Liability and Redress for environmental harm. By following the Polluter Pays Principle this is to provide that if a person or an entity is responsible for causing damage to the environment, they are liable to pay for the damage or compensate for it. The person may also be required to repair the damage they have caused. For this purpose the liability and redress mechanism as provided under the Cartagena Protocol on Biosafety including the Malaysian Biosafety Act 2007¹⁰ should be referred to.

Furthermore, since all CDM project application for registration at the CDM Registry starts from the host country party i.e. national level, it is at this level that each application must be scrutinized and be dealt with according to the findings. Not only that, all running CDM projects should be monitored from time to time. This will of course require active participation between the government and its agencies including with relevant NGOs and stakeholders. Such combined effort I believe will be able to weed out any rotten CDM projects.

All in all it can be said that Malaysia, in its status as a Non-Annex I party, has voluntarily complied and successfully implemented the Kyoto Protocol and CDM. However, there can always be room for improvement. With relevant new national laws and regulations regarding GHG emissions, the 2020 target of 40% GHG emissions reduction compared to 2005 can be achieved.

⁷ Gilbertson, Tamra and Reyes, Oscar, Carbon trading How it works and why it fails, (Uppsala: Dan Hammarckjold Foundation) 2009. 66-79

⁸ *ibid*

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Work life balance and Job Performance of the Sailors in Rapid Action Boat Squadron of Sri Lanka Navy

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Abstract

To be competitive in today's increasingly complex and rapidly changing environment, organizations must retain personnel and promote the well-being of employees. This paper aims at empirically investigating work life balance on job performance of the sailors in Rapid Action Boat Squadron (RABS) in Sri Lanka Navy. Data were collected from 219 sailors using structured questionnaire originally developed by Opatha, (2010) was used for measuring work life balance and the structured questionnaire developed by Udayakumar, (2003) was used for measuring job performance. Pearson Correlation Coefficient and Curve Fit Analysis were employed for the analysis of data. The study substantiated that there is a weak positive relationship between work life balance and job performance of the sailors. The results suggest that the work life balance aspect on its own does necessarily lead to improved individual performance and assumedly organizational effectiveness. Therefore, it needs to implement work life balance-performance model effectively through specific practices. The paper empirically investigated work life balance-performance model in RABS of Sri Lanka Naval context and offers practical implications for top level administration of the Squadron seeking effective implementation of the work life balance-performance model.

Key Word(s): Work Life Balance, Job Performance, Rapid Action Boat Squadron(RABS) of Sri Lanka Navy

Introduction

Organizations function in increasingly complex and changing environments. Globalization, competition, advancements in information technology, increased work demands, decreasing resources, a changing workforce, and transformations in the expectations and capabilities of employees are realities that human resource professionals must be prepared to effectively manage (Agarwala, 2003; Gephart Jr., 2002; Hempel, 2004; Norris, 2004). As one of the elite forces of Sri Lanka Navy, RABS personnel are trained to a high standard with sufficient level of physical and mental fitness and the capacity to develop their skills. However, there is a problem of attrition and dissatisfaction rate at early stage in sailors' career. In addition to this problem, first it lowers the return on investment in training personnel. Second, high attrition both at the early stage of their naval career has implications for operational effectiveness which reduces the training effectiveness of the Squadron. In combination, these problems will continue to have an impact on retention in the Sri Lanka Navy. Among other factors which could influence on the job performance, work life balance Gajendran and Harrison, (2007) and Halpern, (2005) may be major root to determine the degree of sailor's effort for the Sri Lanka Navy. Current awful nature of human utilization in organizational context may be the basis of sailors' performance as a major factor or as a minor factor. Therefore, the authors try to find out the impact of work life balance on determining the job performance of the sailors in RABS of Sri Lanka Navy.

Literature Review and Hypothesis Development

Job performance has been distinguished as a single most all-encompassing outcome variable in the micro organizational behaviour research (Staw, 1984). The job performance for any one in any milieu is determined by many and different factors. In the Porter – Lawler extension of expectancy theory, the effort (the factors of values of reward, perceived effort rewarded probability), abilities and traits and role perception determine the performance (Moorhead and Griffen, 1999). The equity theory for employee performance determines people from perception of equity or inequity by comparing what they give to the organization relative to what they get back and how

this ratio compares with those of others (Moorhead and Griffen, 1999). Vroom (1964), Porter and Lawler (1964), Hellriegel, Slocum and Woodman, (1992), and DeCenzo and Robbins (1993), pointed out that the performance is determined by the level and interaction between ability and motivation.

Gellerman (1963) said that conscious goal setting is an important determinant of levels of performance. Latham and Yukl in 1975 indicated that goal – setting programs improve performance at managerial and non - managerial levels over an expanded period of time in a variety of organization (Gordon, 1993). Locke, Frederick, Buckner, and Bobko based on their research, has suggested that performance was a function of employees' ability, acceptance of goals, level of the goals and the interaction of the goal with their ability (Gordon, 1993).

Employees who have formed intentions to quit their jobs often mentally distance themselves from their work environment and are less focused on their work, less likely to work to their full potential, and less effective than their counterparts who have not formed such intentions (Beehr & Gupta, 1978; Keaveney & Nelson, 1993). As a result of this decrease in effectiveness, employees with intentions to leave their current places of work can be very costly to organizations (Cascio, 1991; Gerhart, 1990; Sager, 1990). Moreover, turnover intentions are often the best predictor of turnover rates in organizations (Armitage & Conner, 2001; Keaveney & Nelson, 1993; Kim & Hunter, 1983; Locke & Latham, 1990; Mobley, 1977; Steel & Orvalle, 1984; Williams & Hazer, 1986). Using archival records, Huffman et al. (2005) found that turnover intentions closely correspond to the actual turnover of military personnel.

Human resources practices play an important role in the work-life balance and turnover intentions of military personnel through support provided to personnel and job quality. Although the military may not always have the flexibility to change organizational standards and job specifications if they want to remain competitive and functional, they do have a significant amount of control over how they manage personnel and how they structure specific aspects of jobs or military occupations. That is job descriptions may not be changed easily in a military context, but aspects of how the job is performed may be improved. For example, job satisfaction is improved by supportive practices such as increasing supervisory support and helping personnel

to balance their work and family responsibilities. Similarly, ensuring that job descriptions are clear (both “on paper” and in practice) may decrease the amount of ambiguity for personnel, and developing and maintaining interesting jobs may keep employees stimulated by, and engaged in, their work. Organizations looking to sustain the physical and psychological factors of current employees and improve retention should focus first on factors within their realm of control rather than the extraneous factors (e.g., market stability) or relatively stable individual factors (e.g., employee personality) that may affect employee work-life balance and retention. Specifically, hypothesize that organizational factors involving the supportive management of personnel (i.e., supervisory support, organizational support, and work life balance) and characteristics pertaining to job quality (i.e., work stimulation and job clarity) will be related to work life balance and turnover intentions among military personnel. However, these effects are mediated by job satisfaction, given the consistently strong relationships between these practices and job satisfaction (e.g., Berg, 1999), and given the strong relationships between job satisfaction and both work life balance and turnover intentions in previous research (Kathryne, Arla, 2007)

Recently, researchers have explored the impact of “work - family culture” defined as the “shared assumptions, beliefs, and values regarding the extent to which an organization supports and values the integration of employees’ work and family lives” On employees’ use of work family benefits, reports of work - family conflict, and general job attitudes (Behson, 2002; Allen, 2001). Attention to work - family culture has grown in response to reports that few employees actually make use of organizations’ family - friendly benefits (Bond et al., 1997). Despite the availability of programmes designed to facilitate employees’ work family balance, an organization’s unsupportive values and norms may undermine the effectiveness of such programmes, (Behson, 2002; Allen, 2001).

Most of the research conducted in different countries shows that there is a positive relationship between personal life and employee performance. For instance Frone et al. (1997) examined the impact of work - life conflict on performance and reported a momentous relationship, he used a self reported scale to measure job performance. Aryee (1998) reported that performance is related to job - parent conflict but not to

job - spouse conflict in his study. Jackson and Schuler (1983) have found that organizational commitment is negatively related to family life of the persons which leads to low performance and hence high work - life conflict. Jackson and Schuler (1983) and Allen, (2000) wrote that the job affects personal life of employees and vice versa. It was said that in terms of commitment that work - life conflict affects it and ultimately the performance of employee is reduced.

Work to family conflict has negative impact on performance of people according to Liao, Arvey, and Butler, (2001) when work affects the family the performance decreases but it is a good indicator of measuring dedication one has for his job. Work family conflict is drastically associated with organizational commitment, and if an employee loses commitment then ultimately the performance is reduced. Allen, (2001), in his study on customer service employees, customers and supervisors, found direct and indirect effects between work family conflict and employee performance where the performances are rated by supervisor. Bond, Galinsky, Swanberg, (1997) found that there exists a conflict between life and job performance of employees.

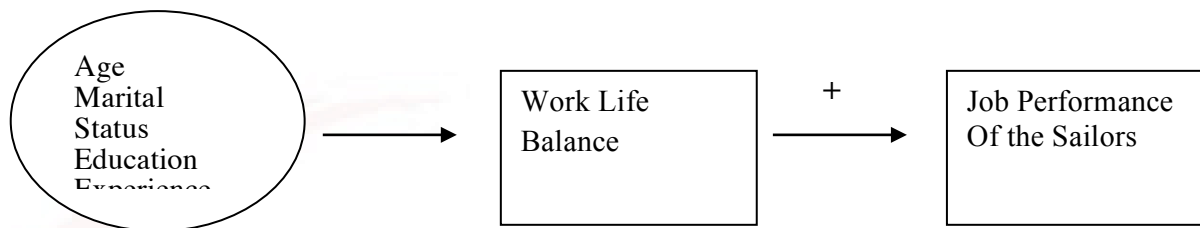
According to Gajendran and Harrison in 2007, Halpern, 2005; there is a positive relationship between work life balance practice and job performance of the employee. Based on the above evidences, it is hypothesized that the work life balance of the sailors in RABS of Sri Lanka Navy has a positive relationship with their job performance. Figure 1 shows the schematic diagram of the theoretical framework.

Hypothesis:

H1: There is a significant relationship between work life balance practice and job performance of the sailors in Rapid Action Boat Squadron of Sri Lanka Navy.

H0: There is no significant relationship between work life balance practice and job performance of the sailors in Rapid Action Boat Squadron of Sri Lanka Navy.

Figure: 1 Schematic Diagram of Research Framework



Method

The survey was carried out among the sample of 219 sailors in RABS of Sri Lanka Navy which represented 43 percent of the population. The unit of analysis was at individual level (sailor). The selection of sample was carried out on a random sampling method. To collect the primary data required for the study a set of questionnaires were distributed among them. These questionnaires consisted of 36 question statements. All question statements were designed with 5-point Likert scale to measure the variables and dimensions in the research model. The secondary data were collected from the sources such as reports, records, and other publications. Data collected from primary (questionnaire) source were collected and analyzed using the computer based statistical data analysis package, SPSS version 16.0. The data analysis included the univariate (descriptive) and bivariate analyses. Research conclusions were made based on the results thereof. The reliability of the two instruments used to collect data was examined by using Cornbach's Alpha coefficient. The Cornbach's Alpha coefficient of job performance was 0.866 and work life balance was 0.847. Hence the coefficients of the Cornbach's Alpha indicate that each of the instruments which were used to measure the two variables under the study had sufficient internal reliability.

Univariate Analysis

Under the univariate analysis frequency distribution analysis was carried out of respondents by their personal characteristics. The age of the respondents grouped into four levels ranging from 20 to 40 years. The majority 49.3% of the respondents was within the age group of 20-25 and 33.3% of the respondents were within the age group of 26-30 and 16.9% of the respondents were within the age group between 31-

35 years. Just 0.5% of the respondents represented the age group 36-40. The majority of the respondents (56.2%) were unmarried. The level of education of the majority of the sample (93.2%) was GCE O/L. This is because GCE O/L is a prerequisite for recruiting the Sri Lanka Navy. The experience levels ranged from 01 to 20 years of the sample. The results show that 45% of the respondents were 01-05 years' experience in Navy and just 5% marked over 16 years' experience in their service period.

The frequency distribution analysis was made individually for the variables of job performance and work life balance. Frequency distribution analysis results have been interpreted mainly considering the Mean and Compare Mean values. The mean value of the distribution of job performance is 4.4027. Then the job performance of the respondents is good. The mean value of the distribution of work life balance is 1.5309. Then the respondents are not balanced with their work and life domains.

Bivariate Analysis

Bivariate analysis includes the correlation analysis and curve fit analyses which were used to investigate any relationship between independent variable (work life balance) and job performance (dependent variable). The correlation analysis was made to investigate any relationship between work life balance and job performance. Person Correlation between these two variables is 0.368 which is positive. The statistical evidence claimed that work life balance and job performance are positively correlated to each other. Regression equation of work life balance is;

$$\text{Job Performance} = 3.673 + 0.477 (\text{Work Life Balance})$$

The b value of equation, the gradient of regression, is 0.477, which is significant at 1% (0.000). When considered the adjusted R^2 , 13.2 % of the variance of job performance is explained by work life balance with the standardized beta 0.367. The ANOVA of the model for Job Performance and work life balance showed the F value that is 34.090, which is significant at 1% (0.000) suggesting that job performance has significantly explained 13.2% of the variance of job performance. Curve fit for job performance and work life balance further confirms the positive linear relationship between job performance and work life balance of the sailors in RABS of Sri Lanka Navy.

According to the results of the tests, the hypothesis is accepted since $r > 0$, and $b > 0$. Hence the data support the hypothesis that there is a relationship between work life balance and job performance of the sailors in RABS of Sri Lanka Navy. Further, data claimed positive relationship.

Discussion

It was found that there is a positive relationship between work life balances and job performance the sailors in Rapid Action Boat Squadron of Sri Lanka Navy. The correlation between these variables was 0.367, which is significant at 1% (0.000) level. This correlation was found to be weak as it is not more than the lower bound of strong correlation (0.5), but closet to marginal level.

According to the results of simple regression analysis, work life balance was found to have a positive impact on job performance with the strength of b value of 0.477. The multiple regression analysis also revealed that work life balance had weak effect on job performance [the beta value of 0.212 significant at 1% (0.000)] and the results of the stepwise multiple regression analysis when considered the adjusted R^2 , 13.2 % of the variance of job performance is explained by work life balance indicated that work life balance is contributing to the less explanatory power of the research model. Hence, work life balance was also found to be a less predictor of job performance.

Discussing the level of work life balance of the respondents in the sample, it was found that they have not balanced of a favorable level of work and life spheres with the mean value of 1.5309 and standard deviation of 0.32671. Accordingly, it was found that the sailors in RABS of Sri Lanka Navy were not balanced with their work and personal life.

As indicated by the empirical data, the job performance of the sailors in RABS of Sri Lanka Navy is not strongly depended on the work life balance. The job performance of the sailors in Rapid Action Boat Squadron of Sri Lanka Navy was high. But their work life balance and the correlation between these two variables is not so high.

According to behavior of these two variables, the job knowledge, cooperation, dependability, interpersonal skills, communication skills, planning work, organizing work, quality of work, punctuality, attendance, speed, achievement, and completion of work of the sailors in RABS of Sri Lanka Navy were quite enhanced by the flexi-time, annualized hours, staggered hours, job sharing, term-time hours, compressed hours and part-time working.

Therefore, the sailors' practices due to utilization of the workforce in the organization to the organizational direction are not highly depended on their work life balance practice in RABS of Sri Lanka Navy.

Conclusion

The problem of the research was that to what extent work life balance affects job performance of the sailors in RABS of Sri Lanka Navy. Based on the theoretical information, conceptual framework was developed to test the relationship of job performance with work life balance. According to the findings, it is substantiated that work life balance was less predictor of the job performance of the sailors in RABS of Sri Lanka Navy.

It illustrated that work life balance is less significant factor that determines the job performance of the sailors in RABS of Sri Lanka Navy. This is because; RABS is one of the elite forces of Sri Lanka Navy, which established for the purpose of countering the LTTE military strategies. This voluntarily joint special force was trained in highly tough and structured war oriented background. In the sense, the characteristics such as mental and physical capacity, high determination power and enthusiasm keep sailors' leads to high level of job performance. Basically as they are work oriented rather than family, the balance between work and family spheres are not in favorable level. The findings of this research study shall be important on the theoretical as well as practical scenario. As this research model proves to be an explanatory model of job performance, the findings of the study are important to improve job performance of the sailors in RABS of Sri Lanka Navy.

Limitations and Future Research

The study was limited to investigate the influence of the job satisfaction, work life balance and occupational stress on job performance of the sailors in Rapid Action Boat Squadron of Sri Lanka Navy. These are not only the factors for determining the job performance of the sailors.

The researcher believes the important independent variables that may account for the unexplained variable in the job performance of the sailors may be the other variables such as mental and physical ability, person energy level, personality dimensions (dependability, self – confidence), (Gordon, 1993), group norms, organizational culture, career commitment, job involvement, task environment, turnover intentions, living environment, welfare measures, career development, job specification, personal knowledge and so on.

Further research studies are suggested to carry out to find the effects of these factors on job performance of the sailors in RABS of Sri Lanka Navy. However, in the context of researching the effort of these variables on the job performance, essentially future researchers may have to encounter serious difficulties in measuring the variables, as there is no measurement instruments correctly developed.

Another important limitation is that this analysis was cross-section in nature. Additional research is suggested to carry out longitudinally in order to evaluate the impact of the variables over the time. Longitudinal studies using quantitative and qualitative techniques are required in order to understand the changes in the three variables over the time.

The study was conducted among a sample of sailors in Rapid Action Boat Squadron as a whole, which does not include types of different rates is another limitation. The work life balance of different rates may depend on the job performance of the sailors in Rapid Action Boat Squadron of Sri Lanka Navy. Therefore, work life balance and job performance relationship of different rates of sailors is to be investigated.

This study has narrowed down with single branch of Sri Lanka Navy. However, it is also useful to extend the research to other branches of Sri Lanka Navy, which face similar situation to a lesser extent to improve overall situation in Sri Lanka Navy.

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The logo for the International Association for Business and Finance (iafor) is centered on the page. It consists of the word "iafor" in a light blue, lowercase, serif font. The text is enclosed within a large, faint, light blue circular arc that is part of a larger, stylized circular design. This design is composed of two concentric arcs: an outer one in a light red/pink color and an inner one in a light blue color, both of which are partially visible and frame the central text.

Bad Government as Reason of Recent Financial Crisis in Europe

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Abstract

Europe Union has always been a good model for Asia to form integration among East South Asian countries. While, occurrence of financial crisis in 2008 showed Europe Union also faced fundamental problems, which even most scholars, daresay this horrific economic shock is able to make it difficult for the convergence of countries in Europe zone. Then it can be a good lesson for Asia. In spite of emphasizing on market by economic liberalism, most experts believe that market failure cause the deepest global crisis after Great Depression (1929) to happen. They credit, that the governments have an undeniable role to finance globalization. Although we cannot ignore the importance of the role of attendance of government in the economy, we believe that sometimes governments are the reasons for the problems in economic situation of country. As a result, the aim of this paper is to investigate the role of the government to worsen the crisis, which leads to bankruptcy of some countries of Euro zone between 2000 and 2012. Factors that will be looked at include the lack of political integration among European government and cooperation of national government, the absence of mighty government to make decision and policy and undisciplined financial plans, as well as, loss of proper rules and low. These are occasions of bad government. They could not solve the imposed crisis from financial markets from USA but also intensified the conditions of these communications where some Europe countries move to bankruptcy.

Keywords: Financial crisis, Bad government, European Union

1) Introduction

Maybe nobody believed that occurrence of price bubble in housing market in the United States, before 2007, and bursting them, in July 2007, is the origin of the most harmful recession in the world economy after the Great Depression of 1929. The global crisis, which was started from financial market in 2007, was enlarged to real economy, affected the production process, and finally involved the goods and services, labor, and capital markets in the last quarter of 2008. Recent financial crisis caused the world to face a harsh and rapid down fall in production of industries, reduction of international trade, lack of mobility and attract of foreign investment, and debt crisis.

Asian countries especially South East Asia always desired to constitute a union with closed and unlimited economic, social, and political relationship among countries of this region like Europe Union by common currency such as Euro. The bad experience of financial crisis in Europe Union caused to scruple to form and organize a new union in Asia regardless of having the required potentials. East Asia has passed terrible crisis in the nineties which economists enumerate several reasons to happen in this part of the world. Lack of productive investments of savings, currency value appreciation in the last decade, which undermined export competitiveness, dependence on flight capital for economic growth coupled with lack of proper financial infrastructure to manage huge capital inflow effectively, and the inherent weaknesses of corporate strategies of large and dominant local financial institutions, are causes to occur the crisis in East Asia. (Mohamad and Nassir, 2000) Some economic experts focus on this issue financial crisis of East Asia was transmitted among these countries. They have explained which high powered trade relationship among East Asian countries caused each non-significant and inconsiderable shocks which happens in these countries is transmitted easily with connections of economic channels among countries of this area. (Gong et al., 2004) This kind of thinking, with the occurrences of serious financial crisis in Europe have prevented the effort to constitute the Asian Union to organize a new union like European Union with common currency like Euro among themselves.

The recent crisis of European Union is the most horrific crisis that has happened since 1957 when this union was formed. Most experts believe that recent financial crisis has made difficult the convergence of European countries. The indebted countries of union like Greece, Italy, Spain, Ireland, Spain, and Portugal have to refund their debts by economic austerity plans otherwise; we will encounter dark and hopeless perspective for European governments.

Among the results of the financial crisis in Europe was the risk of collapse of Euro unit, instability in the whole of European financial system as well as the decline in economic growth by 4%. At the same time the debts of European government have tripled from 2008 up to now, resulting in the enhancement of European government's deficit in the end of 2009, this deficit was about 9 billion Euros. The labor market has also suffered with the increase of unemployment from 7.5% in 2008 to 9.9% in 2009 and 11.5% in 2011. In addition, the region has experience decrease of interest rate from 4.25% in 2008 to 1percentage in the last of 2009, reduction of exports, downturn of housing value and bankruptcy of most European banks.

Financial indiscipline of members, the lack of regulatory mechanism on operation of European banks and existence of competitive and non-competitive economic together are the most significant reasons which the weak countries of Euro area suffered severe deficit during several years. Then they borrowed continuously and finally they could not repay them.

In addition, financial crisis has caused a political gap among member countries. In one hand, weak countries of southern Europe believe that hegemonic policy in Germany is the most substantial reason to create the gap among these countries. According to this view, commercial imbalance between members who have trade surplus like Germany and members who are in trade deficit situation such as Greece has created trade deficit among members of Euro zone. Moreover, economic critics explain that Germany has forced members who are debtor to do economic austerity plans as preconditions to borrow—and these plans are limitations to achieve the economic growth. On the other hand, Germany claims financial crisis of Europe is a result of prodigality and financial indiscipline of members of European Union and their non-competitive economic, because the governments dominated their economies.

In actuality, financial crisis has eventuated to the defeat for all the members of Euro zone. The feeble members will experience the collapse of value of national money, ungovernable inflation and enhanced foreign debt, which eventually lead to a complete economic bankruptcy. On the other side, the powerful countries, which mainly include western European countries, the crisis will cause them to lose their sales markets and will decline demand for their productions. As a result, they will face impressive unemployment and will lose their economic position in the world.

However, transmission of recent crisis to Europe Union also showed that although the economic interconnectedness has more profits, in economic inappropriate situation, the crisis could have the harmful effects. Chiefly when the smaller economy is dependent on large economies and economic unstable of developed countries could worsen the conditions of economies, which have the lower rate of economic growth and even cause the bankruptcy of the economy. Greece, Ireland, Italy, Spain, Portugal, and Cyprus are examples, which can support our statement.

The significant point that we should bring up, here, is that governments can have considerable effects to reduce the negative effect of economic crises. Nevertheless, it is necessary to remind that sometimes governments, themselves, cause to create fluctuations in crisis. This problem reduces the level of standard of living of residents and lessens the satisfaction of people. The experience of countries of Euro zone is a documentary reason, which displays the incompetence, and inefficiency of their governments, which has caused the deteriorating the situation. As result, most experts believe that the resent economic crisis has been the crisis of government. Then we can strongly argue that bad government not only able to manage the economic shocks and fluctuations but also they sometimes act as a catalyzer to worsen an economic process.

Consequently, in Part two we will review the background of what happen in the financial crisis in Europe and the role the government played in this crisis. Part 3 will offer our finding about the role of bad government in the occurrence the financial crisis in Euro Zone, and eventually in part four we will conclude our discussion of crisis and bad government.

2) Background literature of recent financial crisis

Since after the Great Depression, people said, “we have to make sure this never happens again”. Then they had done anything, what was intransitive, to avoid this similar bad economic situation, but the world experienced one in 2007 that created similar situation for people of the world. Ahamed (2009) in his book points to harsh great depression in 1929. The important hint, which is explained by Ahmad, is the mistake of four original bankers’ decisions of the world. He shows that presidents of England, France, and Germany’s central

banks also Federal Reserve president the four people responsible to cause the Great Depression. After World War I, the central banks insistence to use the “Gold Standard System” has caused the monetary irregularity and the great crisis of the twentieth century.

Some crises happen in stock markets (1929) and some of them occur in credit markets (2007). Moreover, sometimes we are witness that exchange market and even goods markets experience different crises. These crises can affect one country or a group of countries and maybe the whole of the world. The first crisis started by collapse in stock market and second happened with falling in credit market. (Herring and Wachter, 2003) show that most financial crises happen since we face bubbles in real estate markets, and the appearance of the bubbles can have different reasons.

Allen et al (2009) argues that there was a bubble in real property prices in the U.S and European countries and the most important reason for this phenomenon was the loose monetary policy by the Federal Reserve and global imbalances.

Occurrence the crisis in financial markets of USA is being referred to the early twenty first century.¹In addition, China could conquer the most goods markets of USA. China could, for the first time, decline American demand for internal production. In other word, the consumption of United States from goods, which were produced in USA, had decreased while its import had gone up. This problem caused bad situation for growth process. Moreover, 11 September happened in 2001. Which damaged economic power of USA and had negative effects on financial markets? This caused capital flight for the greatest economy of the world. Morck et al. (2011) believe “the United States is experiencing sub-prime mortgage crisis which is creating a deep economic winter.

By studying the case of European countries that are member of EU, it seems that the most important problems of this zone during the financial crisis and after that even up to now, has been the lack of political integration between the West and East Europe countries. It is clear that Euro zone crisis in 2007 has boosted the significance of presence the powerful government to create collaboration between the West and East Europe. Unfortunately, the manifest problem that the Europe Union suffers from it, according to theory of Benink and Schmidt (2004), is the absence of political integration.

Most economists claim that Euros is the origin root of the financial crisis in Europe. In their view, this problem started when the plan of money union was done without financial merger. It means, it was necessary that with money union established an organization which proctored on providing budget system tile all the members of union were dedicating a constant ratio of domestic gross production to their budget.(Hall, 2012)

Moreover, incident of financial crisis changed the market failure to one of the hottest topics in economies. Páramo (2009) shows that, information asymmetries as type of market failure, has raised inefficiency of securitization markets and behavior of investors, rating agencies, intermediaries, and originators, which has had direct effect on financial markets to face crisis.

Here, we face so many questions, which we have to find appropriate answer to prevent global economy from future crisis, like what are the lessons learned from the current crisis. What are the important reasons to start the crisis and how can we confront future problems?

¹ Between 1995 and 2000, industrial countries' stock indexes raised rapidly. This improvement owed the growth of internet and information technology sector. In this time, so many firms had been established by prefix e- or suffix .com, which faced bankruptcy very soon. (dot com bubble crisis)

Alternatively, is there a need for government to control market failure, which it seems, is one of the roots of occurrence of financial crisis?

Hoshi and Kashyap (2008) simulated the Troubled Asset Relief Program (TARP) model of the United State for Japanese financial crisis and illustrated that government must navigate the financial markets during the crisis via equity injection. In addition, Bebhuk emphasizes that fluctuation situation can lead the financial markets into crisis, we have to consider a government funded asset purchase program.(Bebchuk and Spamann, 2009)

This global financial crisis corroborated that accretion and affiliation of the economy are two points, which are needed for a regulative system and constant international financial framework. Ozkan (2011) proves that global governance can be useful to the recovery of the economy after the recent crisis. He describes an effective, defined, and legitimate global governance of G-20 to improve the worse economic situation of the world. Chua emphasize that to recover the global crisis in 2007, we have to reign diplomacy efforts, (Chua and Pang, 2012). Benink and Schmidt (2004) describes what can play effective role in critical economic conditions in new world, which the global economy is integrated, is political integration. To this end, the best option is still national governments. In addition, to create accretion among the members of Euro Union, the tool which we need, is diplomacy (Hiebert, 2005). Now, we believe when a successful diplomacy happen among these countries, initially all of them are able to organize a successful political and economic communication with each other.

As result, with studying the literature of government support in crisis, we will show that government assistance will guarantee the reform of financial market when they face crisis. In addition, even government can hold up outbreak of financial crisis, but government should have special character, which we will refer to them in future. Otherwise, government can be the reason to create fluctuation; in so fare, some economists believe the recent financial crisis is the government crisis. It can be said that bad government lead to bad situation in societies.

3) Finding

Expanse of number of countries encounter risk of bankruptcy in Europe Union, and enhancement of famine and hungry in Africa and some part of Asia confirm, after four years, world economic situation still feel the danger of harmful effect of recent crisis- Moreover, countries have not been able to reform completely their situation. Even according to the annual report of UN and DESA in 2012, the world has experienced the weakened economic situation.(2013)

Debt crisis, bankruptcy of some Europe countries and high rate of unemployment are some problems, which the developed countries face them. Weakening the power of Euro and, lack of financial discipline of European government are two factors, which help financial crisis to be changed debt crisis and the high risk of bankruptcy for some governments, while the rate of unemployment also shows in Europe the number of people who are losing their jobs will raise. (Table 3.1)

Table 3.1 Unemployment Rates of Europe, 2004-2014

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
European Union	9.2	9.0	8.3	7.2	7.0	9.0	9.6	9.6	10.4	10.9	10.6
Euro area	9.2	9.2	8.5	7.6	7.6	9.6	10.1	10.1	11.3	11.8	11.6

Source: World Economic Situation and prospects 2013, 2013

Debt crisis has entailed the rate of economic growth was been negligible and Europe governments have so many problems to solve them and improve their situation after recession. The interesting point is the imperfect condition to form the Europe Union has been transmitting the crisis among countries, which are member of Euro area. The member of Europe Union whose their process is done by currency, not Euro, are less vulnerable that Euro zone. This acknowledges Euro is one of the variables to make economic fluctuations.

Over four years of financial crisis, which started from USA and gradually changed into the global crisis, the world has not been able yet to return into the conditions before this recession so that it seems, some countries of the world have experimented the awful situation than before. Maybe, we should say that the Europe Union's countries have had the most horrible economic status. The low rate of the growth, the high number of people, who lose their job every day, and labor unions protest were problems that countries like Greece, Cyprus, Ireland, Spain, and Italy were struggling with them. Even if the Euro Union had not supported them eventually were falling into the bankruptcy trap and it was possible the Euro was disappeared. In short, Europe governments now have been confronted two major problems; low rate of economic growth and debt crisis.

Although the downturn in Europe has dramatically affected the labor market and increased the number people who lost their job position to 5.4 million duration between March 2008 and May 2009(Hijman, 2009), it has been a positive opportunity for students and scholars of political economic filed in Europe. Based on this, economic experts have represented numerous reasons to happen the recent financial crisis, if we want to conclude, we should mention the financial crisis is due to fail the foreign and domestic decision.

Pauly (2009) and Schneider and Kirchgässner (2009) indicate, reluctance of government to develop coordinating policy between domestic and foreign course is a root to occurrence the financial crisis in Europe. Begg (2009) argues that deregulation and failure of regulation is factors which caused the global crisis in financial markets.

The important point in studying of financial crisis in 2007 is even the economics have not found any convincing answer why the recent financial crisis happened. Although, in duration of the recent crisis, which started from advanced countries like the United States, governments had to inject liquidity to financial organizations and systems and even some governments and nations to prevent bankruptcy, one definitive solution has not been found yet and economies, which have confronted downturn and bankruptcy, especially, some European countries are vulnerable and fragile.

Pauly (2008) believe albeit integrated financial and capital markets in Europe have deeply prospered, financial crisis by 2008 showed they have not been able to contrast with crisis and protect economic stagnation and collapse into insolvency and failure. Then we cannot ignore

forming global governance with effective and undeniable instrument like free, integrated, efficient and resilient financial market can be an engine of economic growth when in Europe these markets are matched with what European named them as complex politics. In better word, we need a responsible power parallel by markets. As result, according to the theory of Akerlof and Shiller (2010) we accept that rebellious mind of people as animal spirit was a reason to fall the value of Dow Jones in the United States, FTSE100 in England, CAC40 in France, and DAX in Germany. In addition, the appearance of government, as kind parents to bring up and train of children, is necessary to control and manage the economic situation of a society or government is as a necessary bad. Nevertheless, bad government not only cannot reform the critical situation but also it can worsen the condition even can be a reason to bankruptcy of a country.

Davidoff and Zaring (2009), by emphasizing on theory of Kindleberger and Aliber (2000), illustrates sometimes response of government could push the circumstance of economy to downturn and even bankruptcy. Then we can mention what governments have done to restore the economy of Europe although was creatively, in most time they have been executed imperfectly because of low confidence of government. Then what they have done to decrease the effect of crisis was hastily, as well as was good and enough only in short time. This kind of policymaking could not guarantee the long run improvement in European societies. In addition, the unbounded but complex communications in new world have been causing the world move to moral hazard which government has had a major contribution to violation of ethics. It means that, we live in the world which free riding on government is a custom even in societies are experiencing integrity process and they have to committed to ethics. For example, cheating of government of Greece from 2002, when joined to Europe Union, to offer the data and macroeconomic information to international institutions entailed decreasing the risk of lending from powerful economies and financial international organizations to this country. However, by deploying the financial crisis from the United States to Europe Union and inability of Greece government to refund the debts, Greeks tried the terrible economic situation up to bankruptcy.

Finally, prevalence of Thatcherism ideology in Europe in eighties recognized the market without the intervention of government as only engine of development in societies, as result the role of government gradually diminished in economy. Large scale of privatization of most economic sectors and deregulation which done in most advanced countries. Benáček (1993) believes what accomplished by government as privatization and deregulation was because of being unable of government. Benáček (1993) indicates market is a kind of public good, as well as Keech et al. (2012) explains that the market failure will happen cause government failure. It means when a government is not able to amend the structure of market we will face market failure. Recognizing of market as public good displays to construct it we need infrastructures, rules and huge investment, which a government could only provide them. In other word, market is a special public good that have much authority to affect in economy. If we accept the market is a public good, free market without any intervention of government and irregular liberalization will be sing of inability of government.

4) Conclusion

We can strongly say the first years of twentieth century people of the world experienced too agonizing and frightful situation when happening the Great Depression was a tragedy for these years. Between 1930 and 1936, the rate of unemployment fell in to 25%. The financial crisis in these years started from the United States and affected whole the world for one decade. Although Ahamed (2009) believes that this crisis befell because of making mistake

decision by the presidents of central bank of England, France, Reichsbank of Germany, and Federal Reserve of New York, maybe, investigating of the reasons of occurring the financial crisis in these years is not more important versus failure to provide the appropriate solution to eradicate the downturn. Since lack of ability to recover, the economic situation in during the years between 1929 and 1936 caused the World War II was considered as the only solution to reform the recession condition by politicians. The result of was death of more than 50 million people in worldwide. This issue was more irritating than occurrence the crisis in 1929. That is why, repeating the financial crisis in 2007 the world entailed fear and anxious to be pulled into other war.

Moreover, financial crisis in 2007 in developed countries illustrates, in spite of what is being claimed, development is not a reason for being protected of economic fluctuations and tensions, especially when in definition of development, the prevailing view is the economic growth. The increase of the number of unemployment with decrease of national production in the United States in during of 2007 and 2009 is a strong proof on this asseveration. Transmission of recent crisis to Europe Union also showed that although the economic interconnectedness has more profits, in economic inappropriate situation, the crisis could have the harmful effects. Chiefly in situation, which the smaller economy is dependent on large economies and unstable economy of developed countries, can worsen the conditions of economies which have the lower rate of economic growth and even cause the bankruptcy of the economy. Greece, Ireland, Italy, Spain, Portugal, and Cyprus are examples, which can approve our statement.

Keynes in his book, "The General Theory of Employment, Interest, and Money", has offered his theory based on prominent role of government in a strong capitalism economy. Then, the thinking of appearance of government, as a necessary bad, formed in whole the world. Keynes clarifies how a strong and qualified government can make appropriate policy and even borrow to cost in economic stagnation to hire the force labors that are unemployment.(Keynes, 2006) Although the prescription of Keynes was never completely executed in during the crisis, from the end 1940s the solution of Keynes was performed for all the countries of the world then by finishing the Second World War, governments, as proper manager to reconstruct and plan of society's development, could reduce the rate of unemployment. As result, the appearance of government to manage the economy is one of the undeniable factors in business cycles. Though Thatcherism and Reganism thinking at first of eighties was reason to forget this factor, many experts believe this issues was the beginning of the numerous economic shocks like financial crisis in 2007.

The significant point that we should bring up, here, is that governments can have considerable effects to decline the negative effect of economic crises. Nevertheless, it is necessary to remind that sometimes governments, themselves, cause to create fluctuations in crisis. The experience of countries of Euro zone is a documentary reason that displays the incompetence and inefficiency of European government has been cause of deteriorating the situation. As result, most experts believe that the resent economic crisis has been the crisis of government. In better word, bad government is one reason to deteriorate also move to bankruptcy. We should clarify that the lack of confidence in governmental planning and then offering the short time and hastily decision and policies are factors to approve the bad government is on reason of recent financial crisis in European Union. In addition, absence of morality of governments to respect the rules of process of integration, privatization and deregulation, because of inability of government in managing of government not to support the private property, are causes to define the bad government to worsen the economic situation of Europe.

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Bangkok's Political-Driven Community Radio in Thai Political Turmoil: Recommendations for a Better Community Radio for Promoting Democracy among Bangkok's Society

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Abstract

Thailand had been in the latest episode of political instability since the second term of the Prime Minister Thaksin Shinawatra. The situation reached a string of its peak and world-recognized affairs such as the military coup deposing the Prime Minister Shinawatra, the closing of the Bangkok International Airport, and the wide-spread burning of the downtown Bangkok. Political-driven community radios were observed as a political communication channel for political bodies to propagate their information to the followers and played important roles in the political turmoil. Thus, understanding roles of the political-driven community radio in the political crisis, as well as finding good guidelines to offer such radio program, is extremely important. In this study, we 1) examine all key components of community radio to understand its roles towards the political crisis; 2) study the usage, satisfaction, need and expectation of community or listeners; 3) analyze and suggest how to improve the community radio in the future to better support the community for truly understanding of democracy in Bangkok.

Introduction

Community radio has been publicly and legally allowed in Thailand in 1997 as a result of Constitution of the Kingdom of Thailand in 1997; this radio channel has been supervised by the Organization of Frequency Wave Allocation and Radio Broadcasting, Television and Telecommunications Enterprises Act B.E. 2543 (2000). Many progressive mass communication NGOs and academics have been expanding efforts to provide education and training to raise awareness of freedom of expression and community radio operation among the Thai public. This has been done under the core principle that community radio is of the community, by the community and for the community (Berrigan 1981). In addition, community radio must be operated on a voluntary, not-for-profit, free from political intervention and domination by the state, capital and politicians.

However, as the instability of the political situation in Thailand since 2005 throughout the present time, the community radio has been seen as actively manipulated or used by political-backup organization or group of people opposed to the original intention. Nevertheless, this claim is needed to examine and study thoroughly as it is unwise to jump into the conclusion by observing a few instance or event or even just a rumor. In addition, it seems that the effect or influence of the community radio may have been promoted or discussed or misperceived.

This study aims to study and explore for good practices to offer preferable political-driven community radio program by mainly analyzing roles and influence of community radio which has been claimed playing an active role in Thai political turmoil. It is hoped that this will help us to understand correctly about community radio networks and thus enable us to use or reuse it in a proper way, or rather, back to its original intention—the community radio is for community and really by community and no intervention from other people whether those are political party, or a group of people wanting to manipulate and exploit it.

This paper is organized as follows. Research objectives are stated in the next section, followed by the introduction of the research framework. Then, the methodology and research methods are explained in details. The findings are presented in two following sections: the findings, and the discussions and suggestion section. The conclusion section concludes the study and addresses recommendations for future research.

Objectives

The objectives of the study were:

- 1) Examine all key components of community radio based on research framework to understand its role towards political crisis.
- 2) Study the usage, satisfaction, need and expectation of community or listeners.
- 3) Analyze and suggest how to improve the community radio in the future to better support the community for truly understanding of democracy.

Research Framework

From the principles of community radio that community radio is of the community, by the community and for the community, and our research objectives, there are two main entities in the study: the political-driven community radio and the listener or the community. Understanding the listener in the community radio communication is important to fulfill our research objectives. Uses and Gratifications Theory is one of popular approaches to understanding mass communication, especially paying attention to answer the question of “what people do with media” instead of “what media does to people” (Katz 1959). Moreover, social situations—in this case, political situation—and psychological characteristics motivate the need for media, which stimulate certain expectations of that media. This expectation leads one to be exposed to media that would apparently fit expectations, leading to an ultimate gratification. According to Katz (Katz 1959; Katz, Haas et al. 1973), there are five categories of media functions in the listener’s use, which are 1) Cognitive needs—acquiring information, knowledge and understanding; 2) Affective needs—emotion, pleasure, feelings; 3) Personal integrative needs—Credibility, stability, status; 4) Social integrative needs—Family and friends; and 5) Tension release needs—Escape and diversion. It is possible for us to understand roles of political-driven community radio in the crisis by examining the stated aspects of the media functions. Moreover, the use and gratification of media is closely related to the expectation of the listener. Theory regarding use, satisfaction, and expectation of media usage (Katz 1959; Kaewthep 1998; McQuail 2002) will extend the entities to explore and fulfill the study.

On the community radio side, it is contents and activities that mainly drive the followers’ behavior. It has been found that several factors, such as economics and, of course, politics, play an influential role in determining the content and activities of community radios (Chanprapas 1992; Siriyuwasak 1992). Studies also suggest that business also exploit the use of community radios from its original intention (Chanprapas 1992; Siriyuwasak 1992). Analyzing the development and operational structure of community radio stations would also help us to better understand the nature of the business. Thus, we integrate those introduced entities from related studies and theories and outline a research framework shown in the Fig. 1. The framework was also employed and effectively executed into the action phase by couple of studies (Phrompithak 1996; Polnigongit and Kumchornmenukul 2004).

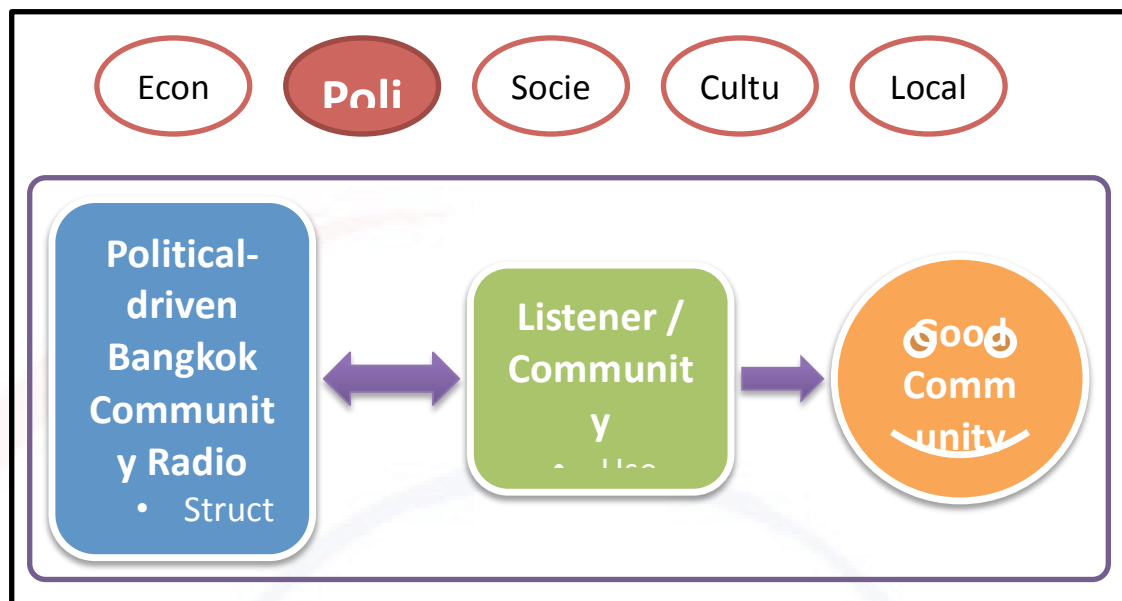


Figure 1. Research framework.

Methodology

This research is a case study of the community radio followers in Bangkok. The study employed a multi-method approach. Document analysis, content analysis, in-depth interviews and casual interviewed had been used.

Document Analysis

Document analysis was mainly used for finding two important pieces of information: political situation and community radio backgrounds. We started with secondary data research to gain a basic understanding of the community radio, from the ground up – history, original ideas, basic statistics, classification, etc. Then we scoped down to the radio which involve in the politics, especially, during the Thai political turmoil. The analyses were conducted over news, articles, literatures, websites, related laws, and books.

Content Analysis

We listened to and analyze the contents of both yellow (anti-Thaksin) and red (pro-Thaksin) shirts' radios. We followed the yellow shirt radio, FM 92.25 MHz, for a week to cover the broadcast schedule which usually repeats its pattern in a week. The analysis was conducted on 3-4 hours a day, not 24 hours. The content analysis was not our major concern and was done to triangulate the interviews. The red shirt radio, FM 92.75 MHz, was also analyzed by following the same manner as the yellow shirt radio. The period of both analyses was a week before the dissolving of the protest on May 19, 2010. According to the research framework, the purpose of analyzing the radio broadcasting contents was to recognize their contents and format, and participation patterns, which also revealed their roles of this type of mass media communication in the political situation. We submerged into the radio programs and let the patterns immerse through our analysis.

Interviews

In-depth group and individual interviews, and causal interviews were employed according to situations as appropriate. The interviews were conducted to get insight into the receiver side of the media communication. Use and gratification, and requirements, as well as satisfaction and expectation, were captured. We have managed to conduct interviews with both yellow and red shirt listeners. For yellow shirt, we conducted three in-depth individual phone interviews and five face-to-face casual interviews. For red shirt, we managed to have an in-depth face-to-face interview with a group of 3 people and also five face-to-face casual interviews. The key informants that we selected for the interviews were red and yellow shirt community radio program followers, especially, who not only listen to the programs but also went out to join the demonstration on the streets. Their perspectives allowed us to thoroughly understand roles of community radio in the crisis, as well as the mechanisms that drove them to join the protest. Unfortunately, for the broadcaster side, we could not manage to conduct any interview with them. We then rely more on secondary data, and content analysis of the program.

Due to the limitation of time & man power, we have done primary research by a limited number of both telephone and face-to-face interviews. In addition, since we were still in state of emergency by Center of Resolution of Emergency situation (CRES or Sor-Or-Chor in Thai), many red shirt community radios and websites have been either closed down or blocked. The most important and influenced one, FM 92.75 MHz got no exception, also closed down including its website (see Appendix).

This “blocked or closed down” has huge impacted to us, apparently, contacting those people (anchor, D.J., staff or manager) of red shirt community radio is almost impossible unless we have someone inside which we did not. The situation was worse by the result of government force used in resolving the protester on 19 May 2010, most red shirts, although, had been sent back to their hometown but still their problem or request have not been heard or resolved. In addition, many red shirts feel, especially, in upcountry, feel that they are in danger by the government. There have been rumors that many red shirts have been detained by polices.

With all of belief, many red shirts now are very cautious and careful to talk about their opinion in public, especially, to any media, many newspaper reporters have expressed their view during pass couple weeks. This make us very difficult to identify and ask for an interview whether it will be telephone or face-to-face.

We opted for causal interviews for verifying the reliability of the in-depth interviews by having conversations with people who highly exposed to political-driven community radio in Bangkok, taxi drivers. Being general passengers, we conducted casual interviews with five taxi drivers of both shirts. Each conversation lasted around thirty minutes. We found that most of them they were enthusiastic to participate the results were consistent.

Findings

The background of community radio and the political situations were briefly given to understand the context of the study. Then, major stereotypes of the group of listeners

in the aspects of their believes in political issues were given, followed by the findings according to our research objectives.

Community Radio Background

Community radio was firstly introduced in Thailand in the year 1992 by Surin Plangprasopchok via the National Broadcasting Services of Thailand station in the province of Chanthaburi (Plangprasobchoke 1991; Polnigongit and Kumchornmenukul 2004). It was based on the principles of *democratic media* and *participatory communication* at the first place. Then, its usage and important has been recognized leading to the public and legal support by the Constitution of the Kingdom of Thailand in 1997. These radio operators have been supervised by the Organization of Frequency Wave Allocation and Radio Broadcasting, Television and Telecommunications Enterprises Act B.E. 2543 (2000).

The broadcast contents must contain at least 70 percent of the following categories: 1) news, 2) programs that promote understanding the democracy, 3) programs that support education, ethic and culture & arts, and 4) education programs in the development of economics, social, quality of life and environment. The range of broadcasting can be up to 3, 5 or 15 kilometers, according to the type of local administration or the population density. The radio station can broadcast up to 15 kilometers in the rural areas. For Bangkok, community radio can legally broadcast in a range of only 3 kilometers.

Formerly, community radio stations were formed and operated by the government (Polnigongit and Kumchornmenukul 2004). They have been used as channels to communicate with the people especially about the government projects conducting in the rural areas. Government's own community radio stations are still a large portion of the overall community radios. Since the starting of the political instability in 2005, which the details are briefly given in the next section, the use of community radios as a political propaganda tool has been proven effective throughout the country. In addition, since radio commercials are allowed in the broadcast schedule, several profit and non-profit organizations take their eyes on community radios as another income source. Nowadays, state enterprise communities, business communities and common neighbor communities are eager to establish their own one. Up to date, there are more than 6,500 stations have registered for licenses (Post Today 2010). Several operates even the licenses have not been issued yet.

Political Situation

Political situation in Thailand has been changed dramatically since 2001 when Thaksin won a historic election becoming single party government, in which we had not seen this for long time since military-governed democracy. Together with his clever populist platform of economic growth and development, indeed, this really helps alleviate rural poverty, esp. 30-baht scheme which is the country's first universal healthcare program. With all of this has strengthened his party (Thai Rak Thai – TRT) and won an unprecedented landslide in the 2005 general election (from 50% in 2001 to 75% popular vote in 2005).

However, with this ‘almost’ absolute power led to many criticisms regarding to the corruption, authoritarianism, conflict of interest and even controlled the freedom of press & independent organizations. The situation has been worsened when he was accused of tax evasion 76 billion baht and many human rights violence from his aggressive way handling the drug & southern part problem. In 2006, the People’s Alliance for Democracy (PAD) has been established and led by Sonthi Limthongkul who had conflict with Thaksin about stopping Sonthi-owned TV program – called “Muangthai Raisapda” or Weekly Thailand (ironically, Sonthi used to be outspoken & supporter to Thaksin in 2001, even calling him “best prime minister our country has ever had”).

During 2006 period, Sonthi also established an ASTV – a satellite broadcaster, plus starting the *ASTV radio channel* and use the color code (yellow) as symbolic unity – hence the name of “*Yellow-shirt*” created. Since then, the ASTV both TV & radio have been actively in PAD protest.

On 19 September 2006, the Thaksin government was seized by military coup and new PM (Surayudh) from military connection was appointed. The UDD (United Front for Democracy Against Dictatorship) has been formed after the coup to oppose the military government, the red colour is chosen to represent the group, hence the short name for the group is called ‘*red shirt*’. As a result, *the red shirt community radios* have been started in 2006 as well.

UDD had been active during 2006-2007 and stopped protest after 2007 general election, which the People’s Power Party (PPP – new name of TRT) won. However, when PAD rallied and aggressively protest the PPP government in 2007-2008, UDD became active again to counter the PAD demonstration.

However, during 2009, the political situation had been more tensed, both by Thaksin direct & indirect involvement (Phone-in, Money supply, etc), UDD became more active. Red shirt community radio has been used as a communication channel to those red-shirt supporters up until the 19 May violent military crackdown, all of red-shirt community radios or websites have been shut down.

Listeners' Belief in Political Issues

The following characteristics of the listeners' belief provide stereotypes of yellow and red shirt people. However, it they are not absolute, e.g. yellow shirts could be lower while red shirts could be higher class people.

Table I. Stereotypes of Political Belief of Yellow and Red Shirts

Yellow Shirts	Red Shirts
<ul style="list-style-type: none"> - do not support Thaksin and Tend to support the Democratic Party - support the monarchy - are the majority of southern Thailand - perceive themselves as higher educated and middle class - believe that Thaksin is corrupted - do not believe in Thaksin ability 	<ul style="list-style-type: none"> - pro Thaksin - support a so-call anti-dictatorship principle - are the majority of north and northeastern of Thailand - are perceived as low educated and lower class - believe that Thaksin is innocent - belive in Thaksin ability

The findings from the study confirmed with the Limited Effect Theory of Mass Media Communication that people tend to open themselves to the media that they already believe (McQuail 2002). Thus the red shirts and the yellow shirts prefer to listen to their own stations which broadcast the contents aligning with their belief.

Key Components Characteristics of the Political-driven Bangkok Community Radio

In this section of findings, the results given serve the first research objective: "Examine all key components of community radio based on research framework to understand its role towards political crisis."

Development, Structure, Operation, Budget

The founding, structure, operation and their budget of political-driven radios of both sides was quite similar. The major difference is the status of the founders. For the red shirt radios, the main radios, Taxi Radio (92.75 MHz), was founded and backed by political party of Mr. Thaksin. For yellow shirt radio, the main station, Manager Radio (97.75 MHz), was founded by anti-Thaksin media of Mr. Sonthi. The secondary radios of both colors were founded by supporting followers of both sides, which also got part of financial support from the main station operators. It is to be noted the color yellow represent the color of the King's birthday, Monday. In Thailand, each day of a week has its own color.

The structure and operation of both political-driven community radios are also similar but different from common community radios. Common community radios are usually overseen by community's committees and by government structure, while the political-driven community radios are managed in a cooperate style. The budgets came mainly from the founder. However, there was fund raising during the period of the demonstrations. The donation can be as few as 10 baht to more than 10,000 baht. The donors' names were read aloud every day. The cost of the operation cannot be explicitly determined.

Roles in Political Crisis

The political-driven community radio has played important roles in the political crisis as follows:

1) Update News and Current Situations

Radio not only has an ability to promptly report a breaking event, but it also able to provide information in details due to its purpose. Thus, it is a prominent alternative for people who closely follow the politic situations

2) Open for Exchange the Ideas

People would like to express themselves. Radios of both colors use the phone-in to encourage their followers' participation.

3) Attack the Opposed Parties

Most of the conversations and program contents try to distrust the opposition. It seems that the listeners agree with almost everything from the program. This role of the community radio is considered to be an important threat to a true democracy. Information and analyses should mention good points of another side as well.

4) Advertise

Commercials of special products are provided. The products were usually customized for the group, e.g. insurance for red shirt. However, in fact, insurance can be purchased from any companies. This kind of marketing took advantages over the group attachment.

5) Raise Fund

It is a channel to raise for donation. Everyday, names of people who donate will be read. They were read during the demonstration period.

6) Entertain

Songs are sometimes played in the program but is considered really reared for both colored radios since the listeners love to listen to the news and conversation.

7) Arouse Listeners' Hater Emotion

In addition to distrust another party by attacking their weak points or misconduct, words such as bad, corruption, and other impolite and arousing conversations and talks are usually broadcast. The degree of intense is according to the political situation.

8) Call to Join the Demonstration

It is a pivotal role of community radios in the political crisis. When the anti-government protesters try to overthrow the government, besides television, community radio is one of the major media that can effectively gather protesters to strengthen the demonstration.

9) Broadcast from the Demonstration Site

It is also an important role of the political community radio in the crisis. Since the ultimate measures to overthrow the government are activities in protest sites, listeners are really encourage to join the demonstration with eagerness and curiousness on how does it feel to be at the real site.

In both red and yellow community radios, activities of the items 1 through 6 from the community radio roles in political crisis above were usually constant, while activities of the items 7 through 9 will get very active when the protesters elevate measures to overthrow the government. The intensity of the activities can be depicted as shown in Fig. 2.

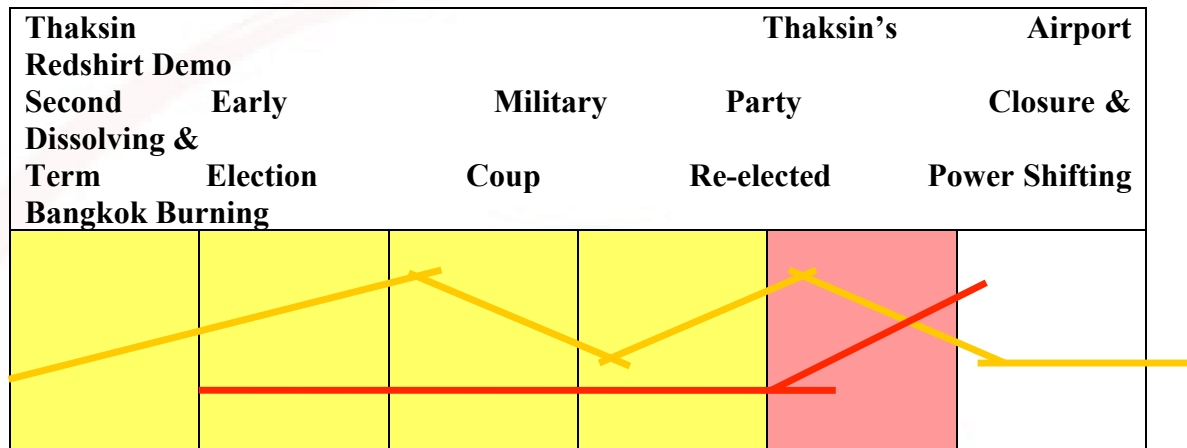


Figure 2. Activities of arousing listeners and call for joining the demonstration on yellow and red community radios according to the political milestones.

Problems

Key problems in operating a political-driven, as well as general, community radio are as follows. Firstly, the process of getting the license is slow. Not only there are two main regulators, The National Telecommunications Commission (NTC) and National Broadcasting Commission (NBC), but there are also too few officers to issue licenses. The NBC mainly oversees on the contents and public media side, such as TV and Radios, while the NTC oversees mainly on the technical and the individual to individual communication, such as telephones, the internet, etc. For those who would like to establish a community radio, not only they have to apply for radio broadcasting permission from the NBC, they have to apply for the frequency at the NTC.

Secondly, there is lack of real regulator overseeing community radios. Since the NBC is supposed to oversee the operation of the community radios, but the delay of establishing the NBC hinders the operation of this regulator. It was observed that the delay in the NBC committee establishment was driven from the parties who were going to lose benefits, which were the military owning large amount of frequencies and radio stations throughout Thailand (Chaleawchart 1999; Prachachart Business 1999). If the allocation of radio frequencies was restructured, the military will lose huge benefits. This leads to several other problems; for example, there is no authority that will take care of the over-power broadcast station that it interferes with other stations, etc. Up until now, the NTC and NBC will be combined together to form the National Broadcasting and Telecommunication Commission (NBTC). This might accelerate the license issuing and leads to better regulations. Thirdly, after the dissolving of the red shirt demonstration, anti-government station had been shut down limiting the freedom of speech as indicated in the methodology section and in the appendix.

Competitive Media:

Apart from community radio, there are many media that people can choose among television, cable TV, satellite broadcast, newspaper or regular radio. Especially, satellite broadcast which has been used by both colors shirts (Yellow shirt called ASTV, Red shirt called PTV), as its nature, multimedia feature of television is more interesting and higher richness comparing to radio. For yellow shirt supporter, ASTV satellite broadcast is more popular, partly because most of them are in middle class that can easily afford TV and ASTV satellite dish. However, for red shirt supporter which most are in lower income class, having TV and PTV satellite dish is not easily affordable.

Nevertheless, there are many advantages of radio that attract the listener, for example, the much cheaper cost to access comparing to TV set. Another key advantage is everywhere or convenient, nowadays most mobile phone, even the cheap model, can receive radio signal. This advantage is strong & valid especially for red shirt supporters where as mentioned, lower income.

Furthermore, for red shirt community radio, the other 2 key advantages are becoming more important during the red-shirt demonstration in March – May 2010. First is the quick and up-to-date news, esp. status update from the stage within the demonstration, sometimes, the radio program just switch to broadcast the voice from the stage instead of normal program.

The other key advantage is so-called “Truth” or the other side of the story. Base on the belief of most red shirt supporter, most mainstream medias (TV, Radio or Newspapers) all take side to government or yellow shirt. They found that these medias always report news or anything about red shirt in such a bad image.

Content & Format, Participation

For content & format, there are huge differences between yellow and red shirt community radio. For example, the radio program schedule, for yellow shirt, there are quite structure (see appendix) and well mixed between politics and others (general news, economics, religious, sports). Meanwhile, red shirt community radio program is not well structured and mostly all about politics. Sometimes, there is only one or two anchors, reading newspapers and criticize the comment in the news. Both colors have a mix of anchor reading/talking and interview with others.

Those 2 colors community radio do allow listener to participate in the program thru phone-in. Any person, including those who are on opposite color can call and talk to the anchor. The anchor will allow them to talk and comment, sometimes, anchor will argue back but if thing goes out of hand, the line will be cut off.

Usage, Satisfaction, Need and Expectation of Community or Listeners

To truly understand the role & influence of community radio towards Thai political turmoil, we have to separately study between the red and yellow shirt radio as its result are quite different.

Red Shirt Community Radio

Based on our interview with red shirts people in Bangkok, 2 radio stations have been identified as famous & most listening which are FM 92.75 & 97.25 MHz. All of them listen to the radio almost all day, both at home & work. The program mostly about red shirt news or activity update by the D.J, news can be from the regular media or just told by D.J. Although there are song & commercial advertisement but all are specific for red shirts, e.g. songs have been modified by putting the red shirt activity/thought into lyrics instead. Or those product/service in commercial are from small business or even some special made for just red shirt people.

Regarding to the program itself, before the large protest in March, mostly D.J. reading the news, talking on his own though or information, interviewing the red shirt leader. However, this had been changed when the protest occurred in March, most the program was just broadcast the sound from the protest stage.

Content & D.J are the most important reason that they listen to. Based on their beliefs, those mainstream media (TV, newspaper, radio) are not reliable & they took side (government side or/and yellow shirt side). So community radio is an alternative source of information for them to learn about the information that they cannot get from elsewhere and know the so-called “truth” about red shirt and country. D.J talking style is very entertaining, esp. those who talk in an aggressive way. Speed is also another factor, as the news is very up-to-date compare to newspaper or even television.

When asking how they know that all of those contents are truth, first re-action is a bit awkward and short silence, it does imply that they may just believe whatever coming out of the radio speaker. However, they replied that they will rethink of those contents whether it does make sense, also they will try to play on the other side and find the counter argument to those content. They said all of the time, they could not find the good reason to counter those content from community radio.

The reason to listen has shift a bit when the protest has been progressed and becoming more and more serious with tension, esp. during March – May 2010. The interviewees have been actively participated in the protest but as all of them have regular work to do. Listening to the community radio is a way that they can keep up the news and progress from the demonstration. When they wake up in the morning, first thing to do is turn on radio to check any progress. Then during work, they also find time to listen, either in the car or at office, once back home in the evening, sometimes, they even gather with friends to listen to the radio while discuss/comment about the situation.

Yellow Shirt Community Radio

The usage, satisfaction, need and expectation of yellow shirt listeners were pretty much the same as red shirts’. Based on our interview with yellow shirt people in Bangkok, 2 radio stations have been identified as famous & most listening which are FM 97.75 & 92.25 MHz.

Discussion & Suggestion

In this section the discussions on the findings above are extended and the recommendations for more preferable community radios are elucidated, serving the third objective of the research: “Analyze and suggest how to improve the community radio in the future to better support the community for truly understanding of democracy.”

Although there are many similar aspects of both colors community radio from structure, operation, budget, participation to program itself, the differences in details and the magnitude of these aspects are observed. Especially in the role of community radio and its importance as a source of information are very different.

In yellow shirt community radio, its role is acted like a supporting media or as a substitute for television or internet and it is regarded as a minor source of information comparing to other media. Conversely, in red shirt community radio, particularly during the red shirt demonstration (Mar-May 2010), many supporters heavily relied on the community radio as an important and reliable source of information. As most of red shirt supporters perceived the mainstream media had taken the government side reporting only bias news and information.

Looking from the other point as a radio station, managers or owners, they have been using the community radio as a channel to disseminate information, and sometimes as a tool to persuade the supporters to act according to their plan, e.g. joining the demonstration at a particular place. Community radio has been an highly effective tools for them, notably for red shirt community as from the interviewing with key red shirt leaders said that the radio was very important to them, if they have more radio stations, they would be able to draw larger crowds. One of the most well-known red shirt leaders, Kwanchai Praipana, based in Udonthani, north-east Thailand, has seen his listeners grow to over 300,000 people, most of who live in villages and small towns in at least three provinces in north-eastern Thailand.

As we can see, the community radio has been manipulated and driven by group of people whether they might be politician, businessman, corporation or even some invisible hands. The program and content have been created to support their needs which sometimes it is not easily and clearly to say that it is good for the community. The community radio has been established with principle that “community radio is of the community, by the community and for the community”. In addition, community radio must be operated on a voluntary, not-for-profit basis, free from political intervention and domination by the state, capital and politicians (Heinrich Bll Foundation 2008). However, Political-driven community radio, as seen from both colors, has distorted the original meaning & objective of community radio.

In addition, the problem of prolonged licensing acquisition process has thus discouraged people to legally apply for the license. Hence, there are many unlicensed community radio station which create many problem, such as interfering wave/signal due to using over-power station or inappropriate content. As a result, government should expedite the process of establishing a new organization so-called “National Broadcasting and Telecommunication Commission (NBTC)” as soon as possible. Government has to breakthrough any challenge created by any group of people or

organization which are believed to lose the benefits and trying to thwart this new organization setup. We believe that this is like “killing 2 birds with one stone”, once this organization setup, we can facilitate and streamline the license acquisition process, then we can legalize those unlicensed community radio. As a result of that, we can control as well as monitor the content to be broadcast and enforce the law as appropriated.

Drawing above discussions and the research framework together, it shows that the operator structure of community radios and expectation of media usage played leading roles here. In short, the operators of the community radios overwhelmingly influence the media contents. One of the most important recommendations for a more preferable political-driven community radio is that the station should be supervised by a variety and proper selected community representatives. For the listener side, listeners preferred choice of the station were mainly driven by their existing believes corresponding with the Limited Effect Theory (McQuail 2002), predicting that people prefer the station on their side. Thus, authorities have to enforce all community radio stations to comply with rules of content proportion. Education, economics, cultures, etc., must be in the program besides politics. Furthermore, to reduce the extremity of bipolar political believes, we can ask community radios from both sides to exchange their programs. For example, yellow shirt programs can be on red shirt programs and vice versa. This strategy will train Bangkok political radio followers to make critical thinking beyond exposed contents. Especially, when consider the last three roles that put the city into turmoil, reasons from both sides should exist in the programs so that the political issues can be solved by peaceful and logical manner.

Ideally, as the current government attempt to solve the political situation and plan the national reform with setting up many committees, one strategic area should be educating people what the real democracy is, as this word have been abused by many people and interpreted different way. Community radio is one of the best communication channel choice, as its wide reach, easy to access (low cost & convenience) and reliable source of information (as most anchors are familiar face for them). We should utilize this strength of community radio by blending the content about democracy, such as Democracy 101, what is the basic right that they can and should do as well as what cannot do. The contents still serve the followers; nonetheless provide several perspectives of the political issues to promote the critical thinking ability of the listeners.

Conclusion and Future Work

It was clear that the community radios play pivotal roles in the political crisis. The suggested recommendations analyzed from the study would be effective guidelines to rebuild the community radio to serve its real purposes. In the next step, we should conduct an action research trying to implement the community radio which serve the followers yet promote a peaceful democracy and evaluate the community satisfaction.

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Green Signal to the Red Light Industry?

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Abstract

Prostitution is a world that is here to stay, like it or not it is time to make the best of it.

Barbara Walters

Prostitution has long been called the world's oldest profession. Evidence can be established of people selling sex for money or some sort of gain for as long back as we have records for. There is no denying that the sex industry has taken international dimensions, so much so, that it is recognized as an economic motor for several countries.

The exploitation of prostitution is considered to be a staid issue in most of the countries across the globe. The number is only increasing enormously by the year, making it a far more serious concern than the past centuries, yet very few to none of the countries have succeeded in completely solving this problem. While the nations of the world have long been debating on the merits of legalizing or decriminalizing prostitution, with questions such as, would legalization condense some of the inequalities and exploitation suffered by the women involved; is prostitution debauchery, etc., however, the question should no longer be that of morality, instead, whether prostitution is a form of exploitation to be obliterated or an occupation to be legalised/regulated, should be posed.

Key words : Prostitution, legalizing, sex industry, exploitation

JEL field code: (L6) Law of Human Rights and Social Justice

INTRODUCTION

Prostitution has long been called the world's oldest profession. Evidence can be established of people selling sex for money or some sort of gain for as long back as we have records for. There is no denying that the sex industry has taken international dimensions, so much so, that it is recognised as an economic motor for several countries. However, according to the Immoral Traffic (Prevention) Act, 1956 ("ITPA"), 'prostitution' means the sexual exploitation or abuse of persons for commercial purposes.¹ Prostitution in India is a Rs. 40,000 crore annual business and thirty percent of the sex workers are children whose exploiters earn a whopping Rs. 11,000 crore.² According to a survey, there are approximately 10 million sex workers in India out of which 100,000 are in Mumbai alone, Asia's largest sex industry centre.³ There are about 300,000 to 500,000 children in sex trade in India⁴ among which Bangalore along with five major cities together accounts for 80% of child prostitutes in the country.⁵ These figures are startling and point towards the importance of a genuine intervention of the State to curb this necessary evil.⁶

Prostitution has a long history in India right from the ancient times⁷ till the 19th Century⁸ in British India and a widely recognized social reality today. Indian Courts have also recognized "Prostitution in society has not been an unknown phenomenon... The victims of the trap are the poor, illiterate and ignorant sections of the society and are the target group in the flesh trade; rich communities exploit them and harvest at their misery and ignominy in an organized gangsterism, in particular, with police nexus..."⁹ It was also said that "[A] class of women is trapped as victims of circumstances, unfounded social sanctions, handicaps and coercive forms of flesh trade, optimised as 'prostitutes'".¹⁰

Throughout this paper, the term 'sex worker' will be used wherever possible. However, the term 'prostitution or prostitute' may be referred to, when discussing case law or legislative text that has adopted this term. This paper aims at exploring aspects of legalization of commercial sex work in India and whether it is a possibility in light of the various social and legal constraints that are existent in India.

¹ § 2(f), Immoral Traffic (Prevention) Act, 1956 (hereinafter referred to as "ITPA").

² S. Sridevi Goel, *Girl Child Prostitution, Society's Responsibility – Indian Scenario*, 7 CBI BULLETIN 14 (1999).

³ Robert I. Freidman, *India's Shame: Sexual Slavery and Political Corruption Are Leading to An AIDS Catastrophe*, The Nation, April 8, 1996 c.f. Donna M. Hughes et al, *Factbook on Global Sexual Exploitation*, Coalition Against Trafficking in Women (CATW), <http://www.catwinternational.org/factbook/india.php>.

⁴ Donna M. Hughes et al, *Factbook on Global Sexual Exploitation*, Coalition Against Trafficking in Women (CATW), <http://www.catwinternational.org/factbook/india.php>.

⁵ Robert I. Freidman, *Supra* note 3.

⁶ Asim Sarode, *Contesting legal positions on prostitution from a human rights perspective*, *Prostitution and beyond: an Analysis of Sex Work in India* (New Delhi: SAGE Publishers, 2008) 231.

⁷ See Sukumari Bhattacharji, *Prostitution in Ancient India*, 15 (2) SOCIAL SCIENTIST 32 (1987).

⁸ See Sumanta Banerjee, *The 'Beshya' and the 'Babu': Prostitute and Her Clientele in 19th Century Bengal*, 28 (45) ECONOMIC AND POLITICAL WEEKLY 2461 (1993).

⁹ *Gaurav Jain v. Union of India and others* AIR 1997 SC 3021 (K. Ramaswamy J.,).

¹⁰ *Id.*

INTERNATIONAL LEGAL FRAMEWORK

There are numerous international treaties and conventions that protect the interests and human rights of sex workers. Among them, the primary international treaty dealing with sex workers is the 1949 UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.¹¹ This Convention reflects the Abolitionist¹² view to the point that it has failed adequately to recognize the human rights of sex workers and is based on the promise that sex work should end and that all sex workers should be regarded as victims who must be saved from themselves and be rehabilitated.¹³ Under this Convention, it is an offence to procure or entice another person even with their consent into prostitution,¹⁴ to exploit the prostitution of that person even with their consent,¹⁵ state parties shall agree to punish any person who keeps or manages of finances a brothel¹⁶ or knowingly rents or lets a building or other place for purpose of prostitution.¹⁷

The most recent international instrument on the issue is the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime¹⁸ but this has not yet been ratified by India and is not in force so far. This Protocol criminalizes acts of receipt, transportation, harbour, recruitment, and transfer of persons; by means of use of force, abduction, threat of use of force, frauds, deception, and abuse of position of vulnerability; for purposes of prostitution, forced labour or other forms of sexual exploitation.¹⁹ This protocol is still couched in language similar to the 1949 Convention and does as little to respect the rights and agency of women in the industry. It fails to draw a line between trafficking and forced prostitution on one hand and unforced prostitution on the other, providing justification for criminalization and denial of basic rights of these workers.²⁰ Similarly, the Slavery Convention of 1926²¹ and its Supplementary Convention of 1956²² have some provisions relating to sex workers. Article 1 of the Supplementary Convention

¹¹ 96 U.N.T.S. 271 (1949) [hereinafter 1949 Trafficking Convention].

¹² The Abolitionist approach declares that the institution of prostitution itself constitutes a violation of human rights, akin to the institution of slavery. The Abolitionist approach requires governments to abolish prostitution through the penalisation of this 'third party', which profits from the transaction between prostitute and client. The prostitute cannot be punished, as she is the victim of a process she does not control. See Jo Bindman & J Doezema, *Redefining Prostitution as Sex Work on the International Agenda*, <http://www.walnet.org/csis/papers/redefining.html>.

¹³ Laya Medhini et al, 2 *HIV/AIDS AND THE LAW* (New Delhi: Human Rights Law Network, 2007) 715.

¹⁴ Article 1 (1), 1949 Trafficking Convention.

¹⁵ Article 1 (2), *Id.*

¹⁶ Article 2 (1), *Id.*

¹⁷ Article 2 (2), *Id.*

¹⁸ G.A. Res. 55/25, U.N. G.A.O.R., 55th Session, U.N. Doc. A/RES/55/25, (2000) (hereinafter, Trafficking Protocol).

¹⁹ *Id.* Article 3 (a), Trafficking Protocol.

²⁰ Laya Medhini et al, *Supra* note 14.

²¹ International Convention to Suppress the Slave Trade and Slavery, 60 L.N.T.S 253, 46 Stat. 2183 (September 25, 1926).

²² Supplementary Convention on the Abolition of Slavery, Slave Trade, and Institutions and Practices Similar to Slavery, 266 U.N.T.S 40 (April 30, 1956).

includes debt bondage and other forms of tied labour, under which the working conditions of sex workers may fall.

Apart from these, there are general international human rights instruments that are of importance for those working in the sex industry. A general overview of the respective contributions of the protections available under these instruments needs to be outlined. The fundamental international framework on human rights²³ protection is the Universal Declaration of Human Rights²⁴ (“UDHR”) and the other instruments that have become synonymous with protection of basic human rights of individuals are the International Covenant on Civil and Political Rights²⁵ (“ICCPR”) and the Convention on the Elimination of all forms of Discrimination against Women²⁶ (“CEDAW”) which is perhaps the best basis for the protection of sex workers.²⁷ The preamble of the UDHR affirms equal rights and dignities of men and women, right to life and liberty,²⁸ equal protection before law and right against all forms of slavery and servitude,²⁹ protection against arbitrary interference with privacy, family, home, or correspondence³⁰ and of particular importance to sex workers is right to work, to free choice of employment and to just and favourable working conditions.³¹ Also significant is the right of each person to a standard of living adequate to food, clothing, housing, medical care and necessary social services.³² Thus the UDHR outlines a series of very important rights and principles relevant to the protection of sex workers. ICCPR also reflects the similar rights with emphasis on right to freedom of association that needs to be in the interests of national security, public safety, the protection of public health and morals, or the protection of rights of others³³ and effective protection against discrimination to be granted.³⁴ Under CEDAW, there are provisions that deal specifically with trafficking and prostitution³⁵ and the right of free choice of profession and employment.³⁶ The Committee on Elimination of Discrimination Against Women, CEDAW acknowledged that poverty and unemployment can force many women into prostitution and that they are “especially vulnerable to violence because of their status, which may be unlawful, tends to marginalize them.”³⁷

²³ See generally Laura Reanda, *Prostitution as a Human Rights Question: Problems and Prospects of United Nations Action*, 13(2) HUMAN RIGHTS QUARTERLY 202 (1991).

²⁴ G.A. Res 217 A (III), U.N. G.O.A.R, U.N. Doc A/810, 171 (December 10, 1948).

²⁵ 999 U.N.T.S 171, 6 I.L.M. 368 (December 16, 1967).

²⁶ 1249 U.N.T.S 13, 19 I.L.M. 33 (December 18, 1979).

²⁷ Laya Medhini et al, *Supra* note 14 at 717.

²⁸ Article 3, UDHR.

²⁹ Article 4, UDHR.

³⁰ Article 12, UDHR.

³¹ Article 23, UDHR.

³² Article 25, UDHR.

³³ Article 22 (2), ICCPR.

³⁴ Article 26, ICCPR.

³⁵ Article 6, CEDAW.

³⁶ Article 11 (1) (f), CEDAW.

³⁷ United Nations Committee on the Elimination of All Forms of Discrimination Against Women, U.N. Doc. A/47/3B (1992).

The International Labour Organization has addressed the issues of discrimination in employment and occupation³⁸, forced labour³⁹, occupational safety and health⁴⁰ and protection of workers' health.⁴¹

United Nations has come out with a handbook of guidelines⁴² to provide examples of best practices and legislation in relation to prostitution and it contains many progressive provisions of relevance to the issue of sex work and also HIV. It states that regulation short of criminalization can also stigmatize the sex workers leading to human rights violations, by imposing restrictions on forced detention in rehabilitation *inter alia*. The handbook also criticizes prostitution laws as being founded on nineteenth century notions of morality, which were as ineffective as they are now in suppressing the industry. It recommends that an alternative approach of treating sex work as a personal service industry, which is neither condemned nor condoned and also removal of a range of offences in fear of prosecution and harassment by the police.⁴³

The above instruments if incorporated into domestic law could be a very strong weapon for the legislature, the courts as well as the concerned groups and individuals to ensure that all rights are upheld.⁴⁴

Legal Framework of Certain Other Countries:

The countries listed below may be far advanced than India in terms of social structures and public moral definitions, but the cases for legalization have been considered purely for an analogical comparison and whether such systems could work in India.

Netherlands:

The current law regarding prostitution in Netherlands⁴⁵ legalizes brothels as long as they do not disrupt the public life and they will operate like any other commercial establishment. The law aims to legalize the organization of voluntary prostitution and penalize involuntary prostitution characterized by coercion, exploitation and fraud for which imprisonment is guaranteed. Powers are vested with local authorities to control and regulate the conditions under which prostitution is permitted.⁴⁶ Sex work is

³⁸ See Discrimination (Occupation and Employment) Convention, No. 111 (1958) ; <http://www.ilo.org/ilolex/english/convdisp1.htm>.

³⁹ See Forced Labour Convention, No. 29 (1930) <http://www.ilo.org/ilolex/english/convdisp1.htm>.

⁴⁰ See Occupational Safety and Health Convention, C155 (1981) <http://www.ilo.org/ilolex/english/convdisp1.htm>.

⁴¹ See Protection of Workers' Health Recommendation, R97 (1953) <http://www.ilo.org/ilolex/english/recdisp1.htm>.

⁴² *Handbook for Legislators on HIV/AIDS, Law and Human Right: Action to combat HIV/AIDS in view of its devastating Human, Economic and Social Impact*, UNAIDS Best Practice Collection, UNAIDS/99.48E (November 1999) http://www.ipu.org/PDF/publications/aids_en.pdf.

⁴³ *Id.*

⁴⁴ Laya Medhini et al, *Supra* note 14 at 719.

⁴⁵ Jo Visser, *The Dutch Law Proposal on Prostitution: Text and Explanation*, http://www.mrgaaf.nl/2_ef.htm; Ministry of Justice, *Press Release: Heavier Penalties for Abuse of Prostitution*, http://www.minjust.nl/8080/c_actual/persber/pb0121.htm.

⁴⁶ *Id.*

organized in a variety of ways in Netherlands, for e.g. window prostitution, street sex work both of which work independently.⁴⁷ The tolerant nature of Netherlands portrays that sex workers have good working conditions which are similar to other industries – but reality is far from it. Even though public policy has taken a pragmatic approach towards sex work, they are victims of stigma, marginalization and bereft of human rights protection.⁴⁸

Victoria, Australia:

The Victorian government has continued to criminalize all forms of prostitution except for prostitution through escort services or licensed brothels (zoning and licensing requirements for brothels to be determined by the proper municipal authorities).⁴⁹ The Victoria experiment has failed for two reasons: firstly, because municipal authorities have control over issuance and revocation of licenses and due to community pressure legal brothels have existed in very small numbers.⁵⁰ This results in an increase in illegal prostitution as there is a limited opportunity to work at the legal brothels.⁵¹ Secondly, because legal brothels are so limited, the brothel owners have substantial power in their hands to exploit sex workers who want to work legally (there is a huge employment demand by such sex workers) and this has led to nefarious and horrible working conditions for these sex workers.⁵²

Sweden:

The new legislation in Sweden criminalizes buying of sexual services. Its main aim is to reduce the numbers of sex workers and encourages them to retrain.⁵³ It targets men as clients, that the sex workers and penalizes them with imprisonment. This approach has led to collaboration of social services and law enforcement officials in sensitive treatment of the sex workers.⁵⁴ The aim is to contain socially unacceptable behaviour and to encourage the sex workers back into the mainstream of the society.⁵⁵

CURRENT LEGAL FRAMEWORK IN INDIA

The laws governing sex work in India are entailed in the Indian Penal Code, 1860 (“**IPC**”); the Constitution of India, 1950 (“**Constitution**”); and the ITPA. The

⁴⁷ Jo Bindman & J Doezeema, *Supra* note 13.

⁴⁸ *Id.*

⁴⁹ Martha Shaffer & Sylvia Davis, *Prostitution in Canada: The Invisible Menace or the Menace of Invisibility?*, <http://www.walnet.org/csis/papers/sdavis.html>.

⁵⁰ M. Neave, *The Failure of Prostitution Law Reform*, 21 AUSTRALIAN AND NEW ZEALAND JOURNAL OF CRIMINOLOGY 202, 203 (1988) c.f. Martha Shaffer and Sylvia Davis, *Prostitution in Canada: The Invisible Menace or the Menace of Invisibility?*, <http://www.walnet.org/csis/papers/sdavis.html>.

⁵¹ Martha Shaffer & Sylvia Davis, *Supra* note 50.

⁵² *Id.*; See also Mary Sullivan, *What Happens When Prostitution Becomes Work? An Update on Legalization of Prostitution in Australia*, <http://action.web.ca/home/catw/readingroom.shtml?x=84641>.

⁵³ Judith Kilvington et al, *Prostitution Policy in Europe: A Time for Change*, 67 FEMINIST REVIEW 78, 83 (2001).

⁵⁴ *Id.* at 85.

⁵⁵ *Id.* at 89.

Constitution apart from the equality provisions⁵⁶ and provisions of freedom of association,⁵⁷ right to life and personal liberty,⁵⁸ guarantees prohibition of trafficking of human beings and forced labour.⁵⁹ Under Part IV of Directive Principles of State Policy: the State is required to direct its policies towards securing, *inter alia*, that both men and women have an equal right to an adequate means of livelihood,⁶⁰ that health and strength of workers not be abused, and that citizens are not forced by necessity to enter avocations unsuited for their age and strength,⁶¹ promotion of the educational and economic interests of weaker sections of the society, ensuring their protection from *social injustice and exploitation*(emphasis supplied),⁶² requirement of fostering respect for international law and treaty obligations,⁶³ obligation on the state to raise the levels of standard of living⁶⁴ and the renunciation of practices by citizens that are derogatory to the dignity of women.⁶⁵ The Andhra Pradesh High Court has also affirmed that these combined duties are placed on the state and a corresponding right is placed on citizens including sex workers.⁶⁶

The IPC has at least 20 provisions⁶⁷ that make trafficking punishable. Most of them *inter alia* deal with abduction for illicit intercourse,⁶⁸ wrongful confinement after abduction.⁶⁹

The primary piece of legislation dealing with sex work is the ITPA. The Act mainly makes pimping and other activities punishable, which gives a commercial aspect to prostitution that is likely to exploit the person of the prostitute.⁷⁰ The Act does not prohibit prostitution per se but it does prohibit commercial activities of the flesh trade.⁷¹ It has been held that all that is necessary in order to prove prostitution is that a woman or girl has offered her body for promiscuous sexual intercourse for hire, and that sexual intercourse is not an essential ingredient.⁷² Section 3 of the ITPA provides for the punishment of any person in charge of the premises who uses or knowingly allows someone else to use it as a brothel. From case law, it seems that even a single incident of prostitution, with surrounding circumstances, is sufficient to prove the

⁵⁶ The equality provisions are Articles 14 and 15 in Part III dealing with Fundamental Rights of the Constitution of India, 1950. Article 14 provides for equality before the law and equal protection of the laws; Article 15 prohibits the state from discriminating on the grounds of religion, race, caste, sex or place of birth, though it can make special provisions for women, children, “socially and educationally backward” classes, scheduled castes and scheduled tribes.

⁵⁷ Article 19(1), Constitution of India, 1950.

⁵⁸ Article 21, Constitution of India, 1950.

⁵⁹ Article 23, Constitution of India, 1950.

⁶⁰ Article 39 (a), Constitution of India, 1950.

⁶¹ Article 39 (e), Constitution of India, 1950.

⁶² Article 46, Constitution of India, 1950.

⁶³ Article 51, Constitution of India, 1950.

⁶⁴ Article 47, Constitution of India, 1950.

⁶⁵ Article 51 A (e), Constitution of India, 1950.

⁶⁶ *P.N.Swamy, Labour Liberation Front, Mahaboobnagar v. Station House Officer, Hyderabad* 1998 (1) ALD 755.

⁶⁷ §293, 294, 317, 339, 340, 341, 342, 354, 359, 361, 362, 363, 365, and 366, 370, 371, 372, 373, 375, 376,

496, 498, 506, 509, 511, Indian Penal Code, 1860.

⁶⁸ §366B, Indian Penal Code, 1860.

⁶⁹ §368, Indian Penal Code, 1860.

⁷⁰ Manoj Wad and Sharayu Yadav, *The legal framework of prostitution in India, Prostitution and beyond: an Analysis of Sex Work in India* (New Delhi: SAGE Publishers, 2008) 212.

⁷¹ *Id.*

⁷² *Gaurav Jain*, Supra note 9 at ¶ 16.

offence of keeping a brothel.⁷³ Offences under the ITPA are listed under sections 3 to 9.⁷⁴ It has been held in a couple of judgments that the ITPA did not aim to abolish prostitutes and prostitution as such, and did not make it a criminal offence for a woman to prostitute herself, but was rather intended to inhibit or abolish the commercialized vice of trafficking in women.⁷⁵ The Gujarat High Court in another case refused to recognize prostitution as a legitimate means of livelihood, as that would give an open invitation for women to be trafficked and also that the right to prostitution is not a fundamental right of women or girls.⁷⁶ The restrictions imposed under Section 7 of the ITPA were held to be legitimate and not discriminatory.⁷⁷ Under the ITPA, a Magistrate, if he deems it to be necessary, can order the removal of a prostitute from any place in the interest of the general public.⁷⁸ The ITPA also allows for reformation of female offenders by detaining them in established corrective institutions⁷⁹ and for the enforcement of which Special Police Officers can be appointed.⁸⁰ It is interesting to note that the client faces no punishment whatsoever.⁸¹

The 2006 Bill⁸² omits §8 of the original Act, thus removing the offence of soliciting or seducing for the purpose of prostitution, it also omits §20 of the Act regarding the removal of the prostitute from any place. However, the responsibility, on the flipside, and severity of punishment of traffickers and clients is increased. The newly proposed §5(c) provides for punishment of any person visiting a brothel for the purpose of sexual exploitation of any person. These proposals have been criticized as the livelihoods of the workers would be stifled by the increased punishments of the clients.⁸³

DIFFICULTIES WITH LAW ENFORCEMENT

The core of the problem lies not in the loopholes of the ITPA, but in its corruption-riddled implementation.⁸⁴ The legislation meant to protect the exploitation of sex workers operates against them because the customer, without whom the act of

⁷³ *Id.*

⁷⁴ §3 provides for punishment for keeping a brothel or allowing premises to be used as a brothel, §4 provides for punishment for living on the earnings of prostitution, §5 provides for offences in procuring, inducing or taking persons for the sake of prostitution, §6 provides for detaining a person in premises where prostitution is carried on, §7 provides for offences regarding prostitution in or the vicinity of public places, §8 provides for seducing or soliciting for the purpose of prostitution, §9 provides for seduction of a person in custody: Immoral Traffic (Prevention) Act, 1956.

⁷⁵ *In Re: Ratnamala and Another v. Respondent* AIR 1962 Madras 31 ¶ 5; *Bai Shanta v. State of Gujarat* AIR 1967 Gujarat 211 ¶ 8.

⁷⁶ *Sahyog Mahila Mandal v. State of Gujarat* (2004) 2 GLR 1764.

⁷⁷ *Id.* at ¶ 9.5.

⁷⁸ §20, ITPA, 1956; See also Prabha Kotishwaran, *Preparing for Civil Disobedience: Indian Sex Workers and the Law*, 21(2) BOSTON COLLEGE THIRD WORLD JOURNAL 161(2001).

⁷⁹ §10A, ITPA, 1956.

⁸⁰ § 13, ITPA, 1956.

⁸¹ Prabha Kotishwaran, *Preparing for Civil Disobedience: Indian Sex Workers and the Law*, 21(2) BOSTON COLLEGE THIRD WORLD JOURNAL 161, 170 (2001).

⁸² The Immoral Traffic (Prevention) Bill, 2006.

⁸³ Laya Medhini et al, *Supra* note 14 at 734; Indian Sex Workers rally over law, BBC News, March 8, 2006, http://news.bbc.co.uk/2/hi/south_asia/4787580.stm.

⁸⁴ Harshad Barde, (Mis)Reading through the lines, *Prostitution and beyond: an Analysis of Sex Work in India* (New Delhi: SAGE Publishers, 2008) 227. ⁵⁷

prostitution cannot be committed, also goes scot-free.⁸⁵ This is the reason for the limited impact and the outreach of the legislation is very evident where the attitude of the police and even the judiciary has not been any different.⁸⁶ And as a result through raids the police frequently rounds up the female sex workers rather than the pimps, procurers, brother owners.

The uneven enforcement of the ITPA against prostitute women is attributed to various causes: First that there is a strong collusion between elected representatives, law enforcement agencies and the brothel-keepers that impedes the strict implementation of the provisions of the Act⁸⁷ and this collusion has to be busted and decimated.⁸⁸ Corrupt officials in the law enforcement agencies are widespread.⁸⁹ An overhaul of the prevalent police procedures involved in ITPA cases and the scrutiny of their corrupt practices might bring about a more desirable effect.⁹⁰ For this purpose the sensitization of the police is a must.⁹¹

The second persistent problem with the enforcement of the ITPA has been uncovered during field studies⁹² and one such study confirms the complexity of collection of sufficient proof to make a conviction absolute.⁹³ Some police officers have said that there is an immense gap between the number of crimes committed in reality and the registration of crimes in the police records as many crimes that are reported are not registered (approximately 60 percent).⁹⁴

The third problem is with the reformatory (corrective and rehabilitative) homes that are set up under the Act and their inadequacy.⁹⁵ Such homes are overburdened and cannot accommodate the large number of sex workers who are convicted under the ITPA.⁹⁶ The rules for protective homes must compulsorily provide for literacy and a range of vocational and occupational training based on the woman's aptitude and market value of the job; counselling which helps in redefining inmates as surviving human beings must be provided; and subsidised hostels and care homes must also be set up to house inmates discharged from homes.⁹⁷

⁸⁵ Poonam Pradhan Saxena, *Immoral Traffic in Women and Girls: Need for Tougher Laws and Sincere Implementation*, 44 JILI 504, 523 (2002).

⁸⁶ *Id.*

⁸⁷ P. Kotishwaran, *Supra* note 84 at 171.

⁸⁸ Poonam Pradhan Saxena, *Supra* note 88 at 527.

⁸⁹ P. Kotishwaran, *Supra* note 91.

⁹⁰ H. Barde, *Supra* note 87 at 227.

⁹¹ P. P. Saxena, *Supra* note 92.

⁹² P. Kotishwaran, *Supra* note 91.

⁹³ NHRC-UNIFEM-ISS Project, *Supra* note 47 at 249; Jean D'Cunha, *Prostitution in a Patriarchal Society: A Critical Review of the SIT Act*, 22 (45) ECONOMIC AND POLITICAL WEEKLY 1919, 1921 (1987); The ground realities of the legal framework have also been discussed in: Anil Awachat, *Prostitution in Pune and Bombay: A Report*, 21 (12) ECONOMIC AND POLITICAL WEEKLY 478 (1986) and Puja Yadav, *Ground realities of the legal framework, Prostitution and beyond: an Analysis of Sex Work in India* (New Delhi: SAGE Publishers, 2008) 229.

⁹⁴ NHRC-UNIFEM-ISS Project, *Supra* note 47 at 363.

⁹⁵ Jean D'Cunha, *Supra* note 97 at 1924; P. Kotishwaran, *Supra* note 91.

⁹⁶ NHRC-UNIFEM-ISS Project, *Supra* note 47 at 27.

⁹⁷ Jean D'Cunha, *Supra* note 97 at 1925.

As opined by Justice Ramaswamy in the case of *Gaurav Jain v. Union of India and others*⁹⁸ that “women found in flesh trade should be viewed more as victims of socio-economic circumstances and not offender of the society, some police authorities have already set out the process of sensitization towards the sex workers and their treatment.”⁹⁹

SYSTEMS OF PROSTITUTION RELATED LAWS

Three systems of prostitution related laws have been formulated and applied¹⁰⁰ in legal strategies and these vary considerably both in effectiveness and appropriateness.¹⁰¹ These systems are classified as: Criminalization, Decriminalization and Legalization¹⁰² also known as Prohibitionist system, Tolerationist system and Legalized Prostitution.¹⁰³

The Criminalization or Prohibitionist system aims at changing criminal sanctions in order to control the social evil of prostitution and to countenance it by amending the criminal law.¹⁰⁴ It perceives prostitution as immoral and aims at its eradication for which it bans prostitution per se, by criminalising the activities of all categories of people involved in prostitution: brothel-keepers, pimps, procurers, clients and prostitutes.¹⁰⁵

Under Decriminalization or Tolerationist system, prostitution is not regarded as either a crime or a licensable activity; it is based on voluntariness and considered an act between two consenting adults where the role of the State is limited to eradicate coercive prostitution.¹⁰⁶ The state can only bring in certain measures to curb excessive exploitation and preserve public health. This system does not seek to abolish prostitution per se but is only targeted at trafficking in women and girls for prostitution, brothel-keeping, pimping, procuring and renting premises for prostitution; here prostitutes are not criminalized for their work and they have more or less the same rights as other citizens in the society.¹⁰⁷

⁹⁸ *Gaurav Jain*, Supra note 9.

⁹⁹ Police IGP Circular (Bangalore, Mysore, Dharwad in Karnataka) under the ITPA, 1956, November 22, 2005. <http://altlawforum.org/Resources/sexwork/DG%20and%20IG%20Karnataka.pdf>.

¹⁰⁰ Jean D' Cunha, *Prostitution Laws: Ideological Dimensions and Enforcement Practices*, 27(17) ECONOMIC AND POLITICAL WEEKLY WS-34 (1992); For a general understanding of the USA policy on Prostitution, See B. J. George, Jr., *Legal, Medical and Psychiatric Considerations in the Control of Prostitution*, 60(6) MICHIGAN LAW REVIEW 717 (1962).

¹⁰¹ Frances M. Shaver, *Prostitution: A Critical Analysis of Three Policy Approaches*, 11(3) CANADIAN PUBLIC POLICY 493 (1985).

¹⁰² *Id.*

¹⁰³ Jean D' Cunha, Supra note 104.

¹⁰⁴ Frances M. Shaver, Supra note 105 at 494.

¹⁰⁵ Jean D' Cunha, Supra note 107.

¹⁰⁶ Frances M. Shaver, Supra note 108.

¹⁰⁷ Jean D' Cunha, Supra note 107.

Decriminalization will enable sex workers to practice their work without police harassment; this is seen as a major issue with many sex workers in India.¹⁰⁸ It is at least a partial solution to some of the problems suffered by men and women within prostitution.¹⁰⁹ Decriminalization is a way to protect workers' rights and to make the brothel owners responsible criminally.¹¹⁰ This approach of penalizing everyone involved in prostitution except for the sex worker works against her interest.¹¹¹ Along with changes in maintenance of rehabilitative homes, the corrupt police and judicial authorities who demand sexual favours from sex workers have to be dealt with severely punished heavily.¹¹²

Finally coming to Legalization or regulation as it is sometimes called, attempts are made to license or register prostitutes and brothels and to require that prostitutes be monitored and checked for venereal diseases. The underlying assumption being that prostitution serves the different sexual needs of men and women and must be regulated so as to regulate its worst side-effects.¹¹³ "It permits for prostitution especially in 'closed houses', this system requires prostitutes to mandatorily register themselves with local authorities and submit them-selves to periodic health check-ups and receive a police clearance to work professionally, generally in officially designated areas. Legalisation is thus perceived as a means of ensuring 'public health' through regulation and control of prostitutes and their health, while permitting unfettered male access to women."¹¹⁴ Prostitution as good economic development policy means prostitution on demand.¹¹⁵ The International Labour Organisation suggests that by including prostitution as an economic sector, poor countries of South East Asia can benefit economically through the revenues generated by the industry.¹¹⁶ Legalization makes more prostituted women available to more men.¹¹⁷

The idea of legalization is faced with a lot of criticism. "It has been suggested by some feminists that licensing and monitoring may not help sex workers to live and work with dignity. They feel that regulation leads to a division between legal and illegal sex workers, leading to further marginalisation of the latter. Many sex workers would not desire regulation as it may mean they will be publicly seen as prostitutes and an increase in control over the lives of these prostitutes would be demeaning to them and also the aspect of compulsory medical testing."¹¹⁸ Many feel that legalizing prostitution is akin to legalizing child labour¹¹⁹ and tantamount to slavery.¹²⁰ Some suggest that the social stigma regarding prostitution will fade away after legalization or decriminalization, yet the shame of those in prostitution remains after legalization

¹⁰⁸ Geetanjali Gangoli, *Prostitution, Legalisation and Decriminalisation: Recent Debates*, 33(10) ECONOMIC AND POLITICAL WEEKLY 504,505 (1998).

¹⁰⁹ *Id.*

¹¹⁰ Mellissa Farley, "Bad for the Body, Bad for the Heart": Prostitution Harms Women Even if Legalized or Decriminalized, 10(10) VIOLENCE AGAINST WOMEN 1087, 1090 (2004).

¹¹¹ P. Kotishwaran, *Supra* note 84 at 184.

¹¹² *Id.*

¹¹³ Frances M. Shaver, *Supra* note 108.

¹¹⁴ Jean D' Cunha, *Supra* note 104 at WS-35.

¹¹⁵ Janice C. Raymond, *Prostitution on Demand: Legalizing Buyers as Sexual Consumers*, 10(10) VIOLENCE AGAINST WOMEN 1156, 1162 (2004).

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 1163.

¹¹⁸ Geetanjali Gangoli, *Supra* note 112.

¹¹⁹ P. Kotishwaran, *Supra* note 115.

¹²⁰ Frances M. Shaver, *Supra* note 105 at 497.

or decriminalization.¹²¹“If brothels are to be legalized, the employees should be protected like any other workers under the appropriate provincial labour standards legislation. Regulation going beyond this minimum is likely to contribute to the continued stigmatization of prostitutes and to the institutionalization of yet another working ghetto for women.”¹²²

CONCLUSION AND WAY FORWARD

Legalization of Prostitution is not the best way to go forward in tackling the problem of human trafficking and the necessary social evil of prostitution. In India, with such diverse societal ingredients, sex work has survived in parallel with the society where it is looked down upon due to the degrading aspects of the profession. Sex Workers across the country, especially in major cities, have been largely limited to a particular area where thousands of sex workers live as a community. Provisions such as licensing, registration with local police and local municipal bodies will not be possible until the stigma attached with sex work is done away with. For this, the police needs to be further sensitized to the field of sex work and they need to respect the human rights of such sex workers. The legislature first needs to provide all the basic human rights of these sex workers that are guaranteed under international law and municipal law. Their social conditions need to be uplifted; they have to be rehabilitated and trained to transfer to better paying jobs where they are given dignity and reasonable support. With legalization, the sex workers' problems will just worsen and prostitution will be further entrenched into our society without a way of getting out of it. A distinction needs to be made between sex workers who have taken up the profession voluntarily and sex workers who have been or are being forced into this profession. Both sections are to be looked after with the latter requiring immediate proactive support. They need to be given life insurance¹²³ and voter's rights.¹²⁴ Only when the complicity of the policemen and the brothel owners is broken off and the nexus between them is annihilated, will the sex workers have a say in their own matters.¹²⁵ The best way to go ahead for India will be decriminalization of prostitutes and criminalization of brothel-owners along with penalizing demand in form of the consumer of sexual services.¹²⁶ The sex worker needs to be rehabilitated with state protection and care and has to be relocated to another sector of the industry with proper training.

¹²¹ Mellissa Farley, *Supra* note 114 at 1092.

¹²² Frances M. Shaver, *Supra* note 124.

¹²³ India Sex Workers get life cover, BBC News, May 1, 2008, http://news.bbc.co.uk/2/hi/south_asia/7376762.stm.

¹²⁴ National Commission for Women has suggested that sex workers in red-light areas should be included in the voter's list as a proposal to amend the Immoral Traffic (Prevention) Act, 1956. <http://ncw.nic.in/page3.htm>.

¹²⁵ P. Kotishwaran, *Supra* note 91; P. P. Saxena, *Supra* note 92.

¹²⁶ Janice G. Raymond, *Supra* note 127 at 16.

Outsourcing in the banking sector (Polish banking sector example)

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Abstract

Changes in the business environment, including macroeconomic changes, enhance the use of various management tools. In the era of seeking by banks a new way to reduce costs, the role of isolating certain tasks outside the organization is growing. In the banking sector crisis reducing costs through the use of outsourcing grows to become the strategic decision. This is a trend seen in recent years in the Polish banking sector. This article aims to analyze and evaluate outsourcing in the banking sector in Poland. Poland is one of the global BPO centers and at the same time, has avoided economic recession in recent years. The banking sector continues to be one of the most profitable sectors of the economy. At the same time, there is a large share of foreign capital in the Polish banking sector. Authors try to answer the questions about what is the scale of outsourcing in the polish banking sector?, and which tasks are the most popular outsourcing? The authors of the study have advanced thesis that the most common types of activities outsourced by banks does not belong to their core business. Authors are also working on the model of outsourcing in the polish banking sector. The method used in the paper is a survey among banking workers and banking reports and other documents analysis.

1. Introduction

The last few years have brought significant changes in the functioning of banks. Doctrinal concepts such as "too big to fail" have become less important. Some well-known banks in the world fell, but the Polish banking sector has avoided bankruptcies. As a result of the global economic crisis, many foreign customers have lost their mortgages and places to live. Mortgage-based credits are the best pay off credits in Poland. Banks are adapting to changes in the environment - quickly began to cut the costs of their activities. Since staff costs are a very important part of the operating costs of banks, during the crisis the reductions were popular. Another way to reduce the operational costs is outsourcing. For some banks, outsourcing has become a vehicle to reduce costs, while for others it was used to improving the management. The first mention of outsourcing dates back to the turn of the 70s and 80s, but its actual popularity occurred in the 90 years of the twentieth century - especially in Polish economy, which was central command economy up to 90. Interestingly, in contrast to many other management tools coming from the West, growth of outsourcing popularity was in Poland and in the West simultaneously. This reflects the relatively short history of outsourcing used in practice.

The article examines the literature concerning outsourcing. Reasons for outsourcing implementation, and factors influencing success of outsourcing were defined. Then methodology of research was presented and final empirical research results were analysed.

2. The need of outsourcing and factors of success - literature review

Outsourcing, most often, is understood as the contracting out of a business process to a third-party, with participation in a separate organisational unit or without the participation. There have been many reasons for outsourcing selected in the literature, but the first position extends striving to reduce operating costs. When we outsource a range of activities we get rid of organizational problems and we can concentrate on our core business. It is significant that, at least in some jurisdictions, like in Poland, when we outsource to business, we commission vendor and also the legal services and we are not interested in social issues about the outsourced spheres. Using outsourcing you can reduce additional labor costs, such as social services. Cost savings are made in some cases by reducing both direct and indirect remuneration of persons who ultimately perform outsourced tasks. Furthermore, vendor assumes much of the risk associated with the ongoing maintenance and management of employees. Principal act paying and demanding. Possible consequences of the problems with the staff, etc. focus on the vendor. Sometimes outsourcing vendor is a big player with a special equipment or experience that cannot afford a small client. He has the technological advantage. A. A. Gokhale assesses that "...offshore providers, who are at work while U.S. workers are sleeping, enable faster turnarounds during crunch time, quicker than most firms can deliver internally" [A. A. Gokhale, p. 11]. It can be concluded that the main reasons for outsourcing are: cost reduction, risk reduction, striving to resources elasticity, growing of the quality of resources, access to resources.

Table 1. The reasons for outsourcing implementation

No.	Author	Reasons
1.	S. Chatterjee, R. Chaudhuri	Internal organizational stability and flexibility in obtaining improved satisfaction and better service with the outsourcing project
2.	J. Harasim	Willingness to get rid of burdensome administrative tasks
3.	Z. Shi et al.	Assemble knowledge from suppliers
4.	J. T. C. Teng et al.	Lack of resources
		Resource gaps
		Acquiring resources from outside the firm boundaries by sourcing arrangement
5.	A. Vashista, A. Vashista	Lower labour costs
		Technological advances

Source: S. Chatterjee, R. Chaudhuri, A System Theoretic Analysis of IT/IS Outsourcing: A Case Based Approach, Journal of Modelling and Simulation of Systems (Vol.1-2010/Iss.2), p 132; J. Harasim, Bankowość detaliczna w Polsce, CeDeWu, Warszawa 2005, p. 264; Z. Shi, A. S. Kunnathurb, T. S. Ragu-Nathan, Is outsourcing management competence dimensions: Instrument development and relationship exploration. Information & Management 42, 2005, p. 901-919; J. T. C. Teng, M. J. Cheon, V. Grover, Decisions to outsourcing information system function: Testing a strategy-theoretic discrepancy model. Decision Science, 26(1), 1995, p. 75-103; A. Vashista, A. Vashista, The Offshore Nation, New York, McGraw-Hill, 2006, from S. Kumar, E. C. Aquino, E. Anderson, Application of a process methodology and a strategic decision model for business process outsourcing, Information Knowledge Systems Management 6 (2007), p. 325.

According to A. M. Porter's studies, the tasks assigned to the outsourcing concentrates on the three areas. It was: information technology (30%), human resources (16%), and marketing & sales (14%) [A. M. Porter, p. 47]. Many factors influence using outsourcing – encourage or make some troubles. Outsourcing can be contracted-out to entities operating in the same country or entities operating in another country. India is one of the most famous countries that established vendors of outsourcing. The increased interest in Indian outsourcing services results not only from lower cost of providing such services, but also from a satisfactory quality of services, which is directly related to the increasing level of education of local society. Another, perhaps less well-known, but still growing, BPO center is the Central and Eastern Europe, including Poland. Polish scholar ratios are one of the highest in the World, and polish people, especially young, easily take commercial rules coming from the West.

Table 2. Factors influencing success of outsourcing

No.	Author	Factors
1.	P. Babcock	Growth of education in the developing countries
2.	S. Chatterjee, R. Chaudhuri	Flexibility
3.	A. Gurung, E. Prater	Cultural factors
4.	J. N. Lee	Knowledge sharing by client and supplier

Source: P. Babcock, America's newest export: white-collar jobs. HR Magazine, 49(4), 2004, p. 6; S. Chatterjee, R. Chaudhuri, A System Theoretic Analysis of IT/IS.

Outsourcing: A Case Based Approach, Journal of Modelling and Simulation of Systems, Vol. 1-2010/Iss. 2, p. 142; A. Gurung, E. Prater, A Research Framework for the Impact of Cultural Differences on IT Outsourcing, Impact of Culture on IT Outsourcing, Journal of Global Information Technology Management, 2006, Vol. 9 Issue 1, p. 24; J. N. Lee, The impact of knowledge sharing, organizational capability and partnership quality on is outsourcing success. Information & Management, 38(5), 2001, p. 323-335.

However, history of outsourcing is short, this management tool is still changing. As mentioned, A. Gurung, E. Prater, "...managing outsourcing relationships is becoming increasingly complex. Contracts have moved from a focus on cost savings to include value-based outsourcing, equity-based outsourcing, and business process outsourcing" [A. Gurung, E. Prater, p. 29]. Both outsourcing vendors and commissioners learn how to cooperate. The length of term of cooperation is at high level dependent on quality of that relationship [T. Kem].

The same characteristics, which were mentioned as advantage of the outsourcing could be a disadvantage, if they are not satisfactory. For example, growing educational level in the developing countries conducive to outsourcing implementation can be an advantage, but when the same outsourcing vendor is not ready to anticipate new technological changes, it can be a reason for collapse of the vendor and principal cooperation. The same problems can occur in the field of language, and communication barriers [T. Nolle]. All of them are connected to risk.

Tabel 3. Risks and challenges in outsourcing

No.	Author	Risk
1.	R. Aron, E. Clemons, S. Reddi	Long-term intrinsic risks of atrophy
2.	B. A. Aubert, M. Patry, S. Rivard	Cultural dissimilarity
		Delayed delivery of data
		Slow implementation
3.	R. Click, T. Duening	Human capital risk
4.	M. J. Earl	Not enough edge expertise of providers
5.	T. Herath, R. Kishore	Knowledge hoarding
		Loss of core group
		Loss of core capability
		Disparity between what it negotiated and what is delivered
		Cost escalation
		Vendors providing legacy technology
		Operational risks due to vendor locations
		Risks due to environmental, cultural, legal differences
		Deliberate underperformance by vendor
		Reverse engineering of critical business processes, stealing and/or using proprietary information for secondary purposes
		Lock-in situations
		Loss of bargaining power leading to disputes and litigations

		Antiquated communication infrastructure
		Complexity in codes
		Conflicting standards
		Poorly articulated requirements
		Incompatible development tools
		Forgoing the development of the knowledge base
6.	N. Kakabadse, A. Kakabadse	Underestimation of the time and skills
7.	N. V. Oza, T. Hall, A. Rainer, S. Grey	The degradation of service
8.	W. E. Sullivan, O. K. Ngwenyama	Opportunistic behaviour by the vendor
		Vendor's lack of experience
		Vendor's financial instability
		Vendor performance monitoring
		Contract horizon and technology discontinuity
		Loss of proprietary information
9.	A. Vashista, A. Vashista	Country risk
		Intellectual property protection

Source: R. Aron, E. Clemons, S. Reddi, Just right outsourcing: Understanding and managing risk. Paper presented at the Proceedings of the 38th Hawaii International Conference of System Sciences (HICSS), January 3-6, 2005, Hawaii; B. A. Aubert, M. Patry, S. Rivard, Assessing the Risk of IT Outsourcing, IEEE Proceedings 31st Annual Hawaii International Conference on System Sciences, 6, 1998, p. 685-692; R. Click, T. Duening, Business Process Outsourcing, The Competitive Advantage, New Jersey, John Wiley & Sons, Inc., 2005; M. J. Earl, The risks of outsourcing it. Sloan Management Review, 37(3), 1996, p. 26-32; T. Herath, R. Kishore, Offshore Outsourcing: Risks, Challenges, and Potential Solutions, Information Systems Management, 26, p. 316; N. Kakabadse, A. Kakabadse, Critical Review-Outsourcing: A Paradigm Shift, The Journal of Management Development 19(8), 2000, p. 670-728; N. V. Oza, T. Hall, A. Rainer, S. Grey, Trust in software outsourcing relationships: An empirical investigation of Indian software companies, Information and Software Technology, 48(5), 2006, p. 345-354; W. E. Sullivan, O. K. Ngwenyama, How are public sector organizations managing is outsourcing risks? An analysis of outsourcing guidelines from three jurisdictions, Journal of Computer Information Systems, Spring 2005, p. 74; A. Vashista, A. Vashista, The Offshore Nation, New York, McGraw-Hill 2006.

We can classify outsourcing risk factors into four groups: vendor attitude problems, vendor competence problems, vendor coordination problems, and in-house competence problems [N. Gorla, M. B. Lau, p. 91]. It seems, however, that division does not cover all types of risk. It cannot be accepted due to the lack of reference to the employee. Benefits and costs of outsourcing implementation appear on both on employer` side - the entity that has decided to outsource some of the tasks outside the organization, as well as on the staff side. Employees who expect their employer intends to subcontract part of the tasks beyond the organization, often expect that it will cause reduction of employees. As with any other redundancies, it can cause a series of negative consequences. Employees are likely to increase competition among themselves. They will use more or less ethical moves designed to keep the job. Some of them (including those more productive) will decide to anticipate the movement of the employer and they begin to look for another job. Certainly reduction period is also

characterized by increased stress and anxiety about the future, which are not conducive to building a culture of trust and cooperation.

3. Methodology

The article uses objective data from reports, strategies, prospectuses and other documents of banks and near bank institutions. There were also used the other methods: questionnaire survey of employees in banks in Wielkopolska region and the results of in-depth standardized interviews with randomly selected HR managers and staff members of the boards of banks operating in Wielkopolska region¹.

The survey examined the opinions of bank employees on employment in the sector. Each survey question was analyzed using several criteria. The questionnaire consisted of the three essential parts relating respectively to the economic, social and technological determinants of employment. A pilot study was conducted among the employees of the banks. It was not possible to determine the total number of employees in banks in the Wielkopolska region and the structure of employment in the banking sector in Wielkopolska. In view of the above problems, the author decided to use a non-random sample selection. Two series of reminders about the study via e-mail were organized. Responses were received from 342 employees of banks (of which 17 questionnaires were rejected due to their low accuracy and reliability). It should be noted that the banks, which were surveyed control more than 90% of the assets of the entire banking sector in Poland, and employ more than 74% of all employees of the Polish banking sector [The report about bank system situation in 2009, p. 20-23]. The analysis excludes the central bank - National Bank of Poland, because of its superior character in comparison to other banks and specific functions.

4. Outsourcing in the Polish banking sector

Outsourcing is commonly used in many polish banks (see table 4). The vast majority of managerial employees (77.97%) and non-managerial employees (76.32%) recognized that outsourcing is used in their bank. Answers confirming using of outsourcing were dominated by almost every of analyzed criteria. It was often the result of foreign capital engaging, which was transferring know-how to polish banks.

Table 4. Using of outsourcing in banks

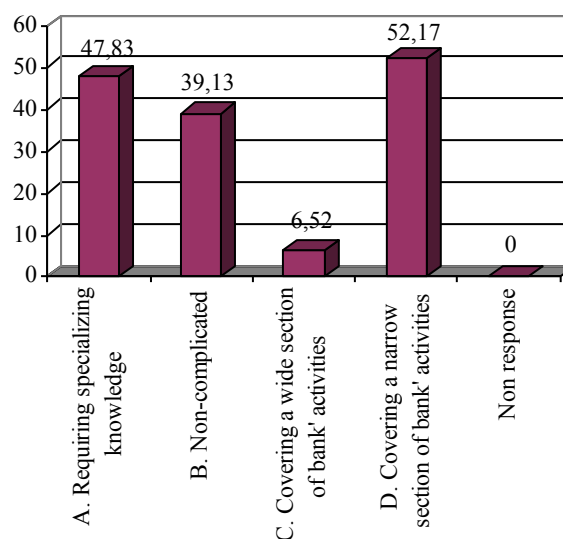
All respondents	A. Yes, outsourcing is used		B. No, outsourcing is not used		C. It is difficult to state		No response	
Managerial employees								
266	203	76.32%	36	13.53%	26	9.77%	1	0.38%
Non-managerial employees								
59	46	77.97%	12	20.34%	1	1.69%	0	

Source: own research.

¹ An additional results of the research on determinants of employment in the banks were presented in J. Kaźmierczyk, Technologiczne i społeczno-ekonomiczne determinanty zatrudnienia w sektorze bankowym w Polsce, CeDeWu, Warszawa 2011.

From the foundations of the literature analysis, it can be concluded that the areas such as: security, safety, transport, legal services, and social and technical IT issues were often transferred beyond the organization [W. Baka, p. 250]. What we should emphasize is that every Polish bank must obtain permission from the Polish Financial Supervision Authority for outsourcing business [W. Wielanek, p. 17]. Employees, who had been 'kicked-out' of the organization were then often, at the beginning of the outsourcing process implementation, employed in the so-called 'near-bank' companies, usually owned by that bank [A. Janc, *Współczesny....*, p. 16-17; A. Janc, *Bank...*, p. 79-90]. In some cases banks separated legally and organizationally a narrow range of tasks (e.g. security), in order to sell this separated company. Moreover, as noted by J. Harasim, e-banks outsource some part of their activities to reduce costs [J. Harasim, p. 148, 152]. This has been confirmed by the analysis of banks' reports. For example, ING outsourced cash services in the form of cash centres and also isolated outside the bank' structure training and recreation centres. ING outsourced also vindication what caused the decline in employment of 354 people in 2007 [Wyniki ING Banku Śląskiego po czwartym kwartale 2005, p. 15; Sprawozdanie z działalności grupy kapitałowej ING Banku Śląskiego w 2002 roku, p. 47; Roczne sprawozdanie finansowe ING Banku Śląskiego S.A. za okres od 1 stycznia 2007 roku do 31 grudnia 2007 roku, p. 62]. Similarly, in 2003 Citibank commissioned handling of thirteen cash converting branches to the separated companies [Raport roczny 2003, Citi, p. 38]. The situation of Pekao and BPH bank was specific. After taking over most of BPH by Pekao in 2007, Pekao became an outsourcing vendor, in the field of IT services for the rest – a single independent component of BPH. The aim of this was to separate the two parts of the BPH database [Raport roczny 2008, Bank BPH, p. 65]. On the other hand, after signing the contracts for outsourcing of security (bank guards) and cash handling, BOS reduced the level of employment of 1744 people at the end of 2003 to 1680 people at the end of 2004 [SAB-R/2004, Bank Ochrony Środowiska, Załącznik 5, p. 49]. Fortis Bank reduced its' employment in 2001 as a result of processes improving, automation and outsourcing to 953 people [Komentarz Zarządu z działalności Fortis Bank Polska w roku 2001, p. 95]. There is an interesting case of outsourcing concerning Citibank. Due to bank secrecy and confidence in banking institutions polish central bank (NBP) recommended Citibank to employ employee so far acting on behalf of Citibank and employed by outside companies. This concerns employee of the Citibank call centre (CitiPhone – 190 people) and a group of direct sales agents in the department of small businesses (13 people). According to the bank's estimates, this has affected personnel costs increase [Sprawozdanie z działalności grupy kapitałowej Banku Handlowego w Warszawie w 2003 roku, p. 14].

Diagram 1. The spheres outsourced by banks (according to the opinion of managerial employees, in %)

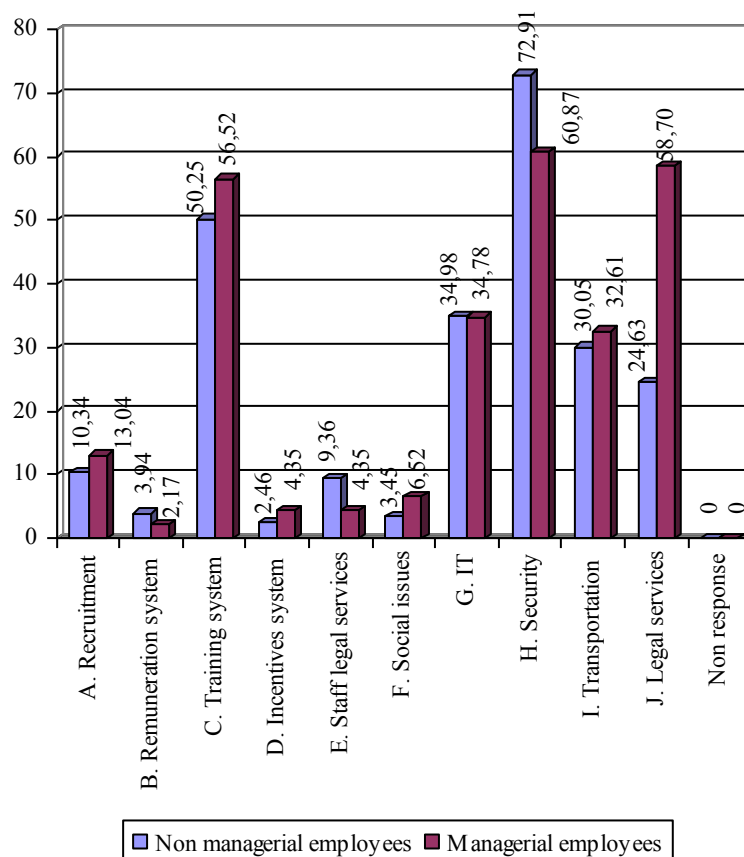


Note: 46 managerial employees answered the question.

Source: own research.

This surveyed managerial employees, who recognized outsourcing in their bank, mostly indicated, that their bank outsources narrow range of activities (52.17%) and the activity requiring technical knowledge (47.83%). Simultaneously, the difference between answers: 'A' and 'B' was not significant (diagram 1). Security, legal services and training system were mostly indicated as the outsourced functions (diagram 2).

Diagram 2. The functions outsourced by banks (in %)



Note: 203 non-managerial employees and 46 managerial employees answered the question.

Source: own research.

In the theoretical part of the article, we raised the aspect of incentives which determine the use of outsourcing in banks. Some researchers pointed that there is a fundamental importance of striving to increase quality of services. However, surveys and interviews with bank recruiters show that main factor of outsourcing in Poland is still striving to reduce costs (82.61%, table 5). This applies to the most of analyzed criteria. Only higher level managerial employees and the managers of cooperative banks pointed out that the most important factor was striving to increase of the quality of services (respectively 88.89% and 60%).

Table 5. Factors of using outsourcing in banks (according to the opinions of managerial employees)

Criterion	All respondents	A. Striving to reduce costs		B. Striving to increase of the quality of services		No response	
All banks	46	<u>38</u>	<u>82.61%</u>	16	34.78%	1	2.17%
Commercial banks	37	<u>34</u>	<u>91.89%</u>	11	29.73%	0	0
Cooperative banks	5	1	20%	<u>3</u>	<u>60%</u>	1	20%
Higher level managerial employees	9	<u>4</u>	<u>44.44%</u>	<u>8</u>	<u>88.89%</u>	0	0

Source: own research.

Table 6. Separation of the operations area from a bank (in the opinion of managerial employees)

Criterion	All respondents	A. Yes, an area was separated		B. No		No response	
All banks	59	23	38.98%	<u>29</u>	<u>49.15%</u>	7	11.86%
Banks with domestic capital	15	1	6.67%	<u>13</u>	<u>86.67%</u>	1	6.67%
Banks with foreign capital	37	20	54.05%	11	29.73%	6	16.22%

Source: own research.

As previously stated, some of banks separated a certain operations area (function, range of tasks), to allow to operate as a separate company in the future (e.g. security). This process was more popular in banks with predominance of foreign capital (54.05%) than national capital (6.67%) (table 6). We can conclude that strong measures of HR management were more popular in the banks with predominance of foreign capital. Due to analysis of banks' reports we can notice that in 2003 BRE separated two departments from its structure and moved them to a newly formed subsidiary company – Centrum Rozliczeń i Informacji (CERI) [The Centre of Settlement and Information] [BRE Bank SA Raport z badania sprawozdania finansowego za rok obrotowy od 1 stycznia do 31 grudnia 2003 r., p. 28]. The Pekao separated security [B. Wawrzewska, M. Wiśniewska, p. 87].

5. Summary

Our results should be considered as starting materials for further in-depth analyses. Due to the reluctance of banks to provide information about their activities, and also because of the current Polish law, a problem is to implement the research representative for all Polish banking sector. Moreover, there is not enough official data concerning the structure of employment in the Polish banking sector.

Analysis shows that the main reason for the application of outsourcing by Polish banks was striving to reduce operational costs. The first phase of outsourcing in Poland was to reduce employment and outsource some tasks beyond the organization. That's why outsourcing is associated to employees with dismissal. The demand for outsourcing there banks in Poland has been influenced by many factors. Apart from focus cost reduction, there was a significant increase in the level of education among employees, which allowed for the employment of new staff, with the right skills, by vendors.

We also see a potential growth in the significance of Poland in global banking outsourcing web. This assumption is based on the analysis of comparative advantages of the country, often mentioned by e.g. World Bank reports like: well-qualified workers (high level of schooling, high learning ability, easy access to capital from European Union funds on entrepreneurship-supporting programs), political stability, benefits for foreign investors (i.e. Special Economic Zones), the developing of infrastructure and overall developing of the banking sector. This was done on a secure and sound basis accurately supervised by the Polish Financial Supervision Authority. However, there is still much to do in cases like: easing the taxing system, running business procedures, and with getting permits for building.

Another issue that very clearly appears, when we consider outsourcing is, the ethics and morality of many moves of customers and vendors outsourcing. Many questioned bank employees, who pointed out, that the theoretical reasons for outsourcing implementation were different from the outsourcing they've seen in their banking branches. It requires further analysis in the future.

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Future of Sino-Japanese Relations: Geopolitical Arm-wrestling or Regional Cooperation

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Abstract

This paper examines the nature and likely developments in the relations between two leading economies in Asia.

At the macro level of analysis the perspectives of Sino-Japanese relations are projected in the framework of transcontinental geopolitical model regarding to China's and Japan's interaction and orientation towards political poles and power centers in the world and taking into account different formation possibilities of 21st century grand-coalitions as well as the role of the two East Asian nations played in those coalitions.

At the regional level we observe Sino-Japanese relations in the system of regional affairs. Namely the paper explores the influence of two Asian giants on the East Asian subsystem, competition between them for markets and zones of political influence, as well as subsystem's retroactive impact on China and Japan.

Finally, at the level of bilateral relations the paper focuses on problematic aspects and fields of cooperation. We divide the problematic aspects and analyze them in the groups of disputed territories and historic legacy related issues, issues connected with security policy and geopolitical- economic competition. Concerning the arguments in favor of cooperation we examine the phenomenon of pyrrhic victory in case of a conflict as a stabilizing and restraining factor in bilateral relations. In terms of political psychology the paper also observes phenomenon of balancing between nationalism and economic benefit in the mass thinking the two nations.

Based on the three-level analysis and dialectics of factors influencing Sino-Japanese relationship the author suggests possible scenario of its development in the near future.

Introduction

Sino-Japanese relations are one of the most important bilateral interactions in the Eastern hemisphere strongly influencing and determining the regional order of East Asia. As relations between the second and third largest economies in the world they also greatly impact the global politics generally and receiving impulses from those politics they are somehow shaped by them.

Speaking about the nature of these relations one could describe them as dramatically altering ones in terms of quickly transforming strategies and approaches, as well as changing ratio of potentials of the two nations.

Japan and China normalized their relations in 1972 and in 1978 they signed the Treaty of Peace and Friendship pledging “to develop relations of perpetual peace and friendship” (Ministry of Foreign Affairs of Japan 1978). Since then China has become Japan’s most important trading partner and the primary destination for Japanese foreign direct investment (FDI). At the same time Japan is China’s third largest trading partner and second-largest source of FDI and one of the top destinations for Chinese students studying abroad as of 2010 (Jerdén, Hagström 2012: 216; International Monetary Fund 2010; Naughton 2007). Much has also changed with the disintegration of the old triangular relationship between US, Soviet Union and PRC when the Sino-US-Japanese interactions were subject to experience some readjustment (Yunling 1997:452).

Regarding the nature of Sino-Japanese relations most of the researchers tend to describe them as ones of power balance (Terada 2006: 5-12; Mochizuki 2007: 756-757; Hughes 2009: 846-848; Sohn 2010: 497-519), while others consider not the balance of power but major world power interactions as the primary determinant of those relations (Zhang 2013:2). Still other scholars tend to look at the Sino-Japanese interactions as Japan’s accommodation towards rising China (Jerdén, Hagström 2012: 215-250).

In our research we are prone to examine the period of modern Sino-Japanese relations by looking at several changing paradigms and strategies, instead of trying to describe the relations from 1978 sticking to one concept. We also try to analyze the international and interstate situation that affects the change in political strategies.

Finally, we have made an attempt to understand the logic behind the contemporary developments (both positive and negative) in Sino-Japanese relations and forecast future behavior of the states in the scope of strategic development scenarios from Japanese and Chinese perspectives separately. When doing so we do not project past or present development trajectories to the future rather try to foresee their possible alterations based on the new factors in Sino-Japanese relations.

IR theories implications to Sino-Japanese relations: patterns of strategic behavior

There is no certain International Relations theory that would be right for all cases of conflict and development in each region and in any historic period examined. On the contrary, the level of adequacy of any particular theory in describing the situation and explaining the trajectory of future developments depends greatly on the region: level

of its development, quality of relations between the states, presence of influential and encompassing institutions, the peculiarity of its politics and last but not least the incumbent leaders' strategic priorities in their thinking and decision making-process. E.g. neo-functionalism and neo-liberal theory can be efficient when applied to European politics but will fail to describe the logic of Middle East politics.

In this part we have tried to track the most corresponding theory and concept to Sino-Japanese relations while taking into account the political realities of the region. And for this purpose it is important to consider three factors: (1) the reality of rising power in the region, (2) the trajectory and nature of its rise and (3) the response of the international and regional systems as well as the response of the system's individual components to that rise.

Here we use the definition of a rising power as a nation, building up its capabilities at a rate exceeding that of other powers (Jerdén, Hagström 2012: 220). In other words it is a state whose relative share in the overall economic and military potential of the system grows. In our case that state is China.

The second key point is the trajectory of Chinese rise. As Kennedy puts it rising powers ascend differently (Kennedy 1989). It is not necessary for a rising power to pursue the policy of imperialism rather it also can lead status-quo policy with some relative improvements of its position in the system without challenging the whole order (Morgenthau 1985). "For example, Japan's pre-war rise was completely different from its rise in the postwar period; militarist Japan in 1930s simply had a different purpose or grand strategy than the "pacifist" "trading state" in the 1960s through the 1980s, and the outside world's response differed accordingly" (Jerdén, Hagström 2012: 220). Nowadays some scholars try to represent ascending China as a status quo-power (Bojiang 2006: 130) though still much concerns remain in Sino-Japanese relations regarding the security issues.

Finally, the third key point is the response strategy. Several fundamental response types in addition to balancing are outlined by Randall Schweller: "preventive war", "bandwagoning", "binding", "engagement" and "distancing/buck-passing" (Schweller 1999: 7-18). It can be marked that preventive war and balancing are typical of (neo-) realist theory, while binding and engagement adhere to neo-liberal theory. At the same time bandwagoning and distancing can be welcomed by both.

Though preventive war was never started by these two countries at the modern stage of their relations, balancing has always been a crucial question. Opinions on balancing vary from absolutizing its significance to Sino-Japanese relations to total denial. In this paper we argue that balancing and containing did not have the determining influence on Sino-Japanese relations, as Japan did not make any significant military steps or undertake harsh economic sanctions to prevent China's rise in the second half of the 20th century. However, countries were always ready for balancing as a "plan B" because of the mutual distrust. The strengthening of the US-Japanese alliance in 1990s and acceleration of that process after Global Recession of 2008-2009 (Wan 2011: 76) can serve as an example of balancing-pattern thinking as an alternative scenario measure.

Binding, allying with the rival in order to control it, has not appeared in its classical form but had its share in the economic alignment of the two states. Engagement, as a

policy of rewards for ameliorating the non-status quo elements of a rising power's behavior, perhaps has been one of the most prominent approaches of Japan to China throughout the last three decades of the 20th century. When busy with the engagement Japan voluntarily or involuntarily benefited to China's rise, thus simultaneously behaving in the frames of bandwagoning. Finally, due to its "introvert" and peaceful foreign policy pursued throughout most of the post-war period Japan also demonstrated much of distancing/buck-passing while leaving some vacuum of power fields in Sino-Japanese relations and more broadly in the international relations of EAR. So judging by the steps of China and Japan it could be argued that their relations mainly flow in a liberal paradigm but also bear some elements of realism. They are not totally liberal mainly for (1) the absence of strong, binding institutions in EAR, like those of Europe that bound together France and Germany, (2) security worries based on historic precedents. So, much in the future of Sino-Japanese relations depends on international institution-building in EAR.

Further in the article we are going to discuss the impact of the abovementioned strategies on the logic of Sino-Japanese relations and their significance.

Three Options for East Asian Order

"Unless Japan responds to the growing power of China, China will dominate its region and become increasingly influential beyond it" (Waltz 1993: 68-69). Waltz, one of the propagators of neorealism in Sino-Japanese relations, was wrong when predicting harsh Japanese response to Chinese growth but he was right in his anticipations of Chinese influence in case of the absence of that response. Now when China has already surpassed Japan it is purely academic question whether it was in Japan's interests to avoid harsh countermeasures against China and even provide tangible aid to its development or whether the benefits from that kind of policy (saving resources that otherwise would have been used to contain China, benefiting from trade with rising Chinese economy) outweigh the risks of China surpassing Japan as the second biggest economy and building up a huge military sector. What is now of practical importance is the understanding of logic behind the future developments and its implication for security issues of the region as well as for its economic development.

It is obvious that since the end of the WWII Japan has never sought a Japan-dominated EAR and its interest in the regionalism remains inappropriately low compared to its potential even nowadays. So the possibility of a Japan-dominated East Asian (EA) order is very low. The remaining options are a (1) China-dominated EA order, (2) US-dominated EA Order or (3) EAR without dominance of any single power.

When speaking about EA Order some researchers bring forward the argument that "Historically it has been Chinese weakness that has led to chaos in Asia. When China has been strong and stable, order has been preserved. East Asian regional relations have historically been hierarchic, more peaceful, and more stable than those in the West" (Kang 2003: 66). They propagate the bandwagoning policy of certain EA states towards China and predict the establishment of Chinese hegemony in the region once again. If we take a look at the military expenditures dynamics of EA countries (both

US-allies and non-allies) in 1988-2012 as an indicator of region's fear of China's rise we can notice a significant drop measured as a percentage of total GDP. The major exception is of course China whose defence expenditures measured in 2011 dollars "grew from \$18 billion in 1989 to \$157 billion by 2012, an increase of over 750 percent" (Kang 2013). These data argues that EA states do not tend to balance China, rather they are prone to bandwagon or buck-pass.

However, a survey (Evan et.al. 2008) including extensive in-country interviews, poll data analysis, responses to China's rise in East Asian US-ally nations shows that these countries see China primarily as a source of economic opportunity, but many have concerns about China's regional goals. They want Chinese productive regional engagement but do not want PRC to become dominant. For this purpose they are clearly for the US involvement in the region to continue — but sometimes only in certain ways, at certain times, and on particular issues. All in all being still far ahead of China in military terms, having a steady net of bilateral alliances in EA and a great economic deal with the region US yet remains as a primary power in East Asia. But still the third option of being protected by American umbrella and benefiting from China's rise (which can even take place at the expense of American positions) is perhaps the most welcomed by the region and the trajectory of the developments goes in the direction of complementary politics.

In the next two parts we will look closer at these options from the perspectives of Japan and China separately.

Rise of China in the Light of Rising Sun: Japanese Perspective

The modern phase in Sino-Japanese relations started with the normalization of relations in 1972. Six years later the sides activated their interactions after striking a Treaty of Friendship. Since 1978 up to present those relations have witnessed dramatic changes and gone through several periods in their development. We are prone to divide the contemporary phase of the relations between China and Japan into several stages according to distribution of power between the two nations and the character of mutual treatment when it comes to choosing a strategy vis-à-vis the opposite number.

In 2010 China surpassed Japan as world's second largest economy. This year as well as the two preceding and three following years, when the gap between the economic potentials of the two was not dramatic, are regarded as the dividing line in the evolution of Sino-Japanese relations. Period of 1978-2008 period of Japanese primacy (vis-à-vis China) witnessed an off-balanced international relations system in East Asian Region. In 2000 Japanese economy was 4 times larger than the Chinese one, while already in 2005 the gap shrank to the level of double exceeding. The years of 2008-2013 can be described as the time of establishment of the balance in economic terms. Practically the same regarded the military expenditures in 2001-2006 (Kang 2013). With the accession of this period the era of Japan's ability to contain China was over. It should be remarked that Japan indeed took no practical steps to contain the Chinese dragon and prevent its future rise during the whole period of 1978-2008. What is interesting about the new era of balance (here we use balance in the meaning of equality of potentials and not balancing-response) in Sino-Japanese relations is that

it coincided with the rise of contentiousness in Sino-Japanese relations. Starting from Koizumi military balance period of “lost half-decade” (Bojiang 2006: 4) for Sino-Japanese relations, which surprisingly was a period of “warm economic ties in times of cold political relations”, the economic balance-era went on to be characterized by the aggravation of both (Yi 2013). E.g. 2010 fisher-boat conflict, 2012 island-related local crisis, 2012-2013 year to year weakening of economic ties, decline in trade and FDI. Another interesting aspect of current balance-phase in Sino-Japanese interactions is its unprecedented nature. Throughout their history Japan and China interacted with each other, while one of the two was weak and the other strong and the two nations have the experience of strong-weak type of bilateral interaction. However, both have never been strong simultaneously (Yunling 1997: 456).

Following the developments in Sino-Japanese relations and asymmetric rise of Chinese economic and military capacities towards Japan's ones it can be predicted that the balance-era can end shortly and Sino-Japanese relations can one more time enter another era of “one weak – one strong” period of asymmetric off-balance. And this time the strong party would be China. It is even projected by some experts that in 2030 China-Japan economic ratio would be 4.1 to 1 (Jimbo 2012). So, it is crucial for Tokyo to understand whether China would pursue the type of liberal policy towards Japan, which the latter did during the 1978-2008 Japanese primacy period.

In order to prevent itself from relying on pure good will of China, Japan has to consider two preventive scenarios:

1. balancing China together with other ally/allies (external balancing) which can logically be accompanied by internal mobilization
2. entangling-binding China

If Japan was tolerant to China's rise when it had big pre-eminence in its economic potential and feeling confident often avoided direct and harsh balancing measures while considering the gains, it might be much more anxious and more assertive in its balancing policy when it feels Chinese growing superiority and aggressive tone. So, much depends on China to employ trust-building measures and not to escalate the grievances in the relations. Or PRC can choose another option and confront Japan together with its present and would be allies. However, the second scenario would be regarded by the US as an attempt to overthrow the status-quo which will lead to direct American intervention (Yunling 1997: 462-464). This is unlikely to happen until the military potentials and expenditures of US and China differ greatly. So, the most likely development scenario for coming five years – the years of end of equality period of 2008-2013 and establishment of Chinese dominance period- would be pacification of 2010-2012 tumultuous developments and rapprochement by reactivation of economic ties. At the same time Japan is likely to come up with some binding initiatives until it's not too late to restrain empowered China from overthrowing the status-quo.

Nowadays it has become much more dangerous for Japan to leave fields of influence vacuum in East Asia. Japan understands that if in the past or Japanese primacy period (1978-2008) she lacked resources to feel them, they were either left vacuum or were filled by her ally – the United States. Nowadays, vacuum of power is primarily to be filled by China which is described by some authors, perhaps with a several degree of exaggeration, as a rival but not yet enemy₀ (Wan 2011: 73) for Japan. In this sense,

Japan is likely to activate its role in the regional affairs, however, trying to avoid direct confrontation with China. So, another prediction for Japan's foreign policy in the coming years is its stress on regionalism.

Return of the Dragon: Chinese Perspective

"China that is either too strong or too weak could undermine regional stability" (Evan et.al. 2008: 234). Though it is still difficult to state with confidence whether China's rise will remain peaceful in the near future (because of several acts of demonstration of power and other reasons) it can be already argued that China is not a status-quo power anymore, while just the sole magnitude of its rise changes the ratio of potentials in the EA Order-system so dramatically that a qualitatively new level of relations and linkages emerges in East Asia bringing forward a transformation of the existing status-quo.

In this transforming reality, as it was discussed, Japan has two options of active behavior: balancing and entangling/binding. The first one is unlikely to happen. As long as the period when Japan was able to contain China has passed, now she has only the option to balance PRC with a coalition of other states while it would be practically impossible for Japan to drag her unwilling allies into highly costly and risky confrontation with China.

However, if Japan fails to counter China's rise with the help of the second binding/entangling strategy as well (or by means of both simultaneously), there is still another factor restraining the Sino-Japanese relations from rivalry. We call it the phenomenon of "Pyrrhic victory" in the relations between these two giants. It should be comprehended as the understanding by the decision-makers of the two nations of the reality that in case of a conflict the losses on the two sides will far exceed the gains and may even cause irremediable harm. The application of this factor should not be limited to merely direct military conflict rather its possible operation field spreads on a wide range of aspects of Sino-Japanese relations dealing with a wide-scale confrontation including economic/financial losses, protectionism or even full-range armament race.

It is also interesting to note that "Pyrrhic victory" thinking would be much more common and subsequently efficient when restraining sides in the "post-balance period" or "Era of Chinese Primacy" (after 2015) than it could have been in the "pre-balance" (1978-2008) period or "Era of Japanese Primacy". The reason for this is the relatively smaller difference in the potentials of China and Japan now (to the benefit of China) than the difference that existed between leading Japan and catching up China in the "Era of Japanese Primacy". However, one should take into account that parallel to the further widening of the gap between China and Japan the "Pyrrhic victory" factor will gradually lose its restraining and stabilizing power and relevance.

Still another factor determining China's Japan policy greatly is the trilateral relationship between US, China and Japan – the triangle of interests and threats. The three parties are not at odds with each other (two have not joined hands to oppose a third (Yunling 1997:462)) and they have not formed a united bloc to oppose external forces. Despite the argument of having US and Japan against China (Wan 2011: 76)

the collaborative part of Sino-American relations prevents the triangle transforming into a bilateral relationship between China and American-Japanese bloc. At the same time the only military alliance among these three the US-Japan Alliance suffers a lot from the “alliance dilemma” – fear of entrapment and fear of abandonment (Snyder 1984: 461-495) especially under the conditions that Sino-American economic and namely trade relations with the turnover of \$536 billion as of 2012 (Morrison 2013) have become one of the most profound cooperation in the world far surpassing US-Japanese (trade turnover \$293 billion as of 2012 (Cooper 2013: 4-5)) and Sino-Japanese economic relations (trade turnover \$333 billion as of 2012 according to JETRO). In other words, since last decade Japan pursues a policy to become a normal major state with strong army, as well as large influence on international arena (e.g. Japanese bid to become a permanent UNSC member) and does not want to be too much dependent on the US. But on the other hand, she is afraid of rising China and fears abandonment by USA. Bearing in mind these realities and options of maneuvering between each other rather than the firm choice of allies and enemies China understands that the role of Japan is most likely to be of bandwagoning because of its decreasing relative potential compared to China. According to the research conducted by Tokyo Foundation the “In 2030, it is estimated that nominal GDP in the US will be 28.4 trillion dollars, China 34.7 trillion dollars, and Japan 8.4 trillion dollars. The ratio of the size of GDP of the US to China to Japan will be 3.4 to 4.1 to 1 (Jimbo 2012)”. So in the Sino-Japanese relations it would be in the interests of China to make Japan bandwagon Chinese policy rather than US.

Keeping in mind these realities we make an assumption from Chinese perspective – during the coming 5-10 years Chinese policy towards Japan would liberalize due to its “safe-passing” through the balance-period. However, afterwards in case of (1) absence of binding and strong institutions-initiatives and (2) China’s equaling or surpassing the USA (at least in the region) the risk for aggravation would return, because of China’s final goal for China-dominated East Asian Order.

Another argument for ameliorating of Chinese Japan policy is that Japan represents less threat to China than China to Japan. If security is a crucial point for Japan, history-related issues are of great importance for China. But at the same time it can be argued that Chinese nationalism is less dangerous than Japanese one. The reason for that is the difference in natures of political regimes in the two states. While China has more authoritative rule it keeps the nationalistic sentiments of the population under control and even employs them as a political leverage. On the other hand Japanese democratic system brings to the power people representing the feelings and thoughts of the large masses. Thus nationalism at the grass-root level may result in the nationalism at the highest levels of political decision-making. However with gradual opening and liberalization of Chinese economy and politics the impact of nationalism among Chinese and Japanese can become pretty much the same. “A more democratic China might have a worse relationship with Japan ... because public resentment against Japan may find greater opportunity to be expressed” (Wan 2011: 81); though this could happen after the predicted 5-10 year period of amelioration.

Conclusion

Several conclusions can be drawn from the previous analysis. First of all it was demonstrated that Sino-Japanese relations remain mainly in the framework of the liberal theory of international relations but realism is always there as “plan B”. The states are too much dependent on each other in economic terms and their worries don’t overcome their benefits from mutually beneficial cooperation. However the level of bilateral entanglement remains unsatisfactory to secure their relations from competition and even possible rivalry in the future. Sino-Japanese relations are very much influenced by the ratio of the potentials of the two states and the three periods in their relations witness changes in politics and strategy.

East Asian Order development trajectory is naturally oriented complementarily to US and China. States of the region want China’s constructive engagement and economic benefit from it but still feel comfortable under the protection of American umbrella and don’t look forward to China’s dominance in the region.

In this context Japan is likely to activate its regional foreign policy and come up with binding/entangling initiatives towards China and the EAR. This is most likely development scenario in the China’s primacy period when Japan is afraid to leave vacuum of power fields as long as they are to be filled by China. And this is one of the basic changes in the development trajectory of Sino-Japanese relations.

On the other hand China will not turn aggressive to Japan and even will strive for her bandwagoning at least until PRC surpasses US (at least in the region) – Japan’s largest ally and the main power interested in avoiding China-dominated EAO. The main reason for that is China’s safe-passing through the balance-period and taking more confident yet shaky positions when she would not want to provoke a bloc of states trying to balance her further growth. Tumultuous 2008-2013 balance-period developments will calm down in 2015+ China’s Primacy Period but without strong institutions the risk for aggravation will be always there.

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Patenting of genes - essence of the problem

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Abstract

Patenting of genes is not a novel matter, but it is one of the most eagerly debated issues of modern intellectual property law. As biotechnology is emerging as a pillar of an economy based on hi-tech, the incoherence of modern practice and regulations can be noticed. Innovative solutions often need huge investments, but on the other hand society benefits hugely from such inventions. However, numerous ethical and legal considerations question the granting of gene patents. The legal situation with respect to the patent-eligibility of genetic inventions varies in different jurisdictions. The judgment in *Assoc. for Molecular Pathology v. Myriad Genetics* highlights the essence of the problem, which relates to the limited scope of the patentability of inventions comprising laws of nature. But this case also shows that a different approach to the patentability assessment, basing on conceptual disaggregation, is possible and advantageous. This approach may be particularly useful in terms of inventions concerning intangible subject matters.

Keywords: Intellectual property law, inventions, patentability, biotechnology, FSTP technology

The logo for the International Association of Agricultural Economists (iafor) is centered on the page. It features the word "iafor" in a lowercase, serif font. The text is surrounded by a large, stylized circular graphic composed of two concentric, slightly irregular arcs. The outer arc is a light blue color, and the inner arc is a light red or pink color. The overall design is minimalist and modern.

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INTRODUCTION

Modern economy is based on knowledge and information. Hence, research and technological innovations are recognized as a driving force of socio-economical progress. Moreover, hi-tech industry has its central place in the developed economies, significantly affecting their growth¹.

Although, for centuries technology has been stimulating the development and prosperity of societies, this connection has become even more apparent in recent years. Tab. 1 depicts that the countries with a high level of innovation achieve at the same time the highest GDP. Definitely this is not a coincidence. Moreover, a stronger protection of intellectual property rights impacts the economic growth (*Gould, Gruben* 1996). Therefore, the tendency to confer greater protection to inventions is linked with the presumption that it will have a positive effect on the number of innovations and *ipso facto* on the economy in general. Since 1995 patent offices have witnessed a stable increase of patent applications, which have more than doubled.

	Top patent applications by origin	Countries with the highest GDP (nominal)
1	Japan	U.S.A.
2	China	China
3	U.S.A.	Japan
4	Republic of Korea	Germany
5	Germany	France

Tab.1. Juxtaposition of top patent applications by country of origin and countries with the highest nominal GDP. Source: 2012 World Intellectual Property Indicators, WIPO Economics & Statistics Series, p. 57; World Bank GDP indicators, available at: <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD>

Inventions from the fields of emerging technologies always posed a challenge for patent law. This was the case with computer programs, and generally computerized inventions whose patentability is still unclear. But contemporary emerging technologies have become increasingly problematic. Their advancement and level of specialization make them very difficult to assess within the current regulations. For example, since 2003 nanotechnology inventions, although still making up only a slight fraction of those inventions which are granted protection, have seen one of the biggest percentage rises among all patented solutions by the European Patent Office (hereinafter EPO)². But the patent-eligibility of nanotechnology innovations is a bothersome issue (Watal, Faunce 2011). Current emerging technologies do not fit well with how inventions are assessed, as they are model-based inventions being connected with intangible subject matters (Schindler 2013c).

¹ For more on knowledge-based economy see: Report of the OECD, *Knowledge-based Economy* (1996), available at: <http://www.oecd.org/sti/sci-tech/1913021.pdf>.

² *European patent applications 2003-2012 per field of technology*, EPO, available at: <http://www.epo.org/about-us/annual-reports-statistics/statistics/patent-applications.html>

Certainly, biotechnological innovations, and in particular those comprising genes, should be included into the group of inventions whose patenting is controversial. This issue is discussed not only within the patent law doctrine, but also as a topic involving the interests of society. The question that arises with regard to the abovementioned problem is whether current regulations and methods of patent assessments are inadequate for the demands of emerging technologies?

The objectives of this paper are twofold. Firstly, it aims at answering the questions, if gene patents should be allowed, and if so, under which circumstances. Secondly, it looks for the solution of the problem of analyzing patent-eligibility and patentability of inventions from emerging technologies that concern intangible subject matters.

PATENTING OF GENES – OUTLINE OF THE PROBLEM

A gene is defined as a “*unit of heredity information that occupies a fixed position (locus) on a chromosome*”, composed of a sequence of deoxyribonucleic acids (DNA). Genes should be differentiated from the human genome, which constitutes all pairs of DNA making the entire set of human organism, including both genes and noncoding regions of the DNA (Encyclopedia Britannica 2013). Patenting of human genes is the main focus of this paper. However, significant parts of the discussion can be universally referred to biological inventions.

In 1972 F.K. Beier accurately predicted that the development of biological inventions, and in particular those related to genetic engineering, will be a challenge for patent law (Beier 1972). Now the actual question is not whether genes can be patented, but rather under which circumstances are they patentable (Ng-Loy 2002)³. The results of the study conducted by K. Jensen and F. Murray in 2005 and published in *the Science* illustrated the scale of the problem. Namely, they found that nearly 20% of human genes have been patented so far. This represents 4382 out of 23,688 genes contained in the National Center for Biotechnology Information at the time of research. Private firms own approx. 63% of patented genes, with the largest – Incyte Pharmaceuticals/Genomics – controlling 2000 of them (Jensen, Murray 2005).

The opposition to the practice of gene patenting is based on ethical, social, and economical considerations. Critics claim that allowing gene patents leads to an infringement of human dignity, an impediment of research, and uncompetitive health care systems (Chuang, Lau 2010). However, these arguments should be supported by evidence, and it should not be forgotten that exclusiveness constitutes the essence of a patent. On the other hand it is justifiable that the human genome is qualitatively different from other natural subjects (Chuang, Lau 2010). Hence, ethical reservations towards the patenting of genes concern mainly the question if one entity can own or

³ The first known patent for a living organism was obtained in Finland in 1843, 30 years before Louis Pasteur was granted a patent in the U.S. for yeast free from organic germs of disease (Elizalde 1998). First gene patents were granted in the early 1980s through extensions of the legal doctrines permitting patents on natural products, which were turned into useful forms (Cook-Deegan 2008). But patenting of biological inventions was boosted by the U.S. Supreme Court Judgment in 1980 in the *Diamond v. Chakrabarty case* (447 U.S. 303), highlighted by a famous expression that everything under the sun made by man may be patented.

control something that essentially and universally belongs to every human being. Authors are divided on this issue, and the answers to this question are not uniform. Some of them claim that the patenting of genes is ethical and without a threat for human dignity and welfare (McGee 1998)⁴. D.B. Resnik believes that a problem would arise only in the case of a patent covering the entire human genome (Resnik 2001). However, critics provide other ethical arguments against this practice, such as the inability to control whether activities leading to the creation of a genetic invention are in compliance with ethical standards. Moreover, the issue of genetic discrimination is also raised as problematic (Kawłatow 2012)⁵. Anyway, there is no doubt that ethical considerations penetrate the patent law, having a strong influence on it (Moufang 1994).

Notwithstanding the above, perhaps the greatest opposition to gene patents derives from the socio-economic perspective. Authors claim that social costs outweigh the benefits of gene patenting (Jackson 2003). Also the nature of gene patents has changed. In the beginning they looked like patents on drugs, yet currently they resemble patents on scientific information (Eisenberg 2003). This is also the reason why gene patents have a negative effect on innovation (Matthijs 2004). Results of a study showed that gene patents have a negative impact on research and development (Williams 2013). Moreover, the practice of preemptive patenting by scholars in order to continue conducting scientific research (Hemphill 2003) is unfavorable.

Another research, based on the influence of BRCA gene patents, proved that those which have a very broad scope are disadvantageous for the development of a highly effective genetic testing scheme within the health care systems (Sevilla et al. 2003). Hence, the patenting of genes is criticized from the feminist point of view, as threatening women's right to health (Foster 2012).

In sum, some commentators state that in spite of the fact that social and ethical arguments against the patenting of genes surpass those in favor, the economic interests of the biotechnological sector have greater influence on the patent law and practice (Kluge 2003). It is worth to take into account that developments in the biotech industry are primarily focused on profits, and that the human body itself has in fact been subject to a recent commercialization (Nelkin, Andrews 1998).

GENE PATENTS – LEGAL FRAMEWORK

At the outset it should be noted that numerous international legal acts address the problem of potential threats to human dignity from biotechnological developments. In particular, UNESCO's *Universal Declaration on the Human Genome and Human Rights* envisages that the human genome is the heritage of all humanity⁶. Most notably, art. 4 of this document provides that the human genome "in its natural state"

⁴ See also the dissenting opinion from some scholars (Merz, Cho 1998, and Magnus 1998)

⁵ The problem of genetic discrimination is apparent in the case of the patented BRCA gene. Since Ashkenazi Jews were found to be more likely to have breast cancer because of genetic conditions, they were also exposed to aggressive advertisement of genetic tests that identified the risk of a cancer (Kawłatow 2012).

⁶ Art. 1, UNESCO, *Universal Declaration on the Human Genome and Human Rights* of 11.11.1997.

shall not give rise to financial gains⁷. But the issue whether it can be patented is unresolved⁸. It has been argued that since art. 4 mentions “the natural state of the genome”, its unnatural state is not covered by this definition. Hence, the definition of “the natural state of the human genome” is problematic (Kapelańska-Pręgowska 2011). Notwithstanding the non-binding character of this declaration, two facts indicate its importance. First, it was adopted unanimously and by acclamation. Second, the United Nations General Assembly endorsed it in Resolution AIRES/53/152⁹.

Art. 27.1 of the *Agreement on Trade Related Aspects of Intellectual Property Rights* (hereinafter TRIPS) contains an international standard of the patentable subject matter. This provision refers to a large scope of inventions, as in fact it requires that patents shall be available for any invention in all fields of technology (therefore gene patents as well). Nonetheless, art. 27.2 and .3 envisage that certain exclusions from patentability are acceptable. Hence, those that are necessary to protect the public order or morality are in accordance with art. 27. Specifically diagnostic, therapeutic and surgical methods for the treatment of humans or animals, likewise plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes may be excluded from patentability by national laws¹⁰. Therefore, the exact scope of patentable subject matter is to be resolved on the national level. Besides, genes may not be considered as inventions within a national law (Correa 2007).

The described issue has been on the agenda of European institutions for a long time. It resulted in the adoption of the Directive 98/44/EC on the legal protection of biotechnological inventions. Art. 5.1 provides that the human body, at the various stages of its formation and development, as well as the discovery of one of its elements, cannot constitute patentable inventions. However, subsequently art. 5.2 specifies that an element isolated from the human body or otherwise produced by means of a technical process, may constitute a patentable invention, even if the structure of that element is identical to that of a natural element¹¹. Both these provisions include also the sequence or the partial sequence of a gene. Therefore, a gene may be only patented if it has been isolated from the human body or technically produced. It is believed that the ordinary sequencing of a gene does not lead to an invention, even if it is a significant discovery. After all it is just a chemical compound (Markl 2002).

Notwithstanding the above, such inventions still need to fulfill all other requirements of patentability¹². In order for an invention to be patented, it has to be novel, non-

⁷ Art. 4 Ib.

⁸ See also point 12 of the Recommendation 1425 (1999) *Biotechnology and intellectual property* of the Parliamentary Assembly of the Council of Europe, where inter alia human genes were regarded as non-inventions.

⁹ Resolution A/RES/53/152 *The Human Genome and the Human Rights*, Adopted by the UN General Assembly on 9.12.1998.

¹⁰ Art. 27 of the *Agreement on Trade Related Aspects of Intellectual Property Rights* of 15.4.1994.

¹¹ Art. 5 of the *Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions*, OJ L 213, 30.07.1998, 13 – 21.

¹² See art. 3 Ib.

obvious (resp. have an inventive step), and useful (resp. be possible to be applied in the industry)¹³.

An invention is considered novel if it does not form a part of the state of the art. With respect to gene patents, their critics claim that inventions comprising genes do not pass the novelty test, as they already exist in nature. However, not the mere existence, but the isolation or transformation of a gene is crucial for the determination of its patentability. Consequently, the fact that the gene has been just discovered and does not belong to the state of the art may be interesting with regard to its qualification as an invention, but it is irrelevant in the context of its novelty assessment (du Vall 2008).

To determine whether a solution in question fulfills the criterion of an inventive step, one needs to evaluate whether in regard to the prior art, it is not obvious to the person skilled in this art. One of the ways to assess that is to look at the methodology used to sequence the DNA. If it becomes routine it may be an indication of the lack of inventiveness. So for an invention concerning gene sequencing to be non-obvious, the methodology used should not be standard. Similarly, no inventive elements may be found in a solution, which - compared to the already known isolated DNA sequence - shares the same function and is structurally related to it. Therefore, an invention involving a sequence of a DNA, should have properties, which are unpredicted in order to deserve the patent protection (Warren Jones 2004).

The industrial applicability condition of patentability means that an invention should be feasible to be made or used in any kind of industry, including agriculture. Article 5.3 of the Directive 98/44/EC requires that the industrial application of a sequence or a partial sequence of a gene must be disclosed in the patent application. This is, in particular, problematic regarding those DNA sequences whose function is unknown (du Vall 2008)¹⁴. Therefore, the function of such inventions plays a crucial role in the assessment of their patentability (Ilag 2002). A mere description of the sequence is insufficient to render it patentable. This means that its useful applications should be precisely specified. Guidelines from the U.S. Patent Office require that the utility should be described in a specific, essential, and credible way. Similar rules were adopted in the case law of the EPO. It is the person skilled in the art, whose understanding of the patent description is a point of reference (du Vall 2008). It is worth mentioning that across Europe the jurisprudence on this issue differs (e.g. see Fitt, Nodder 2010).

ESSENCE OF THE PROBLEM

A recent case (*Association for Molecular Pathology v. Myriad Genetics*¹⁵) decided in June 2013 by the U.S. Supreme Court (hereinafter USSC) has changed the landscape of gene patenting. Not only the USSC explained under which circumstances genes can be patented, but more importantly it provided some hints on how to assess inventions from emerging technologies. Although this case was based on the US

¹³ See art. 27 TRIPS.

¹⁴ This applies in particular to EST sequences, which do not constitute any technical solution to a specific problem (Straus 1995).

¹⁵ *Association for Molecular Pathology v. Myriad Genetics* 569 U.S. ____ (2013)

patent law, its influence should not be underestimated, since in the globalized world such ideas spread quickly.

A biotech company, Myriad Genetics, discovered the precise location and sequence of the BRCA1 and BRCA2 genes for which it obtained patents. Mutations of these genes can increase the risk of breast and ovarian cancer. Such knowledge allowed Myriad Genetics to develop medical tests, which detected mutations of these genes, and therefore to assess a patient's risk of such a cancer. The dispute, which arose around these patents, concerned their validity under U.S. patent law (35 U.S.C. §101). If the USSC would uphold their validity, Myriad Genetics has maintained the exclusive right to isolate these genes and synthetically create BRCA composite DNA (hereinafter cDNA). It should be pointed out that this case has not focused on method claims, new applications of knowledge, or the patentability of a DNA in which the naturally occurring order of nucleotides has been changed¹⁶.

Section 101 of the Patent Act reads as follows:

*“Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title.”*¹⁷

Therefore, the question that was to be resolved by the USSC was whether the inventions at issue constitute a new and useful composition of matter, or if they fall under the scope of laws of nature, natural phenomenon, and abstract ideas, all of which are patent-ineligible. Indeed they are “the basic tools of scientific and technological work”. In consequence, patents obtained for these matters would deter research and innovation, and so derail the premise on which they are granted, i.e. the promotion of creation. However, as the USSC accurately noticed “*all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas*”¹⁸. Thus, the abovementioned exclusion should not be interpreted too broad, in order to maintain a balance between inventiveness and the flow of information that may stimulate the invention¹⁹. In order to determine whether gene patents should be situated within the law of nature exception, the USSC cleverly divided the discussion into one about DNA and cDNA²⁰.

¹⁶ Ib.

¹⁷ 35 U.S.C. §101

¹⁸ See *Mayo v. Prometheus*, 566 U.S. ____ (2012)

¹⁹ *Myriad Genetics* ... (2013)

²⁰ USSC in a simple way abstracted the difference between DNA and cDNA: „Each human gene is encoded as deoxyribonucleic acid (DNA), which takes the shape of a “double helix.” Each “cross-bar” in that helix consists of two chemically joined nucleotides. Sequences of DNA nucleotides contain the information necessary to create strings of amino acids used to build proteins in the body. The nucleotides that code for amino acids are “exons,” and those that do not are “introns.” Scientists can extract DNA from cells to isolate specific segments for study. They can also synthetically create exons-only strands of nucleotides known as composite DNA (cDNA). cDNA contains only the exons that occur in DNA, omitting the intervening introns”. Ib.

Regarding Myriad Genetics' DNA claim, the USSC found that it falls into the scope of the exception from patent-eligibility, just like laws of nature and natural phenomena do. The USSC based its main argumentation on the fact that Myriad Genetics' contribution to the art was simply the uncovering of the precise location and genetic sequence of the BRCA genes. It does not constitute a new and useful composition of matter. Referring to an earlier case decided by the USSC, i.e. *Diamond v. Chakrabarty*, an invention should have a "markedly different characteristic from any found in nature". Myriad Genetics did not create or change the genetic information of the genes or the structure of the DNA. And although what they found was important and useful, not every innovative or even brilliant discovery is patent-eligible. Moreover, the detailed description of an extensive process of this discovery is insufficient to render it patent-eligible²¹.

With respect to cDNA the USSC ruled that it is patent-eligible under §101, since it is rather a "product of man" than a "product of nature". The creation of an exons-only molecule is different from isolated DNA segments because it is not naturally occurring. Although some elements may be imposed by nature (i.e. order of exons), the work done in the laboratory is clearly creative – the removal of introns from the DNA sequence in order to make cDNA. Hence, ultimately a distinct product is received (if the cDNA is undistinguishable from the DNA then it will not be patent-eligible)²². Obviously, cDNA will still need to satisfy all the other conditions of patentability.

This decision was received with the approval of the scientists' community and the majority of the public opinion, and with understandable disappointment from the biotech industry. Commentators claim that this decision will have a strong impact on the health care market, innovation and patient's care. Yet, the actual consequences of this judgment for the medical and biotech sectors are unknown (Kalyvas, Little 2013). Some authors argue that the USSC judgment in *Myriad Genetics*, in particular with respect to distinction of patentable and non-patentable DNA subject matter, leaves the issue more confused and uncertain than it was before (Burk 2013). Moreover, the argument has been raised that the USSC's narrow view of patentable subject matter may lead to a decrease in investment and in the commercialization of new technologies (Daily, Kieff 2013).

The USSC's judgment in *Myriad Genetics* was mistakenly seen as barring the patenting of genes. Such a conclusion is imprecise and incomplete, bearing in mind the distinction between DNA and cDNA "inventions". The latter are patent-eligible as "products of man", assuming they are neither naturally occurring, nor undistinguishable from the DNA.

The USSC aptly noticed and highlighted the difference between patent-eligible and patent-ineligible subject matter under §101 of the Patent Act. The premise of intellectual property protection is that only creations of man deserve it. Therefore, even an excellent and significant discovery should be excluded from patent-eligibility. A clear line needs to be drawn to avoid granting exclusive rights to mere reflections of laws of nature and natural phenomena. Otherwise it would contradict the

²¹ Ib.

²² Ib.

presumptions underlying the patent law, and detrimental to the progress of science and technology. On the other hand it means that inventions, in which naturally occurring things were modified are patent-eligible. The level of the contribution to the science is vague, but certainly the creativity of an inventor plays a crucial role. Thus, additional and creative features should be added to the discussed “inventions” in order to make them actually patentable²³.

NEW APPROACH TO PATENTABILITY EVALUATIONS

As seen above, it may be very problematic to determine for some inventions whether they are patent-eligible or not. This is particularly true for inventions concerning intangible matters. A recent development in the technology of patent assessment may prove to be an answer to the abovementioned problem.

The decisions of the USSC, *inter alia* in the *Myriad Genetics* case, provoked by emerging technology inventions, altered the paradigm in the system of U.S. patent law. These legal developments facilitated a patent technology involving a “partial but substantial systematization and automation” of patentability and patent-eligibility tests which can increase the productivity of patent practitioners (Schindler 2013c). Advantages of this technology are automation, an increased preciseness, but also an objectivity of the assessment²⁴.

The abovementioned development in the field of patent assessment is called FSTP technology (*Facts Screening and Transforming Processor*, hereinafter FSTP). It provides a tool for enabling a more comprehensive and precise patent analysis. The assumptions on which it is based are derived from indications of the USSC on the assessment of patentability and patent-eligibility.

The suggestions of the USSC include the idea of an “inventive concept” and refined claim construction. The idea of an “inventive concept” was introduced in the U.S. patent case law and constitutes a pivotal aspect of the refined claim construction. It assumes that patent evaluations should specifically focus on and look for within the invention for creative properties. Such proofs of creativity may be regarded as “independent thoughts”, which were invested in order to achieve the solution (Schindler 2013b).

Such an approach can be applied in an expert system capable of analyzing different types of inventions and documents related to it. The expert system, which would exploit FSTP technology, could successfully support the user to identify abovementioned “inventive concepts” within an invention. Since, the user is provided with an insight into the invention’s essence, he may perceive it from an objective perspective and better comprehend its significant - i.e. inventive – features, as well as its shortcomings. Moreover, he may receive an instant answer to any query concerning its inventiveness. Finally, this approach provides the possibility of obtaining a precise indication of patentability (Schindler 2012).

²³ See *Mayo ...* (2012)

²⁴ See *Brief Of Amicus Curiae Sigram Schindler Betailungsgesellschaft mbH, In Support Of Petition For Certiorari - Wildtangent v. Ultramercial*, 23.09.2013, available at: <http://fstp-expert-system.com/>

What makes the FSTP technology most appealing is the fact that it is based on the conceptual disaggregation and factual presentation on two levels. Thus, the claims are disaggregated into simple and elementary units. Moreover, any analysis is conducted not only on a semantic level, but involves the mathematical modeling of the invention. And the factual transformation leads to obtaining items depicting the differences between an invention and its prior art in an extremely precise way. By that means, the user can evaluate creative facts within the alleged innovation²⁵.

Another aspect of the FSTP technology is a computer-implemented method for generating and storing a data-structure describing the specific relations between the invention at issue and its prior art. The exploitation of FSTP technology allows the *Innovative Expert System* (IES) to assess all such technical and legal relations, and to provide answers to any queries regarding them. This data structuring ensures an enhanced analysis, but its resources may also be used by other expert systems. The importance of this tool is provided with its function that enables a user to store the results of a patent document's analysis and his queries. The user will have an easy access to his findings about the solution at issue and its prior art, and he may use them as the case further evolves, e.g. in the court (Schindler 2013a).

Eventually, the latest innovation within the FSTP technology provides a tool, exploiting FSTP and IES, to determine, whether the solution in question is meeting all the requirements of patent-eligibility and patentability (so far under U.S. patent law only). Indicating and refining "inventive concepts" leading to their precise presentation allows the user to apply "+10 FSTP tests", which through explorative checks enable the user to evaluate whether the solution meets the requirements of: well-definedness of its inventive concepts, novelty and non-obviousness, and the general patent-eligibility of its claims (Schindler 2013b). Such automation can unburden patent practitioners, increase efficiency of their work, and enhance their output.

CONCLUSIONS

Emerging technologies are a challenge for current patent law. The patenting of genes is indeed among one of the most controversial issues within it. In this respect it is highly problematic to satisfy both the economical interest of research companies that invest in the development of new technologies, and the interest of society. Studies were undertaken to determine influence of gene patents on research and development. Although they indicate negative effects, probably, this issue needs an enhanced analysis from different perspectives.

The general outlook, confirmed in numerous regulations, is that the human genome should be given protection, and genes should not be subject of excessive commercialization. Nevertheless, laws allow the patenting of some genes. Specifically, isolated genes can be patented in Europe. But they still need to fulfill the requirements of novelty, non-obviousness, and industrial application.

²⁵ Ib.

However, a different standpoint was presented in the USSC jurisprudence. The *Myriad Genetics* judgment provided that the mere isolation of genes is not enough to render it patentable, and for them to be patented there must be a human contribution to a new composition of matter that is different from the one occurring in nature. Therefore, an inventor must be involved in the process of creation or modification. That is the rationale of cDNA as a patentable subject matter. This judgment accurately describes the essence of the problem with gene patents, and provides a useful hint how to evaluate whether a solution at question falls under the scope of patentable subject matter. The indication on creativity aptly highlights the way in which patents should be considered in order to determine their patentability and patent-eligibility.

It is moreover one of the USSC's decisions, which laid the groundwork for new, interesting development in the patent assessment technology, i.e. FSTP. The FSTP technology, exploiting the change in paradigm of patent assessment, can prove to be a useful tool in every day patent practice. Through conceptual disaggregation and focusing on inventive aspects of a solution it will enable an objective insight into an invention. Besides, through automation and increased preciseness it can make the work of patent practitioners much easier, especially in the case of evaluating inventions concerning intangible subject matters.

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Trust and Preference for Democracy in Thailand

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Abstract

Changing from absolute monarchy to constitutional monarchy since 1932, but being interrupted by more than 16 coups d'etat, causes Thailand to have difficulties reaching the status of a consolidated democratic country. Thai people mostly learn about democracy from elections, but during the past decade, Thailand was faced with political instability, political cleavages among people in different areas and different ideologies, all claiming that their way insures democracy. After the coups d'etat in 2006, apolarized society developed. Clearly from studying the degree of general trust and specific trust, especially trust in political institutions, trust seems to get lower but still shows significant influence in measuring preference for democracy. This paper tries to explain this situation by studying the level of trust in various institutions in Thai society over the decades and the impact of trust on support for Thai democracy.

Introduction

The preference for democracy is identified here as the detachment from authoritarian governance. Respondents were asked about common alternatives to democracy in Thailand such as having a strong leader decide things, having only one political party, allowing the army to govern the country, and having experts make decisions on behalf of the people. This would mean that no elections are required anymore. The authors use data from the King Prajadhipok's Institute's various surveys such as East Asian Barometer and Social Quality Survey for this analysis.

The results show that trust really matters. Higher trust in government leads to higher preferences for democracy, but higher trust in the Election Commission, an independent regulatory agency, causes negative preferences for democracy. However, the positive prospect for future democracy in the country is also a strong variable that explains overall preferences for democracy.

Who Prefers Democracy in Thailand?

Although Thaksin Shinawatra was re-elected Prime Minister by a large majority in 2005, elites felt excluded from decision-making in government. Previously, these elites were enthusiastic about democratic government, but the Thaksin-style of government caused many in the traditional governing classes to question this enthusiasm. They had expected people to choose the traditional elites in democratic elections. Seeing that there was a populist sentiment among the electorate, elites had second thoughts about their enthusiasm for democracy.

One way in which this cleavage expressed itself was thought to be along class or other demographic lines. Analysis of the data, however, shows that this is not the case (Table 1). Instead, the major cleavage is based upon cultural traditionalism. Even overwhelming support for democracy among peoples of developing nations cannot guarantee democratic governments in the face of determined elites who have access to instruments of military power (Linz and Stepan, 2001). The military, after fifteen years of true democracy, overturned a democratically-elected government in Thailand on September 21, 2006, as in 1991, on the pretext of "corruption in government."

Whether “corruption” warranted such a drastic remedy has yet to be proved,¹ but what is clear is that Thai elites are still willing to sacrifice democracy when they find control of government slipping from their grasp. For the time being, they are willing to tolerate a ban on all political activities, including meetings of political parties, assemblies of more than five people, and restrictions on the news media – specifically bans on criticism of the regime and reporting on Thaksin's activities - all measures that far exceed actions for which the Thaksin regime was severely criticized. The bankroller for the so-called People's Alliance for Democracy (PAD), Sondhi Limtongkul, now argues that suppression of individual rights is acceptable in order to rid the government of all remaining vestiges of the Thaksin regime.

Before censorship of the media took effect, the coup was challenged by some academics formerly opposed to Prime Minister Thaksin Shinawatra, even in the opposition political party, Prajadhipat (Democrat), which had precipitated the political crisis by boycotting the April elections, but few were willing to oppose the coup directly, especially after it received blessings from the palace. Clearly, they had underestimated the mood of the military and the palace that combined to end the 15-year trajectory of democratic government.

Explanations of this turn of events remain complex. Within a year after a landslide election victory of Thaksin Shinawatra's Thai Rak Thai party in the 2005 elections,² significant fissures opened in the Thai political landscape. Thousands of Bangkokians gathered in Lumpini Park to listen to attacks on the government by Sondh Limtongkul, a wealthy businessman who, after supporting Prime Minister Thaksin in previous elections, fell out with him over what are not clearly identified issues. Many Thais were enraged, however, when the Prime Minister sold shares of the huge Shin Corporation to a Singaporean firm. The company included the major satellite linkage in SE Asia and a large proportion of cell phone business in Thailand. Some Thais argued that these were national assets that could not be transferred to non-Thais legitimately. In addition, Thaksin paid no tax on the sale estimated at around \$2 billion, because of a law exempting capital gains from taxation when acquired by

¹ Much is always made of the distribution of money during elections. There is, however, no hard evidence that such practices change election outcomes.

² A nationwide poll of 1546 respondents by the King Prajadhipok's Institute in April, 2006, indicated over 80 percent approval for the Thaksin Shinawatra government. This nationwide approval, however, diverged sharply from Bangkok and the southern provinces.

sales through the Securities Exchange of Thailand. On a routine basis, protests of as many as 100,000 people marched to demand Thaksin's resignation or replacement.

Thaksin had his own supporters located mostly in rural areas of the country and mobilized even larger crowds (as many as 200,000 in Bangkok) in his support. Eventually, in order to quell the continuous unrest, he dissolved Parliament and ordered a "snap" election knowing that his popularity in the countryside would give him a new mandate to govern. The opposition parties, however, refused to participate in the election and supported a move to encourage voters to mark ballots against any candidates. Because the election law (not the Constitution) required that any candidate must receive at least 20 percent of the eligible electorate when only one candidate runs unopposed, this move was successful and, despite repeated by-elections, 14 seats remained unfilled. Although the Constitution of 1997 mandated seating of the Parliament within 30 days, political manipulation by the Election Commission (requiring that all seats be "validated") and by the courts prevented such an outcome.

Commentators now recognize, as though for the first time, deep political cleavages in Thai society. They do not, however, often note the long history of this polarization or that it has always, in one dimension at least, represented conflicts between Bangkok and the rest of Thailand.³ Political dimensions of this division represent a resurrection of the "two democracies" thesis that essentially pits the politics of Bangkok against politics of the rural populations. Polls, taken in 2005 and 2006, indicated growing divisions between urban and rural populations on some of the most fundamental social and political dimensions. Post-coup reports on the financial situations faced by farmers in the Northeast underline growing tensions between rural areas and the Bangkok metropole since the coup regime returned government to traditional dominance by Bangkok interests less concerned for adversities in the hinterland.

What are the sources of the differences between urban and rural society that also happen to have significant impacts on tolerance for democracy and democratic government? People living in rural areas live a significantly more precarious existence. Their livelihood is constantly threatened by nature and they are exposed to lack of personal security in a significantly more anarchic society. This leads to a greater dependence upon social networks for "getting by" in life and, as in almost any

³Pradit Ruangdit, No End to the Political Polarization, Bangkok Post, 02/02/2007.

society, rural dwellers are significantly more communal, as well as being interested in the welfare of their neighbors (which can be either positive or negative, from some perspectives). This communalism in rural areas also leads to higher levels of trust in other citizens, as well as higher levels of trust in government.

Urban dwellers live in an environment where they are more autonomous, isolated, and individualistic, relishing the anonymity presented by urban life – all characteristics of what may be described as a “modernistic” culture. For these urbanites, individual independence from society and government leads to a greater interest in protections from government interference that scholars often associate with what are generally described as “civil liberties.” These divergences between urban and rural populations appear to have significant impacts on how democracy is viewed by individuals living in these two contexts, rural dwellers opting for security and urban dwellers for freedom. It is important to note, however, that virtually all societies celebrate rural culture so that it persists long after populations become urbanized.

In the Thai context, scholars have noted disparities in approaches to democracy based upon class or status, as well as urban-rural cleavages within society, but Anek Laothamatas (1996) suggests that the most fundamental cleavage operating in Thai democracy is the sharp difference in political cultures between Bangkok and the essentially rural hinterland. Thailand is a “tale of two democracies”: one, of sophisticated urban elites (with origins or current residency in Bangkok), the other rural, often isolated, parochial interests that view political activity, especially elections, as opportunities for personal gain in a Downsian sense (Downs, 1997). Among other differences between urban and rural constituencies is that (according to the “Bangkok” view):

Voting in farming areas is not guided by political principles, policy issues, or what is perceived to be in the national interest, all of which is (regarded as) the only legitimate rationale for citizens casting their ballots in a democratic election. The ideal candidates for rural voters are those who visit them often, address their immediate grievances effectively, and bring numerous public works to their communities (202).

The ability of rural constituencies to acquire substantial political power in the parliament under conditions of electoral democracy often leads to doubts among members of the middle class, the upper class, the mass media, and even academics as to the efficacy of the democratic process. For these groups, “democracy turns out to be the rule of the corrupt and incompetent” (Laothamatas, 208). This puts them in a dilemma: although they oppose authoritarian rule in principle, they hold representatives from rural constituencies in contempt, regarding them as “parochial in outlook, boorish in manner, and too uneducated to be competent lawmakers or cabinet members” (Laothamatas, 208).

The problem is that urban, educated, cosmopolitan candidates, who are skilled policy experts, are often held in equal contempt by villagers. They are often regarded as being alien to rural electorates in terms of taste, culture, and outlook, who “fail to stay close to the voters in both a physical and cultural sense” (Laothamatas, 208). Veiled contempt for rural-dwellers by sophisticated Bangkok elites posed no problem under authoritarian regimes. Once democratic elections tipped the balance in favor of rural areas, however, significant gaps in perceptions of and commitments to democracy have developed.

These cleavages have, over the past decade, produced considerable political conflict that until recently seemed to be abating. Laothamatas argues that this fundamental conflict cannot be resolved until the Bangkok middle class accepts alternative versions of democracy that make room for understandings and aspirations of rural voters, especially the need for the rural poor to draw benefits away from the center and distribute them toward rural areas. “Ideally, patron-client ties might be replaced by a more responsive and effective system of local government. On top of that, voters are to be convinced that principle or policy-oriented voting brings them greater benefits than what they may get from local patrons” (Laothamatas, 223).

There is growing evidence, also, that, while the Bangkok middle class opposes authoritarian forms of government that restrict individual freedoms and exercise a heavy hand over commerce, the uncertainty of changes in government, even by democratic processes, is often viewed as destabilizing the economic environment on which entrepreneurs depend. The possibility that government may be seized by politicians with “populist” agendas poses an even more direct threat to the interests of a class that stands significantly above the average voter in Thai elections. The

traditional emphasis on the “middle class” (that characterizes Bangkok “culture”), as an engine of democracy appears to be declining in favor of a view that middle-class support for democracy exists primarily when it coincides with class interests in curbing the power of government. This means that one cannot expect middle-class enthusiasm for democracy when it poses conflicts with private interests of the middle class. This latter view is expressed both by Laothamatas (1996), who argues that the 1991 coup could not have been sustained except for support from the middle class, and Samudavanija (1998), who notes that the role of the middle class in Thailand, vis-a-vis democracy, has been “reactive rather than proactive” (156) and that its primary interest in democracy has been “to safeguard their own freedom and the freedom of the market” (158). Similarly, the coup of 2006 is often conceived as a revolt of the Bangkok-middle-class against dominance of the government by populist politicians who gain their support from rural masses.

The recent political conflict in Thailand thus represents a resurrection of the “two democracies” identified by Anek Laothamatas (1996) that essentially pits the politics of Bangkok against the rural North, Northeast, and Central regions from which the majority party, Thai Rak Thai, drew its strength. Underlying this cleavage is a division rooted in the history of Thai politics, but only now becoming critical to social stability as a result of advancing democracy in the Thai nation. Until the development of democracy, Thai politics was dominated by Bangkok, even though Bangkok comprises only about 10 percent of the population of Thailand. As democracy began to take hold (with each voter in the rural areas counting as much as each voter in Bangkok), it was only a matter of time before political power would shift to the politics and priorities of rural Thailand. The conflict between Bangkok and the hinterland was long in building, but, once the structures of democracy were in place, it was not long before the rural 80 percent asserted their political strength to the alarm of Bangkok elites.

Our contribution begins with a fundamental premise that meanings of democracy are diverse by Bangkok-non-Bangkok sectors in Thailand and examines diverse values within the Thai nation that contribute to equally diverse understandings. The explanations of these diversities require further analysis, but here are tentative elaborations of the factors associated with both Bangkok-non-Bangkok status

cleavages that seem to mark the significantly different emphases in approaches to democracy, much as Laothamatas describes.

Structure of the Research⁴

The data for this analysis were obtained in probability samples of eligible voters in the Thai nation through polls conducted in 2001, 2002, 2005 and 2006.⁵ The sampling procedure employs a three-stage probability sample based upon clusters of legislative districts, voting units (precincts), followed by a systematic sampling of voters in the selected voting units. The sample included 50 of the 400 legislative districts, 100 voting units from across the 50 legislative districts, and 1500-2000 respondents from the 100 voting units. Roughly 1500-2000 respondents were drawn from populations of roughly 55,000.

This process produces true probability samples of the Thai voter-eligible electorate. It represents the very few probability-based samples of the Thai population for political and social attitudes. The study presents the data that characterize the Thai population across the kingdom in their attitudes toward a variety of political and cultural attitudes, indicating the level of attitudinal diversity in democratic values among the Thai people. Specifically, it examines the rural-urban cleavage and the two cultures represented by that cleavage for their impacts on the current Thai political scene.

The Cleavage between the Metropole and the Countryside

The sources of both the 1991 and 2006 coups were rooted in fundamental cleavages between Bangkok and the hinterland. One source of these cleavages is that there are significant class differences between Bangkok and the rest of Thailand, as one might expect. Table 1 shows highly significant differences between respondents in the two areas in both income and education. What is even more interesting for purposes of this analysis are the significant differences in how Thais view themselves. Table 2, for example, shows significant differences between these areas in two dimensions. The first being how much respondents consider themselves to be “villagers” (chao ban) as opposed to “urban” (khonmuang) and how much they think of themselves as

⁴ The author wishes to express appreciation for funding of these polls by the King Prajadhipok's Institute and the Chung ChingKuo Foundation.

⁵ Eligible voters include all Thai citizens 20 years of age and older.

“traditional” (maithansammay) as opposed to “modern” (thansammay). (See Appendix 1)

Table 1: Rural-urban Disparities in Income, Education, and “Modern Orientation” (2006) ANOVA

	Bangkok	Non- Bangkok	F	Sig. of F
Mean Household Income (Monthly in Baht)	26,995	10142	168.19	.000
Mean Education*	3.08	2.09	62.42	.000
Mean of Subjective Orientation to “modernism” (Factor scores)	.561	-.059	66.61	.000

*Based upon a 10-point scale from 1=no education to 10=post-graduate degree

When these subjective indicators are combined in a factor analysis with objective indicators, such as the type of music one prefers, the results show significant gaps in cultural orientations between Bangkok and the rest of Thailand. This variable, designated as “modernism,” helps to explain other orientations to society and politics. Specifically, it contributes significantly to an explanation of support for democracy (Table 2).

Table 2: Effects of Bangkok Location, Subjective Orientations to “Modernism,” and SES on Support for Democracy* (2005)

Variable	Regression Coefficient	Beta	Value of t	Sig. of t
Bangkok	-.427	-.078	-3.068	.002
Residency				
Modernism	-.153	-.093	-3.485	.001
SES	.014	.008	.302	.763
R = .127 F-test = 9.296 Sig. of F = .000 n = 1,705				

The regression equation in Table 2 includes not only the “modernistic” cultural orientation and a variable representing Bangkok versus the rest of Thailand, but also an indicator of socioeconomic status (SES). This latter is composed of factor scores of income, education, and occupational status – all loading on a single natural factor, with loadings in excess of .65. As the equation in Table 2 shows, SES becomes a non-contributor to an explanation of support for democracy when geographic location and cultural orientations of respondents are included. What is even more interesting and important, however, is the finding that, when controlling for both variables that are highly associated with Bangkok residence, Bangkok location remains strong, indicating an additional effect between SES and support for democracy produced by both Bangkok location and modernism.

In addition, it is important to note that the signs of both “modernism” and “Bangkok residency” are negative, that is, the more “modern” a person regards oneself, the less supportive of democracy one is likely to be. In addition, there is further evidence of the finding, duplicated over several years and polls, that Bangkok residents are more negative in their evaluations of democracy. Furthermore, this more negative orientation persists despite controls for modern orientations and SES, both associated with Bangkok residency, indicating an impact of urban location independent of two demographic characteristics associated with urbanism.

Ambivalence in Support for Democracy

Whatever the “meaning” of democracy among Thais, data on support for democracy in the Thai electorate show a very high level of respondents expressing support for democratic processes and institutions. A poll taken as late as 2010 shows that over 95 percent of the electorate were satisfied with democracy and the way it works in Thailand. In addition, Thais said that democracy is always preferable to authoritarian forms of government and, in 2006, nearly 85 percent indicated confidence in the ability of democracy to solve problems of the nation. Using a ten-point scale evaluating democracy in Thailand, less than 1 percent of the sample agreed that democracy is “unsuitable for Thailand” and nearly 46 percent wanted “complete democracy now.”

Thus, in a superficial way, Thais are highly supportive of the “idea” of democracy in virtually every dimension. The fact that 30.5 percent of the sample rated the economy as “bad” or “very bad” and only 30.8 percent rate it as “good” or “very good,”⁶ in the 2006 poll implies that the high level of commitment to democracy obtains in the midst of both objective and subjective economic difficulties, thereby reinforcing significance of the high level of democratic adherents.⁷

When forced to choose between democracy and economic development, however, the commitment to democracy appears somewhat ambivalent. 46.7 percent indicate a preference for economic development over democracy, while only 23.0 percent remain committed to democracy over economic development defined as “improving one’s standard of living.” The question, however, asks respondents to choose between an abstract concept (democracy) and a concrete improvement in one’s personal livelihood; therefore, one should take these responses with a grain of caution.

Data analysis even more sensitive to democratic orientations indicates a Thai public strongly supportive of democratic institutions. When asked about alternatives such as “replacing parliament with a strong leader,” “abolishing opposition parties,” or “letting the military run things,” respondents reject these alternatives by large margins. Among these alternatives to an elected parliament, support for military governance is quite low, with over 78 percent rejecting this alternative (Table 3).

Table 3: Percent of Respondents Accepting Alternatives to Democracy, 2010

	<u>Bangkok</u>	<u>Non-Bangkok</u>	<u>Sig</u>
Opposition parties should be abolished	12.3	17.0	.019
The military should come in to govern the country	29.2	19.5	.104
We should replace parliament with a strong leader	9.2	19.6	.009

⁶ The remaining respondents rated the economy as “so-so.”

⁷ It is important to note that Thai optimism about the future is high. 66.6 percent of respondents believe that the economic situation of their family will be better in the near future; only 7.2 percent believe that it will be worse.

By 2010, however differences between Bangkok and non-Bangkok populations no longer endured. When it comes to support for these items, a majority of respondents in both areas are generally opposed to any of these alternatives, but support for the coup of September 19, 2006, clearly has its seeds in the metropole-hinterland divide. With control of the instruments of violence, an elite minority can easily overcome public opposition to an unconstitutional overthrow of a democratic regime. Reinforcing this finding is the fact that abolishing opposition parties has significantly higher support among the more highly educated and persons of higher socio-economic status, probably because parties are viewed as instruments for mobilizing the masses against elite dominance of the political arena.

When these attitudes are differentiated between Bangkok and non-Bangkok populations, it becomes clear that non-Bangkok residents are more supportive of alternatives to democracy than those residing in the metropole (Table 3), albeit marginally. Bangkok residents are less likely to accept a “strong leader” over parliamentary government, one-party governance, and even government by experts than are citizens who live outside the capital. Non-Bangkok residents are less supportive of military rule, but not by a significant amount. Both areas are united in the belief that although democracy has its failings, it is still the best form of government (95 percent). These attitudes are embedded in the cleavages that emerged in association with the coup of 2006.

When attitudes toward civil liberties are examined, there is somewhat more ambiguity in the Thai population’s commitment to traditional, liberal democratic values.

These cleavages continue to the present and Thais have not been able to accept the resolution of differences within parliamentary institutions. As political power began to move toward rural dominance, Thai elites began to mobilize. This took the form of identification with “colors.” Supporters of the People’s Alliance for Democracy chose a yellow color and became known as the “Yellow Shirts.” This had the effect of identifying their movement with the monarchy, as yellow is the official color representing the monarchy. Their opposition, the United Defenders of Democracy (UDD) adopted the color red which also carried the implication of identifying with socialist sentiments. The cleavage between the “Yellow Shirts” and the “Red Shirts”

now symbolize the polarizations in Thai political society. The PAD used hand-clappers to celebrate, while the UDD adopted foot-clappers for similar purposes. These symbolic gestures also had an effect of creating and solidifying political identities, thus contributing to political polarization in the nation.

In 2012, the Yellow Shirt movement morphed into a movement based upon the popular movie “V is for Vendetta” which featured masks that were generally white. The Red Shirts responded by adopting red masks for their demonstrations. What is often missed is that the white masks (and, indeed, the portrayal in the movie) actually symbolized anarchy, a political stance often supported by the Yellow Shirts. This, of course, moves Thai politics well beyond a quest for democratic government, especially the notion that elected legislatures should have authority to set policy. This approach to analyzing support for democracy, rather than examining the superficial statements affirming democracy, develops a measure that rejects alternatives to democracy. What we find here is that rejection of these alternatives offers a very different view of democratic status. This new picture of preference for democracy is provided in Table 4.

Table 4: Preference for Democracy over Alternatives to Democracy

	Unstandardized Coefficients		Standardized Coefficients	t	Sig.
	B	Std. Error	Beta		
(Constant)	14.739	.837		17.617	.000
trust in national political institution	-.003	.024	-.004	-.125	.901
trust in Local Government	-.010	.046	-.007	-.223	.824
trust in Media	.113	.044	.072	2.568	.010
SES	.195	.083	.070	2.352	.019
BKK/NonBKK	-.485	.267	-.051	-1.818	.069
Age Group	.141	.058	.067	2.447	.015
Gender	-.236	.139	-.043	-1.693	.091

New Party	.448	.149	.076	2.996	.003
Religiosity	-.328	.086	-.099	-3.814	.000
PM Support	-.493	.091	-.154	-5.438	.000

a. Dependent Variable: prefer democracy 129-132

R-square = .061 P = .000 F = 9.709 n = 1,509

Interpretation of Table 4 is relatively simple. Remembering that a negative sign means *acceptance of alternatives to democracy*, we find that respondent's trust in institutions fails to distinguish between those who prefer democracy and those who do not. As in previous studies, we find that people of higher SES tend to reject alternatives to democracy, while women tend to support some of these alternatives. Perhaps the most striking finding is that party ID (as PTP) is more associated with preferences for democracy than identification with Prachadipat. What we find is that preferences for democracy, that is, rejection of alternatives to democracy, are associated with persons of lower SES, respondents who perceive themselves as less religious and older respondents. These findings are consistent with past studies of the Thai electorate. What is remarkable here is that preferences for democracy, defined as rejection of alternatives to democracy, are strongly associated with negative attitudes toward the Prime Minister and identification with the Phua Thai Party. For the first time we have been able to link party ID with support for democracy.

One caveat remains, however. The Prime Minister at this time was Abhisit Vejjajiva who was clearly the *bête noir* of rural, populist sentiment. Nevertheless, the identification of positive attitudes toward democracy with partisan orientations, especially party ID has only recently emerged in Thai politics. The results indicate a novel configuration of a two-party system that has been evolving over the past decade and, now, associated with the major cleavage in Thai politics. A partisan cleavage is quite different from a class-based or rural-urban identification that has characterized Thai politics since the ending of the absolute monarchy. Scholars will be intrigued to see how long this new configuration lasts.

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The 2013 Japanese Upper House Election: Prospects and Implications for Constitutional Change

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Abstract

In December 2012, Japan's conservative Liberal Democratic Party (LDP) regained power after a three-year hiatus, winning the Lower House elections for the Japanese parliament (known as the Diet). Led by Shinzo Abe, who has returned to serve as Prime Minister for a second time, the LDP's electoral fortunes have largely continued to prosper, as the economic policies popularly known as 'Abenomics', have seen an improvement in Japan's economic performance. The outcome of the July 2013 elections for the Upper House of the Diet could have far more long-term implications though.

Should the LDP and politically allied parties secure a two-thirds majority in the Upper House, the Abe Government will be able to pass legislation enabling changes to the Constitution, should any proposals to do so be passed with a simple majority by the public at a referendum. The LDP's policy platform advocates a number of potential Constitutional changes; the most controversial of which is to alter Article 9, the 'pacifism clause' of the Constitution, which has constrained Japan's use of force since its defeat in the Second World War. This would transform the current Self Defence Forces (SDF) into 'National Defence Forces', enabling Japan to engage in military operations alongside its ally, the United States.

Other possible Constitutional 'reforms' advocated by the LDP could potentially restrict freedom of political expression, and deliver greater overall powers to the government. The Upper House election of 2013 may therefore result in changes which will have profound effects on both Japanese domestic and foreign policy.

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Introduction

In December 2012, Japan's conservative Liberal Democratic Party (LDP) regained power after a three-year hiatus, winning the Lower House elections for the Japanese parliament (known as the Diet). Led by Shinzo Abe, who has returned to serve as Prime Minister for a second time, the LDP's electoral fortunes have largely continued to prosper, as the economic policies popularly known as 'Abenomics', have seen an improvement in Japan's economic performance. However, the outcome of the July 2013 elections for the Upper House of the Diet could have far more long-term implications for the state of the Japanese constitution.

In the separate Upper House election held in July 2013, the LDP secured a simple majority, but not a two-thirds majority; therefore, the Abe LDP government will not be able to easily pass legislation enabling changes to the constitution at present. The LDP's policy platform nevertheless advocates a number of potential constitutional changes, should any such proposals to do so manage to be passed with a simple majority by the public at a referendum. The most controversial of these is to alter Article 9, the 'pacifist clause' of the constitution, which has constrained Japan's international use of force since its defeat in the Second World War.

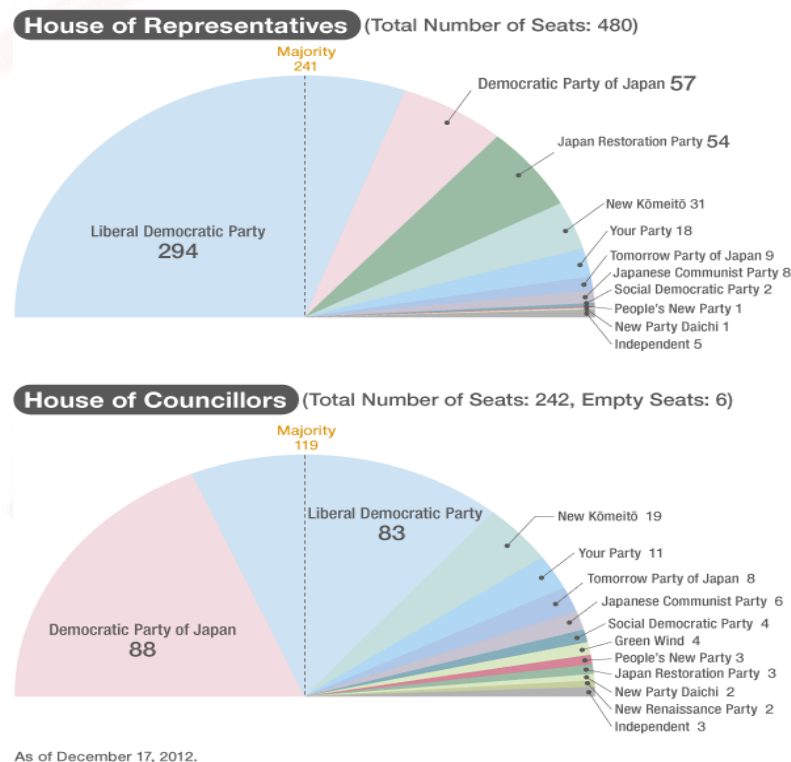
If some of the minor parties manage to join the LDP in eventually supporting constitutional change, particularly if the opposition Democratic Party of Japan (DPJ) splits, the Upper House election of 2013 could thus eventually result in changes which would have profound effects on both Japanese domestic and foreign policy.

Japanese Politics in the Lead-up to the 2013 July Upper House Election

The LDP's return to power on December 16, 2012 was a decisive defeat of the social-democratic DPJ, led at the time by Prime Minister Yoshihiko Noda. The DPJ had defeated the LDP only as recently as 2009; however, widespread public disillusionment with the DPJ soon set in, due to leadership instability, with a new Prime Minister in each year of its government, a continual sluggish economy, and most traumatically, dealing with the impact of the March 2011 Tohoku disaster (Shinoda, 2013, pp.255-258). The DPJ's numbers in the lower house collapsed from 230 to 57 seats; there was no great initial enthusiasm for the new LDP government though, reflected in the record low voter turnout of 59%, 10% lower than for the 2009 election (Fackler, 2012). These dismal results for the DPJ were repeated in the Tokyo

municipal elections in June 2013, where the Japanese Communist Party (JCP) outpolled the DPJ (Warnock, 2013).

Figure 1: The Japanese Diet following the 2012 Lower House Election:



Source: The Japan Times

Shinzo Abe's return to power was a rare event in Japanese politics, having stepped down from a previous term as Prime Minister during the previous term of the LDP government, serving for about a year during 2006-07, before resigning due to 'illness' – although a series of government scandals and poor economic performance was widely considered the true reason. His remarkable political comeback, having won a LDP leadership contest during its last period of Opposition in 2012, enabled Abe to embark upon the LDP's economic growth strategy plan, which is strongly tied to his personal leadership, popularly termed 'Abenomics' (Tepperman, 2013).

Abenomics comprises three general areas, termed the 'three arrows'; the first two arrows, monetary easing and stimulus spending, have been relatively easy for Abe to conduct, and have generally been considered successful. Aggressive quantitative easing by the Bank of Japan since April 2013 has doubled the volume of its long-term bond purchases, which has greatly increased the money supply, and depreciated the yen by about 25% against the US dollar to assist exports, although a record large trade

deficit continues, of ¥1.09 trillion in October 2013 (Ujikane, 2013).

The second arrow has been a ¥10.3 trillion stimulus package, directed mostly towards infrastructure and construction, the traditional means used by the ruling Liberal Democratic Party to boost the economy and lift employment. Inflation has increased to 0.9%, annualised GDP growth has increased to 1.9% for 2013, and the Nikkei stock market index has risen by around 50% since December 2012. The core targets of Abenomics aim to sustain inflation and real economic growth rates of at least 2% each by 2015 (Halla, 2013). Japan's successful bid to host the 2020 Olympics in Tokyo is further expected to encourage stimulus spending and long-term growth, with an economic impact of at least ¥3 trillion (Harner, 2013).

The third arrow is far more ambitious, complex, and problematic. It aims to encourage deregulation, productivity and competitiveness across an extensive range of sectors, including in energy, health care, agriculture (particularly rice and beef production), education, science and technology, transport, infrastructure and tourism. Export industries, small-to-medium enterprises, and increased participation by women in the workforce are to be encouraged, and engaging in more liberalised international trade agreements, such as the Trans-Pacific Partnership (TPP), are also considered part of the third arrow. The Abe government has also confirmed it will press ahead with a controversial hike in the rate of the national consumption tax on the purchase of goods and services, from 5% to 8% in April 2014, with a further increase to 10% in October 2015 (the consumption tax was last increased from 3% in 1997) (Reynolds and Mogi, 2013).

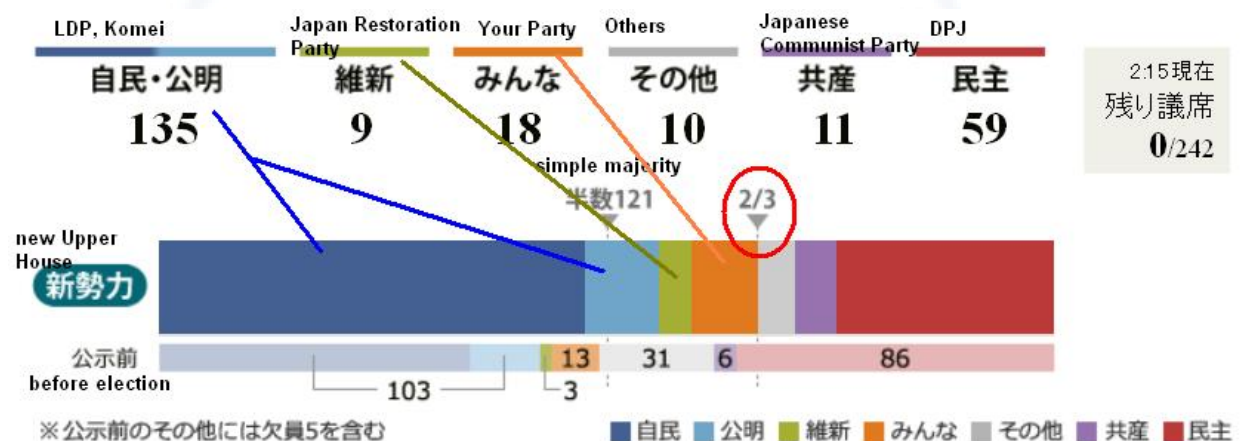
The 2013 Upper House Election and Constitutional Implications

Elections for half the Upper House (the House of Councillors) are held every three years, with members serving six-year terms. Unlike the Lower House, the Upper House cannot be separately dissolved for early elections, and so elections for the two Houses have long been out of synch; simultaneous elections for both Houses have only occurred twice, in 1980 and 1986 (Kobayashi, 2012, p.62).

The Upper House election held on July 21, 2013, continued to build up the LDP's political fortunes; it secured a comfortable majority, winning 76 of the 121 available seats with its traditional governing coalition partner, the New Komeito Party (NKP). The July election saw a continuing heavy decline for the DPJ, being held too soon for it to recover from its poor image, in the wake of its 2012 defeat, losing 27 seats. Of

the other minor parties, only the Japanese Communist Party and the nationalist Japan Restoration Party (JRP) managed to increase their (small) numbers. Other small parties, such as the neoliberal Your Party (YP), the populist People's Life Party (PLP), led by former LDP and DPJ powerbroker and defector Ichiro Ozawa, and the left-leaning Social Democratic Party (SDP), and Green Wind also remained marginal, their poor performance due to being crowded out by the LDP sweeping success (The Japan Times, 2013a). Despite this electoral success though, the LDP still was not able to achieve its ultimate desired goal of a two-thirds majority in its own right, which would allow for easier constitutional change, although it will allow the LDP to control all standing committees. Voter turnout was even lower than in 2012 though, at only 53% (The Economist, 2013).

Figure 2: The Upper House of the Japanese Diet following the 2013 Election



Source: The Asahi Shimbun

Shinzo Abe and the LDP have long held a policy platform of more readily enabling changes to the constitution, drafted during the post-war US occupation. The constitution has never been altered, which the LDP argues makes it too sclerotic; hence the need to allow easier change, so governments can adapt policies and legislation for changing national circumstances. This aim was pursued by Abe in his first administration in 2006-2007, which passed a bill to ease the requirements for the public referendum which has to be held to confirm any vote in the Diet to change the constitution; now only a simple majority is required to pass a referendum, rather than a two-thirds majority (Kersten, 2012, p.37). However, under Article 96 of the Constitution, presently a two-thirds majority vote is still required in both Houses of the Diet to approve any such referendum for constitutional change. Once Article 96 is altered, the barrier would be lowered for further changes in other areas of the

constitution, most notably the ‘pacifist’ clause Article 9, which restricts the military use of force by Japan (Hook, 2012, p.526).

After the 2013 election, a two-thirds majority vote led by the LDP is now potentially possible, with cooperation from the other minor parties, particularly the YP and JRP, which also are generally in favour of constitutional change. Crucially through, the more pacifist-leaning NKP remains opposed, and so it remains the vital voting bloc likely to prevent revision of the constitution, frustrating the ambitions of the LDP into the intermediate future. The other possibility for the LDP to achieve the numbers required would be if the demoralised DPJ, which suffered a series of defections in the lead-up to the 2012 election, splits even further, and a bloc of its more conservative-aligned members supports the LDP in sufficient numbers. However, the DPJ, under its post-election leadership of Banri Kaieda, would be unlikely to yield to such pressure from the LDP, if it ever hopes to rebuild its electoral fortunes (Sieg, 2013).

Another complicating factor has been a recent ruling by the Japanese Supreme Court, which has found the 2012 and 2013 elections were unconstitutional, due to a continuing voter-value disparity in the electoral system; this unfairly gives a greater weighting of a voter’s value in a number of rural/regional electorates, ranging from two to five times as much, compared to urban areas. While it has effectively ruled the current Diet as being unconstitutional, the Supreme Court did not order a re-election, merely recommending that the voter weighting be reformed by the time of the next election. However, this has been an ongoing issue long neglected by the major parties, particularly the LDP, as the disparity tends to benefit its electoral performance. Continuing to leave the disparity unresolved only serves to weaken the legitimacy of the electoral system overall, and could result in possible further legal challenges to any votes to change the constitution itself (The Asahi Shimbun, 2013a).

Domestic Policy Implications

The continuing domestic political success of Abe’s LDP-NKP coalition government so far has largely been due to the ongoing roll-out of ‘Abenomics’. Abe is counting on firms to raise wages as the economy grows, to offset the increases in the consumption tax increases, encouraged by a promised corporate tax cut. However, there are no guarantees employers will pass on any salary increases, instead being more likely to retain them as higher profits and shareholder returns. The main purpose of the consumption tax increase is to attempt to address the ever increasing government

budget deficit, which exceeds ¥1000 trillion, with a public gross debt to GDP ratio of around 230% in 2013, the largest in the OECD (Japan's economy is still the third-largest in the world, with GDP at nearly US\$6 trillion). As the population of Japan continues to simultaneously decrease and age, the fiscal burden of rising health and welfare costs will continue to increase, as the income tax revenue base correspondingly declines (White, 2013).

The sales tax hike can only make a minor, temporary impact on this deteriorating fiscal dilemma. The consumption tax increase will be partially offset by an additional ¥5 trillion stimulus package, including one-off compensation payments to low-income households and pensioners, and tax breaks for home loans and purchases, but the burden will continue to steadily rise on consumers overall in the long term. This poses the danger that such a regressive move will discourage consumer spending and blunt aggregate demand, threatening the gains of the economic recovery that have been achieved so far (Tabuchi, 2013).

The 'third arrow' of Abenomics faces other obstacles in its implementation, such as an ongoing cultural resistance within many corporations to women rising to senior positions in the workplace; although the employment rate for Japanese women has risen to its highest ever level, of 63%, it remains difficult for women to secure regular full-time positions. (The Japan Times, 2013b) There is also growing opposition to Japan's participation in the TPP, particularly from the influential farmers' lobby, who are strongly against allowing any increase to cheaper agricultural imports. Labour unions are also concerned that the trend towards greater casualization of labour will continue to expand, further eroding wages and conditions for workers (The Asahi Shimbun, 2013b).

Also unpopular are the desired intentions of the LDP to restart Japan's 50 nuclear power plants, which had operations suspended following the 2011 Fukushima disaster. Due to the resulting increase in imports of fossil fuels, Japan has announced a dramatic decrease in its planned carbon emission reduction targets, from 25% by 2020, to 3.8% - which would be a real 3.1% *increase* on 1990 levels. The slow pace of resettlement of those displaced by the Fukushima disaster is also a long-running social problem, and concerns about the continuing safety and repair of the destroyed Fukushima-Daiichi nuclear power plant will be an ongoing dilemma for the Abe government (Australia Network News, 2013).

Abe nevertheless retains a commanding position of firm domestic political dominance

for the LDP, as the opposition parties' numbers in both houses of the Diet are too low to present any major legislative impediment. This has been amply demonstrated in the Diet session held after the July election, where another set of controversial legislation was introduced by the LDP, this time focused on national security. Bills were recently passed to establish Japan's first National Security Council (NSC), modelled on that of the USA, to better coordinate responses to potential security crises (Kuromi and Tajima, 2013).

Far more controversial has been a bill to strengthen the protection of 'state secrets', with harsher penalties for the prosecution of public servants who leak such information, and also for journalists who 'encourage' and publish such leaks. The state secret protection bill passed the Lower House plenary session special committee, amid protests by some Opposition members, and is set to pass in the Upper House and become law. The LDP government has justified stronger protection of state secrets on the grounds it will secure greater intelligence cooperation with Japan's allies, particularly the USA, and strengthen national security overall, in light of the recent international whistleblowing cases of Edward Snowden, Chelsea Manning, and Julian Assange's Wikileaks organization (BBC, 2013).

Public protests were held against the state secrets bill by human rights groups, lawyers, media outlets and authors, concerned about the danger that freedom of expression may be eroded. Critics of the bill considered there was a lack of consultation and proper scrutiny of the legislation, it effectively being 'railroaded' through the Diet. They claim the Abe government has been too vague about which criteria of information could be considered state secrets, with the potential for restrictions to be expanded beyond areas such as defence, foreign affairs, espionage and intelligence. This could mean anti-nuclear protesters, and those opposing the greater international use of force by Japan may find themselves in breach of the law in future (McDonnell, 2013). Discussion and criticism of government policies and handling of crises such as the Fukushima nuclear disaster could also possibly face restrictions, reducing government accountability and transparency overall. Human rights advocates also fear other potential changes on the LDP's constitutional reform agenda, including restrictions on freedom of speech and assembly, if such activities and associations 'harm...public order' (Jones, 2013).

Expressions of a more virulent nationalism among LDP politicians are also continuing, seen in proposals for the 'government viewpoint' to be presented in school history textbooks, resurrecting long-running controversy about the treatment of Japan's

wartime history (The Asahi Shimbun, 2013c). Visits by LDP members to the controversial Yasukuni shrine, which honours Japan's war dead, including war criminals, have also continued. Such events strongly offend neighbouring states in the region, particularly China and Korea, creating difficulties in improving relations with those countries; however, these demonstrations of nationalism pander to the conservative support base of the LDP, demonstrating a projection of assertiveness (McCurry, 2013).

Foreign Policy Implications

Apart from securing the LDP's domestic fortunes, Abe needs Abenomics to succeed in order to provide the economic and political capital required to fulfil his nationalistic ambitions of restoring Japan as a premier geostrategic nation in East Asia. A less noted component of Abenomics is a 3% increase in defence spending, to ¥4.89 trillion in 2013, mainly driven by rising territorial tensions with China over the Senakaku Islands (claimed as the Diaoyus by China and Taiwan), which have steadily deteriorated after the previous DPJ government fully 'nationalised' its ownership of the islands in October 2012. Concerns have also increased over North Korea's testing of nuclear warheads and ballistic missiles, which prompted the Japanese Self Defense Forces (SDF) to go on alert on several occasions in 2012-13. This has been the first increase in Japanese defence spending in eleven years, and is the highest amount of spending in 22 years. The SDF is already one of the best-equipped and most well-trained modern armed forces, at a strength of nearly 250,000, including large numbers of warships and aircraft, making it the third most powerful military force in the region, after the USA and China (IISS, 2013, pp.266-269, 306-309).

As well increasing the amount of military spending, the Abe government is changing the operational doctrine of the SDF. This includes expanding the size of the Coast Guard and Maritime SDF, seen in the recent launch of its latest helicopter carrier, the largest warship acquired by the MSDF in the post-war period, to be operational by 2015 (Lendon, 2013). Establishment of a unit of specialized amphibious forces, with the specific mission of recapturing islands is also under way, as is the deployment of US surveillance drones, authorised by a new security cooperation agreement signed between the US and Japan. Further to this, large-scale amphibious landing joint exercises are being carried out between the SDF and US forces, both in the US and Japan, in a clear signal of deterrence aimed against China's greater military posturing in the region (Mie and Aoki, 2013). A full Defence Posture White Paper is to be prepared and released by the end of 2013, formally replacing the Security Doctrine of

previous DPJ Govt (The Asahi Shimbun, 2013d).

These developments are part of the long-term aim of Abe and the LDP to alter Article 9, the 'pacifist' clause of the constitution, officially convert the SDF into the 'National Defence Forces', and allow participation in 'collective self-defence' – particularly cooperation in military operations with the US, beyond the immediate defence of Japanese territory. This would greatly transform the use of the SDF beyond previous interpretations of the constitution, which have allowed SDF participation in UN peacekeeping operations, UN-authorised anti-piracy operations, and 'non-combat' operations in support of the US during the wars in Iraq and Afghanistan (Vosse, 2012, p.161). The case for this far-reaching change of the use of force by Japan has been justified by Abe and the LDP as finally 'normalising' Japan's defence and foreign policy. This would allow Japan to strengthen its national security, in a more volatile and strategically competitive region. It is argued that Japan would thus be enabled to make a greater contribution to international peace and stability, by allowing full assistance to be given to its allies in collective self-defence operations, principally with the US, as permitted under the UN Charter (Kitaoka, 2013, pp.5-7).

As previously outlined though, the LDP does not presently have the numbers in the Diet to effect constitutional change. It is also questionable whether a referendum to overturn Article 9 would be passed by the public; a strong pacifist strain endures amongst much of the Japanese public, particularly in the cities of Hiroshima and Nagasaki, and in areas enduring the burden of hosting US military bases, principally in Okinawa (Clausen, 2013). The Abe government has therefore already taken practical steps to prepare for such a contingency, appointing a new head of the Cabinet Legislation Bureau, with the purpose of potentially reinterpreting Article 9, to allow participation in collective self-defence. Since full constitutional change is unlikely in the short-term, existing legislative and legalistic means are therefore necessary for the LDP to achieve its goals of a more active role for the SDF (The Japan Times, 2013c). However, this more assertive foreign policy direction of the Abe government has already worsened relations with China and the Koreas, who view the LDP policy as a return to nationalistic militarism. Abolishing the pacifist clause of Article 9 would inevitably ratchet up tensions even further, and so be diplomatically costly, despite any attempts at diplomatic reassurance the Abe government might make (Wallace, 2013, pp.504-509).

Abe has already attempted to pre-empt this, in his foreign policy termed 'proactive pacifism'. This has been personally expressed through his high pace of diplomatic

activity during his first year in office. He has recently visited Cambodia and Laos, completing his schedule of visiting all the ASEAN member states, which can be considered an attempt to diplomatically outflank China's influence in the region, with promises of higher levels of Overseas Development Assistance and Foreign Direct Investment. This was recently demonstrated in Japan's swift response to typhoon Haiyan in the Philippines, which saw the largest overseas deployment of the SDF to a disaster relief operation (Ordaniel, 2013).

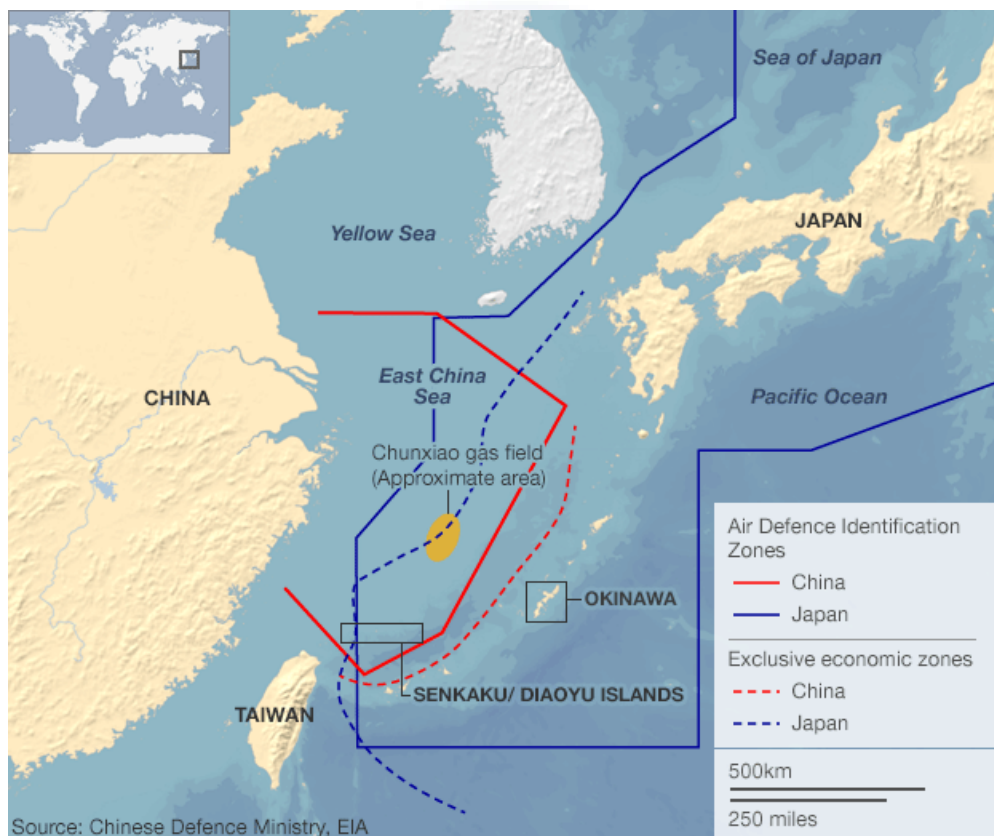
Abe has also further developed the already deepening security ties with Australia, which has Japan as its second-largest export market. Abe had his first official meeting with the new conservative Australian Prime Minister Tony Abbott at the 2013 ASEAN/East Asia Summit in Brunei, where Abbott declared Japan was Australia's 'closest friend in Asia'. Abbott also offered Abe the rare privilege of addressing the Australian parliament on his next visit, and aimed to conclude a Free Trade Agreement with Japan within a year. A growing level of defence cooperation, including a higher tempo of military exercises, was also confirmed in the ongoing Transnational Security Dialogue between Australia, the US and Japan held on the sidelines of the 2013 APEC summit in Indonesia (Kenny, 2013).

However, the process for another series of trilateral meetings between Japan, South Korea and China seems to have broken down, as regional tensions in Northeast Asia worsen. This diplomatic standoff intensified after recent media statements by Abe at the annual review of the SDF, reiterating that Japan has to increase its defence preparedness to secure itself from threats, and to allow Japan to play a greater role in international security. Abe directly warned China that Japan would not allow any changes to be made by force to the territorial status quo of the region. In doing so, Abe raised the prospect of Chinese drones being shot down if they enter Japanese territory; China angrily responded, stating any such action would be an act of war (The Japan Times, 2013d).

Relations between China and Japan have since only worsened further, with China's recent declaration of an 'Air Defence Identification Zone' (ADIZ) covering the Senkakus/Diaoyus, a potentially highly dangerous escalation of tensions. As well as sparking strong diplomatic protests from Japan, the US and Australia, the move has raised concerns among Taiwan and South Korea. The US reiterated its support for Japan under its military alliance, again stating that while it does not have a formal position on the international legality of the dispute, it regards the Senkakus as Japanese-administered territory, and therefore their defence is covered under the

US-Japan Security Treaty (US Department of Defense, 2013). US aircraft have already joined the SDF in sending patrols into the Chinese ADIZ to reinforce this point. This very concerning development underlines the urgent need for more active regional diplomacy to reduce tensions, and to finally restore the diplomatic momentum required to ultimately resolve the issue, along with the other territorial disputes China has with its ASEAN neighbours in the South China Sea (Marcus, 2013).

Map 1: ADIZ and EEZ claims by China and Japan in the East China Sea



Conclusions

While confronting a range of domestic and foreign policy challenges, including that of constitutional change, the LDP nevertheless seems set to enjoy a prolonged period of political ascendancy. After the brief period of the previous DPJ government (2009-12), the LDP may yet become entrenched again as the ruling party, returning Japan to its long post-war period of parliamentary dominance under the LDP, effectively becoming a ‘one-party democracy’ once more. The DPJ could well split and fragment under the pressure of opposition, with the range of other small minor parties ensuring the LDP remains relatively politically unchallenged for the

foreseeable future (the next general Lower House election is due in 2016).

If the LDP finally does manage to achieve its aims of profound constitutional change, this is likely to consolidate its power, and promote the agendas of its traditional support base, particularly the business lobbies of large corporations, and influential sections of the bureaucracy, including those of the 'national security state'. The danger lies if this comes at the expense of the general public, particularly ordinary consumers, taxpayers and wage earners, young people, women, the elderly, and vulnerable minorities in society, such as those still displaced in Tohoku. Vigilance must also be maintained that civil liberties are not eroded, at the expense of ostensibly protecting 'national security'. The move by Japan to a more assertive nationalism under Abe also risks greater instability in the region, unless far greater diplomatic care is taken.

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Statelessness matters 10 Years on from Al-Kateb: Statelessness in the Australian Context

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Abstract

This year is the tenth anniversary of the final decision on *al al Kateb v Godwin* (2004) HCA 37), a landmark case in Australian migration law. The Australian government sought to detain *al Kateb*, a stateless Kuwaiti, indefinitely after refusing his application for asylum. The High Court ruled in favour of *al Kateb* on the basis that indefinite detention of a stateless person is unlawful. Since then, Australian law on statelessness has failed to develop to the extent that the Australian government has not legislated on a determination procedure for stateless people. Australia does not provide protections under United Nations Convention on the Status of Stateless Persons (1954) to which Australia is a signatory. This paper discusses sources Australian Country Advice KWT39495 to describe how concepts about stateless communities might develop within the Refugee and Migration Review Tribunals. It challenges the veracity of the Country Advice information based on its uses of sources. It explains the reasoning behind American and UK positions on statelessness in Kuwait in the Country Advice, which influences determinations on asylum claims in the absence of a procedure to determine and resolve statelessness. It concludes that not only are the Australian Country Advices in need of update, there is also a need for the quality of evidence sourced and the interpretation of that evidence, to be reviewed

Introduction:

Because of the limited nature of this presentation, I will discuss why statelessness matters in the Australian context, the Australian Department of Immigration and Citizenship's sources of advice on Statelessness, the two main sources of the advice and the two trends emerging that positioning the stateless population claims. The analysis by close reading of the text will be published in a full-length paper.

Why Statelessness Matters

There are approximately 22 million stateless people worldwide (UNHCR 2013). Most of these people are not displaced refugees but remain in their countries of origin for generations (Refugee Appeal No. 72635/01, 2002). One of the reasons for this is that if they cross a border from their home country, they will not be allowed back in. The systematic exclusion of stateless people from legal frameworks in their own nations leads to some stateless people taking the risk of travelling, and this manifests as asylum flows to adjacent nations and also further afield. Stateless, they cannot leave the second country since they have no nation to be exited to. Under Australia's new offshore processing procedures for Irregular Maritime Arrivals, stateless persons who do not make successful claims as refugees are left on Manus Island or Nauru. However, as at 15 May 2012, there were 555 people in detention centres in Australia who identified as being stateless, 114 of whom had been detained for over a year-and-a-half (Australian Human Rights Commission 2012 at 6.4), ten years after the al Kateb case (al Kateb v Godwin (2004) HCA 37) had decided that stateless asylum applicants should not be left in indefinite detention.

When his case first came to the attention of the Australian media, Ahmed al Kateb was a stateless Kuwaiti of Palestinian descent languishing in indefinite detention in South Australia (Zagor 2006). The Kuwaiti Bidoun Jinsiya provide a particularly compelling example of statelessness as, until 1986, this group was treated as citizens in Kuwait, while their claims to human rights and citizenship-like benefits are today made in competition with more recent arrivals from other regions of the Arab world. ('Kuwait issues 80,000 identification cards to stateless Arabs' in *Arabian Business*, 20 January 2013). A discussion on how the problem developed is beyond the scope of this paper, suffice to say that the Kuwaiti government has called on the international community to treat this problem as an international issue rather than a purely Kuwaiti one (Kuwait Government Response to Human Rights Watch, 2011). Stateless Kuwaitis seek asylum in nations such as Britain, Canada, New Zealand and Australia (*Statement of Changes in Immigration Rules*, UK Border Agency, 2013; Research Directorate, Immigration and Refugee Board of Canada, 1999 and 2001; DZABG v MIAC (2012) FMCA 36; MRT Case 1218580 (2012); Refugee Appeal No. 72635/01, 2002).

The international flow of stateless populations changes the complexion of statelessness in Kuwait from a domestic problem into an international issue. The current Australian approach to the Convention on the Status of Stateless Persons (1954) has seen Australia fail to implement the Convention, despite being a signatory to it. The failure of the Australian government to implement a procedure to determine statelessness is the most significant problem for stateless asylum applicants in

Australia as they cannot have their stateless status resolved under Australian law. This failure means that stateless people have only the Convention Relating to the Status of Refugees (1951) under which to apply for protection. The means of protection for stateless persons under international law for those who do not qualify for refugee status, remains denied to stateless people who apply for asylum in Australia,. This creates a situation where stateless people and their legal counsel are left to 'fit' their circumstances into a case for refugee status although, according to their circumstances they are eligible for protection from Australia under the Convention on the Status of Stateless Persons (1954).

The leads to the second reason for the failure of stateless people to have their cases resolved under Australian law. While stateless people's asylum claims can only be processed as applications for refugee status, these are often rejected. This leaves their cases unresolved if they cannot be returned to their home country (the al Kateb case (al Kateb v Godwin & Ors [2004] HCA 37 established that the return of stateless Kuwaitis and others is usually refused by the home country from which they came). The decisions of the Australian Migration Review Tribunal and the Australian Refugee Tribunal, including the rejection of refugee claims by stateless people can be related to evidence from documents issued by the Australian Department of Immigration and Citizenship (now known as the Australian Department of Immigration and Border Control). As discussed above, because Australia has not implemented a statelessness determination procedure, the refugee convention is the only convention under which asylum seekers can apply for asylum. In Britain, asylum seekers can now apply for refugee or statelessness status according to either the Convention on the Status of Refugees (1951) or the Convention on the Status of Stateless Persons (1954), respectively. Asylum claimants in Australia must demonstrate that they are being persecuted in a particular way according to the 'well-founded fear' test to 'fit' their case to the definition of the Convention on the Status of Refugees (1951) (refer to the Australian government's Guide to Refugee Law: Chapter 3: Well-Founded Fear, September, 2013; *Refugee Appeal 72635/01*, 6 September 2002 provides a judicial analysis of how the test was applied regarding a stateless Kuwaiti).

If a claim for refugee status is based on membership of a particular group, claimants must demonstrate that they are members of that group and that this group has been subjected to persecution, having experienced prejudice or discrimination. . This means that their cases put forward by solicitors rely on proof of difference of race, religion or affiliation upon which claims of persecution are constructed. Where the status of a person's membership of a group subject to persecution cannot be decided, or if the existence of that group is not accepted, the claimant's case is unlikely to be deemed to satisfy the definition of a 'well-founded fear' of persecution. Where Country Advice documents issued by the Australian Department of Immigration and Citizenship questions or denies the status of stateless groups, which are subject to persecution, according to the group members' 'sameness' or 'difference', this has the potential to negatively influence determinations on cases brought before the tribunals. Such claims about the group identity of stateless Kuwaitis were found in Australian Country Advice *KWT39495*.

This paper analyses sources Australian Country Advice *KWT39495* to describe how concepts about belonging and the identity of stateless communities subject to

persecution have developed. It explains the reasoning behind what appears to be two conflicting positions on statelessness expressed in Kuwait in the Country Advice. The positions relate to stateless Kuwaitis' claims to belonging to a group that is discriminated against or persecuted. I challenge the veracity, quality and context of information from American sources used in the Country Advice, used to assert that the stateless people of Kuwait are the same as Kuwaiti citizens and that stateless people have no distinct identity or culture. On the other hand, information in the Country Advice based on British sources, supported assertions that stateless people of Kuwait have a distinct identity and a rightful claim to refugee status. The UK information was downplayed despite its better quality and contextual fit. This raises questions about the sources and the interpretation of sources in the Advice. The Country Advices influence determinations on stateless person's asylum claims in Australia the absence of a procedure to determine and resolve statelessness, where stateless applicants are expected to prove refugee status in order to be granted protection.

The Department of Immigration's Sources of Advice on Statelessness

Australia has had so many stateless asylum applicants from Kuwait that it began issuing summaries to migration department staff via the Australian Country Advice regarding the 'Bidoun Jinisya,' people without nationality. Numbers of stateless people arriving or staying in Australia from particular countries of origin are not published by Department of Immigration and Migration Australia (now known as the Department of Immigration and Border Protection) or the Australian Bureau of Statistics. Therefore I am unable to suggest just how many Kuwaiti stateless applicants for asylum in Australia there have been. However, as at mid-2013 there were four advices listed on the Australian Migration and Refugee Review Tribunal website including Australian Country Advice: *Kuwait KWT37495* (2010), *KWT37848* (2010), *KWT38627* (2011) and *KWT38642* (2011). The Advices described various issues arising in appeal cases relating to identity, culture, society and politics.

Country Advice KWT39495 was particularly significant because it discussed at length, claims to identity made by stateless asylum applicants. The two main pieces of evidence used in the Advice were:

- *About Being Without: Stories of Statelessness in Kuwait* by Refugees International 2007
- *UK Home Office Operational Guidance Note – Kuwait, March, 2009* (hereafter referred to as OGN 2009)

About Being Without: Stories of Stateless in Kuwait, Refugees International, 2007

Regarding the abovementioned Refugees International (2007) source information, Refugees International is a Washington-based advocacy organisation that has produced a number of field reports on the Stateless in Kuwait (see Refugees International 25 July 2007, 2 September 2009, 12 September 2009, 17 October 2011, 5 March 2012 and 12 May 2012). Ironically, the publication referenced in the Country Advice is probably the least rigorous research publication on Kuwait that the organisation ever produced on Kuwait. The document did not even claim to be a fact-based report. It was a monograph of six 'stories' over just fifteen pages with large

photographs filling the pages, constructed by a field worker who flew into the site for around two weeks.

While the research method used to produce *About Being Without: Stories of Statelessness in Kuwait* (Refugees International 2007) included interviews to construct a life history of participants, a method used frequently in the qualitative social sciences, the manner in which the author used this data to analyse and construct 'results' was creative (in a creative writing sense) rather than rigorous (in an academic or humanitarian advocacy sense). The interview data was pieced together to create general biographical life stories, including life stories of individuals and life stories of families. The family research comprised interviews with only certain individuals in the group, which were presented as providing a portrait of sorts, of the entire group. The first story, 'A Family Destroyed' concluded with,

Mohammad remembers that he lay awake all night, repeating the word 'bidun' and wondering what it meant.

About Being Without: Stories of Statelessness in Kuwait, Refugees International 2007 pp.5

Principles of beneficence were adhered to by the researcher so loosely in interpreting and reporting the results that I believe readers would likely come away from reading the work with a somewhat tainted or negative impression of stateless people. For example, in the first story quote above, the married couple's divorce for the purpose of obtaining free schooling for their five children was described by the researcher while the couple's daughter tried to put forward an argument about the discrimination she had experienced that prevented her education. I believe that application and disclosure of research methods is a significant concern in humanitarian research on statelessness in the Middle East. In *Stateless Aesthetics, Feminist Human Rights Discourse on the Stateless in Kuwait* (Kennedy 2013) I explored the use of feminist methodology to produce results and make recommendations that run counter to the principles of beneficence in the research carried out on stateless people in Kuwait. In *About Being Without: Stories of Statelessness in Kuwait* (Refugees International 2007) the author relied on sensational language and unverified data to craft his stories on statelessness.

UK Home Office Operational Guidance Note – Kuwait, March, 2009

Regarding the British source of information for the Country Advice on Kuwait, the OGN (2009) issued by the UK Home Office was compiled by the British Asylum Policy Directorate. It drew on information from the British Foreign and Commonwealth Office (citing humanitarian and diplomatic efforts in the Middle East), Freedom House (another Washington-based rights group, whose mandate is similar to Refugees International), the US State Department, The National News service (a Middle East daily news source), the World Health Organisation and case law from three British law cases on stateless asylum claims. The sources of information were authoritative and well spread across a number of genres.

As mentioned in the introduction, the analysis by close reading of the text will be published in a full-length paper.

Two trends emerge positioning the stateless population claims

Emerging from the Country Advice are two apparent positions: a British position and an American position on Kuwaiti statelessness. The Washington-based Refugees International (2007) work was held out to be comparable with the OGN (2009) in terms of the evidence from each publication being used to weigh up claims about the stateless Kuwaitis' cultural identity. I explained in the textual analysis why the stories by Refugees International (2007) was not of a comparable quality to the Guidance Note, and nor did it seem intended for the purpose of helping a Tribunal to decide on an asylum claims. A field report by Refugees International (2008) was quoted out of context, and used to support the 'sameness' argument while in fact it argued the stateless were treated with discrimination based on their status of statelessness. On the other hand, the US Department of State (2010) information was used to support a claim of 'difference,' but it did so by claiming that the Kuwaiti stateless community is Iraqi. If this line of argument was developed fully, it would substantiate that the stateless in Kuwait are culturally distinct, but are nevertheless unwelcome foreigners. Even the Kuwait government acknowledges that there are stateless populations in Kuwait of Kuwaiti descent (*Kuwait Government Response to Human Rights Watch* 2011). It is also well-established that many stateless Kuwaitis were left trapped in Iraq and unable to return to Kuwait as a result of the Iraqi invasion (al Najjar 2001).

The authors of Country Advice *KWT39495*, having elaborated on the Refugees International evidence (2007) but not the UK OGN (2009) evidence, appeared to favour the American viewpoint that would lead to a negative decision on asylum claims. Had the authors of the Country Advice checked with the sources for the UK Home Office Operational Guidance Note (2009) (that is said did not elaborate further) it would have found there was ample evidence available to counter the American views expressed in the Country Advice. In BA and others UKIAT [2004] 00256 CG, expert witness Dr Abbas Shiblak addressed in detail the issue of stateless people in Kuwait being Iraqis. He soundly refuted the claim, making reference to the change in composition and numbers of stateless Kuwaitis in the population over time which he argued, justifies the diverse cultural heritage that is shared by Kuwaiti citizens with others across the Gulf and the Middle East.

It is not known how the Country Advices are constructed or how evidence is evaluated and selected for inclusion. One wonders then, why the opinion of the UK Home Office (OGN 2009) was not explored more thoroughly when it supported the claims of stateless Kuwaitis to asylum. Ten years on from *al-Kateb v Godwin and Ors* [2004] HCA 37, it appears little has been learned in Australia about the protections that all stateless people are provided under International Law, whoever they are, and wherever they are from. After an update on Country Advices was recommended during the 2013 Australian federal election campaign in order to reduce the number of positive Iranian refugee determinations (Hawley, S and Norman, J 2013), the Australian Country Advices on Kuwait were removed from the Australian Migration Review and the Australian Refugee Review Tribunal website. There was a message on the website requesting inquiries about the Advices to be emailed to the

Tribunal. The Tribunal did not respond to my email requesting a copy of the previous advices and a copy of any new advices being used by the Tribunal.

Conclusion

Despite the success of the *al Kateb* case (*al-Kateb v Godwin and Ors* (2004) HCA 37), which remains a landmark case in Australian immigration law, Australia has failed to develop law on statelessness and asylum seekers who continue to languish in detention or in the community with unresolved cases. There are two main reasons why cases are not being resolved. The first is due to the lack of a statelessness implementation procedure with which Australia can apply protections under the Convention Relating to the Status of Stateless Persons (1954). The second reason is that stateless persons' claims for asylum are often unsuccessful under the 'well-founded fear' test, according to the definition in the Convention Relating to the Status of Refugees (1951). The Convention Relating to the Status of Stateless Persons (1954) is designed to address the special context of stateless persons under international law. Where stateless persons cannot access this Convention (as is currently the case under Australian law), the applicant and legal counsel are made to 'fit' their case into the alternate Convention. Australian Country Advices provide information for the Migration Review Tribunal and the Refugee Review Tribunal, which is used to determine refugee claims for all applicants, stateless, refugees or both.

A close reading of a Country Advice *KWT39495* on Kuwaiti statelessness found that two different arguments emerged from the sources that could influence decision-making on asylum claims where stateless applicants apply for protection as refugees on appeal. It was found that not only is there is an urgent need for Australian authorities to update and publish new Country Advices but there is also a need for the quality of evidence used in the advices to be reviewed. Since writing this paper, the Australian Country Advices have been removed from the Australian Migration Review and Refugee Review Tribunal website. As yet, they have not been replaced. One wonders what new Advices are being used by the Tribunal, if any. This is an unsatisfactory situation ten years after the success of *Al-Kateb v Godwin and Ors* (2004) HCA 37.

For M. M. al Anezi.

Thank you

Marina Lever your for assistance editing this work.

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The Effects of Social Capital and Culture on Economic Outcomes

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Abstract

Traditional economic variables have ignored social capital and culture until recently. The role of culture and the development of social capital may explain variations in economic outcomes that differ from institutions. This article reviews recent works that sought to identify social capital and culture and its influence on economic outcomes. The author further discusses the questions, “How can social capital be measured?” and “How does one place value on culture?”

Keywords: social capital, cultural capital, social capital measurement, leadership economics

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The Effects of Social Capital and Culture on Economic Outcomes

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Abstract

Traditional economic variables have ignored social capital and culture until recently. The role of culture and the development of social capital may explain variations in economic outcomes that differ from institutions. This article reviews recent works that sought to identify social capital and culture and its influence on economic outcomes. The author further discusses the questions, “How can social capital be measured?” and “How does one place value on culture?”

Introduction

One of the most fascinating aspects of the information age is its relation to economic development – with its diversified global networks, increased interconnectedness, and their overall impact on a country’s economic stability (Eagle, Macy, & Claxton, 2010). As any research on the subject would recommend, we must identify the instruments of change in such cases, especially if they have a direct influence on consumer behavior, their preferences and constraints (Gorodnichenko & Roland, 2010). In doing so, it becomes necessary to include these instruments in our research to avoid neglecting one or more variables which possibly propel such changes in the first place (Portes & Vickstrom, 2011).

Until recently, however, a large majority of economists have spoken against the role of culture and social capital in the economy, with many going as far as eliminating them from the equation completely (Kwon & Arenius, 2010). Much of this has to do with the lack of empirical evidence confirming the causality between economic growth and cultural traditions, and the difficulty in assessing the extent to which culture and social capital influence economic trends (Gorodnichenko & Roland, 2010). Another cause for concern is the possibility that there could be factors other than culture responsible for variations in economic output – factors that may not necessarily be bound by culture, but rather by political triggers and foreign relations (Portes & Vickstrom, 2011). Subsequently, the case against cultural impact is further strengthened when culture is defined broadly as a system of beliefs, customs and practices which connect a group of people, without going into the specifics of what constitutes these preferences and values (Fehr & Hoff, 2011).

Although the revival of culture in economic patterns is a relatively new area of research, it nevertheless takes after the writings of prominent sociologists and economists the likes of Max Weber and Werner Sombart (Arruñada, 2010). In his book titled ‘The Protestant Ethic and the Spirit of Capitalism’, for instance, Weber provides valuable insight into the socio-economic dimensions of religious thought and practices, delving into the dynamic behavior underlying financial institutions (Gorodnichenko & Roland, 2010). Contrary to popular assumption at the time, his research highlighted a dramatic boost in capitalism, following the spread of Calvinism – a religion that advocated the principles of asceticism (Arruñada, 2010). According to the study,

Calvinism inadvertently contributed to the economy as followers, in their attempt to abide by the laws of religion, reinvested much of their profits into work instead of spending it in the way of luxury (Gorodnichenko & Roland, 2010). The research conclusively suggested a strong correlation between culture and economic activity, as seen from the enormous influence religious ideology had over personal financial decisions, which ultimately determined savings and interest rate, among other equally important economic factors (Arruñada, 2010).

Suffice it to say, Weber's theory paved way for further research into the role of culture in business and economics, especially by neo-classical analysts who, in recent studies, have raised significant questions concerning the constant undermining of social capital and culture – variables that are arguably crucial to economic progress (Eagle, Macy, & Claxton, 2010). Interestingly enough, the deeper we delve into the world of economics, the more we are likely to notice that certain factors are largely downplayed possibly due to their intangibility, which makes them financially worthless on paper – albeit incredibly profitable in terms of their causality (Thornton, Ribeiro-Soriano, & Urbano, 2011). The failure to address this issue is most commonly associated with the clash of behavioral economics with pure economics, with the former using a methodology more in keeping with the humanities, and the latter following the sciences in terms of empirical testing (Herrmann-Pillath, 2010). This is presumably why a number of economists refuse to consider social capital and culture in the context of economic growth, for though they may understand how it contributes to the economy at large, they nevertheless remain unconvinced by the scientifically weak data frequently provided to confirm the hypothesis (Casey & Dustmann, 2010).

Another reason why many economists dismiss the importance of these variables is because the surveys taken into account are largely unsuccessful in actually capturing a direct correlation between culture and economic outcomes (Herrmann-Pillath, 2010). They tend to focus simply on the effect one has over another – an argument that can also be used alternatively to disprove the proposition (Gorodnichenko & Roland, 2010). To take an example, Weber indicated the effect of culture on economic activity, illustrating how Calvinism shaped the “spirit of capitalism”; yet many questioned the legitimacy of his claim, including Karl Marx, who attributed the surge of capitalism solely to the Industrial Revolution, rather than the spread of any particular religion (Arruñada, 2010). In doing so, the debate was ultimately reduced to the age-old question: what comes first – the chicken or the egg? (Gorodnichenko & Roland, 2010). While Marx accepted the Weberian theory to the extent that he agreed with religion actively propagating a capitalist agenda, he differed on the grounds of causality, claiming that religion was essentially a byproduct – rather than the cause – of economic progress (Arruñada, 2010).

To maintain the validity of our research, we must explore all the possibilities when trying to identify where exactly culture stands in an economic setting – regardless of its impact on the economy (Cassar & Wydick, 2010). Were we to accept, for a moment, that it has no substantial effect on economic outcomes, there would remain, still, the question of its causality, and the fact that consumer behavior ultimately comes down to predetermined beliefs, values and preferences – all of which are molded, to some degree, by culture (Casey & Dustmann, 2010). With that in mind, it becomes easy to recognize the overwhelming influence culture has on the equilibrium in the long-run, particularly when it comes to determining a country's fiscal policy (Herrmann-Pillath, 2010). Perhaps what is required most from academics in this field is a close reevaluation of culture and economics – this time adopting a narrower definition of culture – so that economic

shifts are understood in the context of specific socio-cultural mechanisms that are necessarily passed on from generation to generation, as opposed to individualist preferences that can otherwise be altered through geographical or environmental changes (Casey & Dustmann, 2010). By narrowing the scope of culture, therefore, the correlation can be assessed more effectively in terms of what does (and does not) have a direct impact on the economy, and we may thus gain insight into culture as a multi-dimensional phenomenon, making it easier to determine the value of social capital in a broader economic spectrum (Eagle, Macy, & Claxton, 2010).

Defining Culture

When discussing culture, specifically in terms of economic development, it is imperative that we specify exactly what is meant by a shared system of beliefs and preferences, for the purpose of clear examination (Fehr & Hoff, 2011). It is worth noting that the argument against cultural impact is usually justified when the term ‘culture’ is used interchangeably with collective values and beliefs, when it clearly goes well beyond the stated definition to include “the norms of behavior derived from that set of values” (Gorodnichenko & Roland 2010: 1). In order to refine our analysis, therefore, we must explore the reasons why certain norms of behavior exert a greater influence on formal institutions and economic patterns, and how they remain unchanged when transmitted to future generations, despite the political prowess of globalization (Thornton, Ribeiro-Sorian, & Urbano, 2011).

Since, by definition, culture encompasses a set of beliefs and values shared by a collective, it is crucial to determine what causes these values to endure, especially when they go far beyond the point of being effective or practical (Herrmann-Pillath, 2010). In addition, culture works as a socio-economic tool which, aside from conditioning and socializing entire generations, is used consciously to market potentially profitable ideas, thereby furthering consumerism and adding fuel to the economic fire (Gorodnichenko & Roland, 2010). Subsequently, every social or political movement is, by and large, culturally-inspired, regardless of the part it plays in formal institutions (Herrmann-Pillath, 2010). Underlying these large-scale socio-political mechanisms is a fundamental pattern of behavior which is studied closely to predict sales, spending, savings and price (Gorodnichenko & Roland, 2010). In other words, these factors are inextricably linked to the economy, which is perhaps one of many reasons why economic super powers such as the United States are populated by an array of ethnicities, concurrently reaping the monetary benefits of cultural diversity (Thornton, Ribeiro-Sorian, & Urbano, 2011). In many ways, the homogeneity of globalization also adds considerably to the livelihood of culture, recreating aspects of the phenomenon to pave way for other, more profitable ones – for instance, what we usually refer to as ‘pop culture’ or ‘youth culture’ (Dockery, 2010).

It is equally important to consider the different dimensions of culture with respect to causal connections; that is to say, certain ‘connectors’ must be identified which weave values and preferences into the very fabric of the economy (Fehr & Hoff, 2011). To take an example, we know that personality traits influence consumer behavior – but do they also determine culture, or do cultural differences give birth to these personality traits? Moreover, variables that connect values and preferences to the local economy must be explored in relation to their social, religious and national affinity, so we may measure and compare their effect on other economies to make for a more concrete analysis (Herrmann-Pillath, 2010). Evidently, defining culture is of immense significance in the analysis due, in large part, to its expansiveness – which explains why the channels through which it enters the economy are so difficult to detect (Dockery, 2010).

While several sociologists and economists have written extensively on the matter, including Adam Smith who published “The Theory of Moral Sentiments” in 1759, there has been little to no discussion on how culture contributes to the economy until the recent resurgence of behavioral economics in the social sciences. This is not to say that economists do not accept the role of culture in the economy, but they find the relationship between the two rather vague, trivial and irrelevant, owing primarily to the untestable hypothesis suggested by those in favor of the proposition (Casey & Dustmann, 2010). To maintain the standard of our research, therefore, we will analyze the various shades of culture and cross-examine its impact on policy-making in light of recent macroeconomic trends (Gorodnichenko & Roland, 2010).

Culture and the Economy

By focusing on specific aspects of culture – for instance, its social, religious and national affiliation – the scope of cultural impact can be evaluated more effectively in terms of a country’s national identity (Casey & Dustmann, 2010). Although culture is not necessarily bound by these parameters, they are there to help us trace the channels through which it seeps into economic paradigms (Casey & Dustmann, 2010). We must keep in mind that culture manifests in the form of behavior and, as a result, it takes an inevitable toll on social institutions such as family, politics, the media, education and religion – rather than being influenced by them (Herrmann-Pillath, 2010).

Building on this theory, recent works in socio-economic research have detected a discernible causality between the structure of family and the division (and participation) of labor – a pattern of behavior that is exclusive to certain cultures (Fehr & Hoff, 2011). This is where personal preferences and values come into play, determining what ‘ought’ and ‘ought not’ to be in the public and private spheres of human life (Alesina & Giuliano, Family ties and political participation, 2011). Similarly, religious practices that play an important part in social convention reflect deep-rooted cultural attitudes stemming from a history of inter-generational transmission (Casey & Dustmann, 2010). In this case, the focus of our research is not the practices per se, but the reasons behind adhering to these practices – namely, the norms – and what sustains them (Heinemann & Schneider, 2011). This is because cultural attitudes toward religion, much like those toward the institution of family, have powerful implications on political values and preferences which, in turn, govern policy-making and economic decisions (Arruñada, 2010).

As a consequence, political leaders are known to publicize specific aspects of their cultural preferences – preferences that would presumably appeal to a larger segment of the population, especially around the time of election or popularity surveys (Herrmann-Pillath, 2010). To a large degree, this determines the country’s foreign relations, depending on the political attitude toward other nation-states, which, in the long-run, leaves a massive impact on foreign trade (Gorodnichenko & Roland, 2010). While it is relatively easy to detect political undertones in economic outcomes, it is equally important to study how culture shapes these political opinions (Arruñada, 2010). The left-wing and right-wing division, for instance, is a classic example of cultural differences manifesting in the political arena (Alesina & Giuliano, Family ties and political participation, 2011). Moreover, decisions pertaining to human rights, immigration, religious plurality, secularism or globalism are ultimately formed by a philosophy born out of a cultural foreground (Miller & Timothy, 2010). What adds to the legitimacy of this assumption is that these patterns are evident in several economies operating worldwide, thus making it easier

for us to assess their functionality and causal connections in terms of a global pattern dominating the economic industry (Thornton, Ribeiro-Soriano, & Urbano, 2011).

In their extensive research concerning the socio-economic dimensions of the family structure, Alesina and Giuliano (2011) discuss the history of such correlations with reference to the Industrial Revolution. The reiteration of the perfect nuclear family, for one, reflects the cultural indoctrination of certain family values which were propagated specifically to influence financial planning (Alesina & Giuliano, The power of the family, 2010). In addition, the stereotypical chores inculcated within this nuclear family were very much reminiscent of gender roles playing a part in the labor market – with the husband fulfilling his obligation as the bread-winner, the wife performing her duties as the obedient house-wife and the children (preferably two, a boy and a girl) taking inspiration from their parents to continue the cycle for future generations (Herrmann-Pillath, 2010). In this regard, family as a social institution has always contributed to the economy in some way, regardless of whether it exists as a response to the changing economic situation or, conversely, as a trigger for those changes (Alesina & Giuliano, The power of the family, 2010). Ultimately, it sustains economic progress by constantly evolving to suit its ever-increasing demands – even if it calls for more or less geographical mobility, or a complete restructuring of the family unit altogether (Alesina & Giuliano, Family ties and political participation, 2011). We can see this from the fact that the nuclear family, despite existing as a traditional norm, is often replaced with several alternatives owing to a shift in cultural attitudes. Restructuring in the form of single-parent families or cohabitation, for instance, leads to a rise or fall in taxes and property distribution, especially in the face of a recession (Alesina, Ichino, & Karabarbounis, Gender-based taxation and the division of family chores, 2011).

Cultural shifts have also left long-standing changes in the economic system, such as the demand for gender equality which eventually gave birth to the Equal Rights Act, or the rise of feminism which paved way greater female employment (Alesina & Giuliano, The power of the family, 2010). In particular, social movements revolving around women's emancipation have spurred from the reinforcement of such norms in the form of a backlash – feminism, for instance, was a cultural aftermath of the supposedly 'perfect' nuclear family (Alesina & Giuliano, Family ties and political participation, 2011). Consequently, a change in cultural attitudes always comes with its own set of pros and cons which affect the economy. While not all cultural trends contribute to the economic climate positively, they nevertheless create a ripple effect, which causes variation in economic outcomes (Alesina & Giuliano, The power of the family, 2010).

While studying the relationship between family and the economy, it would aid our analysis to explore the relationships within the family structure, which tend to determine the course of economic planning (Alesina & Giuliano, Family ties and political participation, 2011). According to recent studies, it was reported that families that do not maintain strong links with its members are likely to form weak community ties and express skepticism in the workplace (Fehr & Hoff, 2011). As a result, this eventually translates into lack of economic cooperation and trust which reduces the chances of their involvement with the outside world (Eagle, Macy, & Claxton, 2010). A strong family unit, on the other hand, is likely to encourage a more pre-defined system of roles and boost labor division, especially with the woman partaking in home production, and the man focused on paying the bills (Alesina, Ichino, & Karabarbounis, Gender-based taxation and the division of family chores, 2011). Subsequently, more time is spent together at home which leads to greater fertility rates and consumption (Alesina & Giuliano, The

power of the family, 2010). In doing so, these social conditions enable the economy to move forward by raising the employment rate, boosting sales, and – by virtue of its ‘normalcy’ – ensuring that the cycle is sustained through their children so they do not have to face the threat of social ostracism (Alesina & Giuliano, Family ties and political participation, 2011).

It is interesting to consider, at this point, the cultural conditioning reinforced in schools through formal education (Thornton, Ribeiro-Sorian, & Urbano, 2011). The process is amplified through the reiteration of what ‘is’ and ‘is not’ acceptable in society in terms of ‘good’ and ‘bad’ behavior, with an entire curriculum that instructs the youth how to walk, talk, sit and stand – all of which are aligned with the predetermined lifestyle they are to have once they graduate and enter ‘the real world’ (Tabellini, 2010). When teenagers yearn for a sense of independence and adulthood in a typical Western society, they are encouraged to work part-time, which inadvertently affects the economy through the provision of cheap labor (Lauer, Wilkinson, Yan, Sin, & Tsang, 2012).

With no substantial qualifications and virtually no professional experience at such a young age, many find themselves working in fast-food chains such as McDonald’s, which are known for their low wages and lack of social security (Lauer, Wilkinson, Yan, Sin, & Tsang, 2012). In their attempt to be financially independent, however, teenagers continually explore these avenues, unfazed by the exploitation they are subjected to, which ultimately surfaces as a seemingly win-win situation for them (Alesina, Ichino, & Karabarbounis, Gender-based taxation and the division of family chores, 2011). The predominance of this culture and its influence on the young masses is a testament to the close connection between economic progress and the desire to be accepted by society (Gorodnichenko & Roland, 2010).

It is no coincidence that the approval so fervently sought after by society at large is, in fact, tied closely to its dependence on the economy – whether social aspirations include a successful career, a stable marriage, a happy family or spiritual fulfillment through God (Thornton, Ribeiro-Sorian, & Urbano, 2011). To that end, they are all motivated by cultural attitudes and coincide with the fundamental functions of one or more social institution(s) (Fehr & Hoff, 2011). One may argue that cultures driven by religion are not necessarily compounded by economic triggers, but the suggestion is highly debatable (Heinemann & Schneider, 2011). As we can see from the Weberian-Marxist conflict, it is likely to turn into a debate about reverse causality more than anything else; though we cannot deny that religion, despite opposing materialism, may still inadvertently boost economic activity, as proven clearly in Weber’s research regarding Calvinism (Arruñada, 2010). To a large extent, religious ideology superimposes a system of beliefs which determine consumption and spending – with many aiming to redistribute wealth and resources for a more egalitarian society (Miller & Timothy, 2010). While this may appear to be the case on paper, many religions are successfully manipulated and used intentionally (or unintentionally) to further inequality and create circumstances where the poor stay poor and the rich get richer (Heinemann & Schneider, 2011). This is very much in keeping with the Marxist perspective which explains the role of religion in the context of a ‘constant class struggle’ perpetuated by cultural indoctrination (Arruñada, 2010).

The emphasis on charity and alms-giving in monotheistic religions is an excellent case in point which reflects the intermingling of religion and economic distribution for the purpose of welfare and social security (Gorodnichenko & Roland, 2010). Whether or not there is truth in these doctrines is another debate; our job as researchers is to identify the norms derived from these

doctrines, and observe how they influence economic output (Cassar & Wydick, 2010). It is worth taking into consideration, for instance, that many non-practicing believers maintain the values and preferences put forth by their by-birth religion, making financial decisions based on the cultural mindset born from their endogenous beliefs (Arruñada, 2010). In their research concerning the economic dimensions of religious discourse, Heinemann and Schneider (2011) shed light on the close relationship between religious values and public views on taxation. By recalling Jesus' words in The Gospel of Matthew, the research delves into the workings of secular tax laws in light of religious morale: "Render to Caesar the things that are Caesar's, and render to God the things that are God's" (22:21). This is not to say that the economy operates through a strictly secularist ideology, but that there is a strong religious foundation behind the general consensus on tax evasion, and the political regulation of tax laws (Heinemann & Schneider, 2011). As the study closes in on different religious denominations and faiths from Protestantism, Judaism, Islam, Hinduism and Buddhism, the authors identify a strong correlation between religious views on the redistribution of wealth and political sentiments toward tax regulation (Heinemann & Schneider, 2011).

The deeper we delve into the power and influence of social institutions, the greater our chances of understanding the role of culture in economics (Fehr & Hoff, 2011). This is because, as we study the social mechanisms behind policy-making and preferences, we come to recognize the cultural patterns which prompt and sustain these social institutions (Gorodnichenko & Roland, 2010). Once it is established that culture and social institutions work together to affect economic outcomes, it becomes easier to identify the areas where they are most effective in the economy.

Defining Social Capital

With many economists now expressing a renewed interest in cultural diversity and economic progress, there are growing concerns about the clash of different cultures and the question of what keeps them intact, especially considering the homogeneity of globalization. Having discussed the socio-economic dimensions of culture in social institutions, it is important for us to highlight how cultural norms are propagated, aside from their constant reinforcement and the social conditioning process (Thornton, Ribeiro-Sorian, & Urbano, 2011). This is where social capital comes into play – described most commonly as the interconnectedness of large-scale social networks and their advantage to business and the economy as they enable social interaction without incurring the costs of geographical mobility (Kwon & Arenius, 2010). In this age of technological innovation, we must keep in mind that the nature and scope of social capital is constantly evolving (Portes & Vickstrom, 2011). Networks are expanding not only in a social and physical sense, but also in the cyber-world as they continue to transcend spatial boundaries (Cassar & Wydick, 2010). The argument surrounding this phenomenon is usually one concerning the value of these far-reaching networks and the role they play in society, given their intangible benefits in economic transactions (Eagle, Macy, & Claxton, 2010).

Often interpreted as an active agent for 'civic engagement', social capital is specifically discussed in terms of its community-building advantages and the value of this communion in terms of information transmission (Thornton, Ribeiro-Sorian, & Urbano, 2011). There have been a variety of perspectives on the relevance and functions of this phenomenon, with insightful research provided by sociologists the likes of Pierre Bourdieu, James S. Coleman and political scientist, Robert Putnam, just to name a few (Portes & Vickstrom, 2011). By maintaining relationships based on mutual trust and cooperation, social capital is known to provide a full-

fledged service free of cost, becoming the central focus in organizational behavior (Portes & Vickstrom, 2011). In the context of culture and economic growth, social capital is a tool used primarily to foster social relations which would otherwise require extensive resources and considerable finance (Eagle, Macy, & Claxton, 2010). In its broadest sense, Thornton et al. (2011: 107) elaborate on the purpose and value of social capital by surmising that “[Social] networks are also a set of relationships that can define the perception of a community, whether a business community or a more general notion of community in society. Thus, society, in the abstract sense, is a series of connected or ‘tied’ nodes”. In light of this definition, we can assess that there is a social embeddedness in networks that qualify as a significant economic resource in its own right – a resource worth significantly more than economists give it credit for (Portes & Vickstrom, 2011). Access to entrepreneurial ideas, knowledge and important contacts are just some of the infinite possibilities offered by social capital, which in turn generate astronomical profits in any given economic venture (Thornton, Ribeiro-Soriano, & Urbano, 2011). Although the nature of these universal relationships may obstruct the exclusivity of information made available by social networks, it is only a minor drawback measured against the general resourcefulness it provides (Cassar & Wydick, 2010). In this regard, social capital is arguably the most important channel for culture to influence economic outcomes, seeing as both are undermined in light of globalization and tangible resources (Gorodnichenko & Roland, 2010). This helps us understand why economies around the world differ on the grounds of causality – some quietly reaping the monetary benefits of social capital and culture without as much as counting them as economic variables, while others, in their attempt to follow suit, ignore these variables entirely, thus depriving themselves of their advantages (Cassar & Wydick, 2010).

Culture Valuation and Social Capital Measurement

Once we come to accept the significance of culture and social capital in an economic environment, we can attempt to quantify them as we would any intellectual property in business (Noruzi & Vargas-Hernández, 2010). As discussed above, there is a definite overlap between culture and social institutions wherein economists include the latter in their research but often fail to consider the former due, in large part, to its intangibility (Cassar & Wydick, 2010). Nevertheless, owing to the close relationship between the two, it is safe to assume that the financial and political investment in social institutions goes a long way to reflect the monetary worth of cultural traditions – traditions which are essentially passed on to future generations through these very mediums (Ortiz, 2011). While there are a number of valuation techniques often suggested by economists, it is imperative that we take into account the context of cultural transmission before applying a particular technique (Noruzi & Vargas-Hernández, 2010). Without considering the context of an intangible resource or asset, Ortiz (2011) argues that the value attached to culture may be grossly inaccurate since much of it is determined by the perception and feelings of a given society.

Similarly, measuring social capital too can be tricky, given how intricately social networks are connected vis-à-vis technology, globalism, culture and social relations (Gorodnichenko & Roland, 2010). It must also be noted that one of the fundamental reasons why, both, culture and social capital are difficult to quantify or measure is because of the heterogeneity of their definitions (Eagle, Macy, & Claxton, 2010). Consequently, it works as a chain reaction – that is to say, if they are defined with blurred boundaries, unconfined to a specific or distinct position, there is no doubt that quantifying the phenomena would be

ineffective (Ortiz, 2011). If, however, we are to narrow down our definition of social capital to individuals and organizations alone, then our measurement can be assessed in terms of tangible assets such as membership to social networks, number of contacts, time taken to exchange information, etc. As we take note of these variables, depending on their priority and purpose, it can become relatively easier to measure the value of social capital in terms of a unitary – rather than isolated – component (Ortiz, 2011).

Conclusion

While there is still a long way to go before economists can agree upon a standard methodology to measure social capital and place value on culture, there has been considerable progress in recent times. Perhaps if these variables were taken into greater consideration prior to the renewed interest, there would be richer empirical data available to refine our analysis for quantification and measurement. We must keep in mind that, aside from playing a major role in determining economic outcomes, social capital and culture are also key players in the information age – with their outstanding contributions in the knowledge economy and globalization. That, alone, should remain reason enough for academics in the field to consider its relevance in economic paradigms. It is stifling to know that, despite the groundbreaking research into the matter by anthropologists and economists alike, there remains an unresolved debate concerning cultural prevalence in the world of economics. Taking into account the enormity of cultural impact on social institutions (which inevitably affect economic outcomes), it is worth considering how much capital would go into creating, recreating and sustaining culture in an effort to alter social norms in accordance with economic shifts. Conclusively, the research suggests an overwhelming possibility that, together, these variables are perhaps worth more than economies can afford.

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Introduction

One of the most fascinating aspects of the information age is its relation to economic development – with its diversified global networks, increased interconnectedness, and their overall impact on a country's economic stability (Eagle, Macy, & Claxton, 2010). As any research on the subject would recommend, we must identify the instruments of change in such cases, especially if they have a direct influence on consumer behavior, their preferences and constraints (Gorodnichenko & Roland, 2010). In doing so, it becomes necessary to include these instruments in our research to avoid neglecting one or more variables which possibly propel such changes in the first place (Portes & Vickstrom, 2011).

Until recently, however, a large majority of economists have spoken against the role of culture and social capital in the economy, with many going as far as eliminating them from the equation completely (Kwon & Arenius, 2010). Much of this has to do with the lack of empirical evidence confirming the causality between economic growth and cultural traditions, and the difficulty in assessing the extent to which culture and social capital influence economic trends (Gorodnichenko & Roland, 2010). Another cause for concern is the possibility that there could be factors other than culture responsible for variations in economic output – factors that may not necessarily be bound by culture, but rather by political triggers and foreign relations (Portes & Vickstrom, 2011). Subsequently, the case against cultural impact is further strengthened when culture is defined broadly as a system of beliefs, customs and practices which connect a group of people, without going into the specifics of what constitutes these preferences and values (Fehr & Hoff, 2011).

Although the revival of culture in economic patterns is a relatively new area of research, it nevertheless takes after the writings of prominent sociologists and economists the likes of Max Weber and Werner Sombart (Arruñada, 2010). In his book titled 'The Protestant Ethic and the Spirit of Capitalism', for instance, Weber provides valuable insight into the socio-economic dimensions of religious thought and practices, delving into the dynamic behavior underlying financial institutions (Gorodnichenko & Roland, 2010). Contrary to popular assumption at the time, his research highlighted a dramatic boost in capitalism, following the spread of Calvinism – a religion that advocated the principles of asceticism (Arruñada, 2010). According to the study, Calvinism inadvertently contributed to the economy as followers, in their attempt to abide by the laws of religion, reinvested much of their profits into work instead of spending it in the way of luxury (Gorodnichenko & Roland, 2010). The research conclusively suggested a strong correlation between culture and economic activity, as seen from the enormous influence religious ideology had over personal financial decisions, which ultimately determined savings and interest rate, among other equally important economic factors (Arruñada, 2010).

Suffice it to say, Weber's theory paved way for further research into the role of culture in business and economics, especially by neo-classical analysts who, in recent studies, have raised significant questions concerning the constant undermining of social capital and culture – variables that are arguably crucial to economic progress (Eagle, Macy, & Claxton, 2010). Interestingly enough, the deeper we delve into the world of economics, the more we are likely to notice that certain factors are largely downplayed possibly due to their intangibility, which makes them financially worthless on paper – albeit incredibly profitable in terms of their causality (Thornton,

Ribeiro-Sorian, & Urbano, 2011). The failure to address this issue is most commonly associated with the clash of behavioral economics with pure economics, with the former using a methodology more in keeping with the humanities, and the latter following the sciences in terms of empirical testing (Herrmann-Pillath, 2010). This is presumably why a number of economists refuse to consider social capital and culture in the context of economic growth, for though they may understand how it contributes to the economy at large, they nevertheless remain unconvinced by the scientifically weak data frequently provided to confirm the hypothesis (Casey & Dustmann, 2010).

Another reason why many economists dismiss the importance of these variables is because the surveys taken into account are largely unsuccessful in actually capturing a direct correlation between culture and economic outcomes (Herrmann-Pillath, 2010). They tend to focus simply on the effect one has over another – an argument that can also be used alternatively to disprove the proposition (Gorodnichenko & Roland, 2010). To take an example, Weber indicated the effect of culture on economic activity, illustrating how Calvinism shaped the “spirit of capitalism”; yet many questioned the legitimacy of his claim, including Karl Marx, who attributed the surge of capitalism solely to the Industrial Revolution, rather than the spread of any particular religion (Arruñada, 2010). In doing so, the debate was ultimately reduced to the age-old question: what comes first – the chicken or the egg? (Gorodnichenko & Roland, 2010). While Marx accepted the Weberian theory to the extent that he agreed with religion actively propagating a capitalist agenda, he differed on the grounds of causality, claiming that religion was essentially a byproduct – rather than the cause – of economic progress (Arruñada, 2010).

To maintain the validity of our research, we must explore all the possibilities when trying to identify where exactly culture stands in an economic setting – regardless of its impact on the economy (Cassar & Wydick, 2010). Were we to accept, for a moment, that it has no substantial effect on economic outcomes, there would remain, still, the question of its causality, and the fact that consumer behavior ultimately comes down to predetermined beliefs, values and preferences – all of which are molded, to some degree, by culture (Casey & Dustmann, 2010). With that in mind, it becomes easy to recognize the overwhelming influence culture has on the equilibrium in the long-run, particularly when it comes to determining a country’s fiscal policy (Herrmann-Pillath, 2010). Perhaps what is required most from academics in this field is a close reevaluation of culture and economics – this time adopting a narrower definition of culture – so that economic shifts are understood in the context of specific socio-cultural mechanisms that are necessarily passed on from generation to generation, as opposed to individualist preferences that can otherwise be altered through geographical or environmental changes (Casey & Dustmann, 2010). By narrowing the scope of culture, therefore, the correlation can be assessed more effectively in terms of what does (and does not) have a direct impact on the economy, and we may thus gain insight into culture as a multi-dimensional phenomenon, making it easier to determine the value of social capital in a broader economic spectrum (Eagle, Macy, & Claxton, 2010).

Defining Culture

When discussing culture, specifically in terms of economic development, it is imperative that we specify exactly what is meant by a shared system of beliefs and preferences, for the purpose of clear examination (Fehr & Hoff, 2011). It is worth

noting that the argument against cultural impact is usually justified when the term ‘culture’ is used interchangeably with collective values and beliefs, when it clearly goes well beyond the stated definition to include “the norms of behavior derived from that set of values” (Gorodnichenko & Roland 2010: 1). In order to refine our analysis, therefore, we must explore the reasons why certain norms of behavior exert a greater influence on formal institutions and economic patterns, and how they remain unchanged when transmitted to future generations, despite the political prowess of globalization (Thornton, Ribeiro-Sorian, & Urbano, 2011).

Since, by definition, culture encompasses a set of beliefs and values shared by a collective, it is crucial to determine what causes these values to endure, especially when they go far beyond the point of being effective or practical (Herrmann-Pillath, 2010). In addition, culture works as a socio-economic tool which, aside from conditioning and socializing entire generations, is used consciously to market potentially profitable ideas, thereby furthering consumerism and adding fuel to the economic fire (Gorodnichenko & Roland, 2010). Subsequently, every social or political movement is, by and large, culturally-inspired, regardless of the part it plays in formal institutions (Herrmann-Pillath, 2010). Underlying these large-scale socio-political mechanisms is a fundamental pattern of behavior which is studied closely to predict sales, spending, savings and price (Gorodnichenko & Roland, 2010). In other words, these factors are inextricably linked to the economy, which is perhaps one of many reasons why economic super powers such as the United States are populated by an array of ethnicities, concurrently reaping the monetary benefits of cultural diversity (Thornton, Ribeiro-Sorian, & Urbano, 2011). In many ways, the homogeneity of globalization also adds considerably to the livelihood of culture, recreating aspects of the phenomenon to pave way for other, more profitable ones – for instance, what we usually refer to as ‘pop culture’ or ‘youth culture’ (Dockery, 2010).

It is equally important to consider the different dimensions of culture with respect to causal connections; that is to say, certain ‘connectors’ must be identified which weave values and preferences into the very fabric of the economy (Fehr & Hoff, 2011). To take an example, we know that personality traits influence consumer behavior – but do they also determine culture, or do cultural differences give birth to these personality traits? Moreover, variables that connect values and preferences to the local economy must be explored in relation to their social, religious and national affinity, so we may measure and compare their effect on other economies to make for a more concrete analysis (Herrmann-Pillath, 2010). Evidently, defining culture is of immense significance in the analysis due, in large part, to its expansiveness – which explains why the channels through which it enters the economy are so difficult to detect (Dockery, 2010).

While several sociologists and economists have written extensively on the matter, including Adam Smith who published “The Theory of Moral Sentiments” in 1759, there has been little to no discussion on how culture contributes to the economy until the recent resurgence of behavioral economics in the social sciences. This is not to say that economists do not accept the role of culture in the economy, but they find the relationship between the two rather vague, trivial and irrelevant, owing primarily to the untestable hypothesis suggested by those in favor of the proposition (Casey & Dustmann, 2010). To maintain the standard of our research, therefore, we will analyze the various shades of culture and cross-examine its impact on policy-making in light of recent macroeconomic trends (Gorodnichenko & Roland, 2010).

Culture and the Economy

By focusing on specific aspects of culture – for instance, its social, religious and national affiliation – the scope of cultural impact can be evaluated more effectively in terms of a country's national identity (Casey & Dustmann, 2010). Although culture is not necessarily bound by these parameters, they are there to help us trace the channels through which it seeps into economic paradigms (Casey & Dustmann, 2010). We must keep in mind that culture manifests in the form of behavior and, as a result, it takes an inevitable toll on social institutions such as family, politics, the media, education and religion – rather than being influenced by them (Herrmann-Pillath, 2010).

Building on this theory, recent works in socio-economic research have detected a discernible causality between the structure of family and the division (and participation) of labor – a pattern of behavior that is exclusive to certain cultures (Fehr & Hoff, 2011). This is where personal preferences and values come into play, determining what 'ought' and 'ought not' to be in the public and private spheres of human life (Alesina & Giuliano, Family ties and political participation, 2011). Similarly, religious practices that play an important part in social convention reflect deep-rooted cultural attitudes stemming from a history of inter-generational transmission (Casey & Dustmann, 2010). In this case, the focus of our research is not the practices per se, but the reasons behind adhering to these practices – namely, the norms – and what sustains them (Heinemann & Schneider, 2011). This is because cultural attitudes toward religion, much like those toward the institution of family, have powerful implications on political values and preferences which, in turn, govern policy-making and economic decisions (Arruñada, 2010).

As a consequence, political leaders are known to publicize specific aspects of their cultural preferences – preferences that would presumably appeal to a larger segment of the population, especially around the time of election or popularity surveys (Herrmann-Pillath, 2010). To a large degree, this determines the country's foreign relations, depending on the political attitude toward other nation-states, which, in the long-run, leaves a massive impact on foreign trade (Gorodnichenko & Roland, 2010). While it is relatively easy to detect political undertones in economic outcomes, it is equally important to study how culture shapes these political opinions (Arruñada, 2010). The left-wing and right-wing division, for instance, is a classic example of cultural differences manifesting in the political arena (Alesina & Giuliano, Family ties and political participation, 2011). Moreover, decisions pertaining to human rights, immigration, religious plurality, secularism or globalism are ultimately formed by a philosophy born out of a cultural foreground (Miller & Timothy, 2010). What adds to the legitimacy of this assumption is that these patterns are evident in several economies operating worldwide, thus making it easier for us to assess their functionality and causal connections in terms of a global pattern dominating the economic industry (Thornton, Ribeiro-Sorian, & Urbano, 2011).

In their extensive research concerning the socio-economic dimensions of the family structure, Alesina and Giuliano (2011) discuss the history of such correlations with reference to the Industrial Revolution. The reiteration of the perfect nuclear family, for one, reflects the cultural indoctrination of certain family values which were propagated specifically to influence financial planning (Alesina & Giuliano, The power of the family, 2010). In addition, the stereotypical chores inculcated within this

nuclear family were very much reminiscent of gender roles playing a part in the labor market – with the husband fulfilling his obligation as the bread-winner, the wife performing her duties as the obedient house-wife and the children (preferably two, a boy and a girl) taking inspiration from their parents to continue the cycle for future generations (Herrmann-Pillath, 2010). In this regard, family as a social institution has always contributed to the economy in some way, regardless of whether it exists as a response to the changing economic situation or, conversely, as a trigger for those changes (Alesina & Giuliano, *The power of the family*, 2010). Ultimately, it sustains economic progress by constantly evolving to suit its ever-increasing demands – even if it calls for more or less geographical mobility, or a complete re-structuring of the family unit altogether (Alesina & Giuliano, *Family ties and political participation*, 2011). We can see this from the fact that the nuclear family, despite existing as a traditional norm, is often replaced with several alternatives owing to a shift in cultural attitudes. Restructuring in the form of single-parent families or cohabitation, for instance, leads to a rise or fall in taxes and property distribution, especially in the face a recession (Alesina, Ichino, & Karabarbounis, *Gender-based taxation and the division of family chores*, 2011).

Cultural shifts have also left long-standing changes in the economic system, such as the demand for gender equality which eventually gave birth to the Equal Rights Act, or the rise of feminism which paved way greater female employment (Alesina & Giuliano, *The power of the family*, 2010). In particular, social movements revolving around women's emancipation have spurred from the reinforcement of such norms in the form of a backlash – feminism, for instance, was a cultural aftermath of the supposedly 'perfect' nuclear family (Alesina & Giuliano, *Family ties and political participation*, 2011). Consequently, a change in cultural attitudes always comes with its own set of pros and cons which affect the economy. While not all cultural trends contribute to the economic climate positively, they nevertheless create a ripple affect, which causes variation in economic outcomes (Alesina & Giuliano, *The power of the family*, 2010).

While studying the relationship between family and the economy, it would aid our analysis to explore the relationships within the family structure, which tend to determine the course of economic planning (Alesina & Giuliano, *Family ties and political participation*, 2011). According to recent studies, it was reported that families that do not maintain strong links with its members are likely to form weak community ties and express skepticism in the workplace (Fehr & Hoff, 2011). As a result, this eventually translates into lack of economic cooperation and trust which reduces the chances of their involvement with the outside world (Eagle, Macy, & Claxton, 2010). A strong family unit, on the other hand, is likely to encourage a more pre-defined system of roles and boost labor division, especially with the woman partaking in home production, and the man focused on paying the bills (Alesina, Ichino, & Karabarbounis, *Gender-based taxation and the division of family chores*, 2011). Subsequently, more time is spent together at home which leads to greater fertility rates and consumption (Alesina & Giuliano, *The power of the family*, 2010). In doing so, these social conditions enable the economy to move forward by raising the employment rate, boosting sales, and – by virtue of its 'normalcy' – ensuring that the cycle is sustained through their children so they do not have to face the threat of social ostracism (Alesina & Giuliano, *Family ties and political participation*, 2011).

It is interesting to consider, at this point, the cultural conditioning reinforced in schools through formal education (Thornton, Ribeiro-Sorian, & Urbano, 2011). The process is amplified through the reiteration of what 'is' and 'is not' acceptable in society in terms of 'good' and 'bad' behavior, with an entire curriculum that instructs the youth how to walk, talk, sit and stand – all of which are aligned with the predetermined lifestyle they are to have once they graduate and enter 'the real world' (Tabellini, 2010). When teenagers yearn for a sense of independence and adulthood in a typical Western society, they are encouraged to work part-time, which inadvertently affects the economy through the provision of cheap labor (Lauer, Wilkinson, Yan, Sin, & Tsang, 2012).

With no substantial qualifications and virtually no professional experience at such a young age, many find themselves working in fast-food chains such as McDonald's, which are known for their low wages and lack of social security (Lauer, Wilkinson, Yan, Sin, & Tsang, 2012). In their attempt to be financially independent, however, teenagers continually explore these avenues, unfazed by the exploitation they are subjected to, which ultimately surfaces as a seemingly win-win situation for them (Alesina, Ichino, & Karabarbounis, Gender-based taxation and the division of family chores, 2011). The predominance of this culture and its influence on the young masses is a testament to the close connection between economic progress and the desire to be accepted by society (Gorodnichenko & Roland, 2010).

It is no coincidence that the approval so fervently sought after by society at large is, in fact, tied closely to its dependence on the economy – whether social aspirations include a successful career, a stable marriage, a happy family or spiritual fulfillment through God (Thornton, Ribeiro-Sorian, & Urbano, 2011). To that end, they are all motivated by cultural attitudes and coincide with the fundamental functions of one or more social institution(s) (Fehr & Hoff, 2011). One may argue that cultures driven by religion are not necessarily compounded by economic triggers, but the suggestion is highly debatable (Heinemann & Schneider, 2011). As we can see from the Weberian-Marxist conflict, it is likely to turn into a debate about reverse causality more than anything else; though we cannot deny that religion, despite opposing materialism, may still inadvertently boost economic activity, as proven clearly in Weber's research regarding Calvinism (Arruñada, 2010). To a large extent, religious ideology superimposes a system of beliefs which determine consumption and spending – with many aiming to redistribute wealth and resources for a more egalitarian society (Miller & Timothy, 2010). While this may appear to be the case on paper, many religions are successfully manipulated and used intentionally (or unintentionally) to further inequality and create circumstances where the poor stay poor and the rich get richer (Heinemann & Schneider, 2011). This is very much in keeping with the Marxist perspective which explains the role of religion in the context of a 'constant class struggle' perpetuated by cultural indoctrination (Arruñada, 2010).

The emphasis on charity and alms-giving in monotheistic religions is an excellent case in point which reflects the intermingling of religion and economic distribution for the purpose of welfare and social security (Gorodnichenko & Roland, 2010). Whether or not there is truth in these doctrines is another debate; our job as researchers is to identify the norms derived from these doctrines, and observe how they influence economic output (Cassar & Wydick, 2010). It is worth taking into consideration, for instance, that many non-practicing believers maintain the values and preferences put forth by their by-birth religion, making financial decisions based

on the cultural mindset born from their endogenous beliefs (Arruñada, 2010). In their research concerning the economic dimensions of religious discourse, Heinemann and Schneider (2011) shed light on the close relationship between religious values and public views on taxation. By recalling Jesus' words in The Gospel of Matthew, the research delves into the workings of secular tax laws in light of religious morale: "Render to Caesar the things that are Caesar's, and render to God the things that are God's" (22:21). This is not to say that the economy operates through a strictly secularist ideology, but that there is a strong religious foundation behind the general consensus on tax evasion, and the political regulation of tax laws (Heinemann & Schneider, 2011). As the study closes in on different religious denominations and faiths from Protestantism, Judaism, Islam, Hinduism and Buddhism, the authors identify a strong correlation between religious views on the redistribution of wealth and political sentiments toward tax regulation (Heinemann & Schneider, 2011).

The deeper we delve into the power and influence of social institutions, the greater our chances of understanding the role of culture in economics (Fehr & Hoff, 2011). This is because, as we study the social mechanisms behind policy-making and preferences, we come to recognize the cultural patterns which prompt and sustain these social institutions (Gorodnichenko & Roland, 2010). Once it is established that culture and social institutions work together to affect economic outcomes, it becomes easier to identify the areas where they are most effective in the economy.

Defining Social Capital

With many economists now expressing a renewed interest in cultural diversity and economic progress, there are growing concerns about the clash of different cultures and the question of what keeps them intact, especially considering the homogeneity of globalization. Having discussed the socio-economic dimensions of culture in social institutions, it is important for us to highlight how cultural norms are propagated, aside from their constant reinforcement and the social conditioning process (Thornton, Ribeiro-Soriano, & Urbano, 2011). This is where social capital comes into play – described most commonly as the interconnectedness of large-scale social networks and their advantage to business and the economy as they enable social interaction without incurring the costs of geographical mobility (Kwon & Arenius, 2010). In this age of technological innovation, we must keep in mind that the nature and scope of social capital is constantly evolving (Portes & Vickstrom, 2011). Networks are expanding not only in a social and physical sense, but also in the cyber-world as they continue to transcend spatial boundaries (Cassar & Wydick, 2010). The argument surrounding this phenomenon is usually one concerning the value of these far-reaching networks and the role they play in society, given their intangible benefits in economic transactions (Eagle, Macy, & Claxton, 2010).

Often interpreted as an active agent for 'civic engagement', social capital is specifically discussed in terms of its community-building advantages and the value of this communion in terms of information transmission (Thornton, Ribeiro-Soriano, & Urbano, 2011). There have been a variety of perspectives on the relevance and functions of this phenomenon, with insightful research provided by sociologists the likes of Pierre Bourdieu, James S. Coleman and political scientist, Robert Putnam, just to name a few (Portes & Vickstrom, 2011). By maintaining relationships based on mutual trust and cooperation, social capital is known to provide a full-fledged service free of cost, becoming the central focus in organizational behavior (Portes &

Vickstrom, 2011). In the context of culture and economic growth, social capital is a tool used primarily to foster social relations which would otherwise require extensive resources and considerable finance (Eagle, Macy, & Claxton, 2010). In its broadest sense, Thornton et al. (2011: 107) elaborate on the purpose and value of social capital by surmising that “[Social] networks are also a set of relationships that can define the perception of a community, whether a business community or a more general notion of community in society. Thus, society, in the abstract sense, is a series of connected or ‘tied’ nodes”. In light of this definition, we can assess that there is a social embeddedness in networks that qualify as a significant economic resource in its own right – a resource worth significantly more than economists give it credit for (Portes & Vickstrom, 2011). Access to entrepreneurial ideas, knowledge and important contacts are just some of the infinite possibilities offered by social capital, which in turn generate astronomical profits in any given economic venture (Thornton, Ribeiro-Soriano, & Urbano, 2011). Although the nature of these universal relationships may obstruct the exclusivity of information made available by social networks, it is only a minor drawback measured against the general resourcefulness it provides (Cassar & Wydick, 2010). In this regard, social capital is arguably the most important channel for culture to influence economic outcomes, seeing as both are undermined in light of globalization and tangible resources (Gorodnichenko & Roland, 2010). This helps us understand why economies around the world differ on the grounds of causality – some quietly reaping the monetary benefits of social capital and culture without as much as counting them as economic variables, while others, in their attempt to follow suit, ignore these variables entirely, thus depriving themselves of their advantages (Cassar & Wydick, 2010).

Culture Valuation and Social Capital Measurement

Once we come to accept the significance of culture and social capital in an economic environment, we can attempt to quantify them as we would any intellectual property in business (Noruzi & Vargas-Hernández, 2010). As discussed above, there is a definite overlap between culture and social institutions wherein economists include the latter in their research but often fail to consider the former due, in large part, to its intangibility (Cassar & Wydick, 2010). Nevertheless, owing to the close relationship between the two, it is safe to assume that the financial and political investment in social institutions goes a long way to reflect the monetary worth of cultural traditions – traditions which are essentially passed on to future generations through these very mediums (Ortiz, 2011). While there are a number of valuation techniques often suggested by economists, it is imperative that we take into account the context of cultural transmission before applying a particular technique (Noruzi & Vargas-Hernández, 2010). Without considering the context of an intangible resource or asset, Ortiz (2011) argues that the value attached to culture may be grossly inaccurate since much of it is determined by the perception and feelings of a given society.

Similarly, measuring social capital too can be tricky, given how intricately social networks are connected vis-à-vis technology, globalism, culture and social relations (Gorodnichenko & Roland, 2010). It must also be noted that one of the fundamental reasons why, both, culture and social capital are difficult to quantify or measure is because of the heterogeneity of their definitions (Eagle, Macy, & Claxton, 2010). Consequently, it works as a chain reaction – that is to say, if they are defined with blurred boundaries, unconfined to a specific or distinct position, there is no doubt that quantifying the phenomena would be ineffective (Ortiz, 2011). If, however, we

are to narrow down our definition of social capital to individuals and organizations alone, then our measurement can be assessed in terms of tangible assets such as membership to social networks, number of contacts, time taken to exchange information, etc. As we take note of these variables, depending on their priority and purpose, it can become relatively easier to measure the value of social capital in terms of a unitary – rather than isolated – component (Ortiz, 2011).

Conclusion

While there is still a long way to go before economists can agree upon a standard methodology to measure social capital and place value on culture, there has been considerable progress in recent times. Perhaps if these variables were taken into greater consideration prior to the renewed interest, there would be richer empirical data available to refine our analysis for quantification and measurement. We must keep in mind that, aside from playing a major role in determining economic outcomes, social capital and culture are also key players in the information age – with their outstanding contributions in the knowledge economy and globalization. That, alone, should remain reason enough for academics in the field to consider its relevance in economic paradigms. It is stifling to know that, despite the groundbreaking research into the matter by anthropologists and economists alike, there remains an unresolved debate concerning cultural prevalence in the world of economics. Taking into account the enormity of cultural impact on social institutions (which inevitably affect economic outcomes), it is worth considering how much capital would go into creating, recreating and sustaining culture in an effort to alter social norms in accordance with economic shifts. Conclusively, the research suggests an overwhelming possibility that, together, these variables are perhaps worth more than economies can afford.

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Russian experience in the field of strategic socio-economic development planning (Far East, Baikal Region and Siberia)

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Abstract

Nowadays the most important task of socio-economic development in Russia and the Siberian Federal District is sustainable economic growth as the basis for improving the standard and quality of life. It requires a dynamic and balanced development of all structural components in the regional economic system, which playing a leading role in enhancing the prospects for regional socio-economic development.

At present, the regions of Russia form socio-economic development plans independently, in which the most important trends, competitive advantages, growth points and the main indicators of the region reflected. A strategy of social and economic development is the main vector economic evolution for the region. Today, the transition to innovative development of economy is impossible without effective strategic planning at the regional level of the Russia.

The main purpose of the research is a complex estimation of socio-economic development plans on federal and regional level by the example of Russian Federation, the Far East, the Baikal region and Siberia.

As a result of the research, we can conclude that:

First, basic indicators of strategic socio-economic development plans of Far East, the Baikal region and Siberia are mostly corresponded with “The variant of accelerated growth”, which the forecast of long-term socio-economic development of the Russian Federation for the period up to 2030.

Second, from the position of improving the existing methodology of strategic socio-economic development plans formation the monitoring of the management is the mostly appropriated. It should use elements strategic analysis, the results of which will be further regional development.

The most important task of contemporary socio-economic development of Russia and the Siberian Federal District, the Far East and the Baikal region is to ensure sustainable economic growth as the basis for improving the level and quality of life. This task requires a dynamic and balanced development of all structural components of the regional economic system, which playing a leading role in enhancing the prospects for regional socio-economic development.

At present, the regions form socio-economic development strategies independently, in which reflect the most important trends, competitive advantages, growth points and the main indicators of the region. First of all socio-economic development strategy is the main vector for the regional economy. In many ways, the development strategy of the region characterizes the full potential of the region's economy and the possible risks associated with the implementation of this document in practice. Today, the transition to innovative development of economy is impossible without effective strategic planning at the level of the region of the Russian Federation.

High-quality socio-economic region development forecasting is strictly connected with the development of major long-, medium- and short-term planning documents. There are many national, regional, municipal documents determining goals, objectives and directions of perspective development. Thus, in the system of region's strategic development documents in Russian Federation we can distinguish such documents as the strategy of socio-economic development, territorial planning schemes, annual regional budgets, indicative plans, government programs, regional target programs and investment programs, etc.

The purpose of our research is to analyze strategies of socio-economic region development of the Far East, Siberia and Baikal region and to reveal methodological approaches to the study of socio-economic development.

The main tasks are:

- to define the features of the current process of strategic planning in Russian Far East, Siberia and Baikal region;
- to identify the main criteria for regional classification by socio -economic status in Russian Far East, Siberia and Baikal region;
- to typology regional socio-economic development strategies by the key points;
- to compare regional socio-economic development indicators;
- to recommend improving measures for the mechanism of regional socio-economic development formation;

Stimulating economic growth and development in rural and economically lagging regions is the goal of several federal and state highway programs.

The most important factor in ensuring the competitiveness of the Russian economy in modern conditions is the presence of the effectively functioning system of public strategic management. The system of public strategic management allows:

- building of long-term priorities of a state in socio-economic development, allowing private companies to reduce risks, including when making long-term investment decisions;
- deploying of long-term solutions (with a period of implementation 7 or more years) in the range of medium-and short-term targets that are agreed upon among themselves;
- balancing of planned actions that require significant organizational and resource costs (projects in energy, transportation, demographics, national security, in the field of human development);
- orientating of national and municipal entities to operate in accordance with the established long-term goals;
- linking solutions which were taken during the state of strategic management and budgetary constraints, that were determined both for medium-and long-term perspectives;
- monitoring the implementation of decisions.

The main problems being solved by the government when implementing the strategic planning are:

- formation of strategic management systems;
- development and monitoring for the implementation of the concept of the Russian Federation long-term socio-economic development;
- monitoring for implementation of projects in the main areas of activities of the Russian Federation Government.

As of today, activities aimed at overcoming the crisis in the economy have taken ~~took~~ on a strategic nature. In accordance with the instructions of the Government of the Russian Federation active work is being done on monitoring measures aimed at reviving the economy.

Effective functioning of the strategic management system is especially important in the context of financial crisis and Federal budget deficit. Formation of the strategic management of the state will change the approach to the medium-term prognosis, link it to the prediction of long-term trends, will coordinate the development and implement the long-term development strategies and programs of the Russian Federation as a whole, as well as those of individual regions and sectors of the economy, and their mutual alignment of goals, deadlines and activities. In addition, this system involves the development of mechanisms of «performance management» or “result based management”, providing a clear connection between performance of public authorities and the budget allocated to their achievement [1].

In our research we analyzed following national strategic documents:

1. The concept of long-term socio-economic development of the Russian Federation for the period up to 2020 approved by the Federal Government on November 17, 2008 № 1662- p;
2. Strategy of socio-economic development of the Far East and the Baikal region for the period up to 2025, approved by the Federal Government on December 28, 2009 number 2094- P;
3. Strategy of socio- economic development of Siberia until 2020, approved by the Decree of the Government of the Russian Federation on July 5, 2010 number 1120- P;
4. New Decrees of the President of the Russian Federation on May 7, 2012 number 596 - 602 , 606 , in particular the Decree of the President of the Russian Federation on May 7, 2012 № 596 «On the long-term national economic policies»;
5. Forecast of long-term socio -economic development of the Russian Federation for the period up to 2030;
6. Strategic documents of the Far East, Siberia and the Baikal region development.

Considering the relation of the regions' strategic development documents and the federal Concept and Prognosis, we can argue that the concept of the Russian Federation is the basis of the forecast. Moreover, it determines the strategic goals, objectives and directions of economy development of Russia until 2020. The strategy of the Far East and the Baikal region and Siberia, as strategic planning documents are designed to implement the Russia's concept of long-term socio-economic development for the period up to 2020. Accordingly, the strategy of Far East and Baikal Region, the strategy of Siberia concretize the mechanism of national goals and priorities at the regional level, identified by the Concept of the Russian Federation 2020 and ensure coordination of strategies for social and economic development of the Russian Federation. In it's turn, socio-economic development program of any Siberian region identifies key areas, mechanisms and tools to achieve long-term goals of social and economic development in view of the national goals and objectives, strategic development priorities. It is identified in the Concept of the Russian Federation, the strategy of Far East and Baikal Region and the strategy of Siberia.

The main Concept «Russia 2020» explores three scenarios for Russia's economy development including inertial, energy and raw product-related and innovative ones. It is clear from the scenario names what they are based on. Target parameters set in the energy and raw products-based and innovative scenarios do not differ much. This significantly complicates choice between the two that set similar quantitative goals but are different in terms of required efforts. We will not discuss in detail the document (the full text of the Concept with appendices is available at the Ministry for Economic Development website), but only give an overview of some moot and doubtful points in it [2].

After the first decade of the transition period in Russia, a regional policy began to form. Strategic development planning of macroregions was considered one of its basic

tools. Currently a strategy for socio-economic development of the whole territory of Siberia, Far East and Baikal Region are being developed.

The shift of the production principle to the market one in the socio-economic zoning of the country is natural when changing the model of economic relations, but the purpose of such zoning should be the development of regional and national economies rather than the interests of players in the global market. In accordance with the above, we should consider possible strategies of the socio-economic development of the Russian Siberia and Far East in terms of increasing dependence on external sources of prosperity.

Today the basic approach to regional development is a reliance on large investment projects which should boost the development of the surrounding areas. Besides, there is a widely employed mechanism of public-private partnership associated with it.

Territorial development is a widely used concept embracing a wide range of spatial processes. Here the concept of territorial development is focused on forming the infrastructure associated with the quality of life and the reproduction of human potential. From the set of indicators characterizing the level and quality of life, for the sake of brevity we have only chosen to present the result: public attitudes to the processes occurring in the territory, or to put it simply – whether people want to live in this territory or not [3].

Today's elected officials often tout economic development as their first priority. However, although their words may sound the same, their meaning often varies. After all, "development" is a deceptively simple term for a remarkably diverse collection of strategies to stimulate private-sector investment. Indeed, development strategies are often responding to significantly different situations. Some rural communities, for example, continue to hemorrhage their historic job base of mining, farming, or low-wage manufacturing, while others struggle with rapid growth that threatens to overwhelm traditional culture or destroy important natural amenities, or economic growth that fails to reach a broad spectrum of community residents.

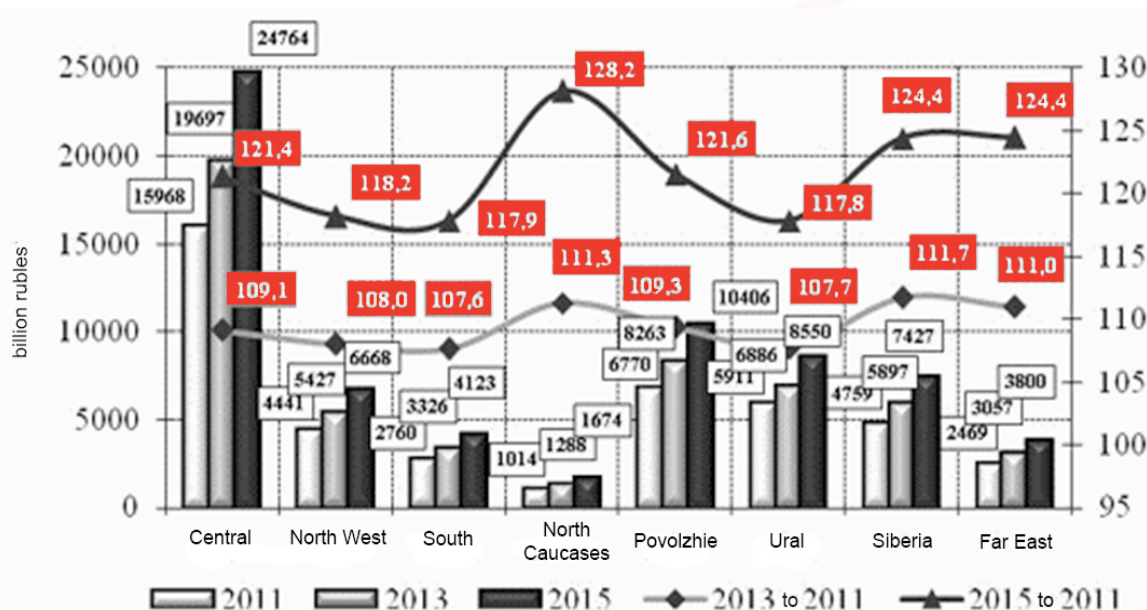
The different contexts lead to different strategies. Much has been written recently about those rural communities that have successfully transformed their economies amid the challenges of lost factories and farms. These success stories are mainly places with economic bases in retirement, recreation, and trade centers and those near urban areas [4].

In the research we compared and ranked regions of the Far East and Siberia in terms of gross regional product.

List of Far East and Siberia regions by GDP(billion rubles)

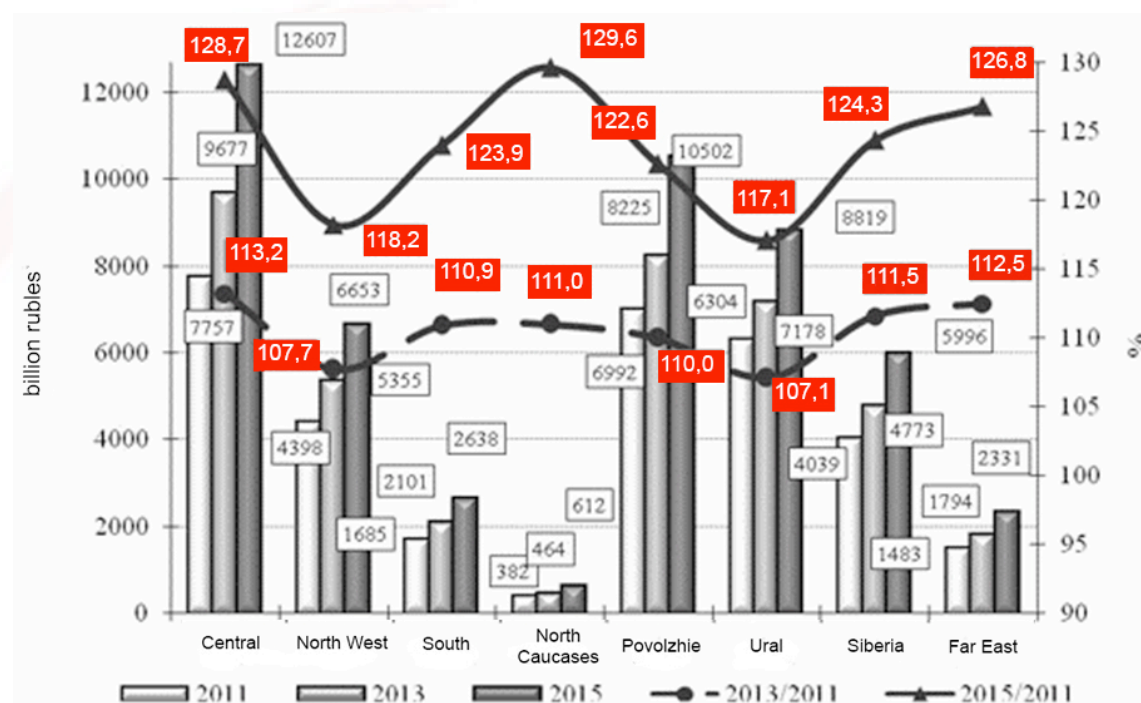
№	Region	2010		2011		2012	
		place	value	place	value	place	value
1.	Krasnoyarsk Region	9	1108	10	1217,46	12	1256,03
2.	Kemerovo Region	14	894,2	13	1177,18	16	1163,89
3.	Omsk Region	21	568,8	20	716,76	21	796,4
4.	Irkutsk Region	23	539,7	23	692,61	22	763
5.	Sahalin Region	24	479,4	24	656,2	24	703,26
6.	Novosibirsk Region	25	422,7	27	504,13	25	564,3
7.	The Republic of Sakha (Yakutia)	29	381	30	484,09	31	526,79
8.	Primorsky Region	37	327,8	35	418,27	35	433,46
9.	Altay Region	34	332,4	37	398,25	38	415,37
10.	Tomsk Region	42	286,5	41	341,2	40	381,48
11.	Khabarovsk Region	39	307,7	40	343,72	41	373,16
12.	Amur Region	59	133,7	58	183	57	197,61
13.	The Republic of Khakassia	68	110,2	67	133,03	64	150,20
14.	Trans-Baikal Region	67	111,1	68	132,94	65	149,17
15.	The Republic of Buryatia	63	113,8	65	141,79	69	139,51
16.	Kamchatka Region	69	86,3	71	91,32	71	104,68
17.	Magadan Region	73	57,9	73	77,21	73	95,03
18.	Chukotka Autonomous District	76	43,3	77	46,58	78	46,23
19.	The Jewish Autonomous District	77	26	78	29,21	79	27,76
20.	Altai Republic	79	18,4	80	23,86	81	22,62
21.	The Republic of Tuva	80	16,7	81	18,11	82	19,41

In 2012, in the majority of Russian regions the production of goods and services was increased. In 2011 the production of goods and services exceeded 1 trillion rubles in 15 regions and 12 were in the range of 500 billion rubles up to \$ 1 trillion rubles. Therefore, in 2012 the number increased to 16 and 15 subjects of the Russian Federation, respectively. Number of regions with low production of goods and services (less than 100 billion rubles per year) declined from 13 in 2011 to 12 in 2012.



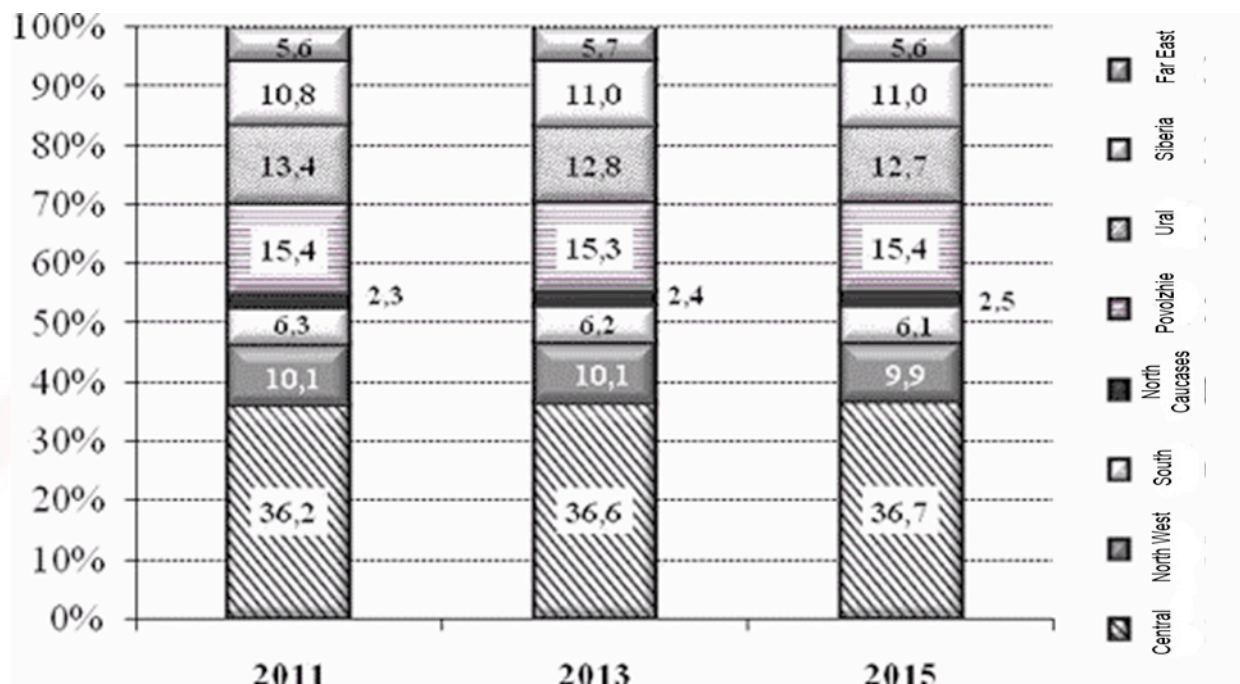
The amount and growth rate of the total GRP by federal districts

Against the background of the overall growth regional concentration of production of goods services remains high. About 50% of the total volume of goods and services produced in Russia accounted for 10 subjects of the Russian Federation.



The total volume of industrial production and the rate of growth in federal districts

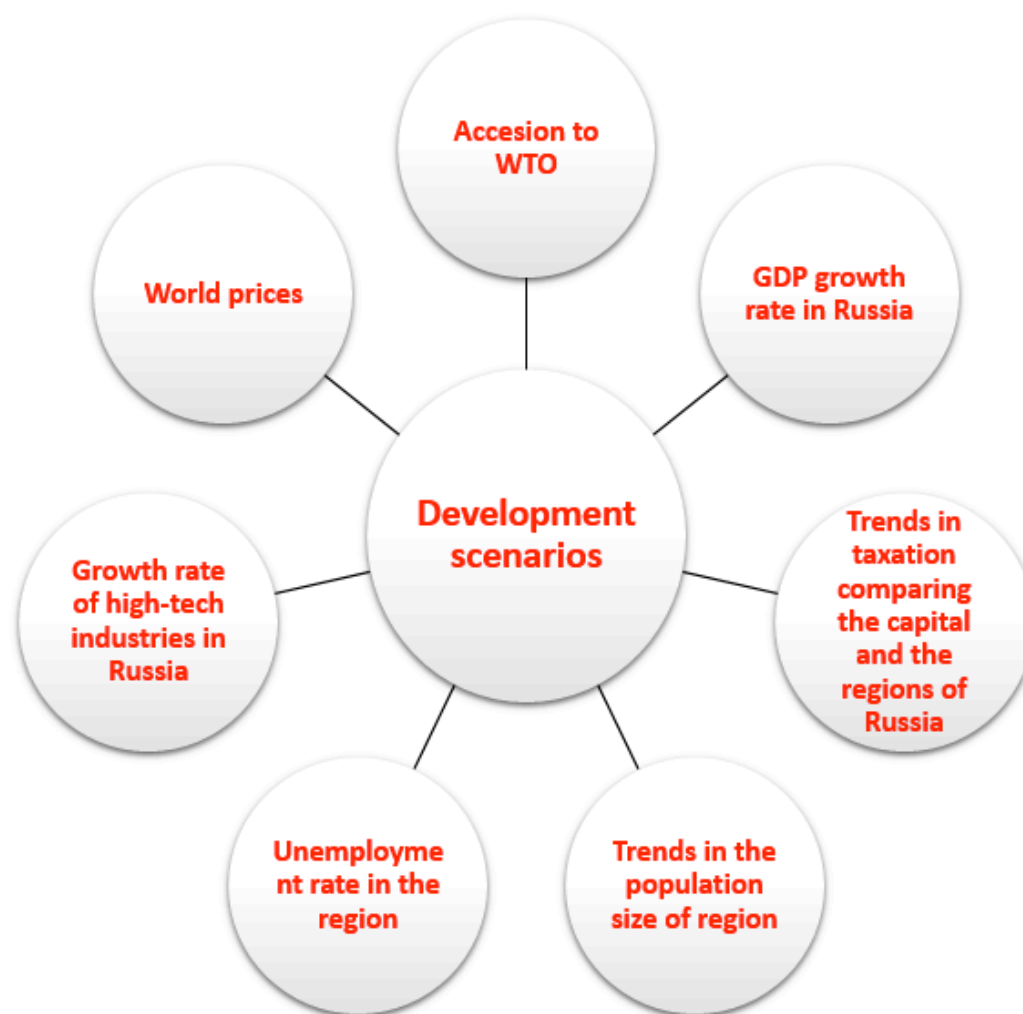
Among the regions, we can identify Krasnoyarsk, Kemerovo, Omsk, Irkutsk, Sakhalin and the Novosibirsk region as the leaders of the Siberian federal district.



Dynamics of production of aggregate GRP by federal districts 2011 - 2015 years

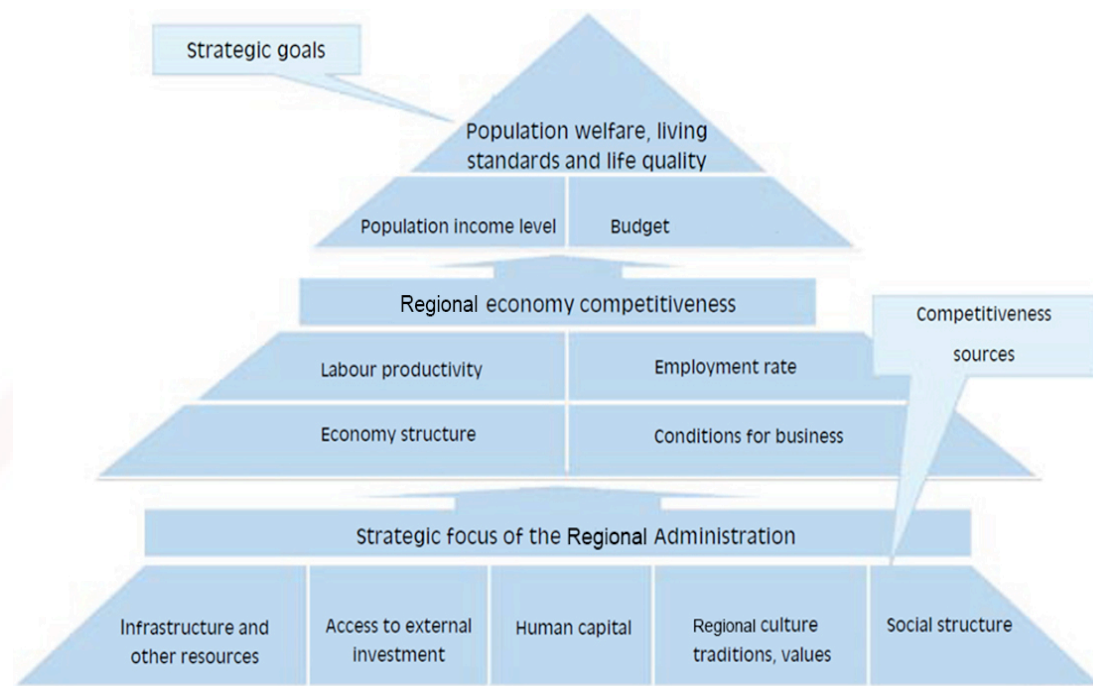
Today strategic documents of Siberia and Far East are based on strategic analysis findings, which delve into the key problems, challenges and competitive advantages of territories. The analysis, the basis of the strategic vision and development models, outlined the following macro parameters:

- World oil prices
- Growth rate of high-tech industries in the Russian Federation
- The date of Russia accession to the WTO
- Unemployment rate in the region
- GDP growth rate in Russia
- Trends in taxes allocation comparing the centre with the regions of the Russian Federation
- Trends in the population of territories.



Basic principles of regional socio-economic strategic planning in Russia

Priority economic sectors are tasked for special attention by Siberian and Far East Regions. The top priorities are information technology, biotechnology, education and research complex, the «new economy», and electrical engineering. The traditional priority for Siberian and Far East Regions is the oil and gas industry but is listed here as a second tier priority sector along with nuclear energy, food, and mechanical engineering.

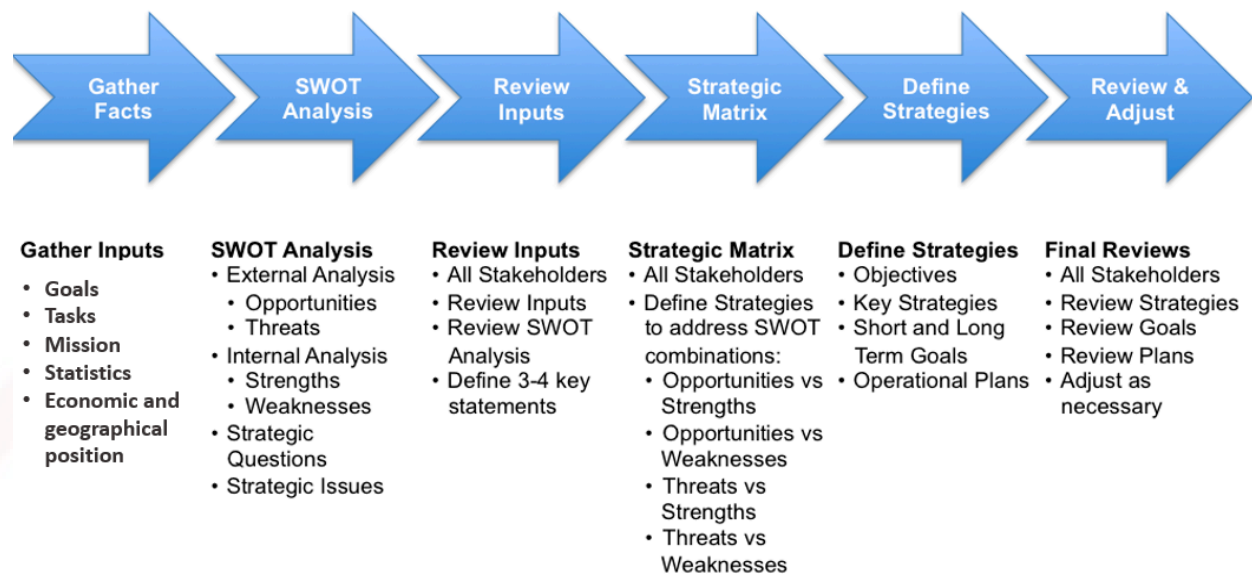


Goal pyramid proposed by the Strategy developers

Siberian and Far East regions pay less attention to the development of these second priority industries. The third level priorities are the timber, gas and petrochemical industries, and agriculture. At the same time, strategic goals of Russian Far East and Siberia, specified in measurable objectives and supported by the system of indicators, are given as:

- High level of entrepreneurial development
- Efficient and balanced economy
- High investment attractiveness
- Highly internationalized economy
- High quality human capital
- Developed infrastructure
- Rational use of natural capital
- Good conditions for life, career, recreation and child education
- High effectiveness of authorities.

Integrated assessment and planning is a new methodological planning tool used by Russian regions. It proposes integration of socio-economic and environmental goals in the development process of a territory, and also close integration of the planning and assessment steps with sustainable development.



Socio-economic development planning process

The process of socio-economic planning includes the following elements:

1. The terms of reference contains a more detailed description which was developed based on interviews with the planning process participants.
2. Analysis of socio-economic and environmental situations. SWOT analysis of environmental development aspects for individual economic sectors was carried out in addition to analysis of socio-economic analysis performed by the Strategy developers. This helped to identify environmental impact and risks arising from the development of some industries.
3. Strategy and consistency analyses The Strategy was analyzed to ensure the inclusion of all necessary elements of strategic planning.
4. Objective led approach The Strategy was analyzed for compliance with recommended environmental and sustainable development goals of Far East and Siberian Regions. An objective led approach was useful.



Socio-economic development planning process

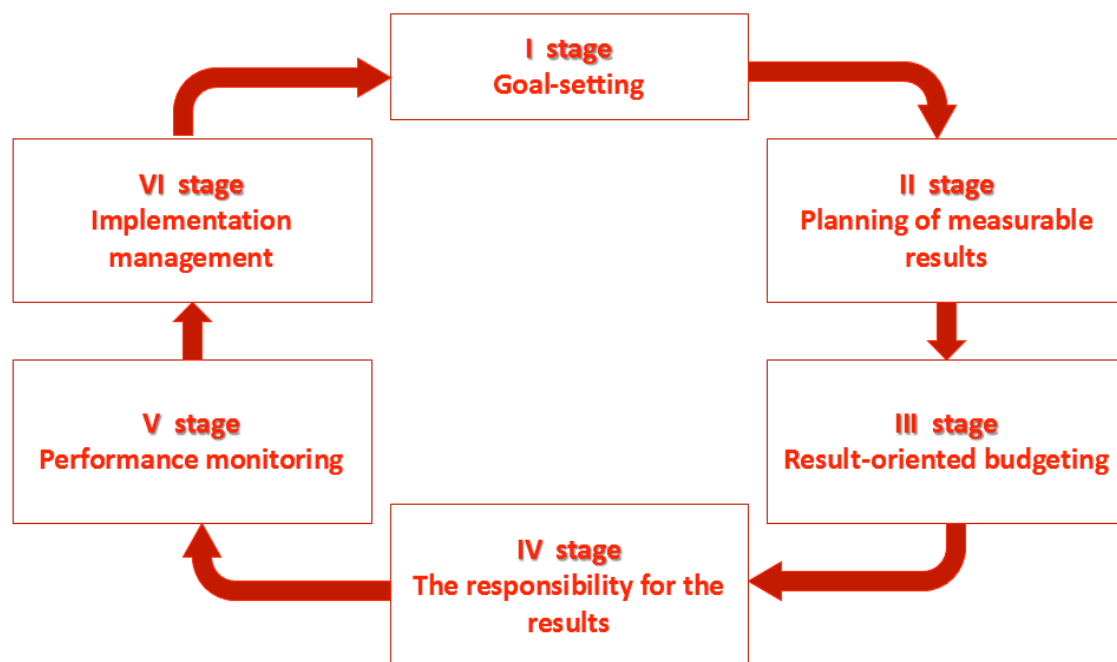
Based on a range of priority socio-economic and sustainable development goals found in different regional documents, the relevant sustainable development goals were defined as:

- Increasing of life quality
- Conservation and development of the nature capital of the region
- Creation of a green image for investment attractiveness
- Environmental improvement
- Stakeholder partnership development to address economic, environmental and social issues
- Socio-economic development of the region based on “cohesive development” of the territories. Inequality between developed and less developed territories should not be increased, but, rather, equal opportunities for different social groups should be sought.
- Human capital development.

The objective led approach applied to both assessment of development aspects, such as priorities, goals and objectives in Strategies of Far East and Siberian regions, and assessment of processes and activities, such as found in the Programs of Far East and Siberian regions.

Analysis of some industries for compliance with sustainable development principles, and identification of strategic impacts and risks for the environment, is an example of the former, while analysis of risks and impact of project implementation is an example of the latter [5].

Indicative planning is an important part of strategic planning. The system of indicative planning is defined as the forming process of an indicators system which characterizes economic development and stabilization efforts of social and economic processes implemented by a state in order to achieve these indicators.



The system of indicative management

Socio-economic indicators are using in order to:

- Estimate a socio-economic situation of the region, it's industries, cities, districts, businesses;
- define the standard of well-being (threshold level);
- plan activities to achieve the threshold level ;
- monitoring the achievement of expected results ;
- adoption of regulatory actions;
- evaluation of the state authorities activities and institutions of local governing

Practically indicative planning is the creation of a Region's economy strategy, its sectors, the social sphere, regional territories. Also it includes monitoring for the implementation of planned targets and encouraging businesses to follow indices of the regional indicative plan.

The main elements of the indicative planning are:

- A system of indicators at different levels;
- The forecast of demand and supply of major services to the population , the supply of goods (works , services) for state and municipal needs (state and municipal order);
- Socio-economic development forecasts for regions, sectors of the economy and the social sphere, cities and towns;
- Regional and municipal budget planning;
- Regional development target programs for economy sectors and social infrastructure;
- Investment projects;
- Indicative Plan of the regional economy, industry, local governments and businesses.

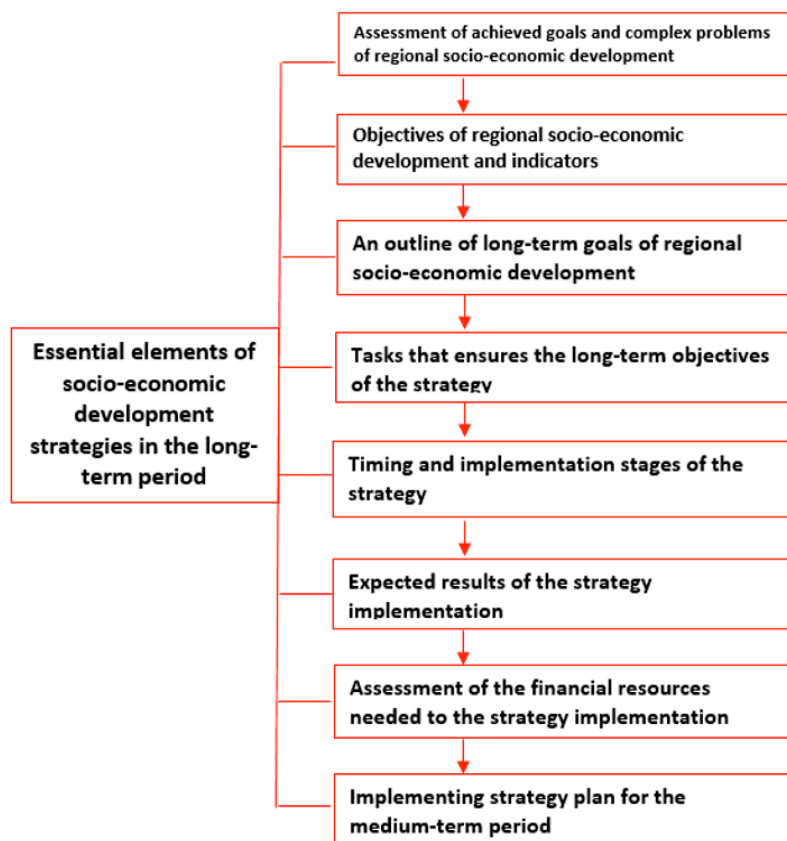
There are specific planning systems for each level of strategic management. The elements of each planning level are linked to each other:

1. Macro-planning is based on a system of indicators at the regional level. The results can be presented in the macro-planning projections, budgets, national programs and investment projects. This level of planning documents are developed and implemented by regional governments and municipalities.
2. Mezo-planning is a planning of socio -economic development sectors, sub-sectors represented in the socio- economic projections industries sector programs developed and implemented by regional government.
3. Spatial planning is reflected in the forecasts, budgets of local governments, the programs of social and economic development of the country (regions, cities, towns), action plans of local administrations, which together constitute the indicative plan of the district (city). The indicators of socio-economic development are the basis for the planning in industry, territorial districts and towns.
4. Micro-planning is realized through the indicative plans and investment projects of economic entities.

Today the system of indicative management is based on the closed circuit scheme.

1. Goal-setting stage;
2. Planning of measurable results;
3. Result-oriented budgeting, which provides development of the regional budget and state programs;
4. The responsibility for the results conducts internal and external monitoring of the implementation of policy documents;
5. Performance monitoring involves analyzing the socio-economic situation of the region and evaluation of the effectiveness of budget spending;
6. Implementation management involves planning, public services calculating, state order development for the goods supply and cooperation agreements with municipalities and businesses.

Indicative management system implemented in Russia is based on 5 levels: state, region, industry, city and businesses.



The mechanism of formation socio-economic development programs according to the draft of federal law «About the state strategic planning»

All levels are logically linked to each other through the system of indicators, which develop with the powers and functions assigned to the authorities.

Comparative analysis of basic strategic indicators

Indicators	Buryatia 2020	Siberia 2020		Far East and Baikal region 2025		Russian Federation 2020	
	Indicators of The Republic of Buryatia	Indicators of The Siberia		Indicators of the Far East and the Baikal region		Indicators of Russia	
			deviation		deviation		deviation
GDP	152,9	-	-	188,5	-35,6	106,9	46,0
GDP per capita	152,1	115,9	36,1	185	-32,9	106,5	45,6
Investments	161,2	109,4	51,8	110,4	-	113,9	47,3
Average nominal monthly wage per employee	151,6	121,6	30,0	149,3	2,3	108,7	43,0
Real income of the population	96,0	108,6	-12,6	111,6	-15,6	108,6	-12,6
Population with incomes below the subsistence minimum	84,3	-	-	39,1	45,2	50	34,3
Tax and non-tax revenues	138,7	-	-	170,1	-	-	
the average value of the deviation,%			26,4		-17,0		33,9

Analysis of the structure and quality of regional development strategies on the example of the Siberia, Far East and Baikal region testified as follows:

1. All the regions have strategies of social and economic development.
2. According to official information, all the regions have medium-term development program.
3. All the regions of the Siberia and Far East have documents regulating the process of regional strategic planning.
4. The structure of regional development strategies based on their characteristics in general can be represented, according to the essential elements of the draft federal law «About state strategic planning» and the required elements from the point of view of strategic management.
5. Among the long-term strategies with the mission only 8 regions decided (chose) the long-term strategies with the mission (republics of Buryatia and Tuva, Kemerovo, Novosibirsk, Kamchatka, Primorsky, Amur and Sakhalin Region). The absence or slurred mission statement extremely limits region development. There are no regions with full PEST-analysis, because there are no guidelines in the «requirements of socio-economic development of the Russian Federation». Some elements of the PEST- analysis were used by regions like Tomsk, Altai, the Republic of Tuva, Kamchatka, Primorsky, Magadan regions and the Jewish Autonomous District. The use of PEST-analysis allows identifying force of impact and the causes of negative trends in economic development at the regional level for Siberia and Far East. PEST-

analysis of the results will allow to develop various solutions to social and economic problems in the regions.

6. SWOT-analysis were made by only 13 out of 21 regions of the Siberian Federal District. In three regions (Tomsk region, Altai and Khakassia Republic) there are some elements of the SWOT-analysis, for example, lists only competitive advantages, constraints, opportunities and potential risks, and the strengths and weaknesses of the regions are not represented .

7. Phased update of development strategy allowing for the strategic management.

Quality ranking list of Far East and Siberia region's strategies

Region	Elements of strategies				Finally	
	According to federal law		According to strategic management			
	Sum ranking*	Place	Sum ranking*	Place	Sum ranking*	Place
Kamchatka Region	16	1	8	1	24	1
Magadan Region	16	1	6	2	22	2
Jewish Autonomous District	14	2	8	1	22	2
Amur Region	14	2	4	4	18	3
Republic of Tyva	10	4	5	3	15	4
Chukotka Autonomous District	12	3	2	6	14	5
Khabarovsk Region	10	4	4	4	14	5
The Republic of Buryatia	10	4	4	4	14	5
Primorsky Region	10	4	4	4	14	5
Novosibirsk Region	8	6	5	3	13	6
Zabaykalsky Region	9	5	3	5	12	7
Kemerovo Region	8	6	4	4	12	7
Tomsk Region	8	6	3	5	11	8
Altay Region	6	8	5	3	11	8
Sakhalin Region	8	6	2	6	10	9
The Republic of Sakha (Yakutia)	8	6	2	6	10	9
Altai Republic	8	6	2	6	10	9
The Republic of Khakassia	7	7	1	7	8	10
Krasnoyarsk Region	6	8	2	6	8	10
Irkutsk Region	5	9	3	5	8	10
Omsk Region	2	10	3	5	5	11

Preliminary analysis of regional strategic documents formation showed the following problems:

- 1) The formalism in the development of strategies, long-term and medium-term plans and programs (strict compliance with their standard layouts, often without regional specificity);
- 2) Undue ambition, underestimation of region's real opportunities;

- 3) The aspiration to include all possible projects and programs into the socio-economic development frameworks of regions resulted in loss of document's integrity (as well as difficulty to isolate the long-term regional development priorities);
- 4) Lack of clear goals and objectives in a number of strategies, the lack of development scenarios, the choice of strategic alternatives, elaboration of future development scenarios, etc.
- 5) Most of the regional development strategies and long-term programs have an isolated character, interests and underestimate the competitive advantages of neighbor regions.
- 6) Many of the regional strategies focused on production paying not enough attention the social factors.
- 7) The scientific organizations of the Russian Academy of Sciences mostly do not participate in the development of regional strategies.
- 8) At the federal, inter-regional and regional levels the necessary institutions (rules, regulations, procedures) and the institutional structures, specifically targeting the implementation of the main products of strategic planning are poorly developed.
- 9) There is no need for quality information base and a special monitoring system for effective tracking system for strategic planning in the regions. The official regional statistics and the private information of the regional authorities do not match in some cases.
- 10) The traditional problem is the lack and poor development work issues related to the mechanisms of the inter-regional and regional strategies, as well as monitoring and evaluation of the implementation and effectiveness of regional policies and programs.

The results of the analysis of the structure and quality of regional development strategies led to the formation of the following recommendations to improve the strategic planning at the regional level:

1. To use the basic elements of the strategy from the point of view of strategic management, such as the Mission, monitoring of strategies, PEST- and SWOT-analysis.
2. To include all elements of PEST- analysis into the socio-economic development strategy for a deeper analysis of the external environment of the region to have a clear idea of the political, social, technological and economic aspects of the region, which may affect the implementation of the strategy and the quality of its results.
3. To develop a regional strategy, taking into account the interests and the competitive advantages of the neighbor regions.
4. To provide the technological progress and accelerate the development of innovative economy.
5. To monitor the implementation of regional strategies and programs.

6. Use the institutional approach in the process of finalizing the development strategy by determining the influence of institutional factors on the development of economic sectors in the region. There are some institutional factors (property relations, the distribution of productive forces, human capital and the labor market, the liberalization of prices and tariff policy, quality of life) and economic and environmental factors. The institutional approach is the description of the problems encountered in the course of the influence of institutional factors on the economic sectors development and creation of an improvement plan. In international practice, the institutional approach is a modern and effective method of strategic planning in the formation of an innovative economy.

7. To conduct a phased mainstreaming strategy in response to structural changes in the economic system and the environment.

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An Econometric Forecasting Model for Tourism Demand in Thailand

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Abstract

Thailand tourism of foreign tourists is important for income generation, employment and contributes to economic development. Therefore, the study to understanding of tourism demand is an important part of the tourism development of the country. This article aims to identify the factors that determine the demand of Thailand tourism from foreign tourists who arrive from important countries. Macroeconomic data affect to the decision of the foreign tourists and the time series model was used for analysis tourism demand which diversity and difference. The results of the study will be useful for the government to create marketing strategies to promote the tourism. Moreover, useful for policies planning for supply management conform to the demand that will occur in the future.

Keywords: Tourism demand, Time series, Econometrics, Thailand

JEL Classifications: C53, L83

Introduction

Tourism industry is important and valuable in terms of the economy immensely both directly and indirectly, due to divergence and connection broadly relationship with other industry. The current tourism activities have respectively increased and is the biggest business in the world if compare with other business (Tisdell 2002). Additionally, tourism industry can create an image and a better understanding will lead to better international relationship (Hamsupo 2000). Statistics of international tourist which tour in Thailand continuously increase, average 16.24% per year as a result of increasing worldwide tourist and strength of basic factor's Thai tourism (Department of tourism 2013).

As a result of tourism is important industry to economy and revenue of Thailand. The government should to promote and develop a strategy for the tourism industry to grow even more. Therefore, the study of the appropriate demand models to forecast the tourism demand accurately. Moreover, the results and benefits from research will affect to plan and policy for supply management that conformity and sufficiency with demand in the future. Additionally, will be useful for policy makers to promote tourism and investment in line with the characteristics of tourism demand to Thailand and empowerment, performance, capabilities and competitive advantage in the tourism of Thailand with international sustainable in the future.

The tourism industry is sensitive to changes in a variable environment. That is, depend on the politics and policies of tourism in the region, market demand and supply responses and the changing trends (Victor 2008). In order to resolve volatility problem of tourism, this research aims to investigate a fit model for time series data to forecast tourism demand in the five countries which travel to Thailand highest five rank according to statistics namely Malaysia, China, Japan, India and Singapore. Data were collected since January, 1971 to July, 2013 and were forecasted by ARIMA models with Box-Jenkin technique, due to ARIMA models has been widely utilized for analysis time series data compare with GARCH models. GARCH models has been widely utilized in financial context to investigate the volatility of the time series data. Subsequently the study of the univariate time series analysis of tourism demand has been the application of the GARCH models (Song & Li 2008). In this research ARIMA models was compared with GARCH models for investigation fit models to forecast Thai land tourism demand in the future.

The organization of the paper is as follows: section 2, discuss a literature review of GARCH models in tourism demand. Section 3 describes the data used for analysis and methodology while Section 4 present the results and Section 5 provides a summary and some conclusions.

Literature review on GARCH models in tourism

The study about forecast, especially times series data, found that Autoregressive Integrated Moving Average (ARIMA) models have been widely used. Afterwards,

found that research about forecast tourism demand was high volatility, due to changing of economy, social, political and other crisis which effect to decision making. Therefore, Generalized Autoregressive Conditional Heteroskedasticity (GARCH) models has been more used for forecast than ARIMA models, for the reason that be suitable for the high volatility models (Ghialy & Lee 2008).

Previous, GARCH models have been widely used in the financial modeling context to investigate the volatility of the time series (Engle 2001). Subsequently the study of the univariate time series analysis of tourism demand has been the application of the GARCH model (Song & Li 2008). As research of Coskun (2011) have been used time series data with multivariate GARCH model using monthly data for research tourism demand 's Turkey from the tourist of Germany, France, United Kingdom and Netherlands. Coskun found that tourism demand of these countries have correlation and accordance with demand volatility, as a result of economic conditions and other factors of the country of origin which have been more effected than internal factors of the destination country. Seo, Park and Yu (2009) studied Korean outbound tourism demand for Jeju islands, Thailand, Singapore and the Philippines by using the DCC–MGARCH models and VEC models for test correlations of Korean outbound tourism demand and volatility for the four destinations country. The MGARCH models help to identify outbound/inbound travel pattern which changes resulting from the impact of the change in economic conditions of the world.

Moreover, Coshall (2009) tested capability of volatility models for forecast outbound tourism demand of the United Kingdom by GARCH and EGARCH models. The test revealed that the both volatility models are able to quantify the impacts of positive and negative shocks on tourism demand. Additionally, Shareef and McAleer (2007) investigated tourism demand to Maldives by test Univariate and multivariate time series models of conditional volatility which were ARIMA-GARCH models, found that conditional correlations from monthly international tourist arrivals that show independent effect to shocks. Then, Shareef and McAleer (2008) tested variation of international tourism demand, particularly the conditional uncertainty with vector ccc-GARCH models in international tourist arrivals to Maldives and Seychelles, found that spillover effect from the country of origin.

The research about forecast tourism demand, researcher intended to be the most appropriate models to get result of precise forecast and nearby possible. As research of Ghialy and Lee (2008) compared GARCH models and ARIMA models for forecast tourist arrivals from USA, United Kingdom, Japan and New Zealand to Australia, found that GARCH models was more appropriate forecast than ARIMA models in all countries except United Kingdom. Furthermore, Chan, Lim and McAleer (2005) studied of International tourism demand, which is typically measured of the logarithm of the monthly tourist arrival rate from the four leading tourism source countries to Australia, namely Japan, New Zealand, United Kingdom and USA, using three constant conditional correlation (CCC) volatility models, specifically the CCC-MGARCH model, ARMA-GARCH model and ARMA-AGARCH model. The results suggest that the three models are not substantially different from each other. Hoti, McAleer and Shareef (2007) studied in Cyprus and Malta by using VARMA-GARCH and VARMA-AGARCH models for analyze monthly time series data for

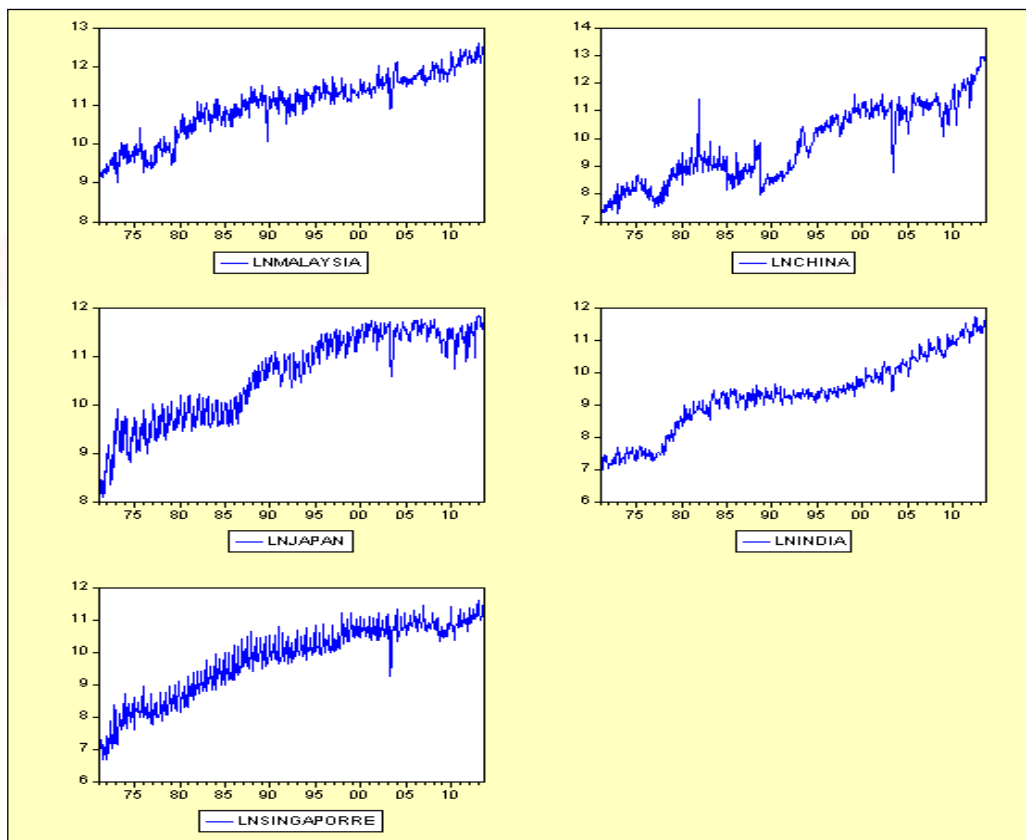
forecast Tourism Growth rate, country risk ratings, found that trend of series is positive and similar for the two models.

The research of modeling and forecasting the demand for Thailand Tourism with GARCH Model with few research. However, Song, Witt and Li (2003) found that ex ante forecast with ARIMA models for analyze growth tourism rate in the period up to 2010, Korea, Malaysia and Japan were the most tourist arrival in Thailand and South Korea has the highest growth tourism rate. Besides that, Bunnag (2010, p.) researched risk of foreign tourist who travelled in Thailand by the VAR model (Value at Risk) test with GARCH and GJR Model. Data was collected from the monthly data of the total tourist arrivals by residence, namely Malaysia, China, United Kingdom and USA. The result of forecast revealed that VAR of Malaysia tourist is the highest and both models lead to the same average VAR. Chaitip, Chaiboonsri and Mukhjang (2008) researched for compare SARIMA, ARIMA, Holt-Winter-additive, Holt-winter-Multiplicative, Holt-winter-No seasonal, Neural network, VAR, GMM, ARCH-GARCH-M, ARCH-GARCH, TARCH, PARCH and EGARCH models estimation for time series analysis to forecasts international tourists arrivals to Thailand. The result revealed that SARIMA was the best model, secondary was VAR models and predicted that the tourism growth trend to positive direction. However, in tourism studies for finding fit models is necessary for the most accurate and interesting as well. Additionally, the number of using multivariate GARCH is few, especially in Thailand.

Methodology

This research was conducted by estimating volatility and forecasting tourism demand in Thailand of tourist which travel to Thailand highest five rank according to statistics namely Malaysia, China, Japan, India and Singapore (Department of Tourism 2013). Researcher used the number of tourist arrivals over the period of January 1971 to July 2013, amount 511 observations. The secondary data were adjusted to Natural Logarithm.

Figure 1: Shows log arrival rate from the selected countries



Data were forecasted by ARIMA and GARCH models for comparing to find appropriate model. Firstly, test stationary with unit root test to determine whether a stationary or non stationary, if data have unit root and were non stationary, then differencing data for adjust to stationary. After that, determined the appropriate form of the ARIMA models (p,d,q) by consideration correlogram for analyze relation of data, used ACF and PACF for identifying ARIMA models should have how many Autoregressive (p) and Moving average (q), and estimated equation with lag (p) and lag (q) for select the best model which the least AIC. Afterwards, estimated by ARIMA and GARCH models, then used coefficient for forecast tourist arrivals in the future. In comparison the best model for forecast, researcher considered model which the least MAPE.

Result

The results of unit root test with Augmented Dickey Fuller (ADF) technique at Level revealed that time series data of China and Singapore have the absolute value of the test statistic calculated more than the absolute value of critical value at 0.01 significant level. Conclude that data was stationary, has not unit root and has relation at zero order or has integration of order 0 : I(0). On the contrary, at level time series data of Malaysia, Japan and India were not stationary which not appropriate for construct model due to spurious results of data, then differencing data to first difference,

afterwards data will be stationary. Result that reject null hypothesis (H_0) and accept alternative hypothesis (H_1). Conclude that data was stationary, have not unit root, have the absolute value of the test statistic calculated more than the absolute value of critical value at 0.01 significant level, conclude that has relation at first order or has integration of order 1 : I(1).

After time series data were tested stationary and lead to construct correlogram. By consider ACF and PACF for compare and find possible models. Researcher consider appropriate models from the least AIC and SC. The result revealed that appropriate ARIMA models for forecast of five countries show in table 1.

Table 1: Coefficient of ARIMA Model from calculation

Country/Model	Malaysia (2,1,2)	China (2,0,2)	Japan (1,1,3)	India (2,1,2)	Singapore (1,0,3)
C	13.4143	14.4012	12.0266	16.0644	9.9578
AR(1)	0.1018	0.9080	-	0.6483	0.9498
AR(12)	0.8719	0.087409	0.9476	0.3455	-
MA(1)	0.2186	-0.3487	-	0.1039	-0.5478
MA(4)	-	-	0.4967	-	-
MA(6)	-	-	-	-	0.4212
MA(8)	-	-	0.3931	-	-
MA(12)	-0.4678	0.1043	-0.3200	0.2031	0.4043
AIC	-0.3697	0.5800	-0.7591	-1.1560	0.2176
SC	-0.3275	0.6222	-0.7169	-1.1138	0.2591

Note : C denotes Constant
 AR(p) denotes autoregressive at lag p
 MA(q) denotes moving average at lag q
 AIC denotes Akaike info criterion
 SC denotes Schwarz criterion
 The C AR and MA Term above are statistically significant at 5%

The result revealed that using Generalized Autoregressive Conditional Heteroscedasticity Model (GARCH) for forecast tourism demand, found that appropriate models was GARCH (1,1) which construct from ARIMA models of each countries, then estimate parameter show in table 2.

Table 2: Coefficient of GARCH (1,1) Model from calculation

Parameter	Coefficient				
	Malaysia	China	Japan	India	Singapore
C	13.1793	-377.5113	15.5390	16.1383	9.4416
K	0.0084	0.0098	0.0046	0.0008	0.0469
ARCH	0.2503	0.1032	0.6233	0.0382	0.3812
GARCH	0.5446	0.8116	0.2807	0.9152	0.0148
AIC	-0.4627	0.5331	-1.1516	-1.1584	0.1847
SC	-0.3952	0.6007	-1.0840	-1.0909	0.2511

Note: C denotes Constant
 K denotes constant at variance equation
 ARCH denotes Autoregressive Conditional Heteroscedasticity
 GARCH denotes Generalized Autoregressive Conditional Heteroscedasticity
 AIC denotes Akaike info criterion
 SC denotes Schwarz criterion
 The Term above are statistically significant at 5%

Equation as following :

Malaysia

Mean Equation :

$$\text{LnMalaysia} = 13.1793 + u_t$$

Variance Equation :

$$H_t^2 = 0.0084 + 0.2503 \varepsilon_{t-1}^2 + 0.5446 h_{t-1}^2$$

China

Mean Equation :

$$\text{LnChina} = -377.5113 + u_t$$

Variance Equation :

$$H_t^2 = 0.0098 + 0.1032 \varepsilon_{t-1}^2 + 0.8116 h_{t-1}^2$$

Japan

Mean Equation :

$$\text{LnJapan} = 15.5390 + u_t$$

Variance Equation :

$$H_t^2 = 0.0046 + 0.6233 \varepsilon_{t-1}^2 + 0.2807 h_{t-1}^2$$

India

Mean Equation :

$$\text{LnIndia} = 16.1383 + u_t$$

Variance Equation :

$$H_1^2 = 0.0008 + 0.0382 \varepsilon_{t1}^2 + 0.9152 h_{t-1}^2$$

Singapore

Mean Equation :

$$\text{LnSingapore} = 9.4416 + u_t$$

Variance Equation :

$$H_1^2 = 0.0469 + 0.3812 \varepsilon_{t1}^2 + 0.0148 h_{t-1}^2$$

Afterwards, estimate both ARIMA and GARCH models for finding appropriate models for forecast tourism demand by considering models which have the least Mean Absolute Present Error (MAPE). When compare result of forecasting found that ARIMA models of China and India was less accurate than GARCH models. On the contrary, GARCH models of Malaysia, Japan and Singapore were more accurate than ARIMA models show in table 3.

Table 3: Forecasting tourist arrivals to Thailand were adjusted to Natural logarithm by comparing ARIMA models and GARCH models

Country	model	8:2013	9:2013	10:2013	11:2013	12:2013	MAPE
Malaysia	ARIMA	12.3330	12.2250	12.2057	12.3031	12.5381	0.4565
	GARCH	12.3134	12.1973	12.1973	12.2780	12.5436	0.6615
China	ARIMA	12.8164	12.7793	12.7734	12.8018	12.8073	1.4630
	GARCH	12.8691	12.8535	12.8614	12.8946	12.9095	1.1905
Japan	ARIMA	11.4034	11.8234	11.5991	11.6946	11.6605	0.0029
	GARCH	11.3418	11.8694	11.6191	11.7289	11.7577	0.1975
India	ARIMA	11.6665	11.4848	11.4504	11.5029	11.5046	1.2831
	GARCH	11.6683	11.4774	11.4425	11.5016	11.5017	1.2406
Singapore	ARIMA	11.4108	11.2733	11.1953	11.2371	11.2929	0.6226
	GARCH	11.4226	11.2911	11.2037	11.2293	11.2743	0.6962

Additionally, result of forecast found that trend of China tourist arrivals to Thailand will be the most amount in the future, instead of Malaysia tourist arrivals to Thailand which has the most amount in the current. Moreover, both ARIMA and GARCH models were same direction which Thailand tourism demand of all countries have trend of increase growth rate in positive direction.

Conclusion

This research aim to forecast international tourism demand of Thailand. Data was collected from time series data of foreign tourist arrivals which travel to Thailand highest five rank according to statistics namely Malaysia, China, Japan, India and Singapore. Monthly data was adjusted to natural logarithm form, over the period of January 1971 to July 2013, amount 511 observations.

The research was started from testing stationary of time series data, found that time series data of China and Singapore have stationary at level or have integration of order d as $I(0)$. On the contrary, found that time series data of Japan and Malaysia have stationary at first difference or have integration of order d as $I(1)$. Afterwards, constructed appropriate models both ARIMA and GARCH models by considering models which the least both AIC and SC. Then, compared results of forecast tourism demand of Thailand by considering Mean Absolute Present Error (MAPE). The results revealed that ARIMA models of Malaysia, Japan and Singapore have less MAPE than GARCH models, concluded that ARIMA models have more accurate forecast than GARCH models. On the contrary, GARCH models of China and India have less MAPE than ARIMA models, concluded that GARCH models have more accurate forecast than ARIMA models. However, the results of forecasting both ARIMA and GARCH models were same direction which Thailand tourism demand of all countries have trend of increase growth rate in positive direction and Thailand tourism demand of China tourist has trend to be the first in the future.

Forecasting by ARIMA and GARCH models which use only observation value and missing value in the past and were not considered the external factors such as crisis in economy, social, political and natural disaster. These factors were effect to tourist demand, then it has limitation for movement behavior explanation of tourist amount. Therefore, other models such as EGARCH TGARCH should be choose for comparison result of forecasting and construction the most appropriate models in the next research. Therefore, in the future research should select other models such as EGARCH TGARCH for comparison result of forecasting and to get the most appropriate models.

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The logo for the International Association of Business and Finance (iafor) is centered on the page. It consists of the lowercase letters 'iafor' in a light blue, serif font. The text is enclosed within a large, faint, light blue circular arc that is partially visible on the left and right sides of the page.

How much do student loan sizes affect returns to tertiary education for Thai persons with disabilities?

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0206

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Abstract

This paper is motivated by the fact that there are about 1.5 million disabled persons in Thailand in 2011. A year later 234,390 of them died; many of whom the deaths were premature. Major causes of their deaths could be traced back to deprived socio-economic conditions. At present registered disabled persons are entitled to monthly payment of 500 Baht (17 USD) and access to low cost medical services. It is inevitable that a new initiative is needed to promote a better quality of their lives. Access to tertiary education is one of the viable options. Disabled persons are usually credit constrained; access to sufficient student loans is, therefore, a pre-requisite to access to tertiary education. Using a unique health literacy data set of Thai persons with disabilities, this paper examines how different student loan sizes affect returns to tertiary education. Propensity Score Matching is used to estimate differences in log of earnings between a disabled person with tertiary degree holders and a disabled person with basic education qualification. Subsequent exercise on the effects of different loan sizes is conducted using the Thai Student Loans Fund (SLF) arrangement. The exercise reveals that rates of returns do not vary significantly with loan sizes. These findings suggest that promoting greater access to tertiary education for disabled persons will be beneficial to both individuals as well as the society at large. Supplementary in-depth interviews highlight the importance post-graduation placements services.

JEL Classifications: I140 I220 J24 J31

Keywords: returns to education; student loans; access to education; human capital investment; persons with disabilities; health literacy

1. Introduction

Based on National Office for Empowerment of Persons with Disability (NOEPD), in 2011 there are about 1.5 million disabled persons in Thailand. A year later, 234,390 of them died. Many of them died prematurely due to lack of proper care and severe poverty. At the time of writing, disabled persons are entitled to a monthly allowance of 500 Baht (17 USD)¹. By and large, disabled persons educational attainments rarely go beyond basic education. Their either are unemployed or only marginally attached to labor market, with their typical jobs being lottery sellers, basic handicraft makers or massagers (National Office for Empowerment of Persons with Disability, 2013).

The above overview raises two interesting issues to be explored. The first relates to insufficiency of monthly allowance which precludes them from acquiring proper health care and nutritional food to sustain their health. Raising payment requires that additional public resources must be diverted from elsewhere. Such diversion often comes with opportunity costs. The second issue being low level of educational attainments. Researches in the field of education and labor market outcomes consistently find that more education allow individuals to be more productive; as a result, they will also enjoy higher earnings throughout their working lives (Psacaropoulos and Patrinos, 2004). The second issue also implies that education can be a powerful instrument to help disabled individuals who are able and willing to undertake such investment to achieve a better living standard. Being able to support themselves also help to free up public resources which can be made available to other disabled persons.

Such initiative, however, has to be supported by hard empirical evidence on whether such investment will yield positive return. Another related empirical issue stem from the fact that many disabled persons are in poverty. They do not have sufficient resources to undertake such investment. In addition, without proper collateral, they are denied of access to commercial loans. One of the promising avenues for the disabled in Thailand is to undertake such investment by borrowing from a public student loans scheme called the Student Loans Fund (SLF). Again, the empirical question is whether borrowing from the SLF to cover their tuition fees and related expenditures is an economically sound decision. This paper attempts two address these two empirical issues.

The remaining sections are organized as follows. Section 2 provides historical background and payment arrangement of the SLF. Section 3 lays out conceptual framework relating education to health outcome and potential earning. Research methodology will be discussed in section 4. Data and results are offered in section 5. Section 6 concludes the study.

¹ The exchange rate is approximately 30 baht to 1 dollar.

2. History of the SLF and Its Arrangement²

The idea of making student loans available to the poor was formed in 1995 while the Democratic Party was leading the Thai government. The Student Loans Fund (SLF) was set up in 1996 while Chart Thai Party, was the leading party of the government. The main objective of the SLF is to foster access to upper secondary and higher education for students from low-income families. It is believed that greater access will eventually reduce inequality education opportunities between the rich and the poor. Increased stock of graduates will also increase the country's competitiveness, hence sustained economic growth in the long-run. To accomplish the above objective, the SLF provides the loans for upper secondary, vocational and undergraduate education to students whose family income does not exceed 200,000 baht per annum. Average public fund allocated to the scheme is around of 27,000 million baht per annum (Office of Student Loans Fund, 2007).

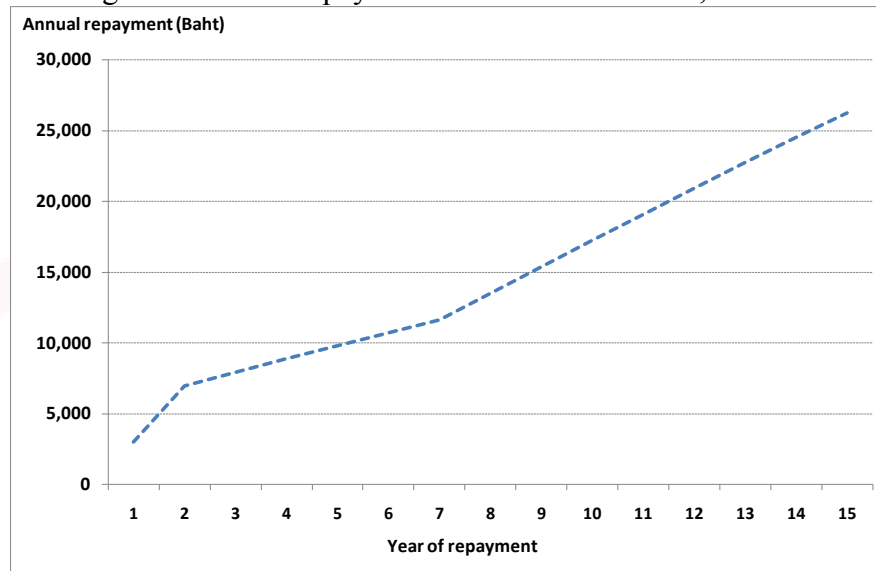
Essentially, the SLF is a mortgage-type loan with a maximum repayment period of 15 years. Annual repayment is an increasing proportion of the loan size, ranging from 1.5 per cent in the first year of repayment to 13 per cent in the last repayment period. The nominal interest rate charged on the loan is one per cent. There are two types of grace period built into the SLF. The first interest rate grace period is before the interest rate begins to accrue two years after graduation or termination from the program enrolled. Therefore, for a four-year program, the interest rate grace period is six years. Second, there is also a two-year repayment grace period after graduation or termination from the program enrolled.

The loans cover tuition fees as well as living expenses. The loan ceilings for tuition fees differ depending on the fields of study; the loan ceilings for tuition fees vary from 60,000 Baht per year for the social sciences and humanities to 150,000 Baht per year for selected science and medical programs. Loans for living allowances are limited to 26,400 Baht per year.³ Figure 2.1 illustrates a repayment pattern for a loan size of 200,000 Baht.

² This section is based on Chapman and Lounkaew (2009) and Chapman *et al.* (2010)

³ See Office of Student Loans Fund (2007) for details.

Figure 2.1: SLF Repayments for the Debt of 200,000 Baht



3. Conceptual Framework

To fix the idea, we will use the production of health to illustrate the points. Let's assume that health can be measured in unit term with higher value of health corresponds to better health condition. Two inputs are used to produce health. The first being food intake per week; the second input is time spent on exercising per week. An increase in either input will increase health outputs. Figure 3.1 depicts the production function of health using time spent on exercising per week as an argument on the horizontal axis. The more time is spent on exercising, the better higher is the health outputs. However, the production function is concave to reflect the fact that improved health outcome gained from the first few hours spent on exercising are greater than the gain from, say the 22nd hour spent on exercising.

Figure 3.1: Health Production Function



In the context of this example, if more schooling leads the productive efficiency, then these additional schooling shifts the production function upward; consequently, similar mix of input corresponds to higher output lying at the frontier of the new production function. This is shown in Figure 3.2. Prior to attaining more education, 4 hours of exercising and 17 units of food per week produces 80 units of health outputs. More schooling shifts the production function upward. With the new production function, similar mix of inputs now produces 100 units of health outputs.

Figure 3.3 demonstrates the situation in which more schooling leads to better allocative efficiency. Prior to attaining more education, 3 hours of exercising and 20 units of food were used to produce 80 units of health outputs. New insight gained from more education results in the new input mix of 4 hours of exercising and 17 units of food; the new health output is 100 units. This is the maximum attainable level of output.

Figure 3.2: Illustrating Productive Efficiency

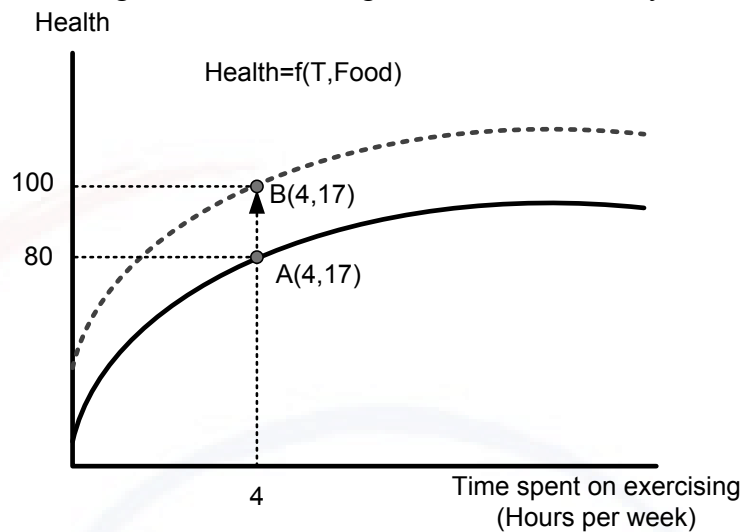
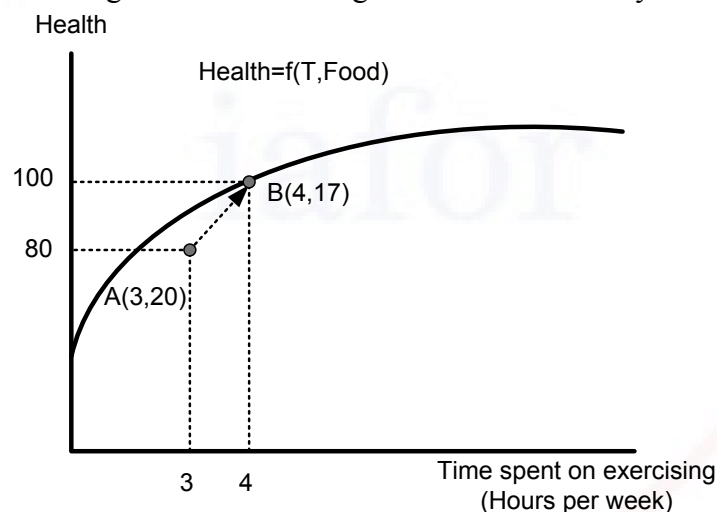


Figure 3.3: Illustrating Allocative Efficiency



An econometric model to test the productive efficiency involves the use of simultaneous equation to approximate the production function. The model predicts that, holding all other inputs constant, schooling coefficient is positive. Alternatively, the allocative efficiency model predicts that there is no direct effect of schooling on health output if all other inputs relevant to the production of health are included. It should be noted, however, that both approaches predict positive relationship between schooling and health outcome in the reduced form health equation (Grossman, 2006).

In the context of this study, positive contribution of schooling on health outcome enables a disabled individual to be more productive and be valued more highly in the labor market. In addition, better education empowers them to take better care of themselves; this also increases their health capital. To formalize this, let Z be level of human capital; H is the level of human capital. Then annual wage increase can be

accounted for by changes in human capital and changes in health capital as shown in equation (1):

$$\Delta \% w(t) = \alpha \Delta \% Z(t) + \beta \Delta \% H(t)$$

(1)

4. The Data and Methodology

This section begins with discussion on basic information of the Thai health literacy data; the most recent and most comprehensive data set available for the study of this nature. Then empirical method - the Propensity Score Matching- used to estimate percentage differences in annual income will be elaborated.

4.1 Data

Data on persons with disability are scarce. In Thailand, the Thai Health System Research Institute (HSRI)'s health literacy⁴ data set is the most recent and most comprehensive data on persons with disability- blind, deaf and handicapped. The data, collected in early 2013, containing 1,600 samples of persons with disability nationwide. Key information contained that are relevant to this study are, types of disability, gender, age, educational attainment, total personal income, self-rated health condition and health literacy. Figure 4.1 and 4.2 provide an overview of the data. It can be seen that only about 15 percent of persons with disability surveyed have tertiary qualification. Weighted average of annual income of a tertiary degree holder is about 2.3 times higher than those with basic education.

⁴ According to the U.S.'s Centers for Disease Control and Prevention (CDCP), Health Literacy is the capacity to obtain, process, and understand basic health information and services to make appropriate health decisions (CDCP, 2013).

Figure 4.1: Distribution by Education

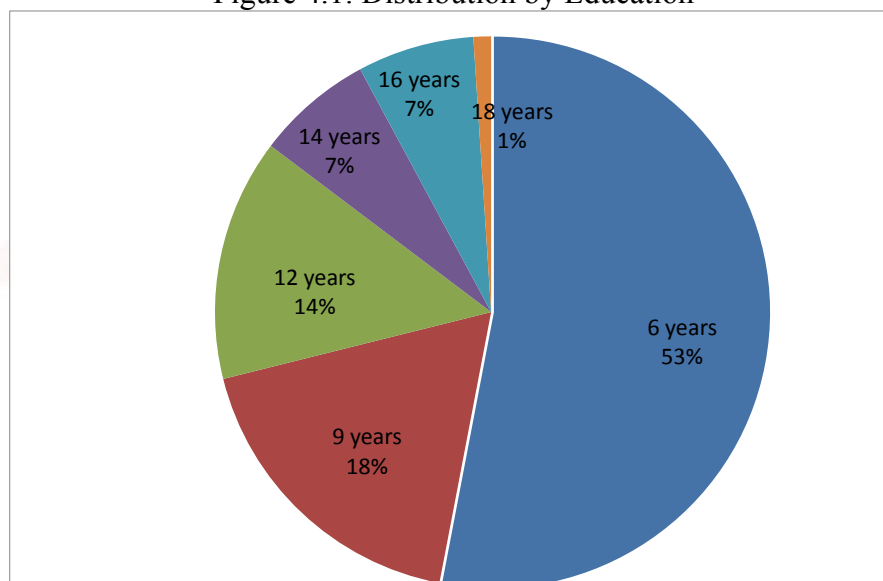
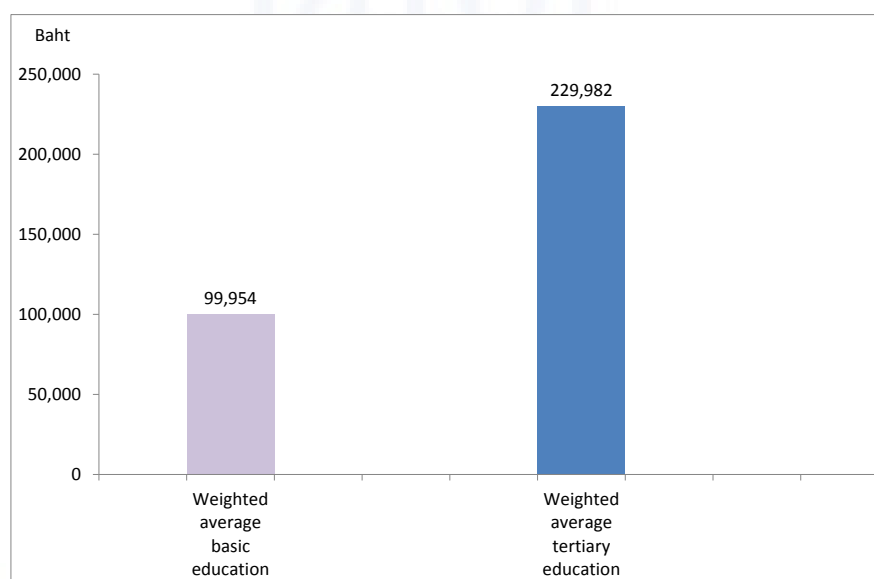


Figure 4.2: Weighted Average of Annual Incomes



4.2 Empirical Method

Typical approach to estimate returns to education relies on Mincerian earning function. Years of schooling is used as a one of the regressors to capture the effect of additional year of education on earning. It is a well-known fact in labor economic literature that schooling coefficient is contaminated by biasness introduced by omitting certain variables such as individual's ability and attitude towards learning

(Griliches, 1977; Berger and Leigh, 1989; Card 2000). Attempts have been made to address these issues; yet none of them has been satisfactory.

Another approach which allows us to address such bias is to frame the exercise in the context of treatment-control research design. In an ideal setting, we can randomly assign disability persons into treatment and control groups with treatment being having access to tertiary education. In such randomized control exercise, difference in average earning between is caused by such treatment. Unfortunately, it is not possible to conduct such exercise. The second-best approach is to carry out quasi-experimental design which mimic as closely as possible characteristics of randomized control experiment. Propensity Score Matching (PSM) is one of such approach (Morgan and Winship, 2007; Brand and Xie, 2010). This approach is now discussed.

In essence, PSM creates a statistical comparison group based on a propensity score-the probability to participate in a treatment. The probability estimate is based on observed characteristics of participants. Participants and nonparticipants are then matched by their propensity scores. The average treatment effect of the program can be estimated by differences in the mean values of outcomes between these two groups. It should be noted that, in practice, PSM is most useful when observed characteristics have sufficient influence on program participation decision. Sufficient characteristic information also helps to minimized biased inherent in the program (Rosenbaum and Rubin, 1984; Dehejia and Wahba, 2002)

In the context of this study, omitted variable biased is more pronounced because the design of the health literacy survey. Primary purpose of this survey was to collect data on health literacy without much attention paid to collecting socio-economic background information. Consequentially, Mincerian estimates will suffer from omitted variable biased, possibly in a greater degree than typical estimates using labor force survey data. The question is whether PSM would help to mitigate such bias?

The answer to the above question is positive. The health literacy data contain some basic characteristics; in addition, the data also contain disability persons' self-rated health status as well as health literacy score. Conceptually, health literacy helps to make appropriate health decisions. Persons who score higher in health literacy are more likely to be capable of looking after themselves. Unobserved characteristics that influence one's decision to undertake tertiary education correlate with health literacy scores. By including health literacy scores into the estimate of propensity score will, therefore, increase accuracy in matching characteristically identical individuals in the two groups.

To obtain returns to tertiary education – defined as percentage differences in annual income- between tertiary degree holders and those with basic education, log of annual incomes are used as dependent variable. Data on types of disability, gender, geographical location, age, educational attainment, total personal income, self-rated health condition and health literacy are independent variables included to estimate propensity score. Effect of student loans sizes on returns to education is estimated by

deducting annual payment required to service the loans from annual income of tertiary degree holders prior to commencing PSM exercise. Amounts to be deducted are based on repayment schedule of the SLF shown in Figure 2.1. Three loan sizes are used in the estimate: 200,000 baht, 300,000 baht, and 400,000 baht. We also restrict the estimate to include only those aged between 25 to 50.

5. Results

Result from PSM estimate of average treatment effect of having a tertiary degree is shown in Table 5.1. It can be seen that a person with disability with a tertiary enjoy about 29.5 percent higher of their annual income compared to a person without such qualification. The difference is statistically significant. This confirms the argument developed in section 3 that education, after controlling for health and other characteristics, determines one's total human capital, hence one's income. Table 5.2 compares the result obtained from this study two previous findings by Lamichhane and Sawada (2013) and Mori and Yamagata (2009). It can be seen that the Thai estimate in this study is consistent with two previous findings; that is estimates of returns to tertiary education is in the order of 30 percent.

The effects of student loan sizes on returns to tertiary education are calculated as described in section 4.2. Results in Figure 5.1 show the effect of borrowing from the SLF to finance their education. Baseline estimate for the debt size 200,000 baht, which is a typical debt size for normal person borrowing from the SLF, reduces the return to 22; further increase in debt to 300,000 and 400,000 baht reduce the returns further to 18 and 14 percent respectively. Thus it can be concluded that, while higher loans size do affect returns to education for persons with disability, they can still enjoy considerable returns on such investment; investment in tertiary education is a worthy investment and will surely help to improve quality of lives of those who have successfully undertaken it.

Table 5.1: Propensity Score Matching Estimates

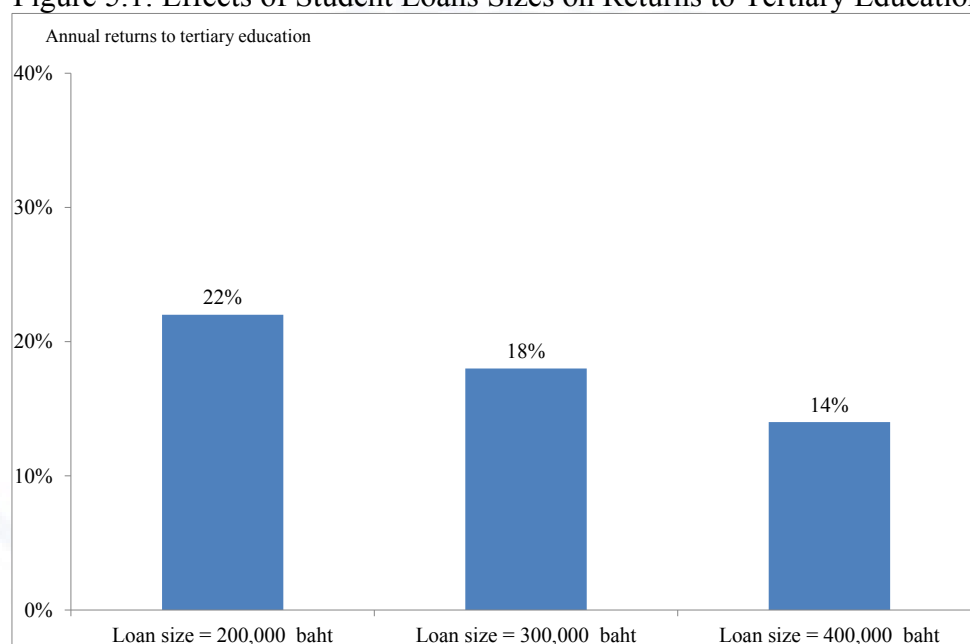
Variable	Mean value		Difference	S.E.	T-stat
	Tertiary education	Basic education			
Log of annual income	9.240	8.945	0.295	0.142	2.09**

** Statistically significant at $\alpha = 0.05$

Table 5.2: Comparisons to Previous Studies

Author (s)	Country	Returns to education
Lamichhane and Sawada (2013)	Nepal	30.4%-33.2%
Mori and Yamagata (2009)	Philippines	24.7%-30.1%
This study	Thailand	29.5%

Figure 5.1: Effects of Student Loans Sizes on Returns to Tertiary Education



6. Conclusion

This paper is motivated by the fact that there are about 1.5 million disabled persons in Thailand in 2011. A year later 234,390 of them died; many of whom the deaths were premature. Education seems to be one of the candidates that can help some of the able disability persons to come out of deprived situation. Such initiative, however, has to be supported by hard empirical fact of whether such investment will yield positive return. This paper addresses this question by providing estimates of returns to tertiary education for persons with disability.

The Thai health literacy data is used to undertake this exercise. As dictated by nature of the data, PSM is used to estimate returns to education. It has been found that return to education for tertiary education is about 29.5 percent. When taking into account the fact that disabled persons have to rely on student loans to commence such endeavor, returns to education fall to around 14 to 22 percent depending on the loan sizes. The results confirm that tertiary education is a worthy investment and will surely help to improve quality of lives of those who have successfully undertaken it.

There are two other critical challenges that must be addressed in conjunction with promoting access to tertiary education. The first stem from the fact that disabled graduates cannot compete with typical graduates in labor market; policies to promote hiring disabled graduates will greatly improve their success in labor market. The second challenge is perception toward persons with disability. They have long been stigmatized as having to constantly rely on public support. Such negative perception may hinder their progress in the workplace and social ladders. A new fact-based perception that disabled persons are valuable members of our society must be promoted. By addressing these two challenges appropriately, education will be the key to ensure that they to contribute productively to the society

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Political Business Cycle in Taiwan—Evidence from Central Government Expenditure

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Abstract

Political business cycle (PBC) is one of the most discussed theories in political economy filed. PBC refers to the phenomenon that incumbent uses fiscal or monetary policies to create economic boom before election so that periodic fluctuations are induced according to election calendars. Among many economic variables suggested by previous literature to examine PBC, government expenditure is one of the easily manipulated fiscal tools by incumbent before elections in order to remain in office. This paper use panel data from 1992 to 2010 to examine the effect of presidential and legislative elections on central government departmental expenditure in Taiwan. Moreover, we also collect related economic and political variables in the models. Four models with eight regression are used and compared.

Keywords: political business cycle, Taiwanese central elections, government expenditure

1. Introduction

The relationship between election and economic performance has been discussed and examined by scholars since 1940s. Although Kalecki (1943) coined the term “political business cycle”, Nordhaus (1975) is the one who uses economic model to examine the linkage between elections and macroeconomic performance. It is believed that among different political events which might have impact on markets, political elections are particularly important (Pantzalis et al., 2000: 1576). Tufte (1978: 65) pointed out the importance of election on nation’s economics as follows:

When you think economics, think elections;

When you think elections, think economics.

In the democratic regimes, because incumbents under the pressure of re-election, they tend to create economic boom or promise offering benefit to specific groups before election in order to remain in power. For instance, in the 2012 Taiwanese presidential election, the two main competitive parties, Kuomintang (KMT) and Democratic Progressive Party (DPP) raced to offer a better subsidy to farmers in order to win the farmer’s votes. KMT proposed to add 316 NTD to farmer’s original subsidy in the first place. However, because DPP proposed to add 1,000 NTD instead of 316 NTD in their political campaign, KMT finally decided to raise subsidy to farmers as 1,000 NTD per person and also raise other subsidies to minorities. These benefit adjustments cost government about 20 billion NTD (United Daily News, November 18, 2011). The phenomenon that incumbents use fiscal or monetary policies to boost economy or promise some benefits to specific groups during an election so that a periodic fluctuation is created according to elections is called political business cycle (PBC).

There are mainly two approaches of PBC: opportunistic and partisan models. Opportunistic model assumes that there is imperfect information about an incumbent’s competence and expansionary policy before election is taken as an indicator of high competence by voters. On the other hand, a partisan model assumes the driven force of economic fluctuations caused by elections is the different ideologies between parties. A left-wing party is more averse to unemployment and less averse to inflation than a right-wing party. Although two theoretical models offered by scholars, most studies found evidence which support opportunistic models. The partisan PBC phenomenon was found in the United States, but not in many other countries (Drazen, 2001: 75-76). Therefore, the paper focuses on the examination of opportunistic PBC as well.

The purpose of this paper is to examine if central elections induce opportunistic PBC in Taiwan. Among many economic variables suggested by previous literature to examine PBC, government expenditures is one of the easily manipulated fiscal tools by an incumbent before elections in order to remain in office. Therefore, this paper

examines the changes of Taiwanese central governmental expenditures to discuss the possible opportunistic PBC phenomenon in Taiwan.

2. Literature Review

There are two main theoretic models of political business cycle in the PBC literature: one is opportunistic approach, and the other is partisan approach. The main difference of these two approaches/models is the explanation of driving forces of a political business cycle. Leading by the works of Tufte (1975, 1978), Nordhaus (1975), McRae (1977), Rogoff and Sibert (1988), and Rogoff (1990), opportunistic approach argues that there is imperfect information about an incumbent's competence, with expansionary policy before an election taken as an indicator of high competence. On the other hand, partisan approach, mainly suggested by Hibbs (1977) and Alesina (1987, 1988), presents a model of partisan policymakers in an environment similar to that of the Nordhaus (1975), but where these partisan differences were the key driving force for PBC (Drazen, 2001: 75-76).

Drazen (2001: 76-77) reviewed the works for a quarter of a century (1975-2000) of PBC in his paper "the political business cycle after 25 years". In the same vein, Shi and Svensson (2003) also provided their observations of development of political budget cycle from 1987 to 2002. These two articles provide a quick review of past theoretical and empirical researches of PBC.

After reviewing the literature of PBC between 1975 to 2000, Drazen (2001) has several conclusions of the development of PBC: first, on the empirical side, there are a number of clear electoral effects on macroeconomic variables, but there is much less hard evidence found in the developed countries. Second, empirical data shows that there is significant disagreement about whether there is opportunistic manipulation that can be observed in the macroeconomic data but there is a clear partisan effect in the United States. Third, on the theoretical side, some key assumptions are criticized for implausibility, such as irrational behavior by the public and the reliance on monetary surprises as the driving force. In the conclusion, Drazen (2001) wrote:

The survey was meant to convey a very clear message: monetary surprises are an unconvincing driving force for political cycles, either opportunistic or partisan (p113).

Shi and Svensson (2003) directly shifted their focus from macroeconomic variables to fiscal policy manipulation of political budget cycle based on the same issue Drazen (2001) raised: government in fact has no real control on macroeconomic economic variables. Besides the argument of monetary and fiscal policies, Shi and Svensson (2003) suggest moral hazard approach to PBC. They followed Persson and Tabellini (2000) and Shi and Svensson (2002) to revise the models of Rogoff (1990) who uses

adverse selection approach in examining PBC. The reason is that in contrast to adverse selection models which need to know the type of an incumbent, all types of the incumbent government will incur excessive pre-election budget deficit (independent of their competent level). In addition to moral hazard models, Shi and Svensson (2003) also outline two other developments of PBC at the time. One is that researchers use more sophisticated empirical methods to estimate PBC. The other is that studies has shifted from industrialized countries to all (including developing countries). They point out time series methods appropriate for dynamic panel data regressions have been adopted cross-countries studies in PBC.

Besides the debates of policy instruments and quantitative methods used in PBC research, some scholars focus on some possible intermediate variables which might change the causal relationships between election and government fiscal variables. The degree of democracy and transparency are two variables which are tested in different empirical researches. The degree of democracy represents the cost of removing a policymaker from office. Gonzalez (1999a) finds that with a high enough cost of removing officeholders, incumbents will not be removed from and will follow their full-information optimal policy. Also, Gonzalez (1999b) considers the relation between the level of democracy and the strength of the political cycle in a sample of 43 countries over the period 1950-1997 and finds that the cycle is strongest in countries with intermediate levels of democracy. Moreover, Brender and Drazen (2004) investigate 68 democratic countries between 1960 and 2001 and find political budget cycles in the deficits of new but not established democracies. As for transparency, the higher the degree of transparency means the smaller the amount of distortion away from the first best in the political budget cycle. Gonzalez (1999a) found that there is a positive correlation between the degree of transparency and political budget cycle, but only in the samples that the transparency measures are at intermediate levels.

From the past literature, we have some observations: firstly, the indicators of political business cycle shifts from macroeconomic variables (for example, unemployment rate or inflation or GDP growth, etc.) to instruments which government has direct control on, such as government budget or expenditures. Secondly, a more sophisticated statistical methods and panel data type are employed by researchers in empirical researches. Thirdly, more and more scholars did cross-country comparison or examine developing countries rather than only target on developed countries. Finally, some intermediate variables such as the degree of democracy or transparency were introduced in the empirical model specifications.

3. Research Design

3.1 3.1 Research Question

The main purpose of this research is to find a possible cyclical pattern of presidential election in Taiwan. From the literature review, we know that macroeconomic variables performances (such as inflation or unemployment rate) normally has a time lag to be recognized by people as well as hardly manipulated by an incumbent; therefore, government expenditure is used by researchers lately to examine the existence of PBC. And because the elections we concerns are direct presidential elections, the nation-wide government expenditures, central government expenditures, become the target of examination in this research. Consequently, the research question is stated as:

Does Taiwanese central government expenditure have a four-year cycle because of presidential elections?

3.2 3.2 Model Specification, Data and Hypotheses

In order to answer the research question, the authors collect central government expenditure from 1992 to 2010, covering four full election cycles, and use three different statistic models to examine and test the data set.

The time span of the data set includes four Taiwanese presidential elections in 1996, 2000, 2004 and 2008. In other words, there are four full election cycles in the data set. Table 1 lists the terms, name of winners, the winner's parties, and voting date for these four elections.

Table 1 Taiwanese presidential elections, term 9th to term 12th

Term	Winner	Winner's party*	Voting date
9	Lee Teng-hui	KMT	1996-03-23
10	Chen Shui-bian	DPP	2000-03-18
11	Chen Shui-bian	DPP	2004-03-20
12	Ma Ying-jeou	KMT	2008-03-22

Source: Central election commission, <http://www.cec.gov.tw/>

*: KMT: Kuomintang ; DPP: Democratic Progressive Party

The dependent variable in the model is central government expenditures. The Taiwanese central government expenditures can be divided into the following eight departmental expenditures: general, education/sciences/culture, social benefit,

community development and environmental protection, retirement and condolence, debt, and others expenditure. We use this panel data which consists of 7 departments with 19 years to examine the possible cyclical patterns according to the four presidential elections in Taiwan.¹

There are four kinds of independent variables in the model: election variables, political variables, domestic economic variables and a global economic variable. The election variables are the main independent variables in the model. According to PBC theory, an incumbent usually tries to stimulate a nation's economy before an election; therefore, we assume that central government expenditures would arise a year before election year to make people "feel good" before election. Moreover, an elected government has no incentive to stimulate economy after an election, so economy might slump after an election. Accordingly, in order to detect the timing of government expenditure variation, we put two kinds of election dummy variables in the model: one is *elect* which takes a value of 1 in the year of an election and 0 otherwise; the other one is *b_elect* which takes a value of 1 in the year preceding an election and 0 otherwise.² Therefore, the first two hypotheses are as follows:

H₁: Taiwanese government expenditures rise in the year preceding a presidential election.

H₂: Taiwanese government expenditures fall in the year of a presidential election.

The second set of independent variables is political variables. As stated above, the previous literature point out the importance of two intermediate variables in the political budget cycle: the degree of democracy and transparency, we include these two variables in the model. Although the first direct presidential election was held in 1996 in Taiwan, most people consider the 2000 presidential election which has marked the fledgling democracy's first peaceful transfer of power, after over half a century's rule by the KMT party-state apparatus in Taiwan (Hung, 2011: 37). Therefore, the variable *dem* represents democracy phase, which takes a value of 1 after the year of 2000 and 0 otherwise. Transparency represents the probability that voters learn the incumbent's competence costless. Therefore, it means that the higher the degree of transparency, the smaller the amount of distortion away from the first best in the political budget cycle (Drazen, 2001: 98). We use corruption perception

¹ Some departmental expenditures can be divided into several sub-categories so that the final panel data consists 19 categories with 19 years.

² Taiwanese presidential election takes place on March of an election year so that authors

index announced annually from Transparency International (TI) to represent the degree of transparency in the model (denoted as trans in the model). Following the arguments of these two intermediate variables, the third and fourth hypotheses are:

H₃: Taiwanese government expenditure cycles are stronger in the years of “new democracy”.

H₄: Taiwanese government expenditure cycles are weaker when controlling the degree of transparency.

Because KMT and DPP both hold the offices for two terms in these four presidential election cycles, we also add a party variable in the model to detect a possible impact of party in the government expenditure cycle.

The other two sets of independent variables are served as control variables in the model. Following the models of previous literatures, we include inflation rate, GDP growth rate, unemployment rate, and GINI index as domestic economic control variables. Moreover, because Taiwan is an open economy and greatly affected by international or U.S. economy, we include Nasdaq Composite Index as a global economic control variable in the model. Table 2 summaries the variable type, code, explanations, and data sources.

Table 2 Variables and Data Source

Variable Type	Variable Code	Variable Explanation	Data Source
Dependent	gexpenditure	Central government expenditure growth rate	DGBAS
Independent	elect	Election variable 1 1 : the year of an election 0 : otherwise	Authors
	b_elect	Election variable 2 1 : the year preceding an election year 0 : otherwise	Authors
Political control variable	dem	Democracy variable 1 : 2000-2010 0 : otherwise	Authors
	trans	The degree of transparency (Corruption Perception Index)	TI
	party	Party variable 1 : DPP 0 : KMT	Authors

Domestic economic control variables	inflation	Inflation rate	DGBAS
	gdp	GDP growth rate	DGBAS
	gini	GINI index	DGBAS
Global economic control variable	nasdaq	U.S. NASDAQ index	TEJ

Source: Authors

Notes: TI: Transparency International, DGBAS: The Directorate General of Budget, Accounting and Statistics (DGBAS) of Executive Yuan in Taiwan; TEJ: Taiwan Economic Journal database.

There are four kinds of model specifications to examine political election cycles. Model 1 is base model which include election variables, domestic and global economic control variables. Model 2 adds the democracy variable to base model. Model 3 adds the transparency variable to model 2. Finally, model 4, a complete model, adds a party variable to model 3. The models are listed as below:

1. Model 1: Baseline model

$$gexpenditure_{it} = \alpha_{it} + election_{it} + inflation_{it} + gdp_{it} + gini_{it} + nasdaq_{it} + \varepsilon_{it}$$

2. Model 2: Baseline model + democracy

$$gexpenditure_{it} = \alpha_{it} + election_{it} + inflation_{it} + gdp_{it} + gini_{it} + nasdaq_{it} + dem_{it} + \varepsilon_{it}$$

3. Model 3: Baseline model + democracy + transparency

$$gexpenditure_{it} = \alpha_{it} + election_{it} + inflation_{it} + gdp_{it} + gini_{it} + nasdaq_{it} + dem_{it} + trans_{it} + \varepsilon_{it}$$

4. Model 4: Baseline model + democracy + transparency + party

$$gexpenditure_{it} = \alpha_{it} + election_{it} + inflation_{it} + gdp_{it} + gini_{it} + nasdaq_{it} + dem_{it} + trans_{it} + party_{it} + \varepsilon_{it}$$

Panel data set helps to control for factors that vary across government departments but do not vary over time as well as to overcome omitted variables problems. However, we found that this dataset has cross-sectional correlation problem. In order to correct cross-sectional heteroskedastic in the estimations, we use generalized least square (GLS) to estimate the coefficients in the models.

4. Empirical Results

4.1 Central Government Expenditure—total and departmental growth

Figure 1 graphs the fluctuations of growth rate of nine central governmental expenditures. The lines indicate the timing of presidential elections. Although we expect to see a rise before an election and a fall after an election if there is a political election cycle, the graphs are not really telling us much.

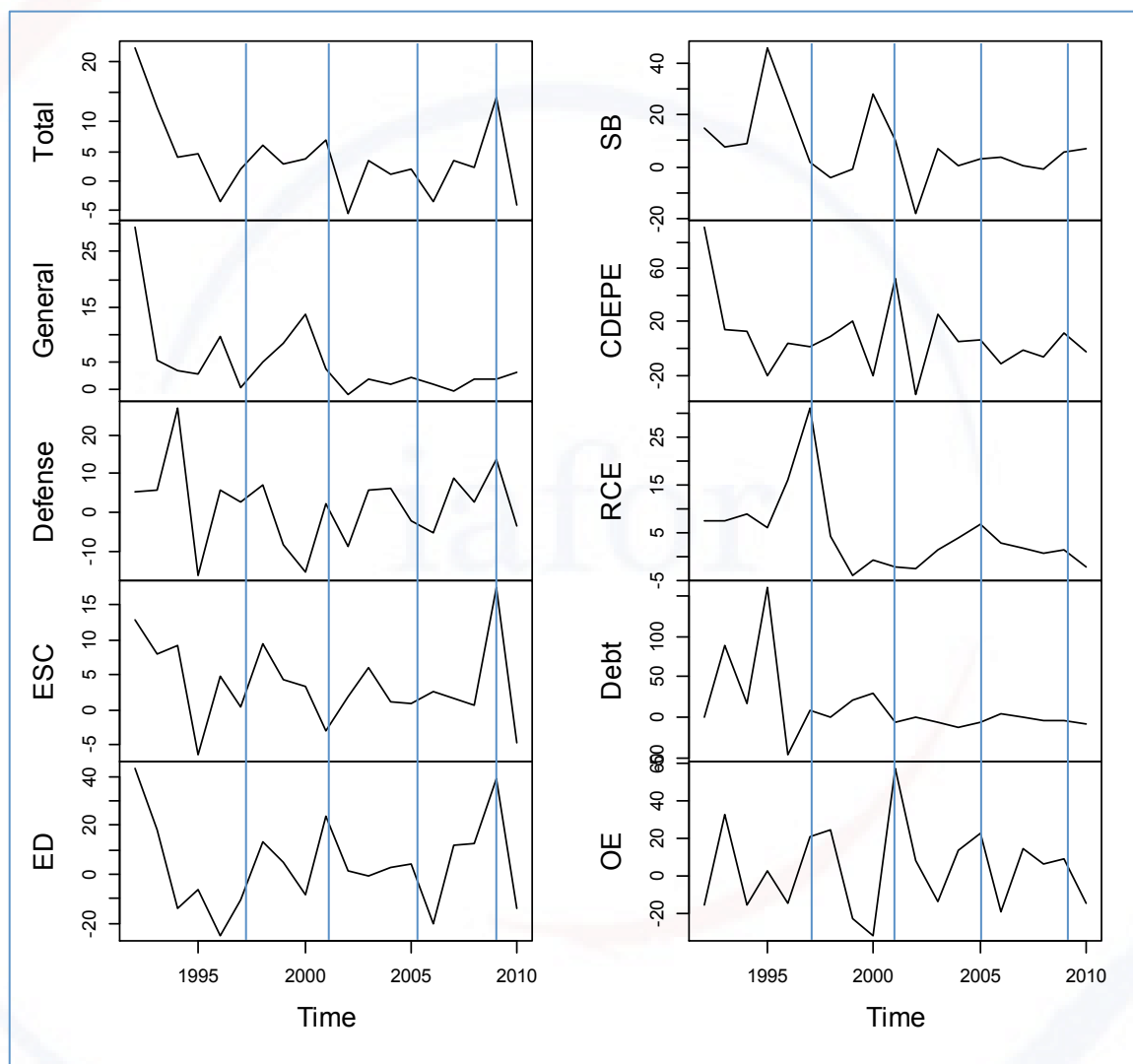


Figure 1 Taiwanese Central Government Expenditure—total and departmental growth, 1992-2010

Note: ESC: Education/Sciences/Culture; SB: Social Benefit; ED: Economic Development; CDEPE: Community Development and Environmental Protection; RCE: Retirement and Condolence; OE: Others Expenditure.

4.2 Regression Models

Table 3 presents some basic descriptive statistics of all variables in the regression models.

Table 3. Descriptive Statistics*

Variable Type		Variable Name	Code	Mean	Median	Max	Min	N
Dependent variables		Central Government Departmental Expenditure growth rat	gexpiture	7.91	3.40	195.23	-67.58	361
Independent variable		Election	elect	0.21	0.00	1.00	0.00	361
		Year Before Election	b_elect	0.21	0.00	1.00	0.00	361
Control Variables	Political	Democracy	dem	0.58	1.00	1.00	0.00	361
		Transparency	trans	5.56	5.60	5.90	4.98	361
		Party	party	0.47	0.00	1.00	0.00	361
	Domestic Economic	Inflation	inflation	1.51	1.43	4.10	-0.87	361
		GDP growth rate	gdpg	4.79	5.51	10.72	-1.81	361
		Gini Index	gini	33.26	33.85	35.00	31.60	361
	Global Economic	NASDAQ	nasdaq	7.59	11.56	61.83	-51.99	342

Source: Authors

* : Both Gini Index and Nasdaq index are been scaled to between 0 and 100; moreover, Nasdaq index is transferred to yearly change rate.

This study uses four different model specifications to examine political business cycles in Taiwanese central government expenditure. Table 4 summarizes the results of these four models with eight regression results. Each model has two regression results according to the different election variable (elect or b_elect).

Firstly, the two election variables both are statistically significant in all eight regressions but with different signs. The dummy variable in an election year has a negative sign but the dummy variable in the year preceding an election has a positive sign in the regressions. The results indicate that Taiwanese central government expenditures increase the year preceding an election year, *ceteris paribus*. However, the central government expenditures have a statistically significant fall when an election is over. The results of the main independent variables are consistent with the argument of opportunistic PBC theory: a government has an incentive to increase government spending before an election, and when an election is over, a government tends to cut back its expenditures. Consequently, the results confirm the first two hypotheses:

Taiwanese government expenditures do rise in the year preceding a presidential election according to the data.

Taiwanese government expenditures do fall in the year of a presidential election according to the data.

Regressions 3 to 6 summarize the results of controlling democracy and transparency of baseline model. The coefficients of election variables in these regressions are consistent with the results of the baseline model in the first two regressions. Also, the coefficient of democracy variable is consistently significant positive in model 2, 3, and 4. However, although the transparency variable is significant in model 3, but when controlling party variable, the transparency variable turns to be not statistically significant in model 4 (regression 7 and 8).

Table 4. Regression Results

Model	Model 1		Model 2		Model 3		Model 4	
Regression	1	2	3	4	5	6	7	8
constant	98.81 ***	108.47 ***	289.02 ***	206.18 ***	204.74 ***	167.00 ***	211.84 ***	203.89 ***
elect	-3.37 ***		-5.43 ***		-2.62 ***		-2.45 ***	
b_elect		2.25 ***		1.34 *		5.02 ***		8.93 ***
inflation	0.67 ***	0.25 **	0.42	0.17	0.32 ***	-0.17 **	0.52 ***	-0.05
gdpg	-1.94 ***	-1.91 ***	-2.32 ***	-2.11 ***	-2.24 ***	-2.19 ***	-2.33 ***	-2.42 ***
gin	-2.52 ***	-2.83 ***	-8.39 ***	-5.87 ***	-5.04 ***	-3.79 ***	-5.84 ***	-5.85 ***
nasdaq	0.04 ***	0.05 ***	0.07 ***	0.08 ***	0.11 ***	0.08 ***	0.07 ***	0.00
dem			12.39 ***	6.98 ***	13.46 ***	10.65 ***	17.31 ***	20.03 ***
trans					-5.50 ***	-6.09 ***	-1.63	-0.26
party							-7.11 ***	-11.60 ***
N	342	342	342	342	304	304	304	304
P-Value	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

Source: Authors.

Note: P-value<.01***, P-value<.05**, P-value<.1* °.

If we take the difference of two coefficients of election variables as an indicator of the strength of a PBC (the difference of an increase of expenditure growth before an election and a decrease of expenditure growth after an election), the strength of PBC increases with the political control variables adding in the baseline model. In the model 1, the difference is 5.62 (2.25 minus -3.37), in the model 2 is 6.77, in the model 3 is 7.64, and in the model 4 is 11.38. Therefore, the results of model 2, 3 and 4 support the hypothesis 3: Taiwanese government expenditures cycles are stronger in the years of “new democracy”. In other words, in a new democracy, an incumbent has a stronger motivation to manipulate government expenditures according to the timing of an election. Because of the insignificance of transparency in the model 4, we do not have enough evidence to support the hypothesis 4 in our dataset. To sum up, for the hypothesis 3 and 4, the test results are:

*Taiwanese government expenditure cycles **are** significantly stronger in the years of “new democracy” according to the data.*

*Taiwanese government expenditure cycles **are not** significantly weaker when controlling the degree of transparency according to the data.*

Finally, the party variable is statistically significant in the complete model. The negative and significant coefficient means that, comparing to the periods when KMT in the office, the government expenditure growth is negative when DPP in the office. But when controlling all political variables, the magnitude of PBC is stronger.

5. Conclusions and Future Research Suggestions

The main purpose of this study is to explore the fluctuations of central governmental expenditure in terms of presidential direct election in Taiwan. Four regressions models are used to examine the growth of central governmental expenditure panel data. Controlling for political variables, domestic economic variables, and global economic variables, the four models and eight regressions exhibit the same results: the election variables have statistically significant impacts on central government departmental expenditures. In other words, the opportunistic political business cycle shows in Taiwan after Taiwanese the first presidential direct election in 1996.

Brender and Drazen (2005) find that the existence of a political business cycle in a large cross-section of countries; however, they find the result is driven by the experience of “new democracy”. The political deficit cycle is stronger in new and weaker democracies. Taiwanese presidential direct election started in 1996. Moreover, a real two party system has begun in 2000, just 13 years from now. Therefore, Taiwan is a new democracy, thus, the result that opportunistic PBC exists in Taiwanese central governmental expenditure is consistent with the conclusions found by Brender and Drazen (2005). Shi and Svensson (2006) use panel data to examine the relation between elections and fiscal policy. They suggest political budget cycles are significantly larger, and statistically more robust, in developing than in developed countries. Taiwan is in the developing country’s group and our results provide an evidence that the political business cycle is stronger when controlling the democracy variable; therefore, our results are consistent with the outcomes of Shi and Svensson’s research.

One more interesting research result provided by the regressions is that party is a significant factor in the empirical model. In other words, different party has different expenditure growth rate in their regimes. This might suggest that partisan political business cycle might happen in Taiwan. This possible argument might need to be examined in the future.

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Case Management in the Civil Trial Courts of Bangladesh : Scope for Thinking

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Abstract

Most developed countries have already turned towards a ‘second generation’ case management system, but it has only recently even been thought about in Bangladesh where it is greatly needed. There are 2.1 million cases pending in the Subordinate Courts of Bangladesh. During my five years’ experience as a judge in Bangladesh, I found some cases had lasted through three generations of the same family. The object of Case Management is to ensure fair, speedy and cost-effective case disposal, which is a pre-condition of ensuring ‘Justice;’ Success in application of case management in reducing case backlog has already been proved. Case management is involved from the commencement of the dispute in the court till it is finally resolved; it is acknowledged that not all cases are suited to a case management regime. The primary responsibility for the case management should be upon the judges, who have the necessary attributes and interest in case management, with the help of lawyers, court staff and parties to the case. An effective case management will identify the issues in dispute at an early stage, reduce the delay and expenses, limit the interlocutory dealings and also firm a date for final hearing within a reasonable time after the suit is first filed. In this paper, I will explain the urgent necessity and scope for case management for the **civil trial courts of Bangladesh**, and how it can be a **successful method** in reducing backlogs.

. INTRODUCTION

To dispose a case within the scheduled time is one of the components to ensure justice. The judiciary is an institution accountable to society to administer justice and to organize itself to ensure the resolution of disputes in a way that is not only fair, just and in accordance with the law but also efficient, cost effective and with a high degree of professionalism and skill (Doherty, Doogue & Simpson 2013).

Delay in court proceedings has been perceived as a problem for long time. Former Chief Justice Spigelman of the New South Wales Supreme clarified that though it is often said that justice delayed is justice denied, at the same time it is to be remembered that not all lapses of time can be called 'delay' (2009, p 1). Spigelman identified the driving force for case management due to the existence of delays in the court system (2009, p 7).

Case management is no longer a new concept for judges and court managers in the United States and some other countries. Steelman noted that judges and court managers must be realistic about the implications of case management in making the court proceedings speedy. He then explained that on the civil side, implementation by the court is the key concepts of case management and is strongly correlated with speedy case processing times and reducing delay (1997, p 90).

In this paper, the author has used some empirical data collected (18 Sep- 20 Oct, 2013) for her thesis with due process. The entire data collection is yet to be completed.

CASE MANAGEMENT

Background

Case management first appeared from a brief review of American court reform efforts in the twentieth century (Steelman, Goerdts & McMillan, 2004). In the first half of the twentieth century, this reform movement was introduced by Roscoe Pound, William Howard Taft and Arthur Vanderbilt (Steelman, Goerdts & McMillan, 2004). Among them the father of the reform in America was Roscoe Pound, who delivered a speech 'The causes of popular dissatisfaction with the administration of justice' to a convention of the American Bar Association in 1906 (Pound, 1906). Like other common law countries, Australia is also concerned about the fairness, and cost efficiency of the judicial system (Sackville 1997). According to Justice Venning, case management was introduced in the Australia in the late 1980s when Solomon and Somerlot published their seminal text, 'Case Flow Management in the Trial Court: Now and in the Future' in 1987 (2013, p 1). Delay in courts is a common problem. Generally backlog means 'exceeding the time frame'. But that definition has been changed in recent times. According to Steelman the terms 'backlog' and 'congestion' were often used interchangeably with 'delay' to describe a court experiencing difficulty with its caseload (1997, p 78). The general consensus about the definition of

delay was eventually expressed by the American Bar Association's National Conference of State Trial Judges in 1984 where 'Delay is declared to be any elapsed time beyond that necessary to prepare and conclude a particular case' (Steelman, 1997).

Definition of Case Management

Steelman, Goerdt & McMillan identifies caseload management as the absolute heart of court administration (2004, p xvii). The Australian Law Reform Commission (ALRC) defines case management by emphasising the control of the case movement process through the Court or Tribunal (ALRC, 1996). It further states that when the case management is performed by the judges it is called 'judicial case management' (ALRC, 1996; P M Lane, 1993, p 3).

The Case Management Society of Australia (CMSA) has also defined case management as, 'Case management is a collaborative process of assessment, planning, facilitation and advocacy for options and services to meet an individual's holistic needs through communication and available resources to promote quality cost effective outcomes'. CMSA also termed it as a service delivery approach. According to the proposal of the CMSA, properly trained court staff, termed as case managers, can develop plans or strategies in collaboration with the client, reflecting their choices and preferences for the service arrangements, to make the clients understand that they are involved in all aspects of the planning and service arrangement in a dynamic way.

Therefore, case management in legal terms refers to the schedule of proceedings involved in a matter. There are various stages in litigation, such as the filing of a claim, written statements (answers), the discovery process, (interrogatories, subpoena, depositions, etc.), and motions that occur before a trial is held or a decision is rendered. Each stage of the process has a scheduled timeframe in which it should be completed. When a claim is filed and a case is assigned to a court, the judge will often set forth a schedule according to the relevant Act for the submission or completion of the pleadings, court appearances, and other matters, which can be broadly termed as case management.

Attributes of Case Management

The greatest success of case management is it reduces backlogs and delay. The Honorable Sir Mason outlined some advantages of case management: for example, it saves time of disposition, it also ensures the hearing date and future course of the case; it also helps to identify issues at a very early stage (1997, p 195).

The goals of case management also reflect the importance of case management. Solomon and Somerlot identify the goals of case management as: 'Court management of case progress as part of an organized predictable system should assure (1987, p 5):

- equal treatment of all litigants by the court;

- timely disposition consistent with the circumstances of the individual case;
- improving of the quality of the litigation process; and
- public confidence in the court as an institution'

Although courts may differ in their specific approaches to caseload management, those approaches can generally be considered on the basis of certain techniques that all successful courts have in common (Steelman 1997; Solomon and Somerlot 1987). At the same time it is also true that there is no single model of a successful delay-reduction or delay-prevention program. Different courts use different approaches and adapted program details suitable to local circumstances and have not sought a single miracle cure (Steelman 1997).

HOW THE CIVIL TRIAL COURTS OPERATE IN BANGLADESH

The Court system of Bangladesh has developed over many years, and it is a combination of Islamic concepts and the common law system; however the common law system generally prevails on all civil matters, but family matters. The court structure of Bangladesh is a little complex. The lower judiciary is separated into civil and criminal matters though the higher judiciary deals with both.

A major portion of Bangladeshi law was enacted during the British colonial period. After the independence (26 March 1971) of Bangladesh, in 1972 an order named the *Bangladesh (Adaptation of Existing Laws) Order 1972* (Bangladesh) was passed and through this Order all Acts, Ordinances, Regulations, Rules and Orders or by-laws which were enforced immediately before 26th day of March, 1971 comprised the laws of the People's Republic of Bangladesh (*Bangladesh (Adaptation of Existing Laws) Order 1972* Bangladesh s 2).

With a population of 163 million in a territory of only 1,43,998 sq km, Bangladesh is the eighth most populous country in the world (CIA). In this vast populated country 2.4 million cases are pending (Faruque, 2013) of which 77% are land litigation (Barkat & Roy, 2004).

Under the supervision of the High Court Division of the Supreme Court of Bangladesh, there is a set of Subordinate Courts and Tribunals having civil, criminal or special jurisdiction. Chapter II of Part VI of the *Constitution* concerns the establishment of subordinate courts of law and the respective laws determine their powers, functions and jurisdictions. The civil courts are governed mainly by the *Code of Civil Procedure 1908* (Bangladesh), the *Civil Rules and Order 1935* (Bangladesh), the *Specific Relief Act 1877* (Bangladesh), the *Evidence Act 1872* (Bangladesh) and other relevant acts.

Every Civil Court shall try all suits of civil nature if they are not explicitly barred by law. A ‘suit of a civil nature’ means any dispute arising out of a right to property or a right to an office. Suits of civil nature also includes family suit. It is also stated that every suit shall be instituted in the court of the lowest grade competent to try it (*Code of Civil Procedure 1908* Bangladesh s 15). Though the Code has not defined the word ‘suit’, a suit is considered to be a civil proceeding filed in civil court by the aggrieved person, institution, legal entity or the State, whose civil right has been violated.

The stages of a civil suit in the court of first instance are as below:

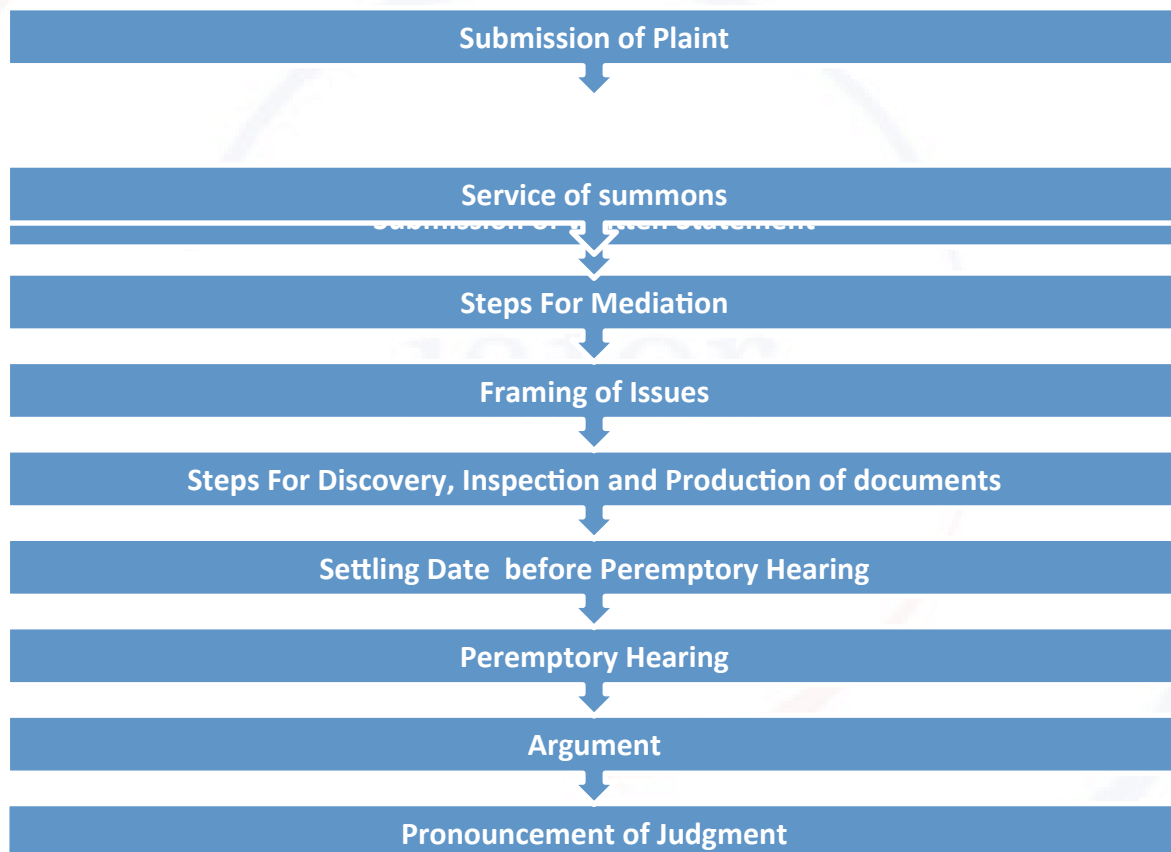


Chart 4: *The Stages of a Civil Suit in Bangladeshi civil trial court*

A. Submission of Complaint

When a dispute arises regarding any matter of a civil nature, any party can file a suit through application, which is commonly known as ‘complaint’. This is the first stage of a civil suit. The person who submits the complaint is called plaintiff and the person against whom the plaintiff files the suit is called defendant. While there no restriction that the plaintiff or the defendant must appear through their lawyer, the general practice is they appear through their lawyer and their lawyer prepares their applications including complaint/written statement and other relevant papers on their behalf. Along with the complaint the plaintiff has to submit the court fees and the cost of serving

summons and he also needs to submit as many copies of the plaint as the number of the defendants (*Code of Civil Procedure 1908* Bangladesh Or. IV rule 1). The Sheristadar¹ (court officer) of the court shall examine the plaint to ascertain whether the plaint has been presented in accordance with provisions of the *Code of Civil Procedure 1908* under *Civil Rules and Order 1935* Vol-1 rule 55.

B. Service of Summons

By this process, the court officer on behalf of the court takes the responsibility to inform the defendant that a suit has been filed against him. The court notice is sent to the defendant along with the copy of the plaint so that he knows what allegation has been drawn against him and he can prepare accordingly (*Code of Civil Procedure 1908* s 27). Generally the time limit for issuing summons is five working days, but service of the summons on the defendant depends upon the satisfaction of the Judge that the summons was duly served on the defendant. The defendant or his authorised agent to whom the summons is so delivered must acknowledge the service on the original copy of summons.

C. Submission of Written Statement

When the defendant comes to know that a suit has been filed against him, and he knows what allegation has been drawn against him, then it becomes his duty to go to the court and submit his statement in writing, which is popularly known as submission of written statement. Usually the time limit for submission of the written statement is up to 30 working days after receipt of the summons (*Code of Civil Procedure 1908* Or. VIII rule 1). However, the court can extend the time up to 60 working days (*Code of Civil Procedure 1908* Or. VIII rule 1) applying its discretionary power. The empirical observation by the author is this discretionary power is exercised frequently.

If the defendant does not appear or submit written statement in court within time, then the Court holds the case for ex parte hearing and after taking documentary and oral evidence from the plaintiff the Court pronounces ex-parte judgment (*Code of Civil Procedure 1908* Or. VIII rule 1).

D. Alternative Dispute Resolution

In civil procedure Alternative Dispute Resolution is generally termed as 'mediation'. Initiative to mediate between the parties has become compulsory under *Code of Civil Procedure (Amendment) Act 2012*. If the parties agree to try for mediation then the Judge will appoint a mediator for them, and the whole procedure shall not exceed 107 days in total (*Code of Civil Procedure 1908* s 89 A). The Judge himself can be the mediator. If a mediator is appointed other than the judge himself, then fees will be imposed upon the parties. If the mediation is successful, then the mediator will submit a report to the court (*Code of Civil Procedure 1908* s 89 A). It is to be mentioned that

though the Judge as well as the parties are bound to take an initiative for mediation, they are not bound to resolve the issue through mediation.

E. Framing of Issues

If the mediation fails, then the case goes back to the original court. The next step is framing of Issues. In this stage, the Court tries to find out the issues on which the parties disagree (*Code of Civil Procedure 1908* Or. XIV rule 1).

F. Steps for Discovery, Production and Inspection

Within 10 days of framing of the issues, the judge shall make necessary order for the production of the documents which are necessary for the suit (*Code of Civil Procedure 1908* s 30 and Or XI rule 1). At this stage, the plaintiff or the defendant by leave of the Court may deliver interrogatories in writing for the examination of the opposite parties (*Code of Civil Procedure 1908* Or XI rule 2).

G. Settling date before Peremptory Hearing

This stage is a transitional stage between the Peremptory Hearing stage and stage for discovery, production and inspection. It is a conventionally accepted stage though not specified in the *Code of Civil Procedure 1908*. According to the *Civil Rules and Order 1935*, there must not be in total more than 5 cases in the hearing list in each working day and will not exceed 120 cases in total at a time in the Cause List² of the Court. The *Code of Civil Procedure 1908* is very clear and restrictive about the fixation of suits in the daily Cause List. So if the Court Diary³ is full (that means if already 120 cases are already listed for hearing at a time), then the newly prepared cases must wait in this stage until the number of the cases from the court diary is reduced to 70 (*Code of Civil Procedure 1908* Or. XVIII rule 20). The empirical experience of this writer finds that though there are restrictions not to list more than 5 cases in each working day on an average 12 cases are listed.

H. Peremptory Hearing

Hearing of the suit means at this stage the judge would be taking evidence both oral and documentary to consider the questions relating to the determination of the suit. General rule is the plaintiff takes the dock first. It is the responsibility of the party to present witnesses on their behalf. The Court has full discretion on showing of sufficient cause to allow adjournment up to a maximum of six times for each party (*Code of Civil Procedure 1908* Or. XVII Rule 1). Order XVII rule 1 states that the court shall award costs to the other side in case of adjournment beyond six times.

I. Argument

This is another stage which exists in practice, but there is no specific provision in the Code of Civil Procedure 1908 for this stage. But Order XVIII, Rule 2 (2) & (3) of the *Code of Civil Procedure 1908* states that:

‘The other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case. The other party beginning may then reply generally on the whole case.’

After completion of the production of evidence from both parties, the court fixes a date for hearing the summary of the case and lawyers of the both parties argue on their behalf according to the evidence as well as to the laws.

J. Judgment

The Court, after the case has been heard, shall pronounce judgment⁴ and on such judgment a decree shall follow (*Code of Civil Procedure 1908* s 33). A Judgment must be based on the evidence on record and should be concise but must touch all the important questions raised by the parties with reference to the issues in the suit (Justice Haque, 2011). The Judgments are enforced according to the direction written in the judgment. If there is no such direction, then the plaintiff has to file a separate execution suit according to section 38 & Order XXI of the *Code of Civil Procedure 1908*.

If any party is aggrieved by the judgement then the party can appeal to the higher court according to part VII of the *Code of Civil Procedure 1908*. Besides, the aggrieved party can go to higher court for revision under section 115 of the *Code* against any order of the interlocutory order from the original court. Empirical research finds that the parties often use this option and go for revision and it delays the whole procedure.

INTRODUCING CASE MANAGEMENT IN BANGLADESHI CIVIL COURTS

Most developed countries have already turned towards a 'second generation' of case management development (Victorian Law Reform Commission, 2008). Earlier they concentrated on speedy disposal but now they are moving for cost effective court systems. It is to be noted that the court system of Bangladesh is adversarial where the judges plays a silent role, but to introduce case management the judge must play an active role as the controller of the court. So questions may arise as to whether these two roles may conflict. Here I want to argue that the basic feature of the Australian courts is also adversarial system and they have successfully introduced case management empowering the judges where the judge will actively control the court procedure. From the Bangladesh perspective, it can also be said that we already have introduced the ADR mechanism in our court proceedings as a compulsory on September 2012 through s 89 A of the *Code of Civil Procedure (Amendment) Act 2012*. Moreover, the Act has allowed the judge to cross examine the witnesses to find out the truth, which is just the opposite of the adversarial system (*Evidence Act 1872* s 165). But this provision has been adapted to the adversarial system. So from this discussion it can be inferred that making judges more active by adopting case management will not conflict with the adversary system in Bangladesh. Chief Justice Spigelman also agreed with this view. He states that there is no inconsistency between the expanded managerial role for the judiciary and the essential requirements of an adversary system (Spigelman, 2009).

As part of the Case management, the following things can be introduced in the civil court proceedings of Bangladesh.

Early court intervention

It is found from the national research of the USA that early court control is clearly correlated with shorter times in disposition of civil cases (Lomvardis, Goerdt & Gallas, 1991). Steelman, Goerdt & McMillan differentiate between what early control means in practice and what it should be. In practice early control refers only to the commencement of a case, focusing on a monitoring process and in this process, the clerk records the initial filing of a case and enters the case into a system under which it will be reviewed at a fixed time to determine whether the next anticipated event has occurred in keeping with time standards for interim stages in the cases progress (2004, p 3). One Judge from the Barishal Sadar Court has stated to the author that the court proceedings of Bangladesh is lawyer dominated. If the lawyers do not cooperate with the court no one will be able to resolve a case in time no matter how cordial the court is. From the perspective of Bangladesh, case management would limit the control of lawyers from the very beginning of the case and will ensure court's control for speedy disposal.

Differentiated case management

Differentiated Case Management (DCM) method is accepted by most of the countries who have adopted case management. Steelman, Goerdt & McMillan justifies why the DCM is necessary by stating that in the absence of case differentiation, courts customarily apply the same procedures and timetables to all cases of a given type. Generally courts give attention to cases according to their filing time (2004, p 4).

Bakke & Solomon also argue that this Differentiated Case Management is not restrictive rather it is more flexible and each court can have their own method according to the categories of the cases (1989, p 17). Steelman, Goerdt & McMillan also describes how the DCM method would operate, stating that the operation of differentiated case management program depends on early court cognizance of each case at the moment of filing (2004, p 5).

In Bangladesh all the judges, lawyers, and even the court staffs who were interviewed (the number was 22 till 31 October 2013) in this empirical research agreed that the partition suit and title suit need the most time and should be treated separately, and to ensure their timely disposition they should be given special attention from the very beginning of the filing case. A Lawyer from Sylhet division who took part in the empirical research suggested that there should be separate court to deal this type of cases by experienced judges. He strongly argued for separate family court. Though the Civil Rules and Order 1935 (Bangladesh) has classified the civil suits into five different categories, but in practice the treatment for all cases is same. The Bangladeshi Court needs to ensure different treatment according to the nature of the suit.

Realistic schedules for completion of court events

Professor Friesen observed that it is lawyers, not judges, who settle cases. Lawyers settle cases when they are prepared and lawyers prepare for significant and meaningful court events (1984, p 4). To make the court event meaningful and to occur as scheduled is an important way to ensure that lawyers and parties will be prepared to make those events meaningful in terms of progress toward appropriate outcomes. In the perspective of Bangladesh this process will ensure lawyers' participation and will make them responsible. Empirical research shows that there is no alternative to take the control of the court proceedings away from the lawyers and vesting it in the judges to ensure speedier resolution.

Limiting discovery and controlling Interlocutory disputes

Interlocutory applications add to the duration and cost of litigation. There are a number of measures which can be utilised to limit interlocutory applications (Victorian Law Reform Commission, 2008). They fall into two broad categories:

1. measures restricting interlocutory steps in a proceeding; and
2. measures to reduce unnecessary interlocutory applications.

Empirical research finds that judge from the Sylhet sadar court sharing her experience told that if you perused some records you will find, the cases which were intervened by the higher court were delayed in disposal. Interlocutory proceedings may also add to cost and delay when procedural decisions are the subject of appeals or applications for leave to appeal. Therefore, I would suggest on restriction of appeals on purely procedural decisions to save time.

Trial management

By managing trials effectively, judges can continue to do justice in individual cases while expanding the availability of the scarcest resources in the courts, judge time and courtroom space, for other matters (McConnell, 1991). Steelman, Goerdts & Mcmillan argue that as part of overall case management, trial management involves a set of steps, which include (2004 p 12; Zeliff 1989):

- Preparation for trial
- Scheduling to start trials on time and provision of adequate time for them
- Management of jury selection
- Maintenance of trial momentum, and
- Establishment and enforcement of time limits.

The empirical observation finds that the lengthiest process of the stages in the civil court proceedings is the trial stage. So proper management in this stage could ensure a firm and credible trial date and would ensure the timely disposition of cases.

Most of the courts in Australia have introduced subpoena where it is mandatory to collect and prepared for all documents before starting trial (*Uniform Civil Procedure Rules* (NSW) Part 33 rule 33.11). Empirical research shows that in Bangladesh the arrangement for documents take much time at the trial stage and often the trial procedure is stopped due to arrangement of the documents. It could be controlled through introducing subpoena procedure.

Alternative Dispute Resolution

In Bangladesh the ADR mechanism has failed to reach in its goal. Empirical research finds that lawyers and sometimes the party do not take initiative to resolve a case through mediation. The judge from the Khulna Sadar Court claimed that the lawyers do not want to resolve a case through mediation because this may reduce the number of pending cases in their hand and the parties of the suit consider winning rather prestigious matter. In fact the ADR is to ensure the win-win situation and the party must be encouraged. Proper training among the judges and mediators would be a good way to motivate the party as well as the lawyers to resolve a case through mediation. This method will end a case finally because no appeals from the mediated decision will be lie to the higher court.

Proactive Judicial Case management

One of the factors having an impact on the operation of the civil justice system is the apparent increase in the legal and factual complexity of many civil cases and the disproportionate impact on judicial resources of what has been described as ‘mega litigation’. The Victorian Law Reform Commission has also introduced and ensured proactive judicial management for complex litigation (2008, p 359). In the light of these difficulties Justice Sackville raised the question of what can be done to achieve more effective judicial control of mega-litigation. Many of his observations are equally relevant to judicial management of civil litigation generally. As Justice Sackville noted (2007, p 13):

- There is ‘no easy solution’.
- The aspiration of ‘just, quick and cheap resolution of the real issues’ in dispute is easier to express than to achieve.
- Modern technology may help but it is ‘wishful thinking’ to assume that modern information technology will solve the problem.
- ‘Vigorous’ judicial management and control will help restrict the ambit of the litigation but will not prevent mega-litigation ‘imposing an unreasonable burden on the judicial system’.

In Bangladesh all the participants of the empirical research agreed that partition suit can be termed as ‘mega litigation’. So proactive judicial case management for the partition suit can be a solution for speedy disposal.

Reform of Legislation

To ensure the smooth functioning of a case management mechanism it must be incorporated within the substantive laws of the civil court proceedings through amendment of the *Code of Civil Procedure 1908*. In 2012 a good number of amendments were made to the *Code of Civil Procedure 1908*. The main concern of those amendments was time binding and to limit the discretionary power of the court. But those amendments did not focus on court administration or case management. It will not be a matter of how we shorten the time; it is rather the matter how we *execute* law within its timeframe. As part of empirical research, 40 case records were perused to find out the real cause for delay and in those sample suits (40 cases) it was found that the average time, for disposal of the cases, was 1623 days, while the Act determined time to days to resolve at best 321 days.

My empirical research shows that delay occurred due to service of summons, interlocutory matters, discovery at the later stage, and in times of trial. It is also found that the cases continuing more than years, were mostly delayed due to intervening interlocutory matters or to produce further documents. Without reforming legislation proper case management cannot be ensured. Experience from the other countries showed that the flexible case management method will be more useful, effective and can be monitored rather making it restricted.

Introducing e-judiciary system

In Bangladesh the whole judicial system is based on manual input which is time consuming. E- judiciary already introduced in many countries proved that there is no alternate to it. It ensures not only assessment, plan, execution & monitoring but also transparency at the same time.

CONCLUSION

Lord Woolf⁵ identified some defects of the civil justice system which are very much relevant to Bangladesh; for example: it is too expensive, very often the case costs often exceeds the value of the claim; too slow in bringing the cases to a conclusion and too unequal: there is a lack of equality between the powerful, wealthy litigation will cost and how long it will last induces the fear of the unknown; and it is in comprehensible to many litigants (Ministry of Justice UK). Above all, in the civil court of Bangladesh no one with clear overall responsibility for the administration of civil justice; the whole system is too adversarial as cases are run by the lawyers, not by the courts or the rules of the courts, which in turn are also too often ignored by the parties and not enforced by the court. Against this background the only solution appears to lie with ensuring appropriate case management. At the same time, case management would ensure a proper monitoring system for speedy disposal. It can be said that case management varies and Case management programs are now commonplace in trial courts throughout the world. Effective case management is part of what is considered optimal performance₂₃₂ for a court in terms of service to the public.

This author argues for the judge's role as case manager, because discretion lies at the heart of case management and only the judge can apply the discretionary power. The case management must ultimately be an activity that judges actually undertake on a day to day basis (Steelman, Geordt & McMillan, 2004). Proper case management in the civil trial court of Bangladesh would be able to ensure access to justice implementing Woolf's principle of civil justice (Ministry of Justice UK).

The logo for the International Association of Forensic Researchers (iafor) is centered on the page. It consists of the lowercase letters "iafor" in a light blue, serif font. The text is enclosed within a large, faint, light blue circular arc that is partially visible on the left and right sides of the page.

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¹ Seristadar is the Office administrative officer. For each and every court there shall be a Seristadar who will be responsible for the administrative work of the Court. They are also appointed by the Government but not necessarily from a Law background.

² Cause list is the office registrar book to maintain the suit number and their date of hearing. A Daily Cause List in the prescribed form shall be posted in some conspicuous part of every court-house for the information of the parties, their advocates and the public. Cases and appeals shall be shown in the order in which they appear in the Diary (Rule 13 of CRO).

³ A Diary in the prescribed form to be called the Diary of the Court of and shall be maintained by each Civil court in the manner prescribed by Rule 12 of CRO.

⁴ Judgment means the statement given by the Judge of the grounds of a decree or order, see, *Civil Procedure Code 1908* (Bangladesh) s 2(9).

⁵ The Lord Chancellor appointed Lord Woolf, one of the England's most senior judges, to review existing rules and procedures, gather evidence and opinion from civil justice professionals and commentators, and identify effective ways to cut costs, reduce the complexity of the rules, and remove unnecessary distinctions of practice and procedure between the courts. Woolf's interim report was published in 1995 and after consultation, the final report was published in June 1996.

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The impact of free trade agreement (FTA) on economic growth in Thailand

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Abstract

The utilization study of the Free Trade Agreement (FTA) in 2011 by the Thailand development research institute (TDRI) revealed that the FTA helps with a variety of raw materials reduces the cost of production and increases its competitiveness in the global market. The FTA facilitates Thailand access to a larger market and as motivate for investment in both goods and services abroad. Overall, the impact of the FTA on trade is difficult to evaluate due to the influence of many factors involved. The analytical benefits of trade cannot determine conclusively for there are benefits to Thailand FTA much how. This study adopts an econometric model of the Generalized Method of Moment Estimators to Dynamic Panel Data (DPD) Analysis to estimate the substantial impact of the FTA on the economic factor and non – economic factor affecting the growth of Thailand's economy. Scope of the study of FTA covers the ASEAN Free Trade Agreement (AFTA), ASEAN-China Free Trade Agreement (ACFTA), and the Japan-Thailand Economic Partnership Agreement (JTEPA), which Thai exports gained FTA benefits most of the top three. Empirical results of this study found most significant factors affect economic growth of Thailand were finding of output. In addition, may be able proxy to assess the role of the FTA in attracting investment inflow for contributing to Thailand economic development.

Keywords: *Free Trade Agreement (FTA); AFTA; ACFTA; JTEPA; Panel Data Analysis; Dynamic Panel Data (DPD)*

I. Introduction

Thailand's vision is to make Thailand to be the center of trade and investment in Asia in 2006. Government needs to strengthen economic base on the Dual Track Policy in developing countries, which is expanding exports to increase employments and incomes for entrepreneurs and farmers. Thailand Development Research Institute (TDRI) revealed, according to the FTAs utilization study in 2011, Thai exports gained FTA tax benefits worth 118.20 billion bahts, or 3% of total export value, from bilateral trade agreement countries. That is higher than the 16.41 billion bahts recorded a year earlier. Exporters to ASEAN countries earned the highest privileges from the FTAs at 75.58 billion bahts. The import sector also benefited from FTAs at 70.80 billion bahts in 2011 up 11.64 billion bahts from 2010, or 2.7% of total import value. The FTA assists on a variety of raw materials, reduces the cost of production and increases its competitiveness in the global market. The FTA makes Thailand to a larger market and as motivation for investment in both goods and services from a board. Overall, the impact of the FTA on trade and Foreign Direct Investment (FDI) inflow, which it is difficult to evaluate due to the impact of many factors involving. The overall analytical benefits of trade only one side cannot conclude conclusively that there are benefits to Thailand FTA much how. Because of the benefits of FTA in overall also needs to include trades in services sector and investment sector, which are measured in value can be difficult. This question is a novelty of this study; it will lead to analyze the impact of Free Trade Agreement (FTA) on economic growth in Thailand. This study applies an econometric model of Panel Data Analysis on the generalized method of moments to Dynamic Panel Data (DPD) analysis to find the impact of the FTA to the economic growth of Thailand. The factors analyzed are economic factor and non – economic factor, which consist of economic potential, potential for investment, political stability and other variables to the economic growth of Thailand. The testing hypothesis of this study, that both trade and Quality of Institutions positively affect economic growth and Quality of Institutions has the largest effect on economic growth than trade (Linh Bun 2009). The study has covered 1) ASEAN Free Trade Agreement (AFTA), 2) ASEAN-China Free Trade Agreement (ACFTA), 3) Japan-Thailand Economic Partnership Agreement (JTEPA), Thai exports has gained FTA benefits the most of the top three (Department of Trade Negotiation of Thailand). Expected results of this study may be able to find most significant factors that affect on economic growth of Thailand. In addition, it will lead to find the impact of the FTA on economic growth of Thailand and be able proximate assessing the role of FTA in attracting investment inflow for contribution to Thailand economic development.

II. Literature Review

Until recently, many researchers have shown interest in the field of the FTA the effect on Thailand economic growth, and suggested many strategies to adjust international trade policies. These studies have carried out impact of economic and non – economic factor in economic growth and show the role of those factors used to contribute FTA between Thailand and partner country. Major findings and suggestions are as below.

A. The Free Trade Agreement (FTA) and Economic and Non-Economic Factor Analysis

Since the late 1970s, the ASEAN region has been one of the most attractive investment destinations in the developing world. ASEAN countries substantially liberalized their international trade and investment regimes by lowering trade barriers and lifting restrictions on foreign investment. Therefore, it is not surprising that foreign direct investment (FDI) plays an important role in the process of economic development in this region (Doktorgrades 2004). Which Japan and East Asian Newly Industrialized Countries (NICs) are the main sources of investments and their share of total foreign investment in this region has increased substantially (Athukorala and Menon 1996). The ASEAN countries found out the strategy for investment in the developing region, the FTA that is suitable to force developing in this region. Free Trade Area (FTA) is a group of countries that have agreed to eliminate tariffs, quotas and preferences on most goods and services between them. FTA is the second degrees of the preferential trading arrangement or economic integration consist of five forms: the preferential tariff arrangement, free trade area, customs union, common market, and economic union (Kuchiki and Tsuji 2008). Major FTA in effect in the Asia-Pacific Region of AFTA, ACFTA, and JTEPA has effect in 1992, 2004, and 2007 respectively. Since the establishment of AFTA in 1992, Thailand's intra-trade with other ASEAN members has grown significantly (Leelawath 2010). Since Thailand became a net exporter in ASEAN market, and trade balance started to be positive. The net gains kept increasing until 1995. Although the tariff elimination schedule started from 2004 under ACFTA, the lowering of tariffs remained limited until 2008 except for agricultural products in the early harvest program (Shino 2012). The most gains from ASEAN-Japan FTA would derive from ASEAN tariff reductions, rather than market access, which will lead to higher price competitiveness, and increased exports and investment (Komolavanij et al. 2008). In terms of economic factors are all the units required in economic activities of production of goods and services with effective and efficient utilization of resources and fulfilling consumption demands in any market and national economy. Non - economic factors are social and political environments that may not directly affect the level of national incomes and outputs. Among regressors are variables relating to trades, trade policies, exchange rates, fiscal policies, political stability, social stability, rights, human capitals, macroeconomic policies and macroeconomic outcomes. Early studies tended to focus on trade policy and investment; studies associated with new growth theory typically including with initial real incomes and some measures of human capitals as well as an investment (Fische 1991). There are more foreign exchange markets than exchange rates. Understanding how economies of different countries interplay and affect exchange rates is an important factor in determining, whether you would be successful in trading currencies or not. Inflation, interest rates, government debts and political stabilities, all influence how currencies will perform relatively to one another.

B. Applying the Dynamic Panel Data (DPD) analysis

Panel data offer a potential solution to the endogenous problem through to use of lagged values as instruments of endogenous variables (Lederman and Maloney 2003). Other article (e.g., Easterly et al. 1997; Levine et al. 2000; Bond et al. 2001) on economic growth attempting to deal with both unobserved country-specific effects and endogenous explanatory variables, a common finding as was regardless of

estimation technique, trade structure variables are important determinants of growth rates and hence probably should be in the conditioning set of growth regressions. Phillips and Sul (2003), argue that the homogeneity assumptions in dynamic panel models are convenient and commonly employed to take advantage of pooling in panel regression. However, these restrictions are sometimes, not well supported by the data and might produce misleading results and invalidate inference. Faruquee (2004) argue conduct advantage of dynamic panel data technical in fixed effect estimation overdirectly including these specific measures is controlling for omitted variable bias at the expense of isolating the individual contribution of distance on trade. The time effects intend to capture common time development with respect to bilateral trade across all trading partners in the panel.

III. Empirical study

Specific predictions of bilateral trade from the growth model in cross-country can be generated and further to compare, the effect of economic and non-economic factor of Thailand and trade partner on economic growth under the ASEAN Free Trade Agreement (AFTA), ASEAN-China Free Trade Agreement (ACFTA), and Japan-Thailand Economic Partnership Agreement (JTEPA) of Thailand.

A. The Growth model Approach

The study begins with a basic specification that can nest much of the existing work on the empirical economic growth. Most of the previous work discussed above, and in fact, much of the growth literature until recently has been base on estimations of an equation similar to model (1) using cross sectional regression data that lack any time dimension, although the drawbacks are well know (Lederman and Maloney 2003). The growth model can be express as follows:

$$(1) \quad y_{it} = \beta \ln y_{i,t-1} + \gamma X_{it} + \varphi \tau_{it} + v_t + u_i$$

Where y_{it} is the GDP per capita of country i in period t , $y_{i,t-1}$ is log income per capita at the beginning of the period; X_{it} is the variable of conditioning trade flow (export value), τ_{it} is the particular economic variable of interest, u_i is an individual country fixed effect, v_t is a sample wide time effect.

The new growth theory has also returned to some of the classic themes of the development literature, among them the roles of technology, international trade, human capital, economies of scale, and the possible need for a coordinated big investment push to break out of a low-income equilibrium (Fischer 1991). In term of economic variable of interest (**Error! Bookmark not defined.**), we would to find from $\tau = f(A, H)$, where A is the level of technology, but also for example representing the quality of government management of the economy, or institutional factors; H are human capital, respectively. The quality of government manages of the economy was represented by the share of investment in GDP, public debt, and inflation rate. For the human capital representation in the labor force, the reason for uses those variables because of the countries of ASEAN has useful in human capital and natural resources field with views of need investor from aboard. As for variation

of conditioning trade flow, it consists of the bilaterally export value, the bilateral real exchange rate, an average tariff rate in importing, net inflow foreign direct investment, the number of the population, and effect of an FTA by a dummy variable. Generalized Method of Moment Estimators to Dynamic Panel Data Model was implement, which would be applied First-difference Generalized Method of Moment technical invent by Holtz-Eakin et al. (1998) and Arellano and Bond (1991) estimate the effect between variables. Such technique could eliminate country specific effect problem because of most countries have a different economic system. In terms of analyzing the impact of Free Trade Agreement (FTA) on economic growth on Thailand, we devise two-group model, which consists of the model for analyzing economic and non economic factor of Thailand effect on the economic growth of Thailand under different FTA , the AFTA, ACFTA, and JTEPA. Specific model can be writing as follows:

$$(2) \quad y_{i,t} = \beta_1 \ln y_{i,t-1} + \gamma_1 \text{export}_{ijt} + \gamma_2 FDI_{it} + \gamma_3 er_{ijt} + \gamma_4 tar_{ijt} + \gamma_5 pop_{it} + \gamma_6 ir_{it} + \varphi_1 lf_{it} + \varphi_2 pd_{it} + \varphi_3 \sin_{it} + AFTA_{ij} + \varepsilon_{ijt}$$

$$(3) \quad y_{i,t} = \beta_1 \ln y_{i,t-1} + \gamma_1 \text{export}_{ijt} + \gamma_2 FDI_{it} + \gamma_3 er_{ijt} + \gamma_4 tar_{ijt} + \gamma_5 pop_{it} + \gamma_6 ir_{it} + \varphi_1 lf_{it} + \varphi_2 pd_{it} + \varphi_3 \sin_{it} + ACFTA_{ij} + \varepsilon_{ijt}$$

$$(4) \quad y_{i,t} = \beta_1 \ln y_{i,t-1} + \gamma_1 \text{export}_{ijt} + \gamma_2 FDI_{it} + \gamma_3 er_{ijt} + \gamma_4 tar_{ijt} + \gamma_5 pop_{it} + \gamma_6 ir_{it} + \varphi_1 lf_{it} + \varphi_2 pd_{it} + \varphi_3 \sin_{it} + JTEPA_{ij} + \varepsilon_{ijt}$$

$$\varepsilon_{ijt} = u_{ij} + v_{ij,t}, \quad E(u_{ij}) = 0, E(v_{ij,t}) = 0, E(u_{ij}v_{ij,t}) = 0$$

Where the bilateral export value of product from country i to country j in year t and net flow foreign direct investment (current US\$) in country i in year t are export_{ijt} , and FDI_{it} . The bilateral real exchange rate between i and j in year t is er_{ijt} , an average tariff rate in importing country j on goods from country i in year t represent in tar_{ijt} , and the number of population of country i in year t is pop_{it} . The quality of government management of the economy, or institutional factors are captured by the term share of investment in GDP of country i in year t (\sin_{it}), the public debt of country i in year t (pd_{it}), inflation rate of country i in year t (ir_{it}), and labor force of country i in year t (lf_{it}). For the rest of the article, we focus on the situation were AFTA, ACFTA, and JTEPA are effect on economic growth ($AFTA_{ij}=1$, $ACFTA_{ij}=1$, and $JTEPA_{ij}=1$), which is realistic for the situation presented in the following section ($AFTA_{ij}=0$, $ACFTA_{ij}=0$, and $JTEPA_{ij}=0$ would not effect on economic growth)

The model for analyzing economic and non-economic factor of trade partner affects on the economic growth of Thailand under AFTA, ACFTA, and JTEPA can be writing as follows:

$$(5) \quad y_{i,t} = \beta_1 \ln y_{i,t-1} + \gamma_1 \text{export}_{ijt} + \gamma_2 FDI_{jt} + \gamma_3 er_{ijt} + \gamma_4 tar_{ijt} + \gamma_5 pop_{jt} + \gamma_6 ir_{it} + \varphi_1 lf_{jt} +$$

$$\varphi_2 \sin_{jt} + AFTA_{ij} + \varepsilon_{ijt} \quad (6)$$

$$y_{i,t} = \beta_1 \ln y_{i,t-1} + \gamma_1 \text{export}_{ijt} + \gamma_2 FDI_{jt} + \gamma_3 er_{ijt} + \gamma_4 tar_{ijt} + \gamma_5 pop_{jt} + \gamma_6 ir_{it} + \varphi_1 lf_{jt} + \varphi_2 \sin_{jt} + ACFTA_{ij} + \varepsilon_{ijt} \quad (7)$$

$$y_{i,t} = \beta_1 \ln y_{i,t-1} + \gamma_1 \text{export}_{ijt} + \gamma_2 FDI_{jt} + \gamma_3 er_{ijt} + \gamma_4 tar_{ijt} + \gamma_5 pop_{jt} + \gamma_6 ir_{it} + \varphi_1 lf_{jt} + \varphi_2 \sin_{jt} + JTEPA_{ij} + \varepsilon_{ijt}$$

$$\varepsilon_{ijt} = u_{ij} + v_{ij,t}, E(u_{ij}) = 0, E(v_{ij,t}) = 0, E(u_{ij}v_{ij,t}) = 0$$

These model has some factor similar in model 2,3, and 4 model and using similar notations in $y_{i,t}$, $y_{i,t-1}$, export_{ijt} , er_{ijt} , tar_{ijt} , and ir_{it} , which difference in the quality of government management of the economy, and investment factor of trade partner. The factor change are share of investment in GDP of country j in year t (\sin_{jt}), labor force of country j in year t (lf_{jt}), net flow foreign direct investment (current US\$) in country j in year t (FDI_{jt}), and number of population of country j in year t (pop_{jt}). In addition, focus on the situation were AFTA, ACFTA, and JTEPA are effect on economic growth ($AFTA_{ij}=1$, $ACFTA_{ij}=1$, and $JTEPA_{ij}=1$), which is realistic for the situation presented in the following section ($AFTA_{ij}=0$, $ACFTA_{ij}=0$, and $JTEPA_{ij}=0$ would not effect on economic growth). Both model promote u_i is an individual country fixed effect, v_t is a sample wide time effect, and ε_{it} is country and time specific effect.

B. Dynamic panel data analysis (Generalized Method of Moments; GMM)

The problems in empirical work are the country specific effects because most of countries are different in economic conditions and the dependent variable may have correlated with the error term. Thus, this study applied the Generalized Method of Moment Estimators to Dynamic Panel Data Model by First-difference Generalized Method of Moment (GMM) technique for resolving country's specific effect problem. The Panel Data Methods is useful to reflect the dynamic variable changes of the data and identify the difference of data in each unit together. Although the consistency of the instrument variable (IV) coefficient estimates is not affect by the presence of heteroskedasticity, the standard IV estimates of the standard errors are inconsistent, preventing valid inference. The usual approached today when facing heteroskedasticity of unknown form is to use the GMM, introduced by Hansen (1982). GMM makes use of the orthogonality conditions to allow for efficient estimation in the presence of heteroskedasticity of unknown form (Baum et al. 2003). In the context of GMM, the overidentifying restrictions may be test via the commonly employed Sargan test statistic or J test statistic of Hansen (1982). The J statistic is distributed as chi-square (χ^2) with degrees of freedom equal to the number of over identifying restrictions $L - K$ rather than the total number of moment conditions L

because, in effect, K degrees of freedom are used up in estimating the coefficients. J is the most common diagnostic utilized in GMM estimation to evaluate the suitability of the model. The null hypothesis for this test is that the instruments are valid in the sense that they are not correlated with the errors in the first-difference equation. If the model cannot reject the null hypothesis implies that the instruments are satisfying the orthogonality conditions required for this implementation.

C. The Expected Sign of Results

The relationship between exports with GDP measuring is expected to be positive. A higher GDP in Thailand should cause higher production capacity, which in turn transforms into the ability of the Thailand economy to export more (supply side). On the other hand, a higher GDP for a trading partner country means a higher absorption capacity, i.e., the trading partner country is able to import more (demand side) (Jordaan and Kanda 2011). Zarzoso and Lehmann (2003) had argued that a negative relationship between exports and population is an indication of an absorption effect. The exchange rate, tariff rate, inflation rate and labor force all should have a negative effect on the observed variability of economic growth. For example, Schuh (1974) was the first to argue that the overvalued dollar caused the decline in agricultural exports due to their relative expense in other countries, so that the overvaluation of the exchange rate had a large negative effect on agricultural exports. According to the study of Fischer (1993), using a regression analog of growth accounting, its present cross-sectional and panel regressions results had shown that growth was negatively associated with inflation, large budget deficits and distorted foreign exchange markets. Supplementary evidence suggests that the causation runs from macroeconomic policy to growth. The framework makes it possible to identify the channels of these effects: inflation alleviates growth by reducing investment and productivity growth; budget deficits also reduce both capital accumulation and productivity growth. Examination of exceptional cases shows that while low inflation and small deficits are not necessary for high growth even over long periods, high inflation is inconsistent with sustained growth. Fischer (1991) based on the new growth theory to define the relationships between macroeconomic policies and growth, and the partial correlations between growth and inflation as well as growth and the budget deficit were examined. The results found that, the relationship between inflation rate and growth was negative and a positive effect existed between investment and growth. The distance is expected to be negatively related to the trade flow of exports, i.e. the longer the distance of foreign market, the higher the costs involved in trading and therefore a negative effect on trade flow. Thailand has strategies to join the Trade FTAs with several groups to reduce her tariff rates of major import and exports. The expected sign of FDI variable on economic growth ought to be positive. Not only this nexus should be co-integrated in the long-run (Adhikary 2011) but Thailand had also impact from the high competitiveness of Asian countries to reduce of tariff rate, which market share of the export market. The Thai government has to use many the external long-term debts for the development of infrastructures to support transportation agriculture products in each region of Thailand, such as double track railway. Hence, a higher level of Thailand's public debt could induce a negative effect on economic growth.

D. Data Sources

The dataset in this study comprises 204 observations, which include 17 annual observations (1995-2011) for ASEAN countries, China country, and Japan country, which were countries of major trading partners. The product for analysis devise by major items utilizing FTAs in Thailand consist of the ASEAN Free Trade Agreement (AFTA), ASEAN-China Free Trade Agreement (ACFTA), and Japan-Thailand Economic Partnership Agreement (JTEPA), which the information from the Ministry of Commerce, Thailand. The observed variable data between 1995 – 2011 were sourced from World Bank's World Development Indicators database (WDI) and the United National Conference on Trade and Development (UNCTAD) statistics. The details as following: The GDP per capita data measure gross domestic product (1995 -2011) as sourced from the World Bank's World Development Indicators (WDI 2005). The bilateral export data, labor force and the tariff rate data were the source of the UNCTAD's statistics, the bilateral export data as a merchandise trade matrix - product groups, exports in thousands of dollars, annual, 1995-2012. The variable is measure as the weighted average tariff rate. Exchange rate data were source from WDI (2005). The exchange rate is measure as the period average exchange rate on number of local currency units that can be trade for one US dollar. The inflation rate was the source of the UNCTAD'S statistics. The net inflow foreign investment is obtains from OECD Statistics and Printed Issues of UNCTAD's World Investment Report (WIR). The populations were sources from the World Bank's World Development Indicators (WDI 2005). A dummy variable takes a value one when the two countries belong to the same Free Trade Agreement (FTA), and zero. The source of Free Trade Agreement (FTA) Data was from an intra bloc trade of world trade organization. Data shares of investment in GDP and public debt were sources from The World Integrated Trade Solution (WITS) database. The share of investment in GDP is measure as gross capital formation percentage of GDP. Public debt data is measured as external debt stock, public and publicly guaranteed (current US\$).

IV. Results

Empirical estimation results represent the effect of economic and non-economic variable on economic growth of Thailand are effective of Thailand variables and trading partner variable effect on economic growth. Which results would reflect the FTA's effect of AFTA, ACFTA, and JTEPA on economic growth of Thailand and show the effect between Thai variable and trading partner variable in each unit with economic growth of Thailand.

A. Analysis of effect Thailand variables to Thailand's economic growth

Table 1 represents the results. The relationship between Thailand variable under AFTA, ACFTA, and JTEPA, we used the First-difference Generalized Method of Moment technique for resolve problem, analyzed a country specific effect problem. Results of Model 2 are in line with the expect sign literature, which variable of Thailand under the AFTA has a positive effect on economic growth consist of the net inflow foreign direct investment, share of investment in GDP, number of population, and effect of AFTA. Included the public debt, bilateral exchange rate, tariff rat, and labor force has a negative effect on economic growth. However, the inflation has a

positive effect, which it is not in line with the expect sign literature. Model 3 shows effect sign and significant effect of the variable of Thailand on economic growth under ACFTA. The bilateral export value, inflation rate and effect of ACFTA have a positive effect on economic growth. However, under the ACFTA, the net foreign direct investment, labor force, and share of investment in GDP has negative effect may cause of Thailand and China are competitor country for absorbing direct investment from aboard investor. According Brimble (2002) found the growing importance of creating or strategic assets influencing foreign investment location decisions (World Investment Report 1998).

Table1. Impact of Thailand variables on Thailand's economic growth

Variable Economic of Thailand	Free Trade Agreement		
	AFTA (2)	ACFTA(3)	JTEPA(4)
Initial income	3387.103***	1170.277 ***	71929.11**
The bilateral export value	4.25E-05	8.41E-05**	1.165873***
Net Foreign direct investment in Thailand	7.20E-05***	-4.17E-05***	0.059310**
Share of investment (% of GDP)	75.23861***	- 65.7787***	61918.54*
Public debt of Thailand	-1.29E-05***	-2.50E-05***	2709.393
Labor force of Thailand	-0.254415***	0.662602***	237.9512**
Tariff rate (Average rate weight)	-64.53392***	32.90929***	61918.54
Inflation rate of Thailand	80.28114***	53.75509***	-67232.08
Population of Thailand	0.024344***	-0.089391***	-313.7379*
Bilateral exchange rate	-0.000951***	21937.56**	2709.393
Effect of FTA	2027.517***	33.74428***	25235.87
Observations	204	204	204
J- statistics	11.88	11.94	3.60
Instrument rank	13	12	12
p value of Sargan statistic test (R-square)	0.54	0.45	0.98

*The Generalized Method of Moment Estimators to Dynamic Panel Data Model by First-difference Generalized Method of Moment (GMM) with *, **, ***: statistically significant at 10%, 5% and 1% levels respectively. Estimations done by Eviews.*

It suggests that one of the main results of greater so-called “broader” impacts of FDI could be to strengthen the level of “created assets.” in the Thai business environment. In term of Model 4 found that under JTEPA, effect sign and significant effect of bilateral export value, net foreign direct investment, and labor force has positive effect on economic growth, which according to expect sign literature. Focus on the bilateral export value has positive effects on economic growth under ACFTA and JTEPA are significant. Support this effect by the study of Pholphirul (2009) found that the impact of tariff reduction under the AFTA schedule could be assesses through commodities and export demand function. Tariff reduction on each commodity should be reflect in changes in all commodity sectors, including prices of goods, production, price of labor and capital, etc. Effect of AFTA and ACFTA has a positive effect on economic growth significant, but the effect of JTEPA on economic growth not significantly. Thailand's economic stability and quality of government management would reflect to the share of investment in GDP, public debt, Inflation rate and labor force, which signs effect on economic growths, was difference under AFTA, ACFTA, and JTEPA significant. Under AFTA, Share of investment in GDP and inflation rate has positive effect on economic growth, whereas the public debt and labor force has negative effect on economic growth, which accorded to expect sign literature. In term of ACFTA found that share of investment in GDP and public debt has negative effect on

economic growth, wherewith labor force and inflation rate has positive effect on economic growth. For under the JTEPA found that share of investment in GDP, public debt, and labor force has a positive effect on economic growth, which the inflation rate has negative effect on economic growth. The findings support from work of Anantarangsi (2011), found that China and Japan may prefer to use Thailand as a headquarter site rather than a production base because of the increasing competitiveness in terms of labor costs and availability of resources and technology in the CLMV countries, not to mention the overall business environments of Malaysia and Singapore. Thailand requires, therefore, a period of intensive reflection with a view to understanding the important factors that inspire enhanced FDI flows. Test efficient estimate of the model and the overidentifying restrictions would be test via the commonly employed Sargan test statistic or J test statistic found that p value of the Sargan test statistic (R- square) more than 0.4 all of model in this study. Which meaning was the model cannot rejection of the null hypothesis implies that the instruments are satisfying the orthogonality conditions required for this employment.

B. Analysis of effect Trade partner variables to Thailand's economic growth

For each trade partner variable, table 2 presents effect of trade partner variable on economic growth of Thailand, which includes the bilateral trade variable namely bilateral export value, bilateral exchange rate, and tariff rate. In particular variable of trade partner for analyze composite net inflow foreign direction investment, share of investment of GDP, labor force, and effect of AFTA, ACFTA, and JTEPA. For the ASEAN countries are trade partner under AFTA in model 5, found that the bilateral export value and share of investment in GDP of ASEAN has a positive effect significant at 5% and 10% level respectively. Most of trade partner variable has an effect on economic growth of Thailand are variable under ACFTA in model 6, wherewith has sign effect same direction with the variable under JTEPA in model 7. Results found that net inflow foreign direct investment and population of trade partner has a positive effect on economic growth. The share of investment in GDP and labor force of trade partner has a negative effect. Appears results able identify influent of net inflow foreign direct investment of China and Japan has benefit to Thailand. The coefficient of net foreign direct investment in Japan under JTEPA higher than China under ACFTA, It is mean that the net inflow foreign direct investment in Japan increased affect to the economic growth of Thailand increase follow that. Most gains from ASEAN-Japan FTA would derive from ASEAN's tariff reduction, rather than market access, which will lead to higher price competitive, and increase export and investment (Komolavanij 2008).

Table2. Impact of trade partner variables on Thailand's economic growth

Variable Economic of trade partner	Free Trade Agreement		
	AFTA (5)	ACFTA (6)	JTEPA(7)
Initial income	-2940.482**	696.9423***	-5203.313
The bilateral export value	0.000846**	-1.87E-06	0.181068
Net Foreign direct investment of trade partner	-1.36E-07	4.40E-07***	0.024365***
Share of investment (% of GDP) of trade partner	297.4158*	-41.24835***	-56406.45
Labour force of trade partner	-0.197442	-0.016853***	356.9938

Tariff rate (Average rate weight)	195.4235	2.060245***	-213324.3**
Population of trade partner	0.089013	0.054882***	546.0977**
Bilateral exchange rate	-0.001838	16637.19***	-176845.5**
Effect of FTA	942.3507	-198.3194***	-277801.6***
J-statistics	10.33	11.98	3.81
Instrument rank	12	12	12
p value of Sargan statistic test (R-square)	0.59	0.44	0.98

*The Generalized Method of Moment Estimators to Dynamic Panel Data Model by First-difference Generalized Method of Moment (GMM) with *, **, ***: statistically significant at 10%, 5% and 1% levels respectively. Estimations done by Eviews.*

Test efficient estimate of the model and the overidentifying restrictions would be tested Sargan test statistic or J test statistic found that p value of the Sargan test statistic (or square) more than 0.4 all models of analysis between trade partner variability and economic growth of Thailand. Which meaning was the model cannot rejection of the null hypothesis implies that the instruments are satisfying and the model suitable for this study.

V. Conclusion

Results of this study had to shown that the relationship between Free Trade Agreement (FTA) of Thailand with trade partner effect on economic growth of Thailand, wherewith each of relationship was able to identify the situation of Thailand and the role of play in the market. The role of Thailand in ASEAN market, Thailand may be as a trader and as competitor in the same time. The result of dynamic panel data analysis, some variables of Thailand has a negative effect on economic growth such as labor force. Therefore, Thailand should devote there to developing human capital in all fields for take more advantage than competitor in the ASEAN market should, to support the efficient labor for foreign direct investment in Thailand from abroad. Trade between Thailand and China under ACFTA revealed found that many trade variables of China have a positive effect on economic growth of Thailand such as net inflow foreign direct investment and population of China. These results mean that if there is more progress of China's economic, it will contribute to increased economic growth of Thailand as well. In terms of trade between Japan and Thailand under JTEPA found that net inflow foreign direct investment and population of Japan has a positive effect on economic growth of Thailand, which the expected benefit from Japan of Thailand has same reason in China case. The other hand, the entrepreneurs of Thailand expected to make benefits on JTEPA effectively. It is a chance to sell agricultural such as banana, mango, mangosteen, pineapple, bell pepper, chicken, shrimp, seafood, flowers even more. The standards of product will improve by Thailand agriculture could connected with agricultural cooperatives in Japan can sell products directly to consumer. Quality of government management is a good level because of share of investment has a positive effect on economic growth under AFTA, and has a small negative effect between public debates on economic growth. The inflation rate has positive effect, which able interpreted Thai government has policy to increase minimum wage affect to cost of product increase and the employment value rise in short time. Therefore, this effect can reflect to the government policy has affect on economic growth of Thailand, as important effect for advice the role of Thailand to play in the each market, and as a data base for promoting a strategy of international trade policy for development suitable condition in next FTA of Thailand.

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Input Pricing, Technology Licensing, and Social Welfare

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Abstract

This paper compares social welfare of third-degree price discrimination with that of uniform pricing by studying a vertically related industry model in which an upstream monopolist may perform price discrimination in input market and one of two downstream firms licenses its cost-reducing technology to the other. We find that, under plausible conditions, the welfare under discriminatory pricing is higher than that under uniform pricing without increasing output. This result contrasts sharply with the well-known wisdom in the literature that an increase in total output is necessary for third-degree price discrimination to enhance social welfare.

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1. Introduction

The welfare effects of price discrimination and technology licensing are two important issues concern economists and policy makers. These two issues are highly related in vertically related markets: the innovation and licensing of cost-reducing technology in the downstream market affect the way upstream firms set prices, and the pricing strategy of the upstream firms also has significant impacts on innovation and licensing of technology in the downstream industry. However, to our best knowledge, no existing study addresses the relationship between these two. This paper examines the welfare effect of price discrimination by constructing a vertically related industry model in which an upstream monopolist may perform price discrimination in input market and one of two downstream firms licenses its cost-reducing technology to the other.

The study on the welfare effects of third-degree price discrimination in the final-good market is originated by Pigou (1920) and Robinson (1933), and it is followed by Schmalensee (1981), Varian (1985), and Schwartz (1990). One of the best known wisdom of this literature is, with non-decreasing marginal cost, discriminatory pricing cannot generate higher social welfare than uniform pricing unless it at the same time generates more output. Katz (1983), recognizing that policies regarding price discrimination are far more relevant in input market than in output market, initiates and inspires studies on welfare effect of price discrimination in input market. DeGraba (1990), Yoshida (2000), and Inderst & Valletti (2009) are among the studies that follow Katz (1983). The studies on price discrimination in input markets find a result similar to those in output markets: price discrimination cannot enhance welfare unless it also increases output. Even though the impacts look similar, the economic forces behind the impacts are quite different: price discrimination in output markets tends to lower social welfare because it reallocates consumption from high-demand consumers to low-demand ones; while price discrimination in input markets tends to lower social welfare because it reallocates production from low-cost producers to high-cost ones.

The licensing strategy of an inside innovator has been studied by Wang (1998), Wang and Yang (1999), Wang (2002), Kamien and Tauman (2002), Fosfuri and Roca (2004), Liao and Sen (2005), Sen and Tauman (2007), and Poddar and Sinha (2010). One of the main concerns of the literature is which licensing contract, royalty contract or fixed-fee one, brings higher profit to the innovator. Scenarios vary along different dimensions, including homogeneity of products, competition modes, innovation level, and so on, have been considered. The results regarding which contract is superior are

mixed.

This paper compares social welfare of third-degree price discrimination with that of uniform pricing by studying a vertically related industry model in which an upstream monopolist may perform price discrimination in input market and one of two downstream firms licenses its cost-reducing technology to the other. We find if the technology is licensed by means of a royalty, the licensor has a higher ex ante cost than the licensee, and the cost reduced by the technology is greater than the initial cost difference, then, with no increase in output, the welfare under discriminatory pricing will be higher than that under uniform pricing. This result contrasts sharply with the well-known wisdom in the literature that an increase in total output is necessary for third-degree price discrimination to enhance social welfare.

In the next section we set up the model. In section 3 we examine the welfare effect of price discrimination in the case of a royalty contract. In section 4 we study that in the case of a fixed-fee contract. Section 5 concludes.

2. The model

Consider a market structure with a monopolist input supplier and two input buyers, firm 1 and firm 2, who use the input to produce a homogeneous final good. Firm 1 and firm 2 are the only two producers in the final good market and they engage in quantity competition. Both firm 1 and firm 2 manufacture one unit of the final good by purchasing and processing one unit of the input. Let the purchasing price of the input be w_1 and w_2 for firm 1 and firm 2 respectively, and the processing cost be c_1 and c_2 . If the supplier is allowed to adopt discriminatory pricing, then w_1 and w_2 may be different. If the supplier is constrained to uniform pricing, then w_1 and w_2 must be of the same value, that is, $w_1 = w_2 = w$.

Assume firm 1 acquires a new technology that lowers processing cost by ε through previous investment in R&D. The technology can also lower firm 2's processing cost by ε , therefore firm 1 can patent this technology and license it to firm 2. Let the final good demand function be $p = a - (q_1 + q_2)$, where q_1 and q_2 represent the output level of firm 1 and firm 2 respectively.

The technology licensing can be either by means of a royalty or by means of a fixed fee. We assume the contract form to be exogenously determined and we study them separately in section 3 and section 4. If the technology is licensed by means of a royalty, a per-unit charge of r on output, the profit function of firm 1 and firm 2 will

be given respectively by

$$\pi_1^r = (a - q_1 - q_2)q_1 - (c_1 - \varepsilon + w_1)q_1 + rq_2 \quad (1)$$

$$\pi_2^r = (a - q_1 - q_2)q_2 - (c_2 - \varepsilon + w_2)q_2 - rq_2. \quad (2)$$

If the technology is licensed by means of a fixed fee, a lump-sum payment f , the profit function of firm 1 and firm 2 will be given respectively by

$$\pi_1^f = (a - q_1 - q_2)q_1 - (c_1 - \varepsilon + w_1)q_1 + f \quad (3)$$

$$\pi_2^f = (a - q_1 - q_2)q_2 - (c_2 - \varepsilon + w_2)q_2 - f. \quad (4)$$

Without loss of generality, we assume the production cost of the input to be zero. We use x_1 and x_2 to denote the units of input demanded by firm 1 and firm 2, and consequently the supplier's profit function is given by

$$\pi_s = w_1x_1 + w_2x_2. \quad (5)$$

We model a three-stage game. At stage one, firm 1 determines the optimal royalty or fixed fee in the licensing contract. At stage two, the supplier sets input price to maximize its profit. If price discrimination is allowed, then the supplier can set w_1 and w_2 individually; if price discrimination is not allowed, then the supplier can only choose one price w for both firm 1 and firm 2. At the last stage, firm 1 and firm 2 engage in Cournot competition.

3. Welfare effect of price discrimination under royalty licensing

In this section we assume the technology to be licensed by means of a royalty. We solve two three-stage games, one with third-degree price discrimination and the other with uniform pricing, separately, and then study the welfare effect of price discrimination by comparing the outcomes of the two games. For both games, we solve the final-good market equilibrium at first, we next study how the supplier sets input price, and in the end we consider how royalty is determined.

3.1 Price Discrimination

At the third stage, given r , w_1 , and w_2 , the Cournot equilibrium can be derived as

$$q_1^{rD} = \frac{a - 2(c_1 + w_1) + c_2 + w_2 + \varepsilon + r}{3} \quad \text{and} \quad q_2^{rD} = \frac{a - 2(c_2 + w_2) + c_1 + w_1 + \varepsilon - 2r}{3}.$$

Consequently, firm 1's and firm 2's derived demand are $x_1^{rD} = q_1^{rD}$ and $x_2^{rD} = q_2^{rD}$. The supplier's profit function is thus given by

$$\pi_s^{rD} = \frac{a - 2(c_1 + w_1) + c_2 + w_2 + \varepsilon + r}{3} w_1 + \frac{a - 2(c_2 + w_2) + c_1 + w_1 + \varepsilon - 2r}{3} w_2. \quad (6)$$

At stage two, given r , the supplier chooses w_1 and w_2 to maximize (6). The solution of

the profit maximizing problem is $w_1^r = \frac{a - (c_1 - \varepsilon)}{2}$ and $w_2^r = \frac{a - (c_2 - \varepsilon + r)}{2}$.

Substituting them back to q_1^{rD} and q_2^{rD} gives us $q_1^{rD} = \frac{a - 2c_1 + c_2 + \varepsilon + r}{6}$ and

$$q_2^{rD} = \frac{a - 2c_2 + c_1 + \varepsilon - 2r}{6}.$$

For the first stage, we substitute q_1^{rD} and q_2^{rD} into (1) and get $\pi_1^{rD} = (q_1^{rD})^2 + r q_2^{rD}$. Since firm 1 is the sole seller of the technology, it gets to choose r to maximize π_1^{rD} . It can be shown that the profit is maximized when $r = \varepsilon$ if a relevant condition is satisfied.¹

With $r = \varepsilon$, we have the following results:

$$Q^{rD} = q_1^{rD} + q_2^{rD} = \frac{2a - c_1 - c_2 + \varepsilon}{6} \quad (7)$$

$$CS^{rD} = \frac{(Q^{rD})^2}{2} \quad (8)$$

$$\pi_1^{rD} = p^{rD} q_1^{rD} - (c_1 - \varepsilon + w_1^r) q_1^{rD} + \varepsilon q_2^{rD} \quad (9)$$

$$\pi_2^{rD} = p^{rD} q_2^{rD} - (c_2 - \varepsilon + w_2^r) q_2^{rD} - \varepsilon q_2^{rD} \quad (10)$$

$$\pi_s^{rD} = w_1^r q_1^{rD} + w_2^r q_2^{rD} \quad (11)$$

$$SW^{rD} = CS^{rD} + \pi_1^{rD} + \pi_2^{rD} + \pi_s^{rD} = \frac{(Q^{rD})^2}{2} + p^{rD} Q^{rD} - (c_1 - \varepsilon) q_1^{rD} - (c_2 - \varepsilon) q_2^{rD} \quad (12)$$

3.2 Uniform Pricing

At the third stage, given r and w , the Cournot equilibrium is given by $q_1^{rU} = \frac{a - 2c_1 - w + c_2 + \varepsilon + r}{3}$ and $q_2^{rU} = \frac{a - 2c_2 - w + c_1 + \varepsilon - 2r}{3}$. Consequently,

firm 1's and firm 2's derived demand for the input are $x_1^{rU} = q_1^{rU}$ and $x_2^{rU} = q_2^{rU}$. The supplier's profit function is therefore given by

$$\pi_s^{rU} = (x_1^{rU} + x_2^{rU})w = \frac{2a - c_1 - c_2 - 2w + 2\varepsilon - r}{3} w. \quad (13)$$

Given r , the supplier chooses w to maximize (13) at stage two. The solution of the profit maximizing problem is $w^r = \frac{2a - c_1 - c_2 + 2\varepsilon - r}{4}$. Substituting it back

¹ The condition is $\left. \frac{\partial \pi_1^{rD}}{\partial r} \right|_{r=\varepsilon} = \frac{1}{18} (4a + c_1 - 5c_2 - 7\varepsilon) > 0$.

to q_1^{rU} and q_2^{rU} gives us $q_1^{rU} = \frac{2a - 7c_1 + 5c_2 + 2\varepsilon + 5r}{12}$ and

$$q_2^{rU} = \frac{2a - 7c_2 + 5c_1 + 2\varepsilon - 7r}{12}.$$

For the first stage, we substitute q_1^{rU} and q_2^{rU} into (1) and get $\pi_1^{rU} = (q_1^{rU})^2 + r q_2^{rU}$. Similar to the previous analysis, it can be shown that the profit is maximized when $r = \varepsilon$ if a relevant condition is satisfied.² With $r = \varepsilon$, we have the following results:

$$Q^{rU} = q_1^{rU} + q_2^{rU} = \frac{2a - c_1 - c_2 + \varepsilon}{6} \quad (14)$$

$$CS^{rU} = \frac{(Q^{rU})^2}{2} \quad (15)$$

$$\pi_1^{rU} = p^{rU} q_1^{rU} - (c_1 - \varepsilon + w) q_1^{rU} + \varepsilon q_2^{rU} \quad (16)$$

$$\pi_2^{rU} = p^{rU} q_2^{rU} - (c_2 - \varepsilon + w) q_2^{rU} - \varepsilon q_2^{rU} \quad (17)$$

$$\pi_s^{rU} = w^r Q^{rU} \quad (18)$$

$$SW^{rU} = CS^{rU} + \pi_1^{rU} + \pi_2^{rU} + \pi_s^{rU} = \frac{(Q^{rU})^2}{2} + p^{rU} Q^{rU} - (c_1 - \varepsilon) q_1^{rU} - (c_2 - \varepsilon) q_2^{rU} \quad (19)$$

3.3 Output and Welfare

To examine the welfare effect of third-degree price discrimination, we compare the results from the previous two subsections. Firstly, we find that $Q^{rD} = Q^{rU}$ from (7) and (14). With this, we obtain the difference in social welfare between the two pricing strategies from (12) and (19):

$$\begin{aligned} SW^{rD} - SW^{rU} \\ = -(c_1 - \varepsilon) q_1^{rD} - (c_2 - \varepsilon) q_2^{rD} + (c_1 - \varepsilon) q_1^{rU} - (c_2 - \varepsilon) q_2^{rU} = \frac{(c_1 - c_2)[\varepsilon - (c_1 - c_2)]}{4} \end{aligned} \quad (20)$$

From the above, we obtain *Lemma 1*:

Lemma 1. (i) $Q^{rU} = Q^{rD}$; (ii)

- a) when $c_1 - c_2 < 0$ or $c_1 - c_2 > \varepsilon$, $SW^{rD} < SW^{rU}$,
- b) when $c_1 - c_2 = 0$ or $0 < c_1 - c_2 = \varepsilon$, $SW^{rD} = SW^{rU}$,
- c) when $0 < c_1 - c_2 < \varepsilon$, $SW^{rD} > SW^{rU}$.

From *Lemma 1*, we obtain the main result of this paper:

² The condition is $\left. \frac{\partial \pi_1^{rU}}{\partial r} \right|_{r=\varepsilon} = \frac{1}{72} (22a - 5c_1 - 17c_2 - 37\varepsilon) > 0$.

Proposition 1. The welfare under discriminatory pricing will be higher than that under uniform pricing without increasing output if the licensor has a higher ex ante processing cost than the licensee, the amount of the processing cost reduced by the technology is greater than the initial process cost difference, and the technology is licensed by a royalty contract.

Proposition 1 contrasts sharply with the well-known wisdom in the literature that third degree price discrimination cannot generate higher social welfare than uniform pricing does unless it at the same time generates more output. The intuition behind Proposition 1 is as follows. First of all, $Q^{rU} = Q^{rD}$, meaning that consumers get the same amount of output to consume under these two pricing strategies and thus the difference in welfare solely comes from the production side. Secondly, note that the condition $0 < c_1 - c_2 < \varepsilon$ can be rearranged to be $c_1 - \varepsilon < c_2 - \varepsilon + r = c_2 - \varepsilon + \varepsilon = c_2$, thus it means that firm 2 becomes the one with higher total processing cost (real processing cost plus royalty) than firm 1 after paying the royalty. Consequently, under discriminatory pricing, it will be charged a lower input price than firm 1 since it has a lower derived demand, and will produce more output than under uniform pricing. However, after adopting the licensed technology, firm 2 also becomes a more efficient producer than firm 1 because of a lower real processing cost, hence, the reallocation of production from firm 1 to firm 2 under discriminatory pricing rationalizes the industry output and improves welfare.

4. Welfare effect of price discrimination under fixed-fee licensing

In this section we assume the technology is licensed by means of a fixed fee. Like the previous section, we solve two three-stage games, one with third-degree price discrimination and the other with uniform pricing, separately, and then study the welfare effect of price discrimination by comparing the results of the two games. For both games, we solve the final-good market equilibrium at first, we next study how the supplier sets input price, and in the end we consider how fixed fee is determined.

4.1 Price Discrimination

At the third stage, given f , w_1 , and w_2 , the Cournot equilibrium is given by $q_1^{FD} = \frac{a - 2(c_1 + w_1 - \varepsilon) + c_2 + w_2 - \varepsilon}{3}$ and $q_2^{FD} = \frac{a - 2(c_2 + w_2 - \varepsilon) + c_1 + w_1 - \varepsilon}{3}$.

Consequently, firm 1's and firm 2's derived demand are $x_1^{FD} = q_1^{FD}$ and $x_2^{FD} = q_2^{FD}$. The supplier's profit function is thus given by

$$\pi_s^{FD} = \frac{a - 2(c_1 + w_1 - \varepsilon) + c_2 + w_2 - \varepsilon}{3} w_1 + \frac{a - 2(c_2 + w_2 - \varepsilon) + c_1 + w_1 - 2r}{3} w_2. \quad (21)$$

At the second stage, given f , the supplier chooses w_1 and w_2 to maximize (21). The

solution of the profit maximizing problem is $w_1^f = \frac{a - (c_1 - \varepsilon)}{2}$ and $w_2^f = \frac{a - (c_2 - \varepsilon)}{2}$.

Substituting them back to q_1^{fD} and q_2^{fD} gives us $q_1^{fD} = \frac{a - 2c_1 + c_2 + \varepsilon}{6}$ and

$$q_2^{fD} = \frac{a - 2c_2 + c_1 + \varepsilon}{6}.$$

For the first stage, we substitute q_1^{fD} and q_2^{fD} into (3) and (4) and get $\pi_1^{fD} = (q_1^{fD})^2 + f$ and $\pi_2^{fD} = (q_2^{fD})^2 - f$. Since firm 1 is the sole seller of the technology, it gets to take away all licensing benefits from firm 2 through charging an f as high as possible. One can show that highest possible value of f is the difference between firm 2's operation profit after licensing and the profit firm 2 gets if it does not adopt the technology. One can get $f^D = \frac{(a - 2c_1 + c_2)\varepsilon}{9}$. With f^D , we

have the following results:

$$Q^{fD} = q_1^{fD} + q_2^{fD} = \frac{2a - c_1 - c_2 + 2\varepsilon}{6} \quad (22)$$

$$CS^{fD} = \frac{(Q^{fD})^2}{2} \quad (23)$$

$$\pi_1^{fD} = p^{fD} q_1^{fD} - (c_1 - \varepsilon + w_1^f) q_1^{fD} + f^D \quad (24)$$

$$\pi_2^{fD} = p^{fD} q_2^{fD} - (c_2 - \varepsilon + w_2^f) q_2^{fD} - f^D \quad (25)$$

$$\pi_s^{fD} = w_1^f q_1^{fD} + w_2^f q_2^{fD} \quad (26)$$

$$\begin{aligned} SW^{fD} &= CS^{fD} + \pi_1^{fD} + \pi_2^{fD} + \pi_s^{fD} \\ &= \frac{(Q^{fD})^2}{2} + p^{fD} Q^{fD} - (c_1 - \varepsilon) q_1^{fD} - (c_2 - \varepsilon) q_2^{fD} \end{aligned} \quad (27)$$

4.2 Uniform Pricing

At the third stage, given f and w , the Cournot equilibrium can be derived as $q_1^{fU} = \frac{a - 2(c_1 + w - \varepsilon) + c_2 + w - \varepsilon}{3}$ and $q_2^{fU} = \frac{a - 2(c_2 + w - \varepsilon) + c_1 + w - \varepsilon}{3}$.

Consequently, firm 1's and firm 2's derived demand for the input are $x_1^{fU} = q_1^{fU}$ and $x_2^{fU} = q_2^{fU}$. The supplier's profit function is therefore given by

$$\pi_s^{fU} = \frac{2a - c_1 - c_2 - 2w + 2\varepsilon}{3} w. \quad (28)$$

At stage 2, given f^U , the supplier chooses w to maximize (28). The solution of the

profit maximizing problem is $w^f = \frac{2a - c_1 - c_2 + 2\varepsilon}{4}$. Substituting it back

to q_1^{fU} and q_2^{fU} gives us $q_1^{fU} = \frac{2a - 7c_1 + 5c_2 + 2\varepsilon}{12}$ and $q_2^{fU} = \frac{2a - 7c_2 + 5c_1 + 2\varepsilon}{12}$.

For the first stage, we substitute q_1^{fU} and q_2^{fU} into (3) and (4) and get $\pi_1^{fU} = (q_1^{fU})^2 + f$ and $\pi_2^{fU} = (q_2^{fU})^2 - f$. Similar to the previous analysis, it can be shown that f is the difference between firm 2's operation profit after licensing and the profit firm 2 gets if it does not adopt the technology : $f^U = \frac{7\varepsilon}{144}(4a - 14c_2 + 10c_1 + 7\varepsilon)$.

With f^U , we have the following results:

$$Q^{fU} = \frac{2a - c_1 - c_2 + 2\varepsilon}{6} \quad (29)$$

$$CS^{fU} = \frac{(Q^{fU})^2}{2} \quad (30)$$

$$\pi_1^{fU} = p^{fU} q_1^{fU} - (c_1 - \varepsilon + w^f) q_1^{fU} + f^U \quad (31)$$

$$\pi_2^{fU} = p^{fU} q_2^{fU} - (c_2 - \varepsilon + w^f) q_2^{fU} - f^U \quad (32)$$

$$\pi_s^{fU} = w^f Q^{fU} \quad (33)$$

$$\begin{aligned} SW^{fU} &= CS^{fU} + \pi_1^{fU} + \pi_2^{fU} + \pi_s^{fU} \\ &= \frac{(Q^{fU})^2}{2} + p^{fU} Q^{fU} - (c_1 - \varepsilon) q_1^{fU} - (c_2 - \varepsilon) q_2^{fU} \end{aligned} \quad (34)$$

4.3 Output and Welfare

To examine the welfare effect of third degree price discrimination, we compare the results from the previous two subsections. Firstly, we find that $Q^{fU} = Q^{fD}$ from (22) and (29). With this, we obtain the difference in social welfare between the two pricing strategies from from (27) and (34) :

$$SW^{fD} - SW^{fU} = -\frac{(c_1 - c_2)^2}{4} \leq 0. \text{ That is, under}$$

fixed-fee licensing, price discrimination cannot generate a higher welfare level than uniform pricing. Thus we have *Proposition 2*.

Proposition 2. Under fixed-fee licensing, price discrimination cannot generate a higher welfare level than uniform pricing.

5. Conclusion

This paper compares social welfare of third-degree price discrimination with that of uniform pricing by studying a vertically related industry model in which an upstream

monopolist may perform price discrimination in input market and one of the two downstream firms licenses its cost-reducing technology to the other. We find if the technology is licensed by means of a royalty, the licensor has a higher cost than the licensee before adopting the technology, and the initial cost difference is smaller than the cost reduced by the technology, then, with not increase in output, the welfare under discriminatory pricing will be higher than that under uniform pricing. This result contrasts sharply with the well-known wisdom in the literature that an increase in total output is necessary for third-degree price discrimination to enhance social welfare

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*Legalizing Community Resources —
Experiences Learned from Implementing of Indigenous Traditional Intellectual
Creations Protection Act (ITICPA)*

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Abstract

The indigenous societies in Taiwan had passed through the era which used to assert them as barbaric and uncivilized 'the Others', and was officially de-colonized with political motivation and promulgation of certain legislations such as the Indigenous Fundamental Law, can still not formalize their customary laws which are prerequisite to their entitlement of community resources, such as the indigenous traditional knowledge and cultural expressions.

In December 2007, a sui generis regime to the civil law IP regulations, the Indigenous Traditional Cultural Expression Protection Act (ITCEPA), is promulgated. ITCEPA is the very first law in Taiwan to substantiate diversified modes of indigenous cultural expressions such as songs, dances, weaves and dye, ceremony and even witchcraft as community resources entitled to the tribal unit. When certified and registered, the collective rights will be legalized retrospectively back to the time immemorial. Any established acquisition and exploitation of the resources by non-indigenous peoples will be revoked, no matter in which form (copyrights, or trade mark).

Yet to implement ITCEPA, a tribal units based decision making process and management plan are needed, since the sui generis rights are entitled to the community only. But with the extended colonial rule and the consequent encroachment of Christian preachment and main stream political institutions over their community, primitive tribal leadership barely survived. This presentation will show how we as an expert group to the Act help 12 ethnic tribes on the Island to re-establish and re-integrate their political organizations and the decision making process.

A. The indigenous community in Taiwan and the protection of their resources

Taiwan is an inherent multi-ethnic nation-State since standing at the front role of the Monsoon. Yet it has never been a multiculturalism society before the amendment of Constitution in the year of 2000. Assimilating the indigenous peoples into mainstream society has always been a formidable policy of the Island's rulers since colonial period. Japanese authority and the succeeding post-War KMT regime possessed the same strategy though with different means. Aside from the fierce suppression with arm forces, dominating majority also employed disciplines such as anthropology or museology to officially characterize the aboriginality as a symbol of under-civilization and consequent subordination. The context of aboriginality was therefore simplified as exotic outers and incompatible social behaviors carried by a group of marginal 'the Others' (Hu 2004; 2005). Therefore, compulsory assimilation is institutionalized. Police powers were then thrown into the sphere of education and sanitization to civilize these savage compatriots, and afterwards a planned migration and enclosure. The result is the dissolution of indigenous polity and, most important, their resources.

The waking of indigenous rights in Taiwan is at about the time with the democratization movement in the 80's. Through the process of liberation from KMT's dictator rule, re-habitation of the oppressed sectors such as domestic petti-bourgeoisie on the Island formally encompassed that of the indigenous communities. One can see blocs of representatives were elected to the ridings and strived to congregate a new constitutional moment.

In the year of 2000, an Amendment to the Constitution which symbolized an epoch of indigenous renaissance is inaugurated. Its Article 10(10) avows Taiwan as a multiculturalism nation-State: "the State affirms multiculturalism, and positively assures the development of language and culture of the indigenous peoples." Then an innovative, ground-breaking Indigenous Fundamental Act was later adopted to substantiate the above Amendment in the year of 2005.¹

One can perceive the Fundamental Act as a semi-treaty based constitutional rewrite (Huang 2009). Pursuant to the act, the central government will be obliged to respect the will of indigenous peoples in terms of their status and future development while coordinating with the civil society, and eventually lead to an autonomous entity

¹ The Indigenous Fundamental Act was promulgated on February 05, 2005, includes 35 articles.

(Article 4).² The substantive aspects reflecting these prospects will be to regain control over their traditional knowledge and intellectual cultural creations.

Under Article 13³ and Article 20⁴ of the Fundamental Act, the central government is commissioned to adopt laws to protect the indigenous entitlement of their land and natural resources, together with traditional bio-diversity knowledge and intellectual creations, and to promote their future development. Furthermore, while conducting research at the areas subject to indigenous title, the government or private party are obliged to consult indigenous peoples and obtain their consent or participation, and share with them benefits generated from land development, resource utilization, ecology conservation and academic researches derived from (Article 21(1))⁵.

The above articles have provided themselves as a formal baseline for the exploitation of indigenous cultural heritage and nature resources though, specific and workable regulations are still in need to provide a due cause of actions either in transactions or in courts, which, however, proves to be a difficult task. According to the Fundamental Act, nominally, at least six laws covering different aspects are requisite to substantiate the admitted rights. Only half of them were enacted at the time.

B. The ITICPA and its major features

The traditional cultural creations of indigenous peoples, including their music, dance, songs, graphics and folk arts and other objective cultural expressions, had long been regarded as *res nullius* due to their incompatibility with the necessary conditions for IPs protection (Lucas-Schloetter 2008: 383-393; UNESCO & WIPO 1985: par.3).

² The Indigenous Fundamental Act, Article 4: "The government shall guarantee the equal status and development of self-governance of indigenous peoples and implement indigenous peoples' autonomy in accordance with the will of indigenous peoples. The relevant issues shall be stipulated by laws."

³ The Indigenous Fundamental Act, Article 13: "The government shall protect indigenous peoples' traditional biological diversity knowledge and intellectual creations, and promote the development thereof. The related issues shall be provided for by the laws."

⁴ The Indigenous Fundamental Act, Article 20:

(1)The government recognizes indigenous peoples' rights to land and natural resources.

(2)The government shall establish an indigenous peoples' land investigation and management committee to investigate and manage indigenous peoples' land. The organization and other related matters of the committee shall be stipulated by law.

(3)The restoration, acquisition, disposal, plan, management and utilization of the land and sea area owned or occupied by indigenous peoples or indigenous persons shall be regulated by laws."

⁵ The Indigenous Fundamental Act, Article 21(1): "The government or private party shall consult indigenous peoples and obtain their consent or participation, and share with indigenous peoples benefits generated from land development, resource utilization, ecology conservation and academic researches in indigenous people's regions."

Taking copyrightable expression for example, which need to fulfill the requirement of containing minimum creativity or originality (Farley 1997: 9-11; Gervais 2003). Yet most of the indigenous traditional cultural expressions are aiming to fully replicate the traditional elements inherited from generation to generations, even the sheer creativity could not, or in most of the case, is not allowed to be generated.

The individual nature of private property is another hurdle to recognize indigenous IPs. Under Article 18 of the Copyright Act of Taiwan, “[t]he protection of moral rights of an author who has died or been extinguished shall be deemed to be the same as when the author was living or in existence and shall not be infringed upon by any person.” The author needs to be an individual to be endowed with moral rights. Authors as a group or community such as indigenous tribes cannot enjoy their moral right over traditional intellectual creations as a whole, yet for them the individual member is not allowed to claim the rights.

The limited duration of civil law IPs also casts doubt on its applicability over the indigenous intellectual creations. Article 30 of the Copyright Act of Taiwan indicates that the IPs “[e]ndure for the life of the author and fifty years after the author's death. Where a work is first publicly released between the fortieth and fiftieth years after the author's death, the economic rights shall endure for a term of ten years beginning from the time of the first public release.” Since most of the indigenous traditional intellectual works have no traceable date of public release, or have to trace back to the time unmemorable, their duration of protection will instantly expire if applied. Not to mention as a common essence of current living, the indigenous traditional intellectual creations can never expire unless all of the peoples are extinguished.

On the 7th day of December 2007, the Indigenous Traditional Intellectual Creations Protection Act (hereinafter as the ITICPA) made its way through the Legislative Yuan (the House of Congress) as an answer to the above Article 13 of Indigenous Fundamental Act. With ITICPA as a formal law of the State, the indigenous traditional intellectual creations are no longer left in the plight of no protection (Huang 2010).

The traditional intellectual creations protected under ITICPA include the listing subject matters like traditional religious ceremony, music, dance, songs, sculptures, weave and dye, graphics, wardrobes, folk arts. An open-end, catch-all clause is also introduced to the Article so all other expression of cultural activities of the indigenous peoples can be protected once they are certified and registered (Article 3).

Not like that of the copy-right laws, to receive protections from the ITICPA, the creations need to be certified and registered through the administrative agency, *i.e.*, the Indigenous Peoples Council of the Executive Yuan (Article 4⁶, 5⁷, 6⁸). Once the certification process is completed, the indigenous peoples and tribes registered will be entitled to proclaim the exclusive right over the registered creations (Article 7), *i.e.*, an unique form of community resources. The exclusive rights include the right to stop and prevent any false attribution, distorting, mutilating, modifying, or otherwise changing the content, form, or name of the work that damaging the author's reputation, and to litigate against any above activities that infringe the registered context (Article 10).

All the *sui generis* rights protected under the ITICPA shall take effect retrospectively, which means there will be no vested rights for the current civil law IPs which incorporate indigenous intellectual creations registered. Trademarks or copyright-protected works exploiting the *sui generis* rights without lawful licensing will be declared void notwithstanding its legality while admitted. This is a typical application of general theory of inter-temporal law, *i.e.*, a necessary result of transformative justice (Huang 2010). Current practice adopted by the IPs Bureau of Ministry of Economy actually complies with the above reasoning. Consultation process will be a prerequisite before issuing any indigenous related trade-mark.

The rights entitled to the indigenous peoples under ITICPA is not individual property but collective in nature (Huang 2010:24-26). Therefore, they are parallel to civil law IPs (copy-rights, patents and trade-marks). The latter may still be entitled to individual members of the tribe or ethnical unit registering the *sui generis* rights. Such a special character of the community resources is also evidenced by Article 22 of ITICPA: "The provision of ITICPA shall not affect the rights of the exclusive right owner of the intellectual creation and the third party derived from other laws."

⁶ ITICPA, Article 4: "Intellectual creations shall be recognized by and registered with the competent authority so as to be protected by the Act. The criteria for recognizing intellectual creations mentioned in the previous paragraph shall be determined by the competent authority."

⁷ ITICPA, Article 5: "The competent authority shall recruit (assign) personnel of related institutions, specialists, scholars and aboriginal representatives to undertake the recognition of intellectual creations in addition to any matters stipulated in other regulations. At least 50% of these personnel shall be drawn from aboriginal representatives."

⁸ ITICPA, Article 6: "(1) The applicant for any intellectual creation shall provide a written application, a specification, necessary graphics, images and related documents or provide audio-visual creations in order to apply for registration with the competent authority.

(2) The applicant mentioned in the previous paragraph is limited to aboriginal groups or tribes and a representative shall be elected to take care of all matters arising. The regulations of electing representatives shall be determined by the competent authority."

The applicant of this *sui generis* right, according to ITICPA, will be limited to the (official) indigenous ethnic groups or tribes (Article 6(2))⁹, though which may eventually be found not as the proprietor or have to be co-entitled with other non-applicant ethnic groups or tribes, which is a decision made by the reviewing board. Experience learned from the mootings shows no surprises ever happened since which is a consensus-oriented community property.

Provided under scrutiny no specific ethnic group or tribes is the due proprietor, then the right shall be registered to the indigenous peoples of Taiwan as a whole, and take effect immediately after the date of registration (Article 7(3)). *I.e.*, no subject matter will be characterized as *res nullius* or public domain even if it cannot be found attached with any ethnic group or tribes, and the proprietors entitled will include the applicants, non-applicant indigenous ethnic groups or tribes, and the indigenous peoples of Taiwan as a whole. When pursuing the rights through courts, an official representative instead of individual member of the proprietor will have the exclusive *locus standi*.

Given its nature as collective rights, the rights entitled under ITICPA can only be exercised, unless provided by laws or contracts otherwise, by the registered indigenous ethnic groups or tribes, or indigenous peoples as a whole exclusively. The rights include to exploit and usufruct the propriety rights, and moral rights to a due attribution (Article 14 (3)). An individual member of the proprietor, however, is free to exploit and usufruct the registered intellectual creations (Article 14 (4)), which makes the collective rights subject solely to the customary rules applied by the proprietor, and eventually legalize the community resources. One may therefore conclude that ITICPA is a leverage to prevent the false exploitation of indigenous traditional intellectual creations by the non-indigenous users. With the compulsory discourse¹⁰, the proprietors can assure that all the utilization will be conducted through authentic cultural discourses.

⁹ According to the Taiwan indigenous ethnic policy, only the indigenous peoples or tribes officially recognized by the government do have official status. Until now, there are many tribes still struggling for being recognized by the government. See Shih (2011); Jolan Shieh (2011).

¹⁰ According to Article 1 of ITICPA, the legislative purpose of the Act is: "In order to protect the traditional intellectual creations of indigenous peoples, and to promote the cultural development of indigenous peoples, this Act is set forth according to Article 13 of the Indigenous Fundamental Act."

C. The implementation of ITICPA- A Mooting Program

Though have substantiated the *sui generis* rights recognized by the Indigenous Fundamental Act, the ITICPA *per se* can only provide the minimum and most general conditions to the processing and certification of them. Since there are 14 indigenous ethnic groups officially recognized in Taiwan, the abundance of their cultural diversity and ethnic significance make it barely possible to regulate them respectively. Yet while implementing the rights, these general regulations need to be transformed into some workable models. Noting this technical requirements, four articles of ITICPA authorize its administrative agency to promulgate bylaws, which covers the process of electing the representative of the applicant and proprietor to be (bylaws No.1), the procedure for the certification, registration and revocation of the *sui generis* rights (bylaws No.3), the standard of certification (bylaws No.2) and the management of fund generated from licensing (bylaws No.4) (Huang 2010).

Taking the aforementioned open-end catch-all clause covering “all other expression of cultural activities of the indigenous peoples” in Article 3 of ITICPA as an example, there is no rigid definition over the indigenous traditional intellectual creations in any article of ITICAP. The certification committee needs a guideline to follow before it can admit any right and entitle it to the legitimate proprietor, such as for how long shall the intellectual creation exists and be possessed by the applicant, and with what conditions shall it be recognized and certified.

As a group right, the applicant of certification and its proprietor will be limited to the (official) indigenous ethnic groups or tribes. Yet before the ethnic groups or tribes can be recognized as legal persons, a nature person representative of the applicant or proprietor is needed to file application and litigation. Then who shall be eligible and through which process to be elected as the representative? The bylaw is supposed to provide an answer.

Currently the second and refined drafts of the four bylaws are completed and withheld by the Indigenous Peoples Council for further review. The following are the brief introduction of its drafting principles.

On the process of electing the representative of the applicant and proprietor to be, the draft bylaw chooses not to provide respective conditions for each indigenous ethnic

groups or tribe of which the governing structure of polity may be highly different, instead leaving it to be regulated by the customary laws the polity regularly applies. The only compulsory restriction is the representative must be the member of the applicant, so to prevent the intervention from outsiders such as IPs brokers (bylaws No.1).

As to the definition of the protected intellectual creations, the draft defines the indigenous peoples as a group of people who identify themselves as an organized single polity with inner coherence. The shared common languages and customs which form an indivisible foundation to such coherence could be traced back to unmemorable but lineal timeframe. Therefore, any rights entitled to the polity as a whole is of the nature of continuity. The right protected under ITICPA then must be an existing right blended with such a significance carried by the applicant. Though its context is allowed to evolve along with the technical development provided the above indigenous significance is not extinguished (bylaws No.2). With the definition, subjects used to be conceived as public domain could be protected under ITICPA, such as the linguistic structure and grammar, names of certain indigenous ethnic groups or tribes, and common symbols which possess the above characters.

D. The authentication of cultural representation: lessons learned from the moot application

To accelerate the preparation period psychologically, the Indigenous Peoples Council has launched a semi-experimental program as the “Demonstrative Application Program on the Exclusive Rights of Indigenous Traditional Intellectual Creations” since 2012, so to further assure (to itself and other Authorities) the feasibility and practicability of the draft bylaws and the overall infrastructure which may in the near future undertake the true operation of ITICPA.¹¹

The demonstrative program allows 14 local indigenous NGOs to voluntarily represent indigenous ethnic groups, tribes or sub-sections within their jurisdiction to undergo a moot application procedure. The chosen NGOs represent 12 official indigenous ethnic groups. They will undertake the responsibility, under traditional customary law or current legal procedure, to re-assemble the tribal congress or assembly and obtain their consensus over the issues such as choosing the traditional intellectual creations recognized as the most representative yet severely-threatened or exploited ones. In the

¹¹ The author was the Chief Investigator of this semi-experimental program. See the program website in: <http://ctm-indigenous.vsn.nthu.edu.tw/>.

meantime, a historical and cultural review over the origin and preservation of the targets, namely the history, exploitation taboos, and cultural implication of the expressions, together with field investigation such as procurement of oral evidence from the elders, will all be conducted by the NGOs. At the final stage, the 14 NGOs will follow the application procedures under bylaws No.3 to file for certification and registration with the gathered references. Since it is a moot application procedure, the *sui generis* rights will not be entitled with any tribes, yet the applications and the registered propriety under the moot program will be officially acknowledged by the Indigenous Peoples Council retrospectively once the bylaws are approved.

Throughout the program, certain authenticity issues never been conceived either by mainstream anthropologists or regulation drafters are revealed. Taking the ITICPA itself as an example, the Act provides that only the (official) indigenous ethnic groups and tribes can be the legitimate applicants and proprietors to be. However, the moot practice proves that to certain indigenous polity, this is not a true statement. Among the moot application team one NGO from the official Paiwanian indigenous ethnic group vowed to represent not the official ethnic group or tribe as a whole, but their own noble-caste family (the Pakedjavai Family). Since the 12 glass beads (the Muljimuljidan, the Luseqnaqadaw, the Kurakurau, etc.), traditional home and the sacred songs they applied for protection belong solely to the noble family and the tribal head due to this unique Paiwanian caste system which is largely followed by the ethnic group nowadays. Only the entitled caste families can legitimately utilize (including, if necessary, licensing out) those creations.

Similar situation could be found with another moot team from Tsao ethnic group in Chia Yi County. The applicant applied for protection over their famous tribal worship rituals Mayasvi and Miyapo. Both rituals are popularly known and documented by the anthropologists as enjoined by all of the tribal members. Yet through the consensus assembly, it is decided that only the two major tribes (Hosa) possess the legitimacy to their narrations and representations, including interpreting the meanings, taboos and due process of the ritual. Therefore, if certified, the objects will be entitled to the tribes only, not the whole official tribe.

Notwithstanding the impact of the ITICPA over the reconstruction of indigenous cultural integrity and even the prospect of political autonomy through the above moot applications, or eventually if the Indigenous Peoples Council will continue to subsidize such a *sui generis* rights management, the process allows, first time in history, the indigenous peoples to actively participate as a subject with the

establishment of a practical set of authentic cultural representation, which is a core to the community resources. In the meantime, the collection and construction of the history, taboos, and cultural implication of the target expressions motivated by the indigenous polities themselves also help to pave ways for a more equal and balanced discourse between the indigenous peoples and non-indigenous community.

E. The authentication of indigenouness in research and archive disciplines – a necessary consequence of legalizing the community resources

Before the introduction of ITICPA, Copyrights Law of Taiwan and its bylaws are the only applicable regime proved certain legal difficulties to the archive program. To prevent itself from the risks of infringement of rights, the program tends to archive objects whose copyrights protection have expired or have fallen into public domain before any due diligence could be completed. Many indigenous related objects were among these preferable targets since the dates of their creation are time unmemorable, or the proprietor is unknown.

However, the above strategy is forced to change after the adoption of ITICPA. According to its Article 3, the protected indigenous intellectual creations are very comprehensive, which include the traditional religious ceremonies, music, dance, songs, sculptures, weaving, patterns, clothing, folk crafts or any other expression of the cultural achievements of indigenous peoples. Fulfillment of the authentication and registration process under Article 4 with the competent authority are the conditions to vindicate the rights. The official ethnic groups, tribes, the sub-section of them, e.g., family groups as mentioned above, and the whole indigenous people then will become the proprietor of the moral right, which includes the right to publicly release the work, to be nominated, and to prohibit others from distorting, mutilating, modifying, or otherwise changing the content, form, or name of the work¹². Property rights are also granted to exclusively use and profit from the registered objects¹³. The above rights are neither transferrable not subject to any pledge or taking and will be protected for

¹² ITICPA, Article 10(2): "The owner of an exclusive right to use intellectual creations enjoys the following moral rights of intellectual creations:

1. the moral right to publicly release the work.
2. the moral right to indicate the name of the exclusive user.
3. the moral right to prohibit others from distorting, mutilating, modifying, or otherwise changing the content, form, or name of the work, thereby violating the author's reputation."

¹³ ITICPA, Article 10 (3): "The owner of the exclusive right to use intellectual creations shall exclusively use and profit from the property rights of such intellectual creations on behalf of specific ethnic groups, tribes or the entire indigenous peoples, unless otherwise stipulated by law or agreement, and shall exercise the rights mentioned in the previous paragraph."

goods. At the first glance most of the archived indigenous contents are candidates to the *sui generis* regime.

The propriety under the ITICPA is collective in nature (Huang 2005:32-37), *i.e.*, an inherent community resources. Proprietors are ethnic groups, tribes, family groups, or the whole indigenous people instead. Therefore, the legitimate means of procurement such as acquiring prior informed consents from their individual member who physically possess the objects, or through a sales transfer, will no longer validate the assessment. Authorization is needed from the registered legitimate proprietors if the archives would be publicly released, either through exhibition in museums or virtual libraries. There is no specific formality requirement for the necessary authorization, yet one can imagine a prior informed consent obtained through comprehensive and diligent discourse will be the bottom-line before any bylaws or model form is issued by the Authority.

An instant example of the above turnover could be found in its business application. In the year of 2009, Glamorous female indigenous singer Chang Hui-mei (Amei) issued a new album titled 'Amit'. The album tagged itself as a unique charm because it includes three songs derived and modified from traditional Puyumen rhythms. Even the ITICPA is yet implemented at the time, the record company still managed to seek for a semi-collective authorization from the council of the tribe in which the singer grew up. No information about the terms and conditions of the authorization though.

The above incident evidences the noticeability of the intrinsic difference between copyrights and the *sui generis* rights under ITICPA. A prior consent to access is requisite not only from the individual possessor, but the community unit the former is belonged to. Certainly it is not very clear with which unit shall the archivers negotiate the consent, since the political institutions of these potential proprietors vary all the time due to current indigenous self-government policy.

Workable data collections and user-friendly interface both symbol the versatility of an archive. A competent archiver needs to retain the ability to design a resilient metadata which incorporate both original context and historical lineage. However, when applying the said qualifications to the indigenous related archive one may encounter two major issues. The first one is that providing a publicly accessible interface is equal to publicly release the contents, which requires authorizations from the *sui generis* moral rights proprietors. The second is to categorize and make functional the archived indigenous contents could have touched the thin redline as "distorting,

mutilating, modifying, or otherwise changing the content, form, or name of the work, thereby violating the author's reputation (ITICPA, Article 10)". A standard-clause notice to the website viewers containing key languages of the ITICPA, *e.g.*, the moral and property rights are entitled exclusively with certain ethnic groups or tribes, and authorization is requisite in case of utilization, is designed as a dialogue box locating at the front page of the archive site so to substitute every individual licensing (Huang 2011:60-64). Only when the viewer reads through and clicks the agreed bottom below can he or she access to the archive contents¹⁴. Viewers IPs will at the same time be located by the webmaster so to monitor any possible infringement.

As to the relief for the second concern, the archivers are advised to consult with proprietors to be over the adequate ways of handling any cultural sensitive contents before constructing the metadata. If a taboo or restricted ritual or lyric is archived, a comprehensive discourse over the adequacy and formality of public release should be conducted beforehand (Huang 2011:66-68). The proprietor will have the right to request instant removal of any content from the site if they found the exhibition poses a threat to their cultural integration.

As mentioned above, Social application of the archive contents is a planned and indivisible phase of the program. Licensing and transferal of the archive contents are always conceived as the necessary means to implement the application. However, under the ITICPA, the archiving institutions are not proprietors of the possessed indigenous archive contents since which are not transferable. Even if the transferred portion is only an edited copy or images which might still be part of the exclusive rights of the entitled ethnic groups or tribes. Currently archivers have started to prepare a revised version of model licensing clauses to cope with the challenge (Huang 2011:64-66). In the meantime, they are urged to actively consult with related ethnic groups, tribes and experts and to initiate a comprehensive discourse over the issues such as the public release, ways of nomination, mode of application and benefit sharing scheme. Though sometimes the tribes may not be the proprietor or a collective consensus is not obtainable through established mechanisms.

¹⁴ See the website of the Digital Music Archive Project for Taiwanese Indigenous People: <http://archive.music.ntnu.edu.tw/abmusic/index.html>. (Project investigator: Prof. Chien Shan-Hua, college of music, National Taiwan Normal University)

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