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# The Relationship between Experiential Marketing and Corporate Reputation: A Research on Turkish Operator Companies

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**Abstract**

The main purpose of this study is to investigate whether the experiential marketing components are related to corporate reputation. It focuses on the relationship of sensory, emotional, cognitive, behavioral and relational experiences to corporate reputation components. In addition, the mediator effects of environment and social media on this relationship has been examined.In the qualitative research part of the research, a large study was done in the literature. Afterwards, negotiations were held with academicians and managers who are experts in the field. It was pretested with validity and reliability and accepted scales. After making the necessary changes, the survey collection phase was passed. In the quantitative research part of the study, face-to-face interviews and survey data filled by 464 people were used.The relationship between experiential marketing and corporate reputation has been tested by structural equation modeling. According to this, path analysis between experiential marketing and corporate reputation was established and relations were found meaningful and positively. While there is a significant effect of the environmental variable, the effect of the social media variable was not found.

**Keywords:** Experiential Marketing, Corporate Reputation

## 1. Introduction

Reputation provides for businesses positive perception by economic, political and social environment allowing the business to grow both locally and globally. Today, developed markets are reaching saturation and emerging markets gain importance. In emerging markets, businesses will have the experience and reputation that will enable them to take place with low risk and high control. (Dima vd., 2013: 52-53).

The desired outcome for businesses is to have a strong corporate reputation. In this context, businesses need to focus on emotional appeal, quality goods and services, vision and leadership, reliable business environment, financial performance indicators and social responsibility activities. (Fombrun ve Shanley, 1990, 233).

## 2. Theoretical Background of Experiential Marketing and Corporate ReputationThe desired

### 2.1. Experiential Marketing

In experiential marketing there are goods, services and experiences aimed at providing sensory, emotional, cognitive, physical and social experiences to consumers. Today, it is stated that customer experience management concept is needed instead of customer relationship management concept in marketing activities. Emphasis is placed on the importance of employees' experiences and the need to give importance to employee experiences for their reputation (Torlak, 2007: 50).

Sensory experience is perceived experiences with five sensory organs. It implies that experience is perceived as different and beneficial. It is evaluated in this context that businesses experience contact with consumers at the contact points. For example, P&G brand of detergents are keeping on odor, whiteness and softness reveals the importance of senses in consumer preference (Deligöz, 2016: 35-37).

Consumers have psychological and sociological characteristics, and their behavior is also based on emotional reasons. The research on corporate reputation emphasizes the importance of the emotional experience of businesses. It is desirable

that businesses are reliable, honest, ethical, helpful, hospitable and responsive (Zaltman, 2004: 203-204)

Businesses need to understand and meet the needs, desires and fears of consumers. Therefore, corporate reputation can be increased by interaction and empathy. Employees with an empathic sense make customers feel better and increase their commitment to business (Freemantle, 2000: 143-144).

The preference of the businesses depends on being an advanced technology, reliable, innovative, creative and proactive. The fact that businesses differ from their competitors because oftheir presenting experiences. Experiences affect the rational decisions of consumers (Zaltman, 2004: 188-189).

Businesses want consumer to change life positively with experiential marketing. For example, Starbucks positions itself as an alternative to home, office or library. Since consumer are motivated not just for coffee, but sitting for hours to chat, meet or study (Kalyoncuoğlu, 2017: 69).

Relational experience is an experience that includes other experiential marketing components. In this experience, which focuses on the social relations of consumers with their business and other customers. Since customers are associated with goods, services and experiences. For example, consumers who adopt the Harley-Davidson brand, see themselves as members of a group and live their sense of belonging with a lifestyle (Schmitt, 1999: 173). On the other hand, businesses increase their earnings through the size of the community whilecustomers can consume together with the community (Yaman - Zerenler, 2018: 78).

## 2.2. Corporate Reputation

Admiration, esteem and trust towards businesses are features that enhance emotional appeal. Another feature that enhances emotional appeal is that businesses are included in donation campaigns. These increase profitability, market share and corporate reputation (Fombrun - Shanley, 1990: 251).

High quality goods and services provide for businesses significant advantages. It increases not only corporate reputation but also a long-term advantage with repayments maintance and profitability is long-lived. The sharing of goods and service provision with word of mouth will cause those who want to experience them. In particular, social media are influencing and directing consumers in search of experience (Caruana, 1997: 110).

The people who set the vision in the business are seen as the leaders. It is stated as a successful talent that the leaders have the ability to act, maintain and give experience to his employees. In addition, employees who believe in their leader can relate between today and the future. Leaders with a high level of communication skills are also involved in understanding the vision, relating it to values and achieving it. (Morden, 1997: 668).

In today's management concept, the business environment has changed in recent years. The adoption of an open system in the business environment is aimed at increasing the relations among employees and creating synergy. Leaders want to increase the motivation of employees. Therefore the business environment is shaped. The vision of the business is also seen as a motivating tool and is used to achieve long-term goals (Bareket, 2012: 433-434).

Consumers behave cognitively and emotionally when evaluating businesses' past and present financial strengths. Strong businesses that have financial power indicates have strong reputation. In corporate reputation scales, the evaluations are based on the financial indicators of the previous years. The evaluation of financial performance is about comparing with businesses and competitors's past and present situation. Sustainable competitive advantage can be seen in this context. (Inglis, 2006: 936).

Businesses' social responsibility activities in global markets are handled with a balanced approach to the values of different cultures. Experiences are presented should take into account the aims of the business, the needs of the community and cultural pressures. The return of these experiences to business is an increase in economic performance and a positive corporate reputation. In this context, social responsibility activities are not considered as a cost but as a strategic investment (Dima et al., 2013: 53-54).

## 2.3. The Environment and Social Media

The environment and social media affect business relations. Corporate reputation of businesses in the globalizing world depend on their environment and social media activities. The environment have features economic, politic, technological,

culturel and competitional. On the other hand, consumers' knowledge and motivation of social media to use social media are also affecting businesses today.

## 3. Conceptual Framework and Hypotheses

Based on the previous research the following hypotheses have been listed to be tested.

H1: Experiential marketing is significantly related to corporate reputation.
H1a: Sensory experience is significantly related to corporate reputation.
H1b: Emotional experience is significantly related to corporate reputation.
H1c: Cognitive experience is significantly related to corporate reputation.
H1d: Behavioral experience is significantly related to corporate reputation.
H1e: Relational experience is significantly related to corporate reputation.
H2: Environment affects the relationship between experiential marketing and corporate reputation.
H3: Social media affects the relationship between experiential marketing and corporate reputation.
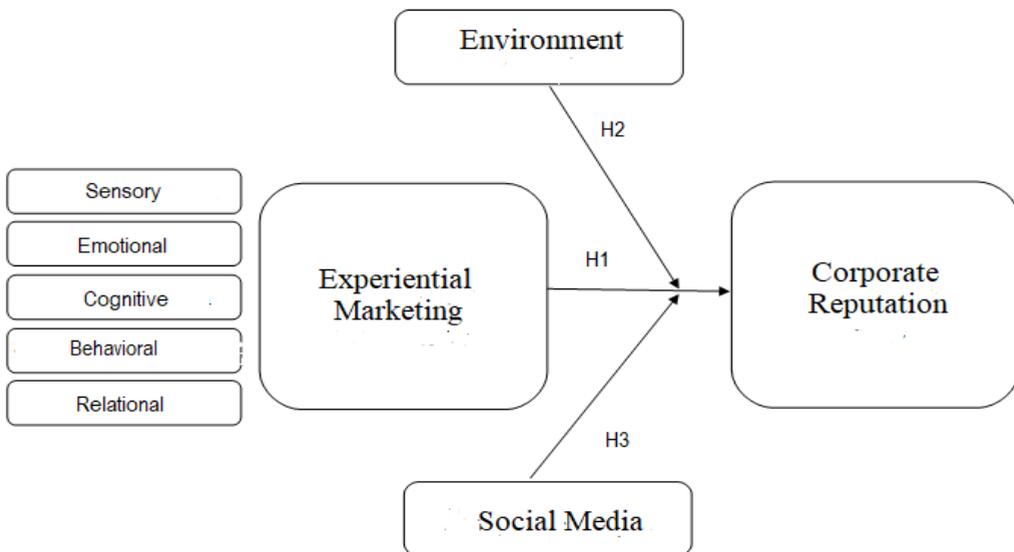


**Figure 1. Conceptual Model**

Based on these hypotheses, the research model is structured to explain how sensory, emotional, cognitive, behavioral, relational experience affect corporate reputation through environment.

## 4. Methodology

### a. Measures

A review of the literature yielded a number of measurement instruments that were employed to test the hypothesized model and each scale has a history of reliable measurement (See Table 2). All scales employed in this study were measured on five-point Likert scales ranging from 1 (strongly disagree) to 5 (strongly agree). In the process of translation, the techniques of back translation and parallel translation have been adopted with the help of a group of academicians fluent in English and Turkish. The final Turkish version of the questionnaire was further verified by the authors of this paper.

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**Table 1.** Measurement items

| Experiential | Marketing | The communication activities of the brand are visually and audibly influential | Schmitt (1999) |
| --- | --- | --- | --- |
| | | The brand has distinctive activities according to its competitors | |
| | | The communication activities of the brand address all sense organs | |
| | | The communication activities of the brand provide charm to this brand | |
| | | The communication activities of the brand are making my feelings positive in the act | |
| | | The communication activities of the brand affect me emotionally | |
| | | The communication activities of the brand strengthen emotional dependence on the brand | |
| | | This brand is a brand I think about from time to time | |
| | | This brand has an intriguing and interesting feature | |
| | | I see this brand as a creative and innovative brand | |
| | | I see this brand as a brand that solves my problems | |
| | | This brand encourages me to enter my own website | |
| | | This brand evokes research requests about the services it provides | |
| | | I would recommend this brand to people around | |
| | | I follow traditional communication channels to get information about this brand | |
| | | I follow the brand regularly on the social media | |
| | | I follow the brand from social media to communicate with other users of this brand. | |

| Corporate Reputation | I have positive feelings about this brand | Fombrun etc. (2000) |
| --- | --- | --- |
| | I trust this brand | |
| | This brand is a respected brand | |
| | I am proud to use this brand | |
| | This brand stands behind the services it offers | |
| | This brand offers innovative services | |
| | This brand offers high quality services | |
| | This brand offers valuable services for the fee I pay | |
| | This brand has a clear and understandable future vision | |
| | This brand has a strong leader and valuable executives within the organization | |
| | This brand has the ability to see market opportunities | |
| | This brand is managed well and correctly | |
| | I think this brand has good and qualified employees | |
| | I think this brand has the ambience to create a work request | |
| | I think this brand has a very strong profitability history | |
| | I think this mark does not invest in risky areas | |
| | I think this brand has the potential for further growth in the future | |
| | I think this brand has better economic performance than its competitors | |
| | This brand offers people a high standard of quality | |
| | This brand is environmentally responsible | |
| | This brand supports charitable activities with social responsibility activities | |

| Environment | Economic developments affect the brand<br>Political developments affect the brand<br>Technological developments affect the brand<br>Cultural developments affect the brand<br>Competitive developments affect the brand | Porter (1990) |
|---|---|---|

| Social Media | I like to enter social media for information<br>Social media is available for information<br>Learning marketing communication activities of the brand from social media<br>I keep track of developments, innovations and existing product updates on brands from social media<br>I like to get social media information about brands and exchange ideas about them<br>The feeling of self-motivation motivates me to participate and use in social media communities (Facebook etc.)<br>To motivate me to participate and use social media communities to realize personal goals (to get information about products and brands etc.)<br>Supporting other social media users in the direction of my knowledge motivates me to participate and use social media communities | Chahal and Rani (2017) |
|---|---|---|

## b. Sampling and Data Collection

Data for this research was collected through a questionnaire survey. During four week period, more than 480 respondents completed the survey. After sorting and removing duplicate submissions, a net sample of 464 usable questionnaires remained. The major demographics of the respondents were listed in Table 2.

**Table 2. Demographic characteristics of survey respondents (N=464)**

| Gender | Female<br>%54,1 | | | Male<br>%45,9 | | | |
|---|---|---|---|---|---|---|---|
| Age | 18-24<br>%16,6 | 25-34<br>%51,7 | 35-44<br>%19,4 | 45-54<br>%9,5 | 55-64<br>%2,8 | | |
| Marital Status | Single<br>%56,3 | | | Married<br>%43,8 | | | |
| Education | Secondary<br>%1,3 | High School<br>%6 | 2 year Degree<br>%13,6 | University<br>%33 | Graduate<br>%36,2 | PhD<br>%9,9 | |
| Occupation | Public sector<br>%45,9 | | | Private sector<br>%54,1 | | | |
| Income | Under than 1000TL<br>%3,4 | 1001-2000TL arası<br>%12,1 | 2001-3000TL arası<br>%24,6 | 3001-4000TL arası<br>%26,3 | 4001-5000TL arası<br>%18,5 | 5001-7500TL arası<br>%9,7 | 7501-10BinTL arası<br>%2,8 | More than 10BinTL<br>%2,6 |

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The sample comprised of 251 Female and 213 Male. Ages of the sample ranged between 18 to 60. Data obtained from questionnaires will be analyzed through the IBM SPSS 23.0 and AMOS 22.0 statistical programs

## 5. Analysis and Findings

The main purpose of the study is structured to explain how sensory, emotional, cognitive, behavioral, relational experience affect corporate reputation through environment. To identify and test the underlying structure of the scales exploratory factor analyses (EFA) were employed to each measurement as the initial step. The EFA results were further validated with confirmatory factor analyses (CFA). Kaiser-Meyer-Olkin measure of sampling adequacy and Bartlett test of sphericity tests were performed to test the appropriateness of data for conducting factor analyses (Sharma, 1996)

The KMO test results are above the accepted limit of 0.50 for each factor. In the Bartlett test results, it is seen that p value is significant and below 0,05. In this context, it is appropriate to perform factor analysis with the existing data set.

Each factor has a Cronbach Alpha value greater than 0.70, which is the result of the reliability analysis.

| Experiential Marketing | CMIN | DF | CMIN/DF | CFI | RMSEA |
|---|---|---|---|---|---|
| | 416,287 | 108 | 3,855 | ,929 | ,079 |
| Corporate Reputation | CMIN | DF | CMIN/DF | CFI | RMSEA |
| | 568,036 | 174 | 3,265 | ,944 | ,070 |
| Environment | CMIN | DF | CMIN/DF | CFI | RMSEA |
| | 12,578 | 4 | 3,145 | ,992 | ,068 |
| Social Media | CMIN | DF | CMIN/DF | CFI | RMSEA |
| | 25,634 | 7 | 3,662 | ,988 | ,076 |

**Table 3. Results of CMIN/DF, CFI and RMSEA**

The results of confirmatory factor analysis seem to be consistent with the theoretical basis. CMIN / DF values are below 5.00. It is stated that values below 5.00 are acceptable (Marsh and Hocevar, 1985). CFI values are close to 1.00. This

| Path Analysis | CMIN | DF | CMIN/DF | CFI | GFI | AGFI | RMSEA |
|---|---|---|---|---|---|---|---|
| | 5,894 | 4 | 1,473 | ,998 | ,995 | ,981 | ,032 |

indicates that the compliance indices are very good and meaningful (Bentler, 1990). The RMSEA values are below 0.08 and represent a very good fit. (Browne - Cudeck, 1993)

**Table 4. Result of Path Analysis**

As a result of the path analysis, it is understood that the fit and the predictive power are statistically significant. The CMIN / DF value has risen to 1.473 below the 5.00 value and is stated in the literature that values below 5.00 are acceptable (Marsh and Hocevar, 1985).

The CFI value is 0.988 and is close to 1.00. In this context, it can be said that it has a very good harmony value. NFI, RFI, IFI and TLI values are consistent with the values of 0,993, 0,982, 0,998 and 0,994 (Bentler, 1990).

The GFI value expresses the goodness of fit index and it is 0,995 and it shows perfect fit with the value close to 1.00 (Tanaka - Huba, 1985). The AGFI value is 0.981 and the value close to 1.00 with a good fit.

The RMSEA value is 0.032, which is lower than 0.08, indicating the perfect level of conformity in the model (Browne - Cudeck, 1993).
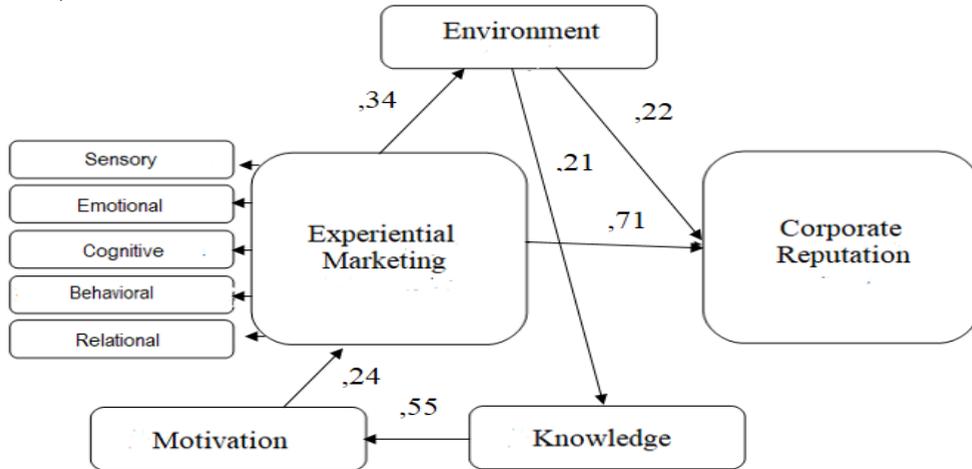


**Figure 2. Graphical representation of path model**

When the results for the standard direct effect in path analysis are examined, there is a 0.71 relationship between experiential marketing and corporate reputation; there is a 0.55 relationship between social media knowledge and social media motivation; there is a 0.34 relationship between experiential marketing and the environment. In this context, it can be said that the variables have significant relations with each other in the positive direction.

When the standard indirect effects are analyzed in the path analysis, it is understood that the effect of the environment is 0.022 on the relationship between experiential marketing and corporate reputation as the intermediate variable. The effects of social media knowledge and social media motivation as intermediary variables on experiential marketing were found as 0.073 and 0.040, respectively.

As a result, H3 is rejected while the study's H1 and H2 hypotheses are accepted. In other words, the experiential marketing approach is significantly related to corporate reputation. While environmental variable influences the relationship between experiential marketing and corporate reputation, the social media variable has no effect.

## 6. Conclusion

The paper finds that sensory, emotional, cognitive, behavioral, relational experience affect corporate reputation directly or indirctly through environment.

The importance of consumer behaviour and being active on social media via Youtube, Facebook, Twitter and others come to exist in the study. Companies reserve a share of advertising budgets, especially to reach the y and z generation and affect their purchase intentions. Consequently, in the study all variables are positively related to each other and shows satisfactory levels. These results suggest that marketers need to take into account and manage actively experiential marketing activities, their environments, social media sites.

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# Nigeria and the Challenges of Internal Security in the 21st Century

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## Abstract

This paper examines the various internal security challenges confronting Nigeria in the 21st century. The paper adopts historical method and content analysis to investigate how the abysmal failure of the poorly formulated and ineffectively implemented National Security Policy has hitherto exacerbated internal security challenges in Nigeria. The paper further attempts a critical review of major internal security challenges hitherto confronting the country; such as the Niger Delta crises, kidnapping in the South-East geo-political zone, Jos crises, Boko Haram crises and crises by Fulani Herdsmen in the Northern part of Nigeria. The result of the analysis shows that these internal security challenges have not only been difficult to address by the National Security Policy, but have also impacted negatively on the country's desired socio-economic development in the 21st century. The paper, therefore, recommends among others, the need for a careful review of the Nigeria's National Security Policy that will not only be integrative/comprehensive in outlook, but will also take cognizance of some domestic factors that are currently responsible for internal security problems in the country; such as unemployment, inequality, poverty, fraudulent electoral process, corruption, skewed federalism, porous nature of the Nigeria's borders, sabotage among politicalelites, bad governance, religious intolerance, citizen-settler controversies, among others.

**Keywords:**Public Policy, Internal Security, Implementation, Economic Development.

## Introduction

The Nigerian state has witnessed plethora of security challenges, especially since the enthronement of democracy in 1999. As a leading state in the African continent, available evidence shows that Nigeria has peculiar security challenges which some observers had expected the internal security policies (a component of the National Security Policy of Nigeria) to address. In Nigeria, ritual killings, cyber crimes, car theft, carjacking, advanced free fraud, drug trafficking, human trafficking, among others; have continued to pose serious challenges in Nigeria. As it was

the trend in some states in Africa like Ghana, Liberia, Sierra Lone, Gambia, etc. these security threats were witnessed along other non-violent threats such as HIV/AIDS, cholera, bird flu, Lassa fever, among others.

Beside these conventional threats, Nigeria is plague with violent security threats. However, such threats include the Niger Delta crises, Kidnapping, Boko Haram crises and frequent clashes between farmers and herdsmen in the Northern part of Nigeria. However, some of these threats have long historical antecedents, while others like the menace of Herdsmen are recent occurrence. In Nigeria for instance, armed robbery, arson, murder, rape, car theft, among others are not new. They are among the old internal security problems confronting the Nigerian state. Paradoxically, Nigeria in recent times witnessed new forms of security threats in her internal security management. Such threats were undoubtedly crimes perpetrated by Niger Delta Youths, Boko Haram sect, kidnapping by youthsfrom the South-East some other zones, terror-attacks by Islamic extremists in Jos, frequent attacks to farmers by Fulani Herdsmen and killing of Christians by extremists at southern part of Kaduna State; which is also located in Northern Nigeria. Consequently, these internal security challenges have not only posed threats to corporate existence of Nigeria as a sovereign state, but also undermined the quest for unity in diversity which underscores the rationale for adoption of federalism in Nigeria.

Thus, several internal security policies formulated by government appeared impotent to address the above security problems. This is partly because; policy makers appeared to have formulated such policies without considering the dynamic

nature of violence, crime and security threats, especially in a heterogeneous society like Nigeria. However, policy makers failed to acknowledge that the achievement of desired internal security will be an exercise in futility when government lacks political will to foster socio-economic development in the state. However, an overview of specific internal security problems in Nigeria provides useful insights to understanding the problems that confronted internal security policies and implementation failures in Nigeria's social formation. Against this background, this paper attempts a critical discourse of the Nigeria's predicament in handling internal security challenges in the 21st century. The paper seeks to expose several systemic and institutional factors militating against effective implementation of the internal security policies of Nigeria, which undoubtedly aimed at addressing pockets of crime, insecurity, internal threats and social unrest within the Nigeria's political environment.

**Objectives of National Security Policy of Nigeria and Implementation Framework**

*National security is an interactive and integrative system consisting of the individual as the irreducible basic unit, who is connected both to the state and the international political system by way of civil society... the state is the strongest entity for the enhancement of national security issues, but is increasingly being challenged by civil society which demands a larger role....(Buzan, 1991:209).*

According to the National Security Policy of Nigeria, the central pillar of the country's national security policy objective is the preservation of the safety of Nigerians at home and abroad and the protection of the sovereignty of the country as well as the integrity of her state (Bassey, 2011). Other specific objectives include:

To safeguard the sovereignty, independence and territorial integrity of the Nigerian State;

To defend the African unity and independence;

Non-intervention in the internal affairs of other states;

Involvement in regional economic development and security cooperation and;

Attainment of military self-sufficiency and regional leadership.

The achievement of the above policy objectives in Nigeria have continued to pose serious challenges by the government. These objectives not only require strong political commitment by the government, but also the determination of Nigerian citizens. Thus, the achievement of the internal dimension of the Nigeria's nation security objectives has remained elusive despite several strategies and implementation framework adopted by the government. However, Nigeria has persistently been faced with several threats to her internal security. As Bassey rightly notes, the internal threats are those issues that distort the socio-political and economic balance of the nation (Bassey, 2011). These include:

Ethnic and religious militias which are well-armed and semi-trained to carry-out raids, ambushes and even assault against law-abiding citizens.

Inter-border and inter-communal conflicts.

Unemployment, especially among the youths with subversive and criminal behaviours leading to economic sabotage and threatening of civil economic installation, especially in the oil sector.

Consequently, while it is the traditional role of the military to check external aggression against the state, the army is implicitly relevant in monitoring the activities of various actors in the domestic sphere that manifestly pose danger to the society (Bassey, 2011; Eminue, 2006). In internal security management, such as the protection of lives and property of citizens in Nigeria, the role of the Nigerian Police Force (NPF), is obviously relevant and indispensable. The NPF performs conventional police functions and is responsible for internal security generally. This includes supporting the Prisons, Immigration and Customs; and performing military duties within and outside Nigeria as directed (NPF Public Relation Department, 2011).

Thus, available evidence shows that the Nigerian Police Force (NPF) has been incapacitated in tackling the increasing rate of internal security challenges in Nigeria since the return of democratic government in 1999. According to the Public Relation Department of the organization, NPF experiences endemic problems with retirement, training, inefficiency and indiscipline. According to Police Public Relations Department (PPRD, 2011), the Force lacks expertise in specialized fields. Further, the

Force is challenged with corruption and dishonesty and these engenders low level confidence on the institution. Thus, crime prevention, detention and investigation are compounded by failure of the Force to report crimes accurately (Nigerian Police Watch, 2011).

The above systematic challenges of the NPF to effectively implement internal security policy of Nigeria are further exacerbated by poor institutional capacity of the institution in terms of manpower and logistics. Thus, available statistics shows that the staff strength of the Nigerian Police Force as at 2011 was estimated at 371, 000. Thus, this figure is grossly low considering Nigeria's national population which is about 164,000 as at 2011. This statistics implies that one Police Officer is expected to police or monitor the activities of 442 Nigerians in view of the ratio of 1:442. This pathetic situation did not improve between 2012-2016.

Comparatively, the statistics of the manpower capacity of some neighbouring countries like the South African Police Service (SAPS) is far better than that of Nigeria. With a national population of 49, 320, 500 as at 2009, the staff strength of South African Police Service was 189, 546. This means that one Police Officer is, therfore, expected to monitor or police 260 residents thereby giving a ratio of 1:260. (SAPSR, 2011). However, the inadequacies of the police institution to effectively tackle violent crimes including terrorism, ultimately resulted to the involvement of the Armed Forces of the Federal Republic of Nigeria in internal security governance. The Nigerian Armed Forces (NAF) is made up of the Nigerian Armey, Nigerian Navy, Nigerian Air Force and the Nigerian Police force. Thus, the personnel-strength of the Nigerian Armed Forces has remained a critical challenge to internal security policy implementation in Nigeria. As a country with pervasive cases of internal insecurity, the capacity of Nigeria's Armed Forces in terms of personnel strength, funding, sophisticated equipment, deployment and rapid emergency response, are grossly low (Aliyu, 2011).

Another critical issue of note is the budgetary allocation to Defense Sector in Nigeria. In the last ten years, analysis of Nigeria's Defense Allocation indicates lack of political will on the part of the Federal Government to address internal security challenges confronting the country. This is evidenced from the allocation made by the Federal Government to the sector, between 2008-2016.

It is imperative to note that Nigeria has several security formations (military and paramilitary), that participate in internal security management. To respond to the challenges posed by insecurity in the country, policy makers claimed to have adopted integrated security approach and this led to the establishment of Joint task Force (JTF). The security formations or agencies whose roles are critical to internal security policy implementation in Nigeria include; the Nigeria Army, Navy, Air force, the Nigerian Police Force, Nigerian Prison Service, Nigerian Immigration Services, Nigerian Security and Civil Defense Corps, Nigerian Custom Service, State Security Services and National Drug Laws Enforcement Agency.

However, the strategies adopted to implement the national security policy objectives of Nigeria appear impotent to address plethora of internal security challenges facing the country. The current conception of the Nigeria's internal security which is an integral part of the overall national security frameworks is at best state-centric and society-centered. As some leaders have argued, the ultimate goal of addressing the internal threats and challenges facing Nigeria is not just to safeguard the lives of the common man, but to protect the lives and the loots of the ruling class (Fayemi. 2003).

Thus, between 2001-2018, the Nigerian state witnessed several security challenges from her internal political environment. These challenges as some observers argue may be due largely to poor implementation strategies adopted by the government and her security appointees to tackle the country's internal security challenges. Hence, Akinterinwa (2001:11) puts the generational roots of the above problem in clear perspectives:

*...security appointees have failed the President, Chief Olusegun Obasanjo. If we are to judge by the current state of lawlessness...it is a shame when the Attorney General gets killed so easily. The aggressive posturing Odua People's Congress, robbery, drug trafficking, advanced free fraud (419), unemployment, high price of commodities.. .are realities being faced in the country that requires remedies...*

The above observation underscores the relevance of effective policy strategy to implement the country's internal security policy. This observation reinforces the argument by Dye who insists that:

*Implementation is the continuation of politics by other means…policy making does not end with the making of new law...and its signing by the president. Implementation involves all the activities designed to carry out the policies enacted by the*

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*legislative branch. The activities include the creation of new organizations, departments, agencies, bureaus, and so on...(Dye, 1972:312).*

The above argument by Dye further reinforces the assertion by some scholars and analysts that the internal security policy of Nigeria abysmally failed to take cognizance of the "unusual suspects" or what Nnoli refers to as "the real enemies of the people" (Nnoli, 2006:10). The "unusual suspects" or "real enemies of the people" which revolve around the economic misfortune of Nigeria include poverty, inequality, unemployment, low per capita income, among others. The 'unusual suspects' encompasses politics, which is a reflection of aberrant behaviours of the ruling class such as nepotism, sectionalism, election rigging, bad governance, corruption, thuggery, hooliganism, among others.

The implementation framework to achieve the national security policy objectives of Nigeria undoubtedly neglected the role of domestic (internal) factors capable of affecting effective implementation framework. Also, the implementation framework equally neglected the fact that domestic or internal factors could lead to conflicts and this can subsequently metamorphosed to security challenges in the country. The above assertion is true because as Bassey rightly explains:

*...containment or management of conflict entails an understanding of its nature before we can deal effectively with it intellectually, emotionally and behaviourally.. .structural analysis of conflict, violence and warfare focus on how the organization of the society shape action... (Bassey 2007: 62)*

The inability of the implementation framework of the national security to reduce the vulnerability of the citizens of Nigerian obviously compounded the internal security situation in the country, especially since the return of democracy in 1999. Ultimately, these challenges require paradigm shift which some scholars have recommended to the government in the past. This paradigm shift may be akin to the continuous call for adoption of integrative approach in the formulation and implementation of national security policy objectives of African states. This appears to be the global trend in security governance by modern states which appears elusive in many African states, especially Nigeria.

### Nigeria and internal security challenges: A Historical Exploration

Nigeria as a sovereign state has witnessed several plethora of challenges emanating from her internal political environment. The country has been under siege for some years largely due to militancy, and act of terrorism perpetuated by some individuals against the state. However, the most serious security challenges witnessed in Nigeria between 2001-2018 include; Niger Delta crises, kidnapping, Jos crises, Boko Haram crises and crises by Fulani Herdsmen. These threat perceptions are further elucidated below:

### The Niger Delta crises:

The Niger Delta crises in the South-South region of Nigeria have long historic antecedence. Thus, during the colonial period, the areas hitherto referred to as Niger Delta were part of the Eastern region of Nigeria which came into being in 1951 (one of the three regions and later one of the four regions). This region comprises of several ethnic groups. They include, the people from colonial Calabar and Ogoja divisions which are the present Ogoja, Annang, Ibibio, Oron, the Efik, Ijaw and Igbo as majority. However, the National Council of Nigeria and Cameroon (NCNC) was the ruling party in the region (Niger Delta Archive of News, 2011). Indeed, the NCNC later become National Congress of Nigerian citizens shortly after Western Cameroon decided to separate from Nigeria. Thus, the ruling party of Eastern Nigeria did not seek to preclude the separation but encouraged it. The Niger Delta is a very densely populated region and is sometimes called Oil Rivers. This is because, the area was once a major producer of Oil. However, the area was British Oil River protectorate from 1885 until 1893 when it was expanded and become the Niger Coast Protectorate (Niger Delta Development Commission, 2010).

The Niger Delta as now defined officially by the Nigerian Government extends about 70, 000km$^2$ and makes up 7.5% Nigeria's land mass. Historically and cartographically, it consists of present day Bayelsa, Delta and Rivers States. In 2000, Obasanjo's regime included Abia, Akwa-Ibom, Cross River, Edo, Imo and Ondo states to the region (Dafinone, 2008). The region comprises of about 31 million people of more than 50 ethnic groups. They include the Bini, Efik, Ibibio, Annang, Oron, Ijaw, Itsekiri, Isoko, Urhobo, Ukwaani, Kalagbari and several others. The linkage between resource and conflict is exemplified in the Niger Delta region of Nigeria. Thus, the region is richly endowed with crude oil deposits, both in onshore and offshore. This has made the region the center of international controversy over devastating pollution, ecocide, kleptocracy and human right violation, in which the Royal Dutch Shell has severally been implicated (Mathiason, 2009).

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Admittedly, before the discovery of oil in 1956, the main-stay of local economy of the people in the region was fishing and farming. These occupations have been dislocated by oil exploitation and exploration. This pathetic situation partly explains factors responsible for perennial conflicts and crises over oil resources in Niger Delta. However, some observers (Terminiski, 2003; Akpan, 2011; Wale, 2009; Andrew, 2009), have bluntly argued that the role of oil in conflicts and crises in Niger Delta is paradoxical. This is because, while the multinational oil companies and the Nigerian state enjoyed the revenue accruing from oil exploitation, the communities in the Niger Delta were persuaded to endure its consequences such as spillage, gas flaring and several forms of ecological disasters (Ayodele & Sotola, 2008; Akpan, 2011). This assertion is further corroborated by Idoko who posits that:

*...the state is scarcely concerned about the prospects of good life for the people of the Niger Delta, neither is the state really interested in enduring peace and development of the region...there is no doubt that the Nigerian state has always believed in the use of force to reign on "trouble makers" in the Niger Delta which makes it less surprising that the federal government.. .maintains an occupation force within the Niger Delta territory...(Idoko, 2008:18).*

The implication of the ecological problems posed by oil exploitation on the lives and economy of the people coerced many communities, non-state actors and most recently militia groups to protest against the federal government and the multinational oil companies operating in the regions (Oladesu, 2008). They used both constitutional means to draw attention to injustice of successive government to the plights of the regions since 1960.

In response, government resorted to the adoption of repressive policy and the sinister tactics of playing one community against other rather than addressing the problems facing the people (Akpan, 2011). This was a deliberate approach of instigated and intensified inter and intra-communal conflicts in the Niger Delta region (Human Right Watch, 2002). Thus, the use of force by the federal government of Nigeria to address a clear case of injustice and marginalization of the people was at its climax following the extrajudicial killing of Ken Saro-Wiwa and nine Ogoni leaders by the Abacha regime (Obodo, 2010). Thus, this singular action by Abacha's administration was condemned not only by some Nigerians, but also the international community. Consequently, the international community expressed her disapproval by imposing several sanctions on the Nigerian state during the period.

Indeed, the inability of the Federal Government, especially during the military era. to address the root causes of agitation (environmental problems, poverty, unemployment, inequality, lack of basic amenities, etc), in the Niger Delta region, resulted to proliferation of armed militia groups causing tension and militarization of nearly the entire region. This movement was superheaded by Movement for the Survival of the Ogoni People (MOSOP), founded by Ken Saro-Wiwa.

As Human Right Watch (2002) further pointed out, the agitation continued without reasonable policy action by the government until the Odi massacre of 1999. This extra-judicial action by Obasanjo-led administration claimed the lives of over 10, 000 people including women and children according to unofficial sources. This ugly incidence happened barely five years after the execution of Environmental and Minority Right Activist, Ken-Saro-Wiwa and 9 others. Thus, Saro-Wiwa and his kinsmen were killed, following their alleged role in the killing of four Ogoni Chiefs. The alleged action by Saro-Wiwa and his group was based on their conviction that those four Ogoni Chiefs were collaborating with the government and Shell to subvert their efforts toward addressing the fundamental issues such as neglect, marginalization and injustice (Aderoju, 2008). The hardship the above social malaise has caused to the lives of an average Niger Delta indigene is put to perspective by Mitee who explains that:

*The fundamental problem of the Niger Delta still remains the challenge posed by the very harsh environment which made development most challenging and resulted in the criminal development neglect of the region... (Mitee, 2009:15).*

The trajectory of the crisis in Niger delta is understandable from the point of view of the inability of the Government to provide basic amenities and infrastructural development for the people. This sorry situation is compounded by the economic dislocation occasioned by the oil exploitation and exploration activities in the region. Thus, it is the politicization of these issues that culminated into struggle for resource control and subsequent militancy in the Niger Delta region (Amaizu, 2008). This point is well articulated in the Ogoni Bill of Rights, the Kaima Declaration and other protest documents as deliberate struggle to compel government to address the perceived neglect and poor condition of the Niger Delta people.

However, several intervention institutions and programmes initiated and implemented by the government such as the Oil Mineral Producing Area Development Commission (OMPADEC) and Niger Delta Development Commission (NDDC), to address the problem of the Niger Delta undoubtedly performed below expectations. Consequently, the abysmal failures of

these institutional mechanisms established to douse tension in the region coerced the government to resort to other measures to bring enduring peace in the region. This was after several loss of revenues by the Federal Government from the oil sector. The loss of resources that amounted to billions of naira was largely due to the activities of the militants who forced oil companies to close down and increasing spate of kidnapping of expatriate oil workers in the region. These armed militias and anarchic group also engaged in illegal bunkering of oil resources and destruction of oil installations in the region. Consequently, these illegal actions grossly reduced Federal Government's revenue from oil sector, especially between 1999 and 2015.

The ugly development in the Niger Delta which adversely impacted on the Nigeria's economy ultimately became a source of worry. Hence, the Federal Government decisively adopted another policy measure to reduce the spate of insecurity in the region. This decision resulted to the application of minimal force to ensure that militants drop their crimes and hostilities against the government and the people of the region.

Towards the end of 2008, the Federal Government launched a massive military crackdown on militants (Amaizu. 2008). Thus, the military patrolled waterways, hunted for militants, searched all civilian boats for weapons and raided numerous hideouts in the region. Also, on May 15, 2009 (the following year), a military operations undertaken by the Joint Task Force (JTF), was put in place by the federal government against members of the movement for emancipation of Niger Delta (MEND), and their affiliates in the region (Onoyume, 2008).

Paradoxically, rather than these measures to address the challenges of internal security in the Niger Delta, the situation led to incessant kidnapping of not only the foreign oil workers, but also the indigenes and other residents in the region. In view of the worsening security situation in the region, the Federal Government adopted another civil and tactful approach in resolving the poor security internal situation in the Niger Delta. Thus, on June 26, 2009, the federal government under the leadership of Late President Umaru Yar' Adua, announced the granting of Amnesty and unconditional pardon to militants in the Niger Delta (Rotimi, 2009). However, the militants were given between August 6, to October 4, 2009 to surrender their weapons to the Federal Government in return for training and rehabilitation.

Hence, during the 60 days period, the militants led their groups to surrender their weapons which included rocket-propelled grenades, guns, explosives, ammunitions, gunboats, among others. This strategy adopted to end hostilities in Niger Delta by the Federal Government, significantly increased Nigeria's oil production and consequently enhanced Federal Government's revenue from oil sector between 2009-2011.

Thus, as Nigeria witnessed a change in her political equation which resulted to the opposition party (All Progressive Congress, APC) controlling the Federal Government in 2015 General Election, the crises in the Niger Delta took a different dimension in Nigeria. This time, a militant group known as Niger Delta Avengers commenced the destruction of government economic outfits in the Niger Delta Region. This resulted to a sharp drop in oil production and its attendant consequences on revenue accruable to the Federation Account.

However, despite several mediation efforts of prominent Nigerians from other parts of the country and indigenes of the Niger Delta region, the Niger Delta Avengers has continued to destroy oil installations belonging to leading oil companies such as Mobil, Shell, Total, Agip, among others. The implication is that the hostilities in the region ultimately forced many oil firms to shut-down in the Niger Delta region of Nigeria. This pathetic situation has continued to affect the economy of the Nigerian state adversely.

### (ii) Kidnapping in the South-East Zone of Nigeria

Kidnapping is one of the criminal activities that have continued to pose serious security threat to the Nigerian State. According to Chukwurah (2011), kidnapping is conceived as the act of illegally taking someone away and keeping him as a prisoner for the purpose of receiving ransom (money in return). Historically, kidnapping in the South-East zone and some other parts of Nigeria, could be traced to the hostilities, conflicts, crises and violence in the Niger Delta region (Igbokwe, 2009).

The challenges posed by this criminal dimension of Nigeria's perennial internal security checklist painted negative image of the country nationally and internationally. This ugly situation explains why Arizona-Ogwu, a Nigerian Residing in the United States of America bluntly describes the attitudes of the Federal Government of Nigeria toward the menace of crime as follows:

*Owing to the government cold-feet attitude to certain crimes in Nigeria, there is an outcome of thousands of cases signifying the brutality wrought on the innocent Nigerians with the help of local collaborators. Besides kidnappings and murders, there are millions of cases of torture, rape, arson, looting and other crimes (Arizona-Ogwu, 2010:18)*

In the South-East geo-political zone of Nigeria, kidnapping activities were initially targeted at prominent indigenes and residents of the region. The incidence of kidnapping became more pervasive shortly after the 2007 General Elections in the country. This is partly because, the youths who were used as political thugs by some inordinate politicians during the 2007 General Elections subsequently engaged in kidnapping as a means of livelihood after the elections (Nwosu, 2011). The violent nature of kidnapping and its socio-economic implication on the economy of the South-East zone of Nigeria are enormous.

Specifically, the menace of kidnapping was phenomenal in Abia State, especially in Aba metropolis and its environs. This criminal activity brought tension in the commercial city and compelled many families to abandon their residence (Eke, 2011). Besides individuals and families that ran away from Aba metropolis for security reasons, some manufacturing companies relocated to peaceful states like Enugu, Anambra and Ebonyi for their businesses. This ugly incidence adversely impacted on the economy of Abia State, in particular and Nigeria in general (Akinrinade, 2011). This situation further resulted to loss of jobs by some residents of Aba metropolis, thereby increasing unemployment rate in Abia State particularly and Nigeria generally.

Besides the relocation of these major manufacturing companies to more peaceful states, some small and medium scale business operators ran away from Aba and its environs due largely to high incidence of kidnapping. Thus, the increasing rate of this menace also resulted in several foiled attempts to kidnap the former Executive Governor of Abia State, Chief Theodore Orji in 2008 (Nwogu, 2008). From 2008-2010, several prominent men and women in Aba, as well as its environs were kidnapped for ransom. This includes political office-holders in Abia State, Traditional Rulers, business-men and women, civil and public servants. This pathetic situation impacted negatively on the economy of Abia State. Similarly, the Nigeria Gross Domestic Product (GPD) and Foreign Direct Investment (FDI) of Nigeria were grossly affected, thereby resulting to unemployment, poverty and their attendance implications.

The menace of kidnapping in Abia State got to a crescendo when some school children were kidnapped in Aba in 2010. However, this singular act and consequent kidnapping of "common man" compelled all the commercial banks in Aba metropolis to shut-down for several days. However, prior to this decisive action by the banks, many of them had been repeatedly robbed by armed gunmen in Aba, which is the commercial nerve centre of Abia State.

Worse still, kidnapping in the South-East geo-political zone also impacted negatively on social relations as some people were kidnapped during church services, village/town hall meetings and at market square. This resulted to the decisions of some illustrious sons and daughters of many rural communities from the zone to stay away from their villages during the Christmas and festive periods (Soriwci, 2011). The implication of this was that the rural dwellers could not speak with 'one voice' on community development programmes, let alone repose confidence on one another. They were suspicious of each other and could not come together as a people to articulate development programmes for the general well-being of their areas.

To redress the challenges posed by kidnapping in the South-East geo-political zone, the Federal Government of Nigeria, on passionate request of the Abia State Government, deployed soldiers to Aba metropolis. Thus, Okoli (2009:27) shades more light to the above bold step by the government.

*…Governor Theodore Orji of Abia State formally invited the Army to the state to assist in the fight against crime and criminals, especially kidnappers. The Governor said the menace of kidnapping seemed to have overwhelmed the police...*

Consequently, the action of government in mobilizing the Army to flush "kidnappers" in Aba and its environs minimized the reported cases of this menace in the area. This was largely due to intensive attacks launched by the Army at the identified hideouts of "kidnappers" in Ukwa-West Local Government Area of Abia State (Sampson, 2010).

It is imperative to note that several other criminal activities also threatened the security and economy of the South-East geo-political zone in particular and Nigeria in general during the reviewed period. Such criminal activities include murder, rape, ritual killings, robbery, human trafficking, politically-motivated killings and assassination of prominent men and women

in the zone (Ajani, 2010). Thus, the above criminal activities may have impacted negatively not only on Nigeria's Gross Domestic Product (GPD), but also crippled most economic activities in the South-East geo-political zone (Agboso, 2011).

However, despite kidnapping which undoubtedly crippled the economy of the South-East geo-political zone particularly and Nigeria generally, the agitation for self-rule or Sovereign State by the indigenous People of Biafra (IPOB), also threatened internal security governance of Nigeria. The agitation was geared towards the realization of the Sovereign State of Biafra. This agitation was championed by Mr. Nnamdi Kanu (an indigene of Afara in Umuahia, Abia State)

Indeed, the agitation for the realization of Republic of Biafra also has long historic origin. Thus, the quest for self government by the old Southern Region of Nigeria, comprising States in the current South-South geopolitical zones of Nigeria such as Cross River, Akwa Ibom, Rivers, Delta, Bayelsa and Edo States, as well as some states currently in the Middle Belt region like Kogi and Benue, was precisely what resulted to Nigerian Civil War between 1967-1970.

In response to this agitation, the Federal Government headed by Major General Mohammadu Buhari (Rtd), arrested the Leader of Indigenous People of Biafra-Mr. Nnamdi Kanu. Thus, Mr. Kanu was prosecuted for treason felony. The members of IPOB declared that the only remedy to their agitation is simply for the Nigerian Government to allow Biafrans to gain independence. This situation adversely impacted an internal security posture of the Nigerian State during the period under review.

**(iii) Jos Crisis**

The Jos crisis is another internal security threat which appears difficult for the internal security policy of Nigeria to address in recent times. The Jos crisis is a combination of the violence that followed the November, 2008 Jos North Local Government election (Audu, 2011). Historically, Jos is the capital of Plateau State of Nigeria. The city of Jos has witnessed several sectarian, ethnic and political clashes among which were the September, 2011 and April 2004 conflicts that resulted to the imposition of state of emergency on Plateau State by the Obasanjo's administration.

However, the violent dispute as argued by some observers is over the "rights" of the indigene ofBerom/Anaguta/Afizere (BAA) group and the rival claims of the Hausa-Fulani settlers to land, power and resources (Nakande, 2011). To some analysts, the immediate and remote causes of Jos crisis prior to November, 2008 crisis has been politicized along sectarian and ethnic lines (Akpan, 2011). Those inclined to the ethnic thesis believe that the crisis is a classic case of ethnic cleansing. They further argued that the Berom, Anaguta, Afizere and the Hausa/Fulani, laying claim to pre-eminence over one another is the main cause of the crisis in Jos (Akpan, 2011).

The above position is further supported by the crisis group report on Jos crisis. According to the report:

*Indigene - settler conflicts are not new to Nigeria... the Jos crisis is the result of failure to amend the constitution to privilege broad-based citizenship over exclusive indigene status and ensure that residency rather than indigenity determines citizen's rights.. .constitutional change is an important step to diffuse indigene-settler rivalries that continue to undermine security... (Crisis Group Report, 2011:21).*

Thus, the indigene principle or indigenity (that is local origin), means that some groups control power and resources in the state or local government area, while others, particularly those assumed to have migrated for different reasons are completely excluded. This situation gives rise to both grievances and fierce political competition which too often lead to interference, agitation, conflicts, violence and internal security challenges in Jos. The Jos crisis which has attracted mixed reactions from both local and international observers mostly occurred in some local government areas.

The ugly and annoying posture of the federal and state governments in resolving the problem in Jos have further attracted mixed reactions from Nigerian citizens and international community. As Human Right Watch Report rightly observed:

*...the discriminatory policies lies at the root of much of the inter-communal violence in Nigeria... with these policies, non-indigenes are openly denied the right to compete for government jobs and academic scholarships...in Jos, Kuru and Karama, members of the largely Muslim Hausa ethnic groups are classified as non-indigenes though may have lived there for several generations... government should take concrete steps to end the discriminatory policies that treat certain groups as second-class citizens... (Human Right Watch Report, 2010:29)*

Specifically, the unresolved crisis in Jos has claimed numerous lives of Nigerians and property worth billions of naira, particularly between 2001 to 2018. The crisis which seems to have defied all manner of intervention by the Federal and State Governments, as well as the Non-Governmental Organizations (NGOs), have resulted in frequent attacks on Christians by some Muslims (Obateru & Omonobi, 2010). Indeed, between 2001-2011, over 10, 000 Christians were slaughtered during the Jos crises. In 2010 crisis for instance, about 500 Christians lost their lives (Oladonyinbo, 2010). Similarly, some Muslims equally lost their lives during the crisis.

Indeed, the Jos crisis has resulted to unimaginable confrontations, killings, bombings and other forms of violence on the residents. The magnitude and wanton destruction of lives and property partly explains why the Late Terror Master - Gaddafi of Libya, once suggested that Nigeria should be divided into two religious lines (Muslim and Christian states). This suggestion was in consideration of frequent attacks on Christians by Muslim community. This pathetic situation as Sunday Tribune Editorial rightly noted was as a result in the emergence of a group known as Islamic Assailants. This group has continued to cause tension in Jos, displacing Nigerians and setting houses and property of the people ablaze. The Editorial Report further explains:

*Jos, conflict seems to reoccur in every narrowing cycles... deadly riots rocked the city in 1994-2001, 2008 and two months ago... in January 2010. The current conflict is said to have started in reappraisal for the destruction that occurred in January... there has been reports of children and the elderly being particularly targeted by roving gangs armed with guns and machetes... (The Editorial Report of Sunday Tribune Newspaper, 2011:2).*

Admittedly, the Jos crisis have raised serious question on the unity and development of Nigeria. Thus, available evidence has shown that the crisis in Jos has been fought on sectarian lines and this ugly trend is traceable to 'sour relationship' between the Christian and Muslim communities in some parts of Plateau State. The understanding of this relationship is pertinent because, as Human Right Watch Report Watch -Report rightly argues:

*...Jos lies on the border between Nigeria's Muslim minority North and Christian majority South. Access to land resources is often determined by whether one is a native or indigene... Jos is historically Christian city... settlers are most often Muslims from the North... (Human Right Watch Report, July 10, 2010:20)*

The above observation by Human Right Watch reinforces the result of some studies on Jos crisis. According to crisis group, the problem in Jos borders on citizenships status. The Crisis Group bluntly argues that:

*because the settlers are almost entirely Muslim and the indigenous people are predominantly Christians, struggle over land ownership, economic resources and political control tend to be expressed not just in ethnic but also religious terms... since 2010, security has further deteriorated in Jos because of terror attacks and suicide bombings against churches and security targets by suspected militants of Boko Haram... the Islamic group is responsible for an unprecedented wave of terrorist attacks in the North... (Crisis Group: Africa Report No. 196, 2011:14).*

From the above premise, it becomes imperative to rhetorically query why the Federal Government of Nigeria appears reluctant to tackle the root causes of the problem in Jos and to prosecute those perpetrating these dastardly crimes in the area?. Also, why has the Federal government perpetually kept quiet in addressing the problem of citizenship within the Nigerian political space? Why has the Federal Government and Plateau State abysmally failed to implement the recommendations of several committees set-up to find lasting solutions to the crises in Jos? Thus, the reaction of Hilary Clinton, the former US Secretary of State, provides useful insights to credible answers to the above questions. Thus, Hilary Clinton fearlessly argues that:

*...the Nigerian political leaders failed to live by- examples, thereby increasing the radicalization of many young Nigerians... fierce and unregulated political competition characterized by ethnic mobilization and violence, coupled with poor governance and rampant corruption, have severally exacerbated ethnic, religious and regional fault lines (Crisis Group Report, No. 196, 2011:14).*

Therefore, it is strongly argued by some analysts that the Jos crises require both national and local solutions. Thus, constitutional provisions by virtue of their ambiguity over terms such as "indigene" (which the amended 1999 Constitution of the Federal Republic of Nigeria failed to define satisfactorily), and "residency" for accessing citizenship rights, have done little to clarify the situation. Hence, Nigeria's current implementation of its citizenship (or national) question appears to be grossly inadequate and flawed. This situation as some analysts have rightly argued requires the collaboration and political

will of both the executive and legislative arms of government at the national level, especially to articulate implementable policy strategies to resolve the problems in Jos.

**iv)Boko Haram Crises**

*...what is going on is a new phase in this nation. Neither Nigerians, the government nor the security agencies is used to a situation where innocent citizens will be attacked for a cause that is clearly difficult to reason with or to explain...the Islamic fundamentalist group has claimed responsibility for attacks on government and private institutions, including the suicide bombings of the Police Headquarters and the United Nations (UN) House in Abuja... many people were killed in these attacks (Ojiabor, 2011:10; quoting the former Minister of Information in Nigeria, Hon Labaran Maku).*

The activities of Boko Haram as a terrorist group in Nigeria has been described in several ways by public analysts and observers. To some, Boko Haram is simply a group of people committed to the propagation of the Prophet Muhammed's teachings and Jihad in Nigeria. To others, Boko Haram is a socio-political fundamentalist group that rejects western education and culture. Also, others see this group as Islamic movement which strongly opposes man-made laws. However Boko Haram is conceptualized, available evidence indicates that it is Muslim sect that seeks to abolish the secularity of the Nigerian State and establish Sharia Law in Nigeria (Alaneme, 2011).

Etymologically, the term 'Boko Haram' is derived from Hausa word 'Boko' meaning 'Animist; Western, otherwise non-Islamic education; and the Arabic word 'Haram' figuratively meaning 'sin' or literally forbidding' (Olugbode, 2010). The summary of the above descriptions is that Boko Haram as a terrorist group abhors western education, culture and the general behaviours of Muslim faithfuls, especially the elites who promote western ethics. For this group, western education, culture, modem science and their related-terms, are not only forbidding, but also sacrilege (Dunia, 2010). Comically, the group asserts that the belief that the world is 'spheral' or 'ovat in shape is contrary to Islam and should be rejected along "Darwinism evolution theory" which asserts that rain comes from water evaporated by sun.

Historically, the Boko Haram group was founded in 2002 in Maiduguri by Utaz Mohammed Yusuf (Ikuomola, 2011). In 2004, this terrorist group moved to Kanamma in Yobe, where it sets up a base called 'Afghanistan', The 'Afghanistan' therefore, became the group's base to lunch terror and frequent attack on near-by police outposts and killings of police officers (Awowole, 2010). However, the founder of this terrorist group (Utaz Mohammed Yusuf), was hostile to democracy and secular education system operative in Nigeria and supported by some Northern elites. This partly explains why he vowed that the war he began in 2002 would ultimately change the political, economic and educational systems in Nigeria; a dream not realized till his gruesome death in 2009.

The Boko Haram does not mix with the local people in the Northern part of Nigeria. Thus, Available literatures have demonstrated that lot of members of this terrorist group that speak Arabic come from neighbouring Chad (Ojiabor, 2011; Obi, 2011; Anofi, 2010). This undoubtedly is as a result of the group's strong belief in the Koranic phrase which says "Anyone who is not governed by what Allah has revealed is among the transgressors". Thus, whether western education which majority of elites from the Northern Nigeria have acquired was not revealed by the "Allah' is entirely a subject hotly debated in Nigeria's political space. Consequently, the Boko Haram terrorist group has launched several attacks against the Nigerian State.

However, the magnitude and severity of the attacks by Boko Haram terrorist group are greater in some states/cities than others in the same Northern part of Nigeria. According to Champion Newspaper Report of June 12, 2011, it is estimated that Borno State records the highest rate of casualties (2,400), Yobe (1,950), Adamawa (1,720), Bauchi (1,500), FCT Abuja (1,510), Kaduna (1,230), Plateau (1,200), Kano (850), Niger (520). This is further explained in Fig. 2 below:

**States/Cities in Northern Nigeria with high rate of attacks by Boko Haram**
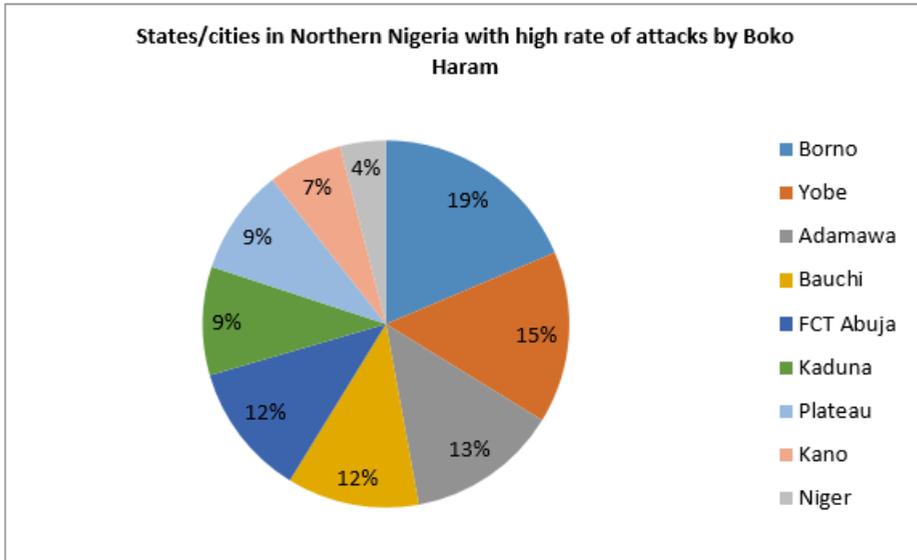


Fig 2: States/cities in the Northern part of Nigeria with high rate of attacks from Boko Haram terrorist group. *Source: Champion Newspaper, June 12, 2011.*

From fig. 2 above, it is observed that the state that received the highest rate of terrorist attack from BokoHaram between 2009-2018 was Borno State. Similarly, the Borno State has continued to receive several attacks from this terrorist group, even after the death of the Boko Haram founder. Thus, the climax of this inhuman act was the adoption of over two hundred (200) Chibok Dapchi school girls in 2014 and 2017 respectively by Boko-Haram terrorist groups.The reason could be that the group was formed in Maiduguri which is the Borno State Capital. The next state that received severe attacks from this group as evidenced in fig. 2 above was Adamawa, followed by Yobe State, especially Damaturu. The reason could be as a result that Boko Haram moved from Maiduguri where it was formed to Yobe State where it established its operational base it named 'Afghanistan'. As stated earlier, it was from its operational base in Yobe State that it began to launch incessant attacks on police officers and police stations in the area. Thus, other states and cities in the North that received attacks from Boko Haram could simply be as a result of the arguments among observers that Boko Haram is a terrorist agenda of some groups from the North to pull down the secularity status of the Nigerian State.

It is pertinent to note that Boko Haram promotes a version of Islam which makes it 'haram' or forbidden for Muslims to participate in any political or social activities with Western States and their allies. This includes voting in election, wearing shirts and trousers or receiving a secular education (Ajayi, 2011). The activities of the Boko Haram terrorist group constitute serious security threats to effective implementation of the National Security Policy of Nigeria. Thus, between 2009-2018.This group has killed so many residents in Nigeria, destroyed property of both the government and citizens and subjected millions of Nigerians to IDP camps. The criminal activities of this group and their implications on the implementation of National Security Policy of Nigeria are put to clear perspectives by some scholars who bluntly argue that:

*...the recent surge of the Boko Haram through series of bombings that have killed several innocent Nigerian citizens is a serious breach and challenge to national security. The bombing of the United Nations building in Abuja on Friday 26th August, 2011, killing not less than 22 people and wounding scores of others has further demonstrated not only the wickedness of the group, ... these bombings are serious crimes against the Nigerian State and threaten national security... (Ekanem et al., 2011:33).*

The activities of Boko Haram which has raised critical questions among investors on the safety of their investments in Nigeria range from killing of innocent Nigerians/residents, raping of women, to indiscriminate bombing of major cities,

churches, police stations and public gatherings, especially in the northern parts of Nigeria. As some analysts argued, these criminal activities have not only gained Nigeria a poor image in international political arena, but also impacted negatively on the economy of the Nigerian State.

It is imperative to note that the Boko Haram group may have executed other terrorist attacks against the Nigerian State apart from those presented in this study. Also, some of the criminal attacks by the group against the Nigerian State and its citizens may not have been effectively reported to the public by the media. This situation makes it difficult to have accurate data of the activities of this anarchist movement against the Nigerian State and her citizens.

Beside the security challenges posed by Niger Delta crises, Jos crises, kidnapping in the South-East, Boko Haram terrorist group and crises by Fulani Herdsmen in some part of the Northern Nigeria, the Nigerian political space also witnessed other forms of security threats or what could best be described as criminality. Some of the security threats were violent in nature like the case of rape, armed robbery, ritual killing, murder, child stealing/baby factory making venture etc, while others like HIV/AIDS, Ebola, cholera, Lassa fever, etc were non-violent. These security threats appear to have adversely affected the Nigerian economy, the image of the country at the global arena and social relations among the Nigerian citizens. The magnitude and severity of these crimes differ sharply from major security challenges witnessed in Nigeria in recent times, such as Niger Delta crises, Jos crises, kidnapping, Boko Haram insurgency and Fulani Herdsmen crises. However, the magnitude, severity and concerns generated by some internal security challenges in Nigeria is represented in fig. 3 below:



**Legend**
- Advanced free fraud
- Ritual killings
- Car theft
- Child stealing/baby factory
- Murder
- Rape
- Armed robbery
- Kidnapping
- Jos crises
- Niger Delta crises
- Boko Haram Crises
- Crises by Fulani
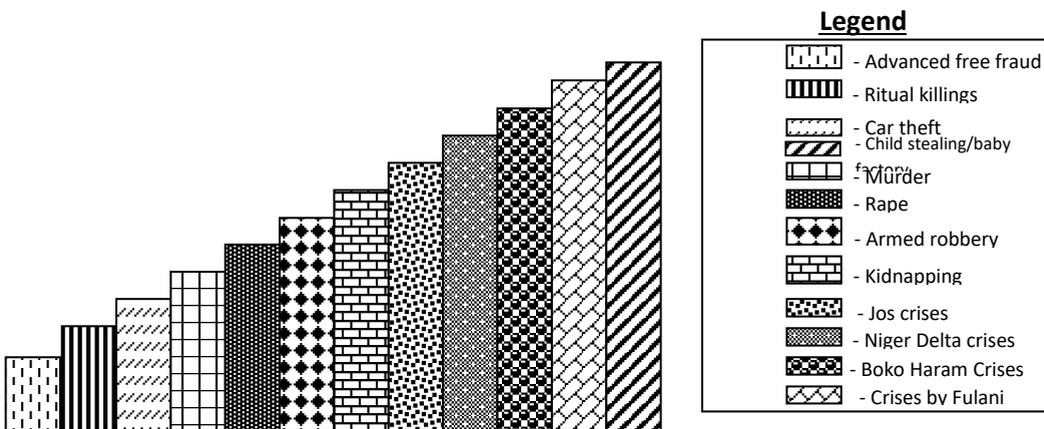
**Fig. 3: Presentation of Minor and Major Internal Security Problems in Nigeria.**

Source:Nwagboso's field survey, 2018.

From Fig. 3 above, it is evident that categories of crimes that posed threats to internal security governance of Nigeria. They are grouped as major and minor security threats in Nigeria. Thus, the minor security threats are criminalities that may have impacted only the economy of Nigeria.They include, rape, armed robbery, ritual killings, car theft, murder, child stealing/ 'baby factory making venture', advanced free fraud, among others. The major security threats are those that impact negatively on both the economy and statehood.They include, the Niger Delta crises, Jos crises, kidnapping, Boko Haram crises and crises by Fulani Herdsmen. However, the Jos crises and kidnapping are included in these categories as a result of their implication on the image of Nigeria in global politics.

**v. Crises by Fulani Herdsmen**

Recently, another ugly internal security challenge that currently perturbs the government and the people of Nigeria is the incessant mayhem launched by Fulani Herdsmen mostly in the Northern part of the country. Thus, "Fulani" is an ethnic nationality found in core northern states of Nigeria, such as Borno State, Kano, Jigawa, Bauchi, Zamfara, Yobe, Adamawa, Katsina, Sokoto, Gombe among others. Their traditional occupation prior to the current wave of globalization and western civilization is cattle rearing. Indeed, the 'Fulanis' usually move their cattles from one geographical location to another.

However, available evidence shows that due to poorclimatic condition in the Northern Nigerian,which most often delays rainfall in the region, the 'Fulanis' move their cattles from the Northern part of Nigeria to Southern part of the country, especially during dry season (October to March).

This nomadic movement and its attendant implications as widely acknowledged by some Nigerians is occasioned by the fact that between October and March, the 'Fulanis' find it difficult to feed their cattles as grasses usually die during the period. Hence, they move to Southern part of the country in search of green pastures for their cattles. It is significant to note that the Fulanis move back to the Northern part of Nigeria during raining season.

Historically, Fulani Herdsmen usually encounter clashes with farmers in the Northern Nigeria due largely to destruction of their crops and farm lands by their cattles. On the other hand, the herdsmen often face severe challenges from cattle rustlers (armed cow thieves) who often launch attack from neighbouring countries like Niger Republic, Chads, Cameroon, among others.

However, both the crises from the perspective of Herdsmen- farmers and Herdsmen- cattle rustlers undoubtedly have long historic antecedence. There was never a time the clashes by Herdsmen and farmers as well as Herdsmen and cattle rustlers posed threat to the authority of the state and corporate existence of Nigeria as sovereign nation-state.

Recently, there appears to be a paradigm shift in threat perception and conceptualization of internal security challenges in the Northern part of Nigeria. This is because, what used to be a common internal security challenge in the region such as Herdsmen-farmer clashes and Herdsmen-cattle rustlers, have significantly metamorphosed into a more perturbing internal security challenge in the country. Consequently, available documented evidence has shown that in 2012, Herdsmen started to move around for grazing of the cattles with guns and ammunition and frequently launch attacks on civilian population (Aminu, et al, 2018). Indeed, such barbaric dispositions on civilian population, particularly farmers resulted in the destruction of lives and property ofmost communities in Benue, Kaduna, Zamfara, Borno, Yobe, Adamawa, Taraba, etc. Thus, between 2012 and 2014, the clashes between Herdsmen and farmers persisted and this resulted to most communities running away from their homes.

However, government responses to this ugly internal security situation in the Northern Nigeria were the establishment of Internally Displaced Persons (IDP) camps in most states ravaged by Herdsmen-farmers clashes. Also, government responded to this pathetic internal security situation by swift implementation of a critical component of welfare policy such as the distribution of relief materials to the Internally Displaced Persons (IDP) at various camps in the affected Northern States of Nigeria. Thus, such relief materials include food items, building materials, drugs and money among others. The menace of armed Herdsmen-farmers conflicts are mostly witnessed in the following Northern states as presented in table 1 below:

**Table 1: States in the Northern Nigeria mostly affected by Herdsmen-farmers crises**

| S/N | State | Geographical zone |
| --- | --- | --- |
| | Benue | North-Central |
| | Kaduna | North-Central |
| | Adamawa | North-East |
| | Yobe | North-East |
| | Taraba | North-East |
| | Borno | North-East |
| | Zamfara | North-West |
| | Nassarawa | North-Central |
| | Jigawa | North-West |

Source: Nwagboso's field survey, 2018.

From table 1 above, the Herdsmen-farmers crises mostly affect states in the North-East geo-political zone of Nigeria. This is followed by the North Central and North-West.The reason why the North-West is mostly affected as some analysts have argued is duely largely to the long historic internal security challenges occasioned by the activities of the Boko Haram in the region (Obi, et al, 2018). In table 1, we found out that the barbaric activities of Herdsmen have spread to some other states in the North-Central, such as Benue, Nassarawa and Kaduna. Similarly, the dastardly acts exhibited by the Herdsmen became a source of worry to some states in the North-West such as Zamfara and Jigiwa.

As a response to this new phase of internal security challenge in the Northern part of Nigeria, the Federal Government considered the enactment of Open Grazing Law. Thus, the Open Grazing Law seeks for the establishment of grazing areas in all parts of the Nigerian States.The aim is to ensure that state governments across the 36 states of the Nigerian Federation provide land for Fulani Herdsmen to move their cattles in those states and openly graze/feed them without hindrances.

Consequently, some advocates/proponents of this view (Open Grazing Bill), immediately sponsored a bill at the Nigerian Senate for possible passage into Law. This strategy by Buhari-led administration to clandestinely coerce State Governments in Nigeria to cede part of their territories for open grazing agenda in favour of Fulani Herdsmen (his kinsmen), was welcomed by few(State Governors from the Northern Nigeria. For instance, the Governors of Benue (Samuel Ortom) and Kogi State (Yahaya Bello) did not hesitate to accept the idea without considering its devastating implications on the internal security governance of their states, particularly and Nigeria generally. Paradoxically, Benue State is currently the worst hitherto devastated or destroyed by the dastardly acts of the Fulani Herdsmen.

Interestly, the Governor of Abia State, Okezie Victor Ikpeazu, Ph.D, did not hesitate to raise objection to Open Grazing view in Nigeria. This was after Dr. Ikpeazu had carried out empirical and scientific studies on the activities of Fulani Herdsmen in communities they have previously cohabited. Thus, several available documented evidencehas demonstrated thatFulani Herdsmen oftenengage in expansion agenda, ultimately aimed at driving away, their host communities wherever they are allow to live (Olaniyi & Nzeagwu, 2018; Akor & Iwok, 2018).

Indeed, the position and argument of the Governor of Abia State that the idea for the enactment of Open Grazing Lawby the Federal Government of Nigeria as welcomed by Governors Ortom of Benue and Yahaya Bello of Kogi States was later accepted by many State Governors in Nigeria as best option for the country. According to some State Governors, Governor Okezie Ikpeazu of Abia State was right in his arguments over objection to Federal Government's proposed Open Grazing Law. Thus, the supporters ofDr. Ikpeazu in this regardsuch as his colleagues from other states eminent Nigerians from academia, businessmen, traditional institutions, among others,increasingly resulted to stiff opposition by many Nigerians against passage of Open Grazing Bill into Law by the Nigerian Senate.

It is, therefore, pertinent to note that Benue State Governor, (Samuel earlier Ortom) who was the First Senate Governor in Nigeria to welcome the idea of Open Grazing Law, is currently at the fore-front criticizing the idea, working assiduously to suffocate any move or ploy to cede parts of Benue territory to Fulani Herdsmen for grazing ventures. This is largely due to the fact that his state (Benue) is deeply devastated by the menaces of Fulani Herdsmen.

Unfortunately, the 'farmers-herders' crises in the Northern part of Nigeria have taken pathetic and vexing dimension. The crises which have received condemnation from regional and international communities not only appear to be transnational, but also seems to be sponsored by foreign non-state actors. This is because, what some observers and analyst describe as "Killer Herdsmen" operate from Nigeria's immediate borders and other countries like Libya as recently asserted by the Nigerian President, His Excellency, Mohammadu Buhari. The mercenaries intrude into Nigeria from neighbouring countries such as Niger, Chad, Cameroon etc, attack defenseless communities, kill, maim and rush back to their base. From intellectual point of view, these mercenaries do not move with cows like the conventional Fulani Herdsmen that used to engage in conflicts with farmers in Northern States of Kebbi, Katsina, Bauchi, Sokoto, Yobe, Zamfara, among others.

To be sure, the crises between the farmers and herdsmen in the above states and many parts of the Northern Nigeria were largely due to the invasion of farmer's lands belonging to farms by the Herders. This behavioural pattern of Herders ultimately destroys crops and sometimes results to hunger in many parts of Nigeria in the subsequent year. Precisely, the current face-off between most communities in the Northern Nigeriaand the so-called killer Herdsmen is undoubtedly different from the traditional threat perceptionthat frequent occur between farmers and herdsmen in the northern partof Nigeria.

According to the Nigerian Watch Organization, the crises between farmers and Fulani Herdsmen/or Killer Herdsmen and rural communities in the Northern Nigeria has claimed about 14,000 lives in 2018 alone (Nigerian Watch Organization, 2018). This latest development in threat perception in Nigeria has raised different debates. To some, the crises between the killer herders and communities in the North are a continuation of Boko Haram onslaughts in the North-East Zone of the countries. This includes Borno, Yobe, Adamawa and Taraba. However, other analysts and observers argue that the crises in the Northern part of Nigeria are well planned, articulated, conscious and deliberate action, strategically aimed at wiping

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away some ethnic nationalities. This position issupported by the assertion by Former Military Leader and Minister for Defence, under Chief Olusegun Obasanjo's administration,Lt. Gen. T. Y. Danjuma. Recently, Danjuma categorically stated in press release that the current killings in Taraba State (his state of origin)and several other Northern part of Nigeria, is undoubtedly an "ethnic cleansing", systematically aimed at 'wiping out' particular ethnic groups in Nigeria. The retired Army General further urged Nigerians "to rise up defend your state against herdsmen attack".

Thus, the above statement by Danjuma has continued to attract criticisms from certain segments of the Nigerian State, particularly the military. This is because; the retired Army accused the Nigerian Armed Forces of colluding with bandits (Killer Herdsmen) to kill people (PM News, 2018). However, General Danjuma analytical disposition captured pathetic feelings of some security experts who bluntly argue that 'any insurgency that lasts more than four days implies that the military/or Armed Forces has a hand in it" (Oyedele, et al, 2018; Adeyemi, et al, 2018).

Generally, all these claims and counter claims point to the fact that the killings of innocent Nigerians by either Fulani Herdsmen or killer (hired) Herdsmen in the Northern part of Nigeria have continued to be on increase despite purport efforts of the Nigerian Military, particularly in the North. The analysts' positions are further justified by the recent killing of two Reverend Fathers and several parishioners by killer/herdsmen on their return from burial of their members. Thus, these religious leaders and their members were murdered by the armed bandits despite the existence of troops deployed to Benue State by the Buhari-led Federal Government.

The killing of the two Reverend Fathers and their members attracted protests by Catholic faithfuls across the 36 states of Nigeria and Federal Capital Territory (FCT) Abuja (Adeyemi, et al, 2018). These internal security challenges are still taking place despite claims by the Federal Government that Boko Haram has been defeated. The pathetic internal security challenges in Nigeria, particularly in the northern part of the country has not only militarized the Nigerian political space, but has also resulted to the recent abduction of Dapchi school children, suffering of large number of families in IDP camps, destruction of numerous lives and property of Nigerians, deterioration of the image of the country at global arena, and suffocation of economic development of Nigeria, particularly since 2015 . Consequently, the Nigeria's internal security architecture has been bastardized and the capacity of the state to justify her fundamental responsibility of protecting lives and property of the citizens are currently questionable.

The internal security situation in Nigeria iscurrently more worrisome as some public functionaries serving under President Muhammadu Buhari-led administration are calling on states in Nigeria such as Benue and Taraba to suspend Open Grazing Law which their StateHouse of Assemblies have already passed into law. It is evident that Benue and Taraba States are mostly affected by nefarious activities of Fulani Herdsmen. Similarly, both Christian and Moslem faithfuls cohibit in these two states. However, observers have asserted that in view of killing of Christians and bombing of churches in these two states (Benue and Taraba) by Fulani Herdsmen, depict deliberate attempt to stamp out christianity in both state. For some security experts, suspension or withdrawal of Anti-Grazing Bill implies the killing of more Christian population in the two states.

**Conclusion**

This paper has attempted with fair degree of objectivity, to expose the Nigeria's internal security challenges in the 21st Century. The study exposed the inadequacies of the internal security policies of Nigeria and the Nigerian Police Force (NPF) to tackle internal security challenges in Nigeria. However, the high level of unproductive disposition of the Nigerian Police and gross inadequacy of institutional manpower resulted to the involvement of the military in internal security architecture of the Nigerian State, which is mostly conceived as aberration. Thus, its aberration is rooted in theorization that continuous deployment of the military in internal security governance is capable of encouraging military intervention in any social formation.

Thus, this pathetic situation has resulted to multiferation of several criminal groups agitating one thing or the other against the local, state and federal governments in Nigeria. These criminal elements/groups include the Niger Delta militants, the Islamic extremists in Jos, the kidnappers in the South-East, the Boko Haram, Fulani Herdsmen, terrorist groups, among others.

Consequently, the activities of these unregistered group, and unlawful armed men and non-state actors which could not be effectively controlled/handled by both the internal security policies and security agencies have continued to impact negatively on the economy of the Nigerian State, particularly since 2011-2018.

This ugly scenario partly explains why Nigeria witnessed serious economic recession, unable to pay public workers' salaries, exodus of foreign/multi-national companies, closures of indigenous manufacturing companies, low investment outlook in Nigeria, hunger/malnutrition among Nigerians, poor health status, low expectancy rate, tension, civil uprising, violent agitations, religious differences, hate speeches among others.

This, however, calls for stringent approach by policy makers, not only to effectively implement Nigeria's internal security policies to redress the identified challenges, but also to salvage the country from imminent disintegration as a federation.

**Recommendations**

To address the challenges posed by internal security in Nigeria, especially in this 21st Century, the following evidence-based policy recommendations are proffered:

The federal government of Nigeria should review the national security policy and include more robust ingredients capable of addressing the generational causes of internal security in the country such as poverty, unemployment, inequality, corruption, among others.

The Federal Government of Nigeria should adopt more stringent penalties for violent crimes such as those committed by Niger Delta militant group's avengers, kidnappers, Islamic extremists. Boko Haram groups, among others. This will serve as deterrent to youths that may form such criminal groups to intimidate government and her corporate existence in Nigeria.

Government at all levels in Nigeria should partner with corporate bodies to create employment for the Nigerian youths. This will discourage large number of idle youths from forming criminal groups against the citizens and thegovernment in the Nigerian State.

Since agriculture can accommodate large number of unemployed citizens in Nigeria, government should stop playing politics with it and give Zero Interest Loans (ZIL) to youths to embark on poultry farming, fish farming, cattle farming, snail farming, piggery, cassava farming, vegetable farming, among others. This will boost food production and further reduce hunger, unemployment, poverty and insecurity in Nigeria.

Federal, State and Local Governments should establish a more robust relationship with international institutions such as World Bank, Agricultural Development Bank, African Development banks, World Health Organization, UNDP, USAID, among others. This will enable these agencies empower large number of Nigerians in various fields of human endeavours. This will further reduce the spate of insecurity in the contemporary Nigerian State.

The National Assembly in Nigeria (Senate and House of Representatives), should enact a Law to address the citizenship debates in Nigeria. The new law should ensure that 'residency' rather than 'origin' of where one comes from, must be the basis of citizenship in Nigeria. This will address the internal security problems in Jos, and many parts of Nigeria.

The Nigerian Government should assist cattle farmers (both from Northern and Southern) Nigeria, with zero-interest loan facilities to establish ranches across the country. This will reduce the fiasco between farmers, Fulani Herdsmen and cattle rearers from the Southern part of Nigeria.

The appointment of Service Chiefs (Police, Army, Navy, Airforce, DSS and other Para-military services) in Nigeria should not reflect sectionalism or being perceived by Nigerian as ethnic-based, as evidenced from the actions of Mohammadu Buhari-led administration in his first tenure of office as the Nigerian President. This will ensure that Service Chiefs will see their positions as crucial, to protect lives and property of all Nigerians, irrespective of their origin, rather than a particular segment of the Nigeria State.

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# Integration of Vocal Music, Dance and Instrumental Playing in St Matthews Apostolic Church: Maphopha Congregation

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**Abstract**

There are a number of different approaches to determining the functions of music. Members of St Matthews Apostolic church – Maphopha congregation in Sekhukhune district – Limpopo Province in South Africa identify themselves by their music and allow music to become a representation of themselves. In responding to a song, to a hymn, they are drawn into affective and emotional alliances. Their relationship to music is inevitably based upon their emotions and internal connection to a particular song. Emotionally intense songs are even used during funerals to cue specific emotions from the audience for suspense, heartbreak, or a peaceful resolution. Songs, then, become an active ingredient in their lives as they find ways to employ music as a tool to share in their life experiences and bring them to a desired emotional state. The purpose of this study was to contribute towards documenting and describing the integration of vocal music, dance and instrumental playing in this church. To achieve this aim, the study employed a naturalistic approach and data was collected through video recordings of church services, interviews and observations. The primary question the study addressed is: how is collective identity formed through music and how does religious music serve as a core part of culture? The results have shown that in this church, music is manipulated to serve congregational purposes. The investigation has also shown that identity is largely related to musical preference, and the congregants use music to understand who they are and define themselves internally as well as externally.

**Keywords:** St Matthews Apostolic Church; Maphopha Congregation; Limpopo Province; South Africa; Music; Identity

## Introduction

In Sekhukhune district, St Matthews Apostolic church, and other independent churches such as St John Apostolic, Zion Christian (ZCC), International Pentecostal (IPC) and others have survived indoctrination and acculturation by the missionaries by insisting upon solid foundation of local traditional religious hymns. In these churches, learning music is part of the socialisation process and imitation forms an important part in the transmission process. This is an informal procedure, where people learn relevant music material through participation in pertinent activities for groups that they belong to. The transmission process involves participation, fostering of a communal sense, concentration on the present moment and the use of musico-cultural formulae and cues for interactional purposes. The learning process is largely dependent on improvisation, re-creation and variation. From this creative process, participants receive knowledge through understanding and assimilation. In St Matthews Apostolic church – Maphopha Congregation the learning process is informal, and the congregation learns the hymns through participation and imitation.

This study that focused on transference of skills among members of St Matthews Apostolic church attempted to look at the integration of vocal music, dance and instrumental playing as a process through which the congregants gain knowledge and skills necessary for worship. Further, the study looked at the association of the hymns with the ritual of the service possibly as an accompaniment to musical tradition and culture of the church. The study also sought to assess how collective identity can be formed through music. By documenting and analysing the order of church service, the internalization process and music activities in St Matthews Apostolic Church -Maphopha Congregation, the study endeavoured to reveal the modes of transmission in the teaching and learning process of the hymns, dancing and instrumental playing. The study was guided

by the following research questions: 1) How is collective identity formed through music?; 2) How does religious music serve as a core part of culture?; 3) How effectively do the congregants learn the hymns, dancing and instruments?; and 4) How does playing traditional instruments for example, *meropa* (drums), *mekuduetane* (whistles) and *dithlwathlwadi* (rattles) help to instil a sense of cooperation in congregants.

## Theoretical Backgrround

The present study is based on the theory of 'Praxialism' as proposed by Elliott (1995) which affords the opportunity for the integration of multi-dimensional aspects of music which is a predominant feature in the music-making processes. Elliott has convincingly argued that "indigenous African education depends considerably on rote memorization as a method of learning". Elliott's theory is supported by Ogunrinade (2012:109) when he writes that 'music and every aspect of life's activities are inseparable in African setting to the degree that every activity has music attached to it". Elliott highlights that the action of music should be understood in relation to the meanings and values evidenced in actual music-making and music-listening in specific cultural contexts (1995). Elliott's theory is also endorsed by Nzewi (2002:20) who asserts that "Africa perfected praxial music education", since Africans have always been actively involved in music-making instead of "non-participatory auditory encounters with music". Like in this study, the development of knowledge and performance skills in St Matthews Apostolic church – Maphopha Congregation involves a high level of music expertise including music-making, listening, improvisation, creative expertise, gestures and actions, repertoire, communal composing, imitation and choreographed dance. The acquisition of these skills is supported by informal learning which is contextual and memory-based system of learning most commonly used in Africa. This music learning approach is in consonance with this endeavour because with this approach, members of St Matthews Apostolic Church are able to succeed in meaningful and significant music-making processes for their own lives as well as the lives of others in their community. After a meticulous analysis of this model, I am convinced that St Matthews Apostolic church context is ideal for this model since, the primary function of music in this church is to promote a worship service that is culturally embedded. The theory is applicable to this study because it offers an explanation of the nature and values of music as it manifests in all cultures. In this study, the theory was used for reference while investigating the modes of transmission in the learning process of the hymns, dancing and instrumental playing. The theory also assisted in determining how collective identity is formed through music. Theoretically, the research contributes to the discussion of the relationship between the church and musical taste, genre, transmission, belief system and practices.

## Literary Sources and Liturgical Studies

Written sources such as books and other sources describing the concepts of localizing and indigenizing the Christian message were consulted to establish a literature review. While articles and books by Maboee (1982); Hiltunen (1993); Van der Laar (2000) offer a broad and general information on Music and Liturgy and Africanization of liturgy, the researches and publications of Amalorpavadass (1971); Triebel (1992); Khuzwayo (1999); Hellberg (2010); Löytty (2012); Francies (2013); Kloppers (2016); Lund (2016); Murtonen (2016) provide more detailed data on the concepts localizing and indigenizing the Christian message. Scholars on the subject 'localizing and indigenizing Christian message' have done many a learned writing. In particular, Löytty (2012:138) observes that Luther worked for indigenizing the language of the Bible, the liturgy and hymns. According to him, the language as it is the core of a culture and spoken by people, is not merely the spoken words but involves many other forms of communication. He argues that music is one of them and indigenous music therefore should be included in localizing and indigenizing the Christian message. Expanding on the idea of music as a tool, Löytty (2012:188) emphasizes that music plays a central role in the dialogue between Christianity and culture by acting in a mediating role in the encounter. Löytty confidently advocates that from the side of Christian tradition, music is seen in the light of the first person of God, the Creator. He asserts that throughout centuries of Christian thinking, theologians such as Luther have claimed that music was created by God as a gift for humanity. Adding to this, Hellberg (2010:20) supports the above observations but sees 'localisation' as a wider term than indigenisation. In his view, participants in a process of localisation do not look only to the past, but also appropriate new cultural influences, using the elements of the local cultural past that still are remembered in combination with them. He argues that in a process of localising both the newly arrived elements and those that have long been present can be reshaped in various ways; the former can be localised while the latter can be modernised. Attesting to the observations above, Francies (2013:64) asserts that the Bible, never mentions a capella singing but it has much to say about musical instruments (Psalm 150). He further mentions that the Bible never says that instruments in the worship are unspiritual, nor is the practice condemned. He continues to argue that tradition, although helpful, cannot be elevated to the role of scripture, lest one become like the

biblical Pharisees in the days Jesus who sought external conformity to the law with no inner substance (Francies, 2013:89). Furthermore, Francies (2013:99) suggests that congregations must feel free to disagree on non-salvation issues. He is of the opinion that every congregation must first understand its local context before it embraces ministry innovations. He candidly states that local congregations must also ask themselves, in what ways have we failed to connect with our communities and in what ways have we failed to create a community?

## The Perspective of this Study

The purpose of this study was fivefold: a) to investigate and document St Matthews Apostolic Church's music of the Bapedi people, thereby contribute to the growing knowledge of religious music in Bapedi society, in Sekhukhune district; b) to investigate the modes of transmission in the learning process of the hymns, dancing and instrumental playing in St Matthews Apostolic Church; and c) to explain the integration of vocal music, dance and instrumental playing in the context of the order of church service;d) to determine the value of the music in this church and discuss its usefulness as a medium of contextualization and vehicle of communication; and e) to assess the extent to which playing traditional musical instruments *for* example *meropa* (drums), *mekuduetane* (whistles) and *dithlwathlwadi* (rattles) can instil a sense of cooperation among congregants. It is envisaged that this information will provide a clearer picture on how the congregants internalize music.

## Methodology and the Research Process

The ethnographic observational data was obtained from St Matthews Apostolic Church – Maphopha Congregation, situated at Ga-Maphopha village, Sekhukhune district – Limpopo Province in South Africa. Ethnography was seen as being closest to Ethnomusicology research, a research design that attempts to understand music in the context of human behavior (Merriam, 1964). Naturalistic approach was employed, and data was collected through video recordings of church services, interviews and observations. The primary sources include oral interviews that were collected through face-to-face interaction with the interviewees, which were aimed at eliciting firsthand information on their knowledge of the subject matter. The secondary sources included among others, materials such as journal articles, books and theses. The participants in this study are from the Sepedi-speaking community. The methodology that I used in the collection of data for this study was mostly based on participant observation and interviews. In order to collect in-depth information of primary data based on naturalistic observations of church services, and what music means to the congregants in this study, an ethnographic design was used.

As the worship service in this church takes place every Sunday in the afternoon from 15h00, the interviews happened on Sundays afternoon experience to capture immediate impressions. I interviewed nine (9) members of the congregation, the Pastor inclusive, ranging from ages 25-65. This large range age allowed me to capture insight of members from various generations. Each of the 9 was interviewed twice, both interviews lasting approximately forty-five (45) minutes. Due to my interest in the integration of vocal music, dance and instrumental playing in the church service, I searched for participants with related experience. With the help of the pastor, participants were sought through a selective process that prioritized diversity based on age, gender and experience in communal composing of musical activities in the church. All participants attended both interviews voluntarily and all interviews were recorded. Most of these interviews were informal and spontaneous. However, I also carried out other interviews that were longer, more formal, and in some instances taped. I also endeavoured to attend five (5) worship services, and three (3) communal composing sessions in this church that would further understanding of the modes of transmission process of their hymns. The interviews and church services provided a comprehensive picture of how collective identity is formed through music. I depended on recorded worship services, interviews and transcripts for accuracy in analyzing the data.

## Results

This section presents the study findings on 'the modes of transmission in the learning process of the hymns, dancing and instrumental playing', with specific focus on St Matthews Apostolic church – Maphopha Congregation, in Sekhukhune district, Limpopo Province in South Africa. The presentations of the findings are clustered around the four research questions on which the study was anchored namely: 1) How is collective identity formed through music?; 2) How does religious music (hymns) serve as a core part of culture?; 3) How effectively do the congregants learn the hymns, dancing and instruments?; and 4) How does playing traditional instruments for example, *meropa* (drums), *mekuduetane* (whistles) and *dithlwathlwadi* (rattles) help instil a sense of cooperation in congregants. The aim was to assess and reveal the learning

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process of the hymns, dimensions of rhythm, the role of hand-clapping, improvisation, recreation and variation, musical repetition, musical instruments, musical creativity and musicality, the art of composing, repertoire, observation and internalization. The results were obtained from all phases: the interviews, direct observations and literature review. The results of analyzing the modes of transmission in the learning process of the hymns, dancing and instrumental playing are discussed below.

## Communal Composing

### Learning the hymns through participation

Learning music through participation has been a constant practice in Sekhukhune district (Lebaka, 2017:125). This is evident in St Matthews Apostolic church – Maphopha Congregation. From the observations and interviews, it was established that in St Matthews Apostolic Church, learning through participation involves communal composing (participation, repertoire and musical instruments, repetition), observation (call-and-response, coordination, gestures and actions), Imitation (performance techniques, agent and content) and choreographed dance (social tolerance, aural recall and creative product). The impression created during interviews and observations was that participants perceived that composing was not necessarily an individual process. All participants were committed to 'creative activities' which involved the relationship between music and dance. It was encouraging to observe how the participants learn more quickly and with less effort when they are enjoying themselves.

### Repertoire and Musical instruments

Participants were asked about the art of composing hymns. According to Magane Michael (interview, 18 February 2018), participants are skilful in building a repertoire which is characterized by improvisation, polyrhythm, cultural blend and interlocking rhythms which compel the participants to dance to the music. The basic musical format of the hymns is four-part harmonic setting, which allows all voices, female (soprano and alto) and male (tenor and bass), to participate in the singing, producing a feeling of communal musical expression. Repertoires are oral memory-based and the 'phrase method' was adopted in the learning process.

When asked whether the integration of traditional instruments into worship service help to instil a sense of cooperation among congregants, all the participants agreed. They felt that the integration of traditional instruments has rather encouraged maximum participation in worship service by members. Congregants feel that they are themselves. They are free to express their emotions by either clapping their hands, ululation, drumming or dancing; which is in line with the African cultural background. Masha Malebo explained (interview, 12 November 2017) that, congregants are dancing, singing from memory and worshipping God the way they like, and there is active participation in the church **(see Figure 1**). Mashego Ressy (interview, 21 January 2018) agrees with Masha Malebo by confirming that in Bapedi culture, music making is a communal endeavour in which cooperation between people is both a means and end. Similar to these observations, Lieberknecht (1994:281,283) rightly claims that singing in particular helps the congregation of God to recognize itself as church, so that it can establish its own identity through music and appears attractive to outsiders. Nketia (1974:15) adds that apparently the 'fact that drums and other percussion instruments were used in the Ethiopian church, which had been established in the fourth century A.D., did not affect the evangelistic prejudices'.

These observations also support Scott's (2000:9) assertion of a relationship between music and culture. He argues that, 'accepting that music is part of the experience of every human culture group, we can say that it is an inherent gift given by a wise Creator for the benefit and enjoyment for us all'. In his view, the church, in its missionary endeavours, ought to recognize and accept 'the powerful effect of music in all aspects of Christian ministry. Triebel (1992:235) endorses this observation, by stating that 'We cannot ignore culture in our missionary task'. The above observations are endorsed by Löytty (2012:17) by stating that "in many African cultures, the use of instruments is practice-specific". He further observes that their playing is regulated according to the particular cultural trading and context in where they appear.

It was further observed in this study that almost all hymns in this church are cyclical in structure, with occasional, spontaneous text, melodic and harmonic modifications. The duration of a hymn is determined by the performers' moods or preferences and the performance context: If, for example, a hymn is popular with the majority of congregants, it can go on for up to 10 minutes. An unpopular hymn, on the other, will only be sung for a matter of few minutes, before another, more appealing one is spontaneously 'announced' and 'answered'. The hymn texts are usually short, on average not exceeding ten lines.

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### Repetition

Using videos, it was observed that the hymns in this church are characterized by joy, interaction, concentration, expression, self-confidence, imagination, fast tempo, and full of movement, including dance steps. This shows how much the congregants enjoy their art of worship. Musical repetition, in its simplest form is evident in the hymns. The rather simple musical nature, cyclical form of repetitiveness and basic contents, make these hymns accessible to both adults and children. As repetition of musical phrase is one of the most important compositional features in this church, it often serves as a useful means by which the singers emphasize and project to the congregation the principal idea or ideas of a particular hymn. The call and response of musical patterns usually serves as the most adequate means of creating a perpetual variation. The above observations are endorsed by Van de Laar (2000:1) when he states that "throughout history of humanity, music has played a significant role in the lives of people". According to him, music has always had an important place in the worship of God's people. He further asserts that every culture and context express itself in some way through music. He is of the opinion that since one of theology's tasks is to apply faith to the immediate context, much cannot be ignored (Van de Laar 2000:4).

### Observation

### Call-and-response

During observations and interviews, it was also established that all hymns in this church employ the call-and-response pattern and this pattern allows for spontaneity and self-expression. These hymns are organized into clear sections for a lead singer and a chorus. In the simplest type, each section consists of a single phrase, sung by the lead singer and answered by the chorus with a set response. This response phrase may be similar to the lead phrase. However, there are hymns in which the response section remains virtually the same while the call phrases change. The above observations are endorsed by Onyeji (2004:89) when he states that call-and-response pattern is one of the typical characteristics of African music employed by many cultures in the continent. This is also in line with the opinion of Tau Daniel (interview, 26 November 2017) who said that the dominant music making approach in St Matthews Apostolic church is rote memorization and call-and-response, and this entails drilling and verbal repetition.

### Coordination

An interesting observation on the vital, if not central role of handclapping in the worship service should be mentioned. From this study, it appears that handclapping helps to maintain the tempo since some congregants gradually and habitually slowed the tempo of hymns in the course of singing. It is noticeable that when handclapping is enforced, the tempo is regularized, thereby producing a metronome effect. These observations confirm that with musical creativity and rhythmic direction, congregants build a repertoire which is characterized by cultural blend, polyrhythm, improvisation, four-part harmonic setting and interlocking rhythms which compel the congregants, the pastor inclusive to dance to the music, and hence increase attendance and participation. The above views are supported by Löytty (2012:36) who states that "in traditional African societies, music-making is generally organised as a social event". In consonance with the above views, Francies (2013:69) gives a feeling of how handclapping is perceived when he states that handclapping is an issue about which some Black congregations still struggle. He reminds us that for a long time it was seen as a violation of the scriptural mandate for worship because it was thought clapping was another form of instrumental music. To Francies, handclapping is also done in both secular and denominational settings, which made it a forbidden practice during the worship. Francies adds further insight to the understanding of handclapping by registering his concern that handclapping is seen as done for entertainment purposes and showmanship, and these practices ought not to take place in the worship service.

### Gestures and Actions

An interesting dimension of this study is the creative work which is indirectly related to worship service. This developing feature is taking an increasingly important role. It is of considerable interest to note that the hymns in this church are rhythmically centred, as the drums, tambourines, whistles and rattles are the most frequently used musical instruments, not so much based on harmonic principles as Western style music. Thus, the whole congregation is usually encouraged to participate in the performance of these hymns (**see figure 1**), including the multi-part singing, handclapping, call-and-response structure and dancing. Through this inviting character, these hymns serve as a communion-building, as well as communicative means. It becomes increasingly clear that the dimensions of rhythm play an important role to contextualize worship service into Bapedi cultural context.

With regard to the use of music as a tool for spiritual motivation, the enquiry has revealed that during the order of worship service, some congregants are touched by either the scripture reading or the music or both. The above views are supported by Kubik (2001:199) who examines the relationship between music and movement. He observes that "all music in Africa is almost naturally associated with movement and action, such as playing percussion instruments, hand clapping or dancing". It is also in the same vein that Maboee (1982:131) in a careful assessment of the relationship between music and movement observes that "traditionally, when Africans worship, they sing and dance together". Maboee goes on to explain that they have a tendency to become emotionally or spiritually involved in the service'.I agree with Maboee because during my field research at Ga-Maphopha village, in Sekhukhune district, I have observed that some congregants in this church are moved by hymns, becoming spiritually motivated during the order of worship. Comments by Maboee are noteworthy because from a cultural point of view, Bapedi people tend not to be interested and comfortable in a controlled solemn church, where emotions are suppressed. Maboee's observation is applicable to St Matthews Apostolic church. During my field research, it was observed that singing in this church is always accompanied by handclapping, instrumental playing and dancing and the whole church service becomes lively because of active participation during the order of service. This is also in line with the opinion of Tshukudu Monicca (interview, 21 January 2018) when she explained that during the order of worship service, the congregants on their own, drawing upon their creative intelligence, use variation and gestures, re-creation and improvisation to make their renditions impressive.

## Imitation

### Performance Techniques

Ululating (*mokgolokwane*) plays an important role in St Matthews church service, as it does in other Bapedi cultural festivals and rituals. Culturally, it is practiced by ladies in the community and used to express utmost joy (Hiltunen, 1993:36). Hiltunen further mentions that in the past there were times when missionaries thought it belonged to pagan traditions, so it was not accepted in church at all. According to him, it was later released from the ban and became commonly used in celebrations and festivities. No arguments were found why it could not be practiced; after all, it is neutral from any religious connotations and can be considered a pure expression of joy. It colours many cultural celebrations with its high, crisp tone. Ululating has become an accepted cultural expression of praise and joy also in church, and sometimes the ladies are even requested to do it by church and parish leaders. Its inclusion in the worship service means a step forward in contextualization and adds cultural values to the liturgy (Löytty, 2012:205).

During the field research, it was observed that the creative music-making takes place during a process of interaction between the congregants' musical experience and competence, their cultural practice and their instructions. Altogether this forms the *affordances* in the creative situation. The impression created during interviews and observations was that the talent for composition is based on musicality, together with certain influences that have been of importance in the development of the necessary motivation and mental attitudes such as the inspiration of composer-performers. According to Madutlela Aaron (interview, 21 January 2018), the art of composing requires a reliable musical memory.

### Agent

The congregants in this church believe that every individual is blessed with a voice which is unique and incomparable. To them, a good singer is expected to have a quality voice with the ability to produce it as per the requirement of the style of singing. Also, every singer should train his/her voice to make it sweet and melodious and produce a wide range of varieties of expressions. As such they prioritized rehearsals before the actual performances; either during worship services or during church rallies, circuit or diocese conferences. In their view, voice training requires commitment to regular practice, with sufficient time and devotion.

When asked if collective identity is formed through music, there was a consensus that it was the case. In particular, Senamela Masalesa (interview, 21 January 2018) mentioned that music, culture and identity are part of St Matthews Apostolic. I fully agree with Senamela Masalesa because during my field research it was difficult for me to differentiate between the choir leader and member of the choir in this church. Almost everybody can sing and dance without having received any formal tuition in either music or dancing. To them, music is an inborn talent enhanced by informal learning during the enculturation and transmission processes. Neither tonic-*solfa* nor staff notation is used in this church. All congregants sing from memory. The members of this church have memorised all the hymns. There are no hymn books. Through dance, the congregants have the opportunity to learn, synthesize, and demonstrate their musical ability by means

of choreography. Through movement they can both perceive and express the meaning in their religious beliefs. In this church, musical intelligence involves its own rules and thinking structures, not necessarily linked to other kinds of intelligence, and creativity is thus manifestly a cultural process. In this church there are no separate terms for singing and dancing: 'the two are seen to be indivisible. In a way dancing is, rhythm made visible' (Karolyi, 1998:6). While singing the hymns, dancing involves rhythmic expressions, as diverse as the simple clapping of hands or stamping with the feet, expressive body movements. The careful use of figurative words with powerful associative meanings is observed in these hymns and the text possesses variation in poetic expression.

## Content

Participants were asked about the role of religious music (hymns) in relation to Bapedi culture. It was found that in this church, social and ethical values are communicated through hymns, while the content is largely dictated by current concerns and the way people approach them. Passing on hymns from generation to generation or giving permission to sing them involves teaching them. Failure to understand the meaning of the lyrics is not a hindrance to learning a hymn. It is in fact rare to come across any member of any church denomination who cannot explain the meaning of what he/she sings. According to Selahle Onicca (interview, 21 January 2018), for full members of the church who are in good standing, the learning of the hymns is not a matter of personal choice, but an obligation. She further mentioned that, as most of the hymns are short and repetitive, the congregants pick up the chorus almost immediately. From these observations, it is clear that the learning of music in this church therefore, is essentially the learning of moral and ethical values. Content in the context of the church refers to knowledge, skills, attitude and values to be learnt by the congregation. It is the totality of what is to be transmitted and learnt by the congregants or church choir.

## Choreographed Dance

### Social tolerance

When analyzing the data material, it becomes evident that creative music-making and music identity are two sides of the same coin, in that the former provides an arena in which the latter can be explored. These observations suggest that music is part of culture and at the same time forms culture. There is a growing body of evidence to support this view. Nelson (1999:152-155) for example, provides convincing evidence of a relationship between music and culture. He advocates that "music-making in Africa is a quest for unity and integration and is directly concerned in the education of the whole person".

It is noticeable that among the congregants in this church, practice is a known and accepted fact of the musical practitioners' life, and all music practitioners say they practice, if not every day, then at least once a week. It is difficult to determine the duration of such practicing sessions, as they differ from one group to the other, but in theory, at least, it is fairly substantial, amounting to two or three hours a week at the minimum, according to the music practitioners. The learning process of the hymns reflects communal composing whereby the choir members or congregants come together to assemble communally new compositions for worship service. Individuals contribute ideas about hymn texts, polyphonic organization, melody and overall form. The choice of language usage in the hymns is encouraged by the fact that hymns are meant for communal music-making. The resulting composition is therefore their song, not a named individual. A new composition does not come from 'outside', no matter how much individual music practitioners borrow ideas and strategies from others. The compositional voice always and ultimately emanates from within. Some hymns emerge as some are abandoned. After assembling the composition, the group selects the soloist/leader.

### Aural recall

This is how the participants remember music by ear. When asked whether memorizing music helps them to develop a mental map of the music, all agreed. They felt that by using their voices to sing the hymns, congregants can memorize long cycles of patterns with signals, breaks, responses, solos, etc. According to Tshehla Samuel (interview, 26 November 2017), this shows that by participating actively and creatively in music-making when needed, enables the participants to understand music artistically and contextually. Adeogun (2006: 3-63) adds further insight to the understanding of the concept 'aural-recall' in relation to musical creativity in African context, by stating that "art in any form, whether oral or not, in visual arts, music, dance, drama, mime or in the crafts, is an alternative in the imagination to the reality around human beings". Adeogun further emphasizes that music making is intended to provide understanding of self and other selves better, allowing more intelligent and meaningful action in all aspects of life.

**Creative product**

Informal interviews indicated that involvement in the processes of music-making as well as music learning process in this church enables the congregants to acquire the ability to make music. Musical creativity revolves around the acquisition of skills, abilities, making musical sense and making musical meanings. It was further observed that while creative musical ability is developed to enable the congregants engage in musical interpretation in context, imaginative capacity is developed to enable the participants to experience the why, when and how to shape the on-going music performance in ways that are contextually, situationally, artistically, socially and personally significant. The results in Table 1 focus on singing, dancing and instrumental playing. Observations made on the learning process of singing, instrumental playing and dancing skills are listed and discussed below.

Table 1 summarizes the proposed modes of transmission in the teaching and learning process of the hymns, dancing and instrumental playing in St Matthews Apostolic Church – Maphopha Congregation. From the above discussion, it is pertinent to mention the fact that democratic values such as equality, tolerance and respect for everyone's dignity were upheld by all participants, and practices such as open discussion, a search for consensus, the opportunity to argue and exchange ideas until unanimity is reached are characteristic of communal learning in this church in particular, and Bapedi cultural context in general. The discussion above shows that learning by heart is a slow method, and enough repetitions in practicing eventually helped the learning process. From all of the above, originally handed down by memory-based music tradition, we can conclude that communal learning is highly valued in traditional Bapedi education and culture and rote memorization is the most effective method of learning.

**Discussion**

Ethnographic data from the field informs us that the question of culture is becoming very important in the worship service – whereas its consideration has been generally neglected in the past. With reference to the cultural dimensions of order of worship, it has been argued that the connection between culture and religion results in as many liturgical forms as there are cultural concepts (Chupungco, 1994:153). The findings of this study show vividly that worship service and music are instrumental in expressing one's culture, particularly in today's missionary context. The study validates that facts that, education is not only in the classroom situation; *second,* collective identity can also be formed through music; *third,* religious music can also serve as a core part of culture; and *fourth,* the integration of traditional musical instruments in the worship service can help to instil a sense of cooperation in congregants and assist in promoting a worship service that is culturally embedded.

The above observations are enriched by the general agreement among scholars such as Löytty (2012:117); Murtonen (2016:210); Lund (2016:245) and Hellberg (2010:25). For these scholars, music can carry with it the meaning it has been given in different kinds of situations and environments. They believe that singing could confirm identity, indicate boundaries but could also bring together different groups and erase boundaries. It is worth noting that despite fundamental and multi-consequential changes Christianity brought about in Sekhukhune district, St Matthews Apostolic church like other independent churches has used and is still using their indigenous systems of worship. Like any system of education, Bapedi traditional religious music education, is based on some kind of philosophical foundations.

The results have also shown that in this church, learning music through participation has been a constant practice.From the observations it was also established that the learning process is largely dependent on communal composing, observation, imitation and choreographed dance. In this study, however, we observe that communal music making entails the empowerment of congregants as members of the church and society, becoming socially responsible, enriching and perfecting themselves through active musical life. From the observations and interviews, it is also evident that some musical skills observed in this church are listening, performing, aural, creativity, singing and many more. When analysing the data material, it becomes evident that creative music-making and music identity are two sides of the same coin, in that the former provides an arena in which the latter can be explored.

Reviewing the results thus far, it is clear that the hymns sung in this church possess qualities quite different from Western style music, as they stress an African sense of rhythm. The message communicated by the hymns is a reflection of what is happening within contemporary Bapedi society. According to oral and literary evidence, music-making linked to religious observances, choral singing and instrumental playing forms an integral part of educational efforts (Adeogun, 2006:5-11). During interviews and observations, it was also established that the integration of vocal music, dance and instrumental

playing in the context of worship service is traditionally not an art form separate from social and cultural meanings, connections or functions. It can be concluded from the above discussion that for making any liturgical contextualization a reality and a success, a theological knowledge and cultural understanding are required. My own evaluation during field research showed that multipart hymn singing is customary in St Matthews Apostolic church services, and the popularity of hymn singing in congregational life is functionally integrated in all spheres of church life. In view of what has been discussed above, it is clear that active participation in the preparation and actualisation of a music performance is a means by which the individuals come to draw life from it as a communal property – heritage from the past and a humanizing gift for tomorrow.

## Conclusion

In conclusion, this study has revealed that music plays a crucial role in the dialogue between Christianity and culture. In view of the comments and observations established in this study, it is evident that the integration of singing, dance and instrumental playing in the context of this study could confirm identity, and communal composing is the most effective method of learning music. The study has also demonstrated that singing in own's language and worshipping God the way one wishes, contains something of one's own identity, one's own history, own culture, as well as the identity, history and culture of a group one belongs to. Indications from the investigation suggest that "to be really touched, we need to be aware of the art in what we do, and to experience a hymn as a work of art, we need to sing in a language we know, a language we understand and a language we feel" (Kloppers, 2016:82). The findings which have been presented in this study will help us to understand how creative imagination plays a very important role in cooperative learning among congregants in the learning of hymns in the church worship context.

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## Tables

**Table 1** below shows a proposed diagram of the learning progression through participation.

**Communal Composing**

| Participation | Repertoire & Musical Instruments | Repetition |
|---|---|---|
| Participation differs with respect to performing roles. | Hymns/songs are tied to social ideas and practices | The singing, dancing and instrumental playing are repeated innumerable times until participants have mastered every detail. |

**Observation**

| Call-and-response | Coordination | Gestures and Actions |
|---|---|---|
| The pattern allows for spontaneity and self-expression. | Different movements are choreographed into a complete performance of singing, instrumental playing and dance. | Dimensions of rhythm |

**Imitation**

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| Performance Techniques | Agent | Content |
|---|---|---|
| Learning through slow absorption and unconscious internalization of the sounds. | Congregants | Specific at hand. |

**Choreographed Dance**

| Social tolerance | Aural recall | Creative Product |
|---|---|---|
| Learning through discovery. Attending church services, choir rehearsals, church rallies and conferences. | Learning through demonstration and memorization. Internalization. | Originality. Spontaneous movements. None of the dancers imitates the other. |

**Table 1: Proposed diagram of learning progression through participation.**

**Figures**

**Figure 1**

St Matthews Apostolic Church: Maphopha Congregation (Ga-Maphopha village, Sekhukhune district – Limpopo Province in South Africa, 10.12.2017), Photographer: Morakeng Edward Kenneth Lebaka.

# Genocide Denial: A Form of Evil or a Type of Epistemic Injustice?

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**Abstract**

In this paper, I bring together the philosophical scholarship on evil and the literature on "epistemic injustice" in order to assess effective vocabulary to understand the phenomenon of genocide denial. I use the term "denial" to denote the discursive political tactic that makes the evil of genocide invisible. Adi Ophir's discussion of "two orders of evil" allows us to consider genocide denial as a form of evil. For what Ophir identifies as a second-order evil, another stream of scholarship suggests the term "epistemic injustice." This latter literature can also be deployed effectively in treating the question of genocide denial, insofar as it provides an interdisciplinary approach rather than a strictly philosophical one. Epistemic injustice scholars focus on different types of unfair treatment in the realm of knowledge-production, and they agree that exclusion, silencing, invisibility and distorted representation are major forms of epistemic injustice. I argue that both scholarships are crucial to draw out conceptual frameworks for understanding the specific case of genocide denial. Furthermore, I think that interdisciplinary approaches informed by the social sciences are essential to map out the real life implications of the injustices that are implemented through denial.

**Keywords:** Denial, Genocide Denial, Form of Evil, Theory of Evil, Epistemic Injustice.

## Introduction

From a psychoanalytic perspective, denial is "a defense that originates in the child's efforts to rid himself or herself of unpleasant perceptions of the outside world." (Moses, 1989, p. 288). In the case of genocide denial, the perpetrator group and its ideological supporters wish to eliminate the culpability of the genocidal act. Although, the psychoanalytical definition underscores an important aspect of the phenomenon of genocide denial, namely, the desire to eliminate responsibility, another kind of vocabulary is needed to capture the systematic and political nature of genocide denial. To highlight this systematic and institutional aspect of denial and to distinguish it from the psychoanalytic employment of the term, I consider genocide denial as an *ideologically supported political lie* (as distinguished from pragmatic and occasional political lies). Such an attempt views genocide denial as a discursive political tactic (or strategy) with a goal to make invisible a massive scale wrongdoing (i.e., the atrocities that constitute the genocide) through the implementation of systematic lies.[1]

This paper is interested in understanding the phenomenon of genocide denial through different scholarly approaches that bring forth the ethical implications of this systematically produced political act. It is my contention that the philosophical scholarship on evil and the interdisciplinary literature on epistemic injustice provide effective vocabulary for understanding this phenomenon. The paper discusses why these two areas of scholarship are resourceful and how they can contribute to the conceptual framework in understanding this phenomenon. First, I clarify what genocide denial is and how it is produced and distributed by focusing on a current example: The Turkish denial of the Armenian Genocide. Secondly, I briefly consider two philosophical approaches, Adi Ophir's and Claudia Card's, which are useful for situating genocide denial as a form of evil. These treatments discuss the question of evil as a social phenomenon and not as a problem of the individual—which has been the common tendency in the Western philosophical tradition. This is why, I find their theories accommodating for

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[1] This definition suggests that we are not within the psychoanalytical domain but in the political domain where denial is understood through its political function as used by the perpetrator group. There are also cases in which the survivor group engages in collective denial. See "Some Observations on denial and Avoidance in Jewish Holocaust and Post-Holocaust Experience" (Klein and Kogan, 1989). Correlations drawn between the everyday psychic denial of the neurotic person and the denial of Holocaust survivors have shown that in both cases denial can be considered as a defense mechanism; therefore, it has a positive function for survival. For a further discussion of the relation between psychic and social denial, see *The Politics of Denial* (Milburn and Conrad, 1996).

addressing this peculiar form of social evil. And finally, I examine the literature on epistemic injustice. Epistemic injustice scholars focus on different types of injustices in the realm of knowledge-production. They claim that exclusion, silencing, invisibility and distorted representation are major forms of epistemic injustice. I argue that actively implanted collective ignorance is a type of epistemic injustice that is suitable for understanding the phenomenon of genocide denial. In discussing how the collective denial of genocide can be viewed as an actively implanted ignorance, I use Linda Martin Alcoff's essay "Epistemologies of Ignorance" (Alcoff, 2007) together with Gaile Pohlhaus' taxonomy of three types of epistemic injustice (Pohlhaus, 2017). According to my view, genocide denial can be considered as a form of epistemic injustice because the existence of collective denial requires a social and political environment where systematic distribution of ignorance takes place.

## I. What is Genocide Denial?

The concept of denial suggests that there are at least two different ways to understand what has happened: we can either accept the ethical implications of the event in question or we can cast a doubt to the existence of the event, and thereby, attempt to silence its ethical implications. Michael A. Milburn and Sheree D. Conrad suggest that, "understanding the history and process of denial as a psychological mechanism is essential to a comprehensive understanding of current public opinion, political leaders, and events" (Milburn and Conrad, 1996, p. 13). From their perspective, denial should be viewed as a psychic phenomenon that has political implications. Although I am in agreement with their approach, in this essay, I examine denial as a political phenomenon because of its particular political and ideological goal: rejecting the existence of a willfully administered atrocity.

In the case of genocide denial, denial operates on the assumption that we may not know the whole truth about a past historical event. Production, distribution and circulation of conflicting narratives is one of the most favored techniques of genocide denial. Therefore, casting doubt about how the event has occurred is one of the most effective ways to implement genocide denial. Genocide denial is different from other forms of denial (e.g. in interpersonal relations), because, here, denial is not merely a negation of a fact, but also a discursive act that continues to systematically harm the survivors. Systematically silencing the existence of an intended wrongful act is the continuation of the genocidal act because it aggravates the harm. Denial not only refers to the act of replacing "truth,", but also the will to create another regime of truth. To focus on this point, Hannah Arendt's essay "Lying in Politics" is useful; here she considers lying not as a defect in politics but as a way to begin something new. She states that lying is a political act in and of itself. She writes,

[…] let us remember that the lie did not creep into politics by some accident of human sinfulness. Moral outrage, for this reason alone, is not likely to make it disappear. The deliberate falsehood deals with *contingent* facts; that is, with matters that carry no inherent truth within themselves […]. Facts need testimony to be remembered and trustworthy witnesses to be established […]. From this, it follows that no factual statement can ever be beyond doubt […]. It is this fragility that makes deception so easy *up to a point,* and so tempting." (Arendt, 1972, p. 6)

According to Arendt's above assessment, what makes political lie such a powerful political tool is the fragility of historical facts. These facts are open to interpretation, because they carry no truth within themselves. Following from this, a certain atrocious historical event or series of events can be categorized as genocide only on the condition that it meets international consensus. It is often this lack of international consensus that helps governments in their attempts to distort the meaning of historical events.

## II. Recent examples: Various tactics of Genocide Denial

One of the long-standing, if not the longest, example of genocide denial is the Turkish denial of the Armenian Genocide. It is still being officially denied by the Turkish government, and many journalists and other public and political figures in Turkey have long been facing criminal charges for speaking about the Armenian Genocide. Most recently, in 2007, the Armenian journalist Hrant Dink was assassinated due to openly and publicly speaking about the Armenian Genocide.[1] Although his assassination backlashed and increased knowledge and awareness within the Turkish public, there is still a large population

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[1] For a further discussion, see "Coming to terms with a difficult past: the trauma of the assassination of Hrant Dink and its repercussions on Turkish national identity" (Türkmen-Dervişoğlu, 2013).

which continues to deny the existence of an intended and systematic atrocity against the Ottoman Armenians.[1] The common opinion in Turkey is that during the WWI, Armenians were forcefully deported from the Ottoman land, because they were considered a security threat. This narrative does not uphold any government official to be responsible for the atrocities committed during the time of deportations. Nor does it recognize the massive number of Armenian deaths, abduction of women and children, and confiscation of Armenian property. In some versions of this false narrative, even the legislation for deportation is denied, and the story is inverted by claiming that it was the Armenians who killed the Turks.

Since the foundation of the Turkish Republic in 1923, many different versions of these false narratives have been distributed by the Turkish state to account for the events of 1915. According to Raymond Kévorkian's detailed analysis, which depicts the situation of Armenians in the Eastern provinces of Ottoman Turkey during 1915, the fabrication of false narratives was the number one strategy to mobilize the Muslim population against the Armenians (Kévorkian, 2011). These narratives mobilized locals, who destroyed Armenian property, abducted women and children, and massacred men (Kévorkian, 2011, p. 239). Kévorkian's study suggests that the implementation of political lies was already taking place before and during the genocidal act and were not only put into effect after the event.

For the newly born Turkish Republic denial had created a world founded upon a political lie. This point brings us back to the question of the function of political lies, as stressed by Arendt. Cathy Caruth (2010) agrees with Arendt in the productive function of lying. She writes, "the lie does not appear in the political realm only as the denial of the historical acts of the past [...];" through the very act of denial a new beginning is assumed (Caruth, 2010, p. 82). In the case of the Turkish Republic, the official narrative depicting the events of 1915 presents an extreme and unique example of lying. According to Roger W. Smith, "in no other instance has a government gone to such extreme lengths to deny that a massive genocide took place" (Smith, 2006, p. i). As a result, the Armenian Genocide became the 'forgotten genocide' according to Hovanissian (Hovanissian, 1994). To make this possible, there have been various attempts and maneuvers by the Turkish government. In what follows, I briefly provide a few examples.

Marc Mamigonian draws attention to the most powerful tactic of denial used by the American tobacco industry during the 1950's, which was also used in Turkey's denialist campaign, namely, manufacturing doubt about scientific evidence (Mamigonian, 2013). When the tobacco industry was faced with the scientific evidence that smoking was a number one cause of lung cancer, it established the Council for Tobacco Research that was designed with the specific intent of manufacturing doubt. Mamigonian underscores that it was the same Hill & Knowlton PR Company that worked for Turkey in its denial campaign. Hill & Knowlton devised a new method for denying the genocide: manufacturing doubt about historical evidence. Mamigonian writes that, "a key element of Turkey's long-range plan was to expand upon the small group of American scholars […], to cultivate academics who could produce [...] genocide-denying scholarship" (Mamigonian 2013). To this end, in 1983 Turkey established the Institute of Turkish Studies in Washington D.C. with a grant of three million dollars from the Turkish state. Another exampleis provided by Ronald Grigor Suny and Fatma Müge Göçek (2011), who stress that "[i]n the fall of 2000, when the U.S. House of International Relations Committee voted on a resolution recognizing mass killing of Armenians in the Ottoman Empire as genocide, Turkish money financed lobbyists in Washington to work against [it]" (p. 4). They also note that the Turkish state intensified "its campaign of denial of the genocide" when a series of workshops were organized between Armenian and Turkish scholars on the question of the Armenian Genocide.

Most interesting example, however, can be read through the article drafted by scholars, Roger W. Smith, Eric Markusen and Robert Jay Lifton. This article entitled, "Professional Ethics and the Denial of Armenian Genocide," portrays an awkward case of genocide denial. The article opens with the following lines:

[…] suppose that one receives a letter from the Turkish ambassador to the United States rebuking one's scholarship because one has written about what the ambassador refers to as "the so-called Armenian genocide, allegedly perpetrated by the Ottoman Turks during the First World War." Suppose that, inadvertently, the envelope also contains an internal memorandum written by the executive director of what claims to be a non-political, scholarly institute and that memorandum

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[1] On that day, two hundred fifty Armenian men, including intellectuals, community leaders and members of the parliament were arrested in Constantinople (Istanbul) by the ruling Ottoman government, composed of members of the Committee of Union and Progress. Many of those who were arrested were killed. In the following months of 1915, the leading members of the Committee of Union and Progress issued an order regarding the deportations of Armenians living in West and East Anatolia to Der Zor, a deserted area in Syria.

reveals much about the mentality of those who engage in denial of the Armenian Genocide. What then? (Smith et al., 1999, p.271)

The above remarks belong to Smith, Markusen and Lifton, each of whom received (in different occasions) a letter from the Turkish Ambassador questioning their academic credibility, because they have written about the Armenian Genocide. The above-quoted article was published in Spring 1995 in the *Holocaust and Genocide Studies* journal by these three scholars after Lifton received a letter from the Turkish Ambassador.

In his 1986 book, *The Nazi Doctors*, Lifton had discussed the important role played by the Turkish doctors in the Armenian Genocide. According to Lifton, Dr. Mehmed Reshid, Dr. Bahaeddin Shakir and Dr. Nazim, were active participants and influential members of the Committee of the Union and Progress—the organization responsible for the Armenian Genocide. One of the doctors had described Armenians as "a cancer, a malignance which looks like a small pimple from the outside, which, if not removed by a skillful surgeon's scalpel, will kill the patient" (Lifton, 1986, p. 489).After the book was published in 1986, four years later, in 1990, Lifton received a letter from the Turkish Ambassador in Washington, Nuzhet Kandemir. In the letter, the Turkish Ambassador had claimed that the events of 1915 do not constitute genocide and that Lifton's scholarly references are weak and cannot support his claim (Smith et al., 1999). Hence, the Turkish Ambassador was questioning the academic credibility of Lifton's claims about the Armenian Genocide by stressing that the subject matter in question is open to interpretation. The most interesting thing about this letter, we are informed, is that it was accompanied by a memorandum, drafted by the Ottoman Historian Dr. Heath Lowry, who was at the time the director of the Turkish Studies in Washington D.C. (Smith et al., 1999). As Mamigonian's above-mentioned article stated, one of the most powerful tactics of denial, implemented by the Turkish government, was to cast doubt through "scholarly" work. The Turkish Ambassador's letter addressing Lifton was drafted by an academic (Dr. Lowry), whose job was to produce scholarly doubt regarding the existence of the Armenian genocide.

This particular letter suggests that the evilness of an event (e.g., the Armenian Genocide) has to be persistently claimed against future denialist attempts. Such cases show us that ontology of evil is precarious in the face of denialist efforts. Hence, the phenomenon of genocide denial reveals an important aspect of the ontology of evil, because it suggests a gap between evil's existence and its public appearance as evil. In other words, the possibility of denying the existence of an evil event testifies to the fact that *not all evils that exist appear as evil to the public eye*. Arendt's above-mentioned claim, namely, "facts need testimony to be remembered and trustworthy witnesses to be established" (Arendt, 1972, p. 6), warns us against this possibility (of not appearing as evil). As in the case of the Turkish denial of the Armenian genocide, a dominant political group can claim that the event in question does not match the international criteria for what constitutes a genocide.[1] Through such a denialist discourse, the evil that took place is eradicated from public and cultural memory. Hence, genocide denial is a discursive political tool making possible the political and social disappearance of an evil event. As genocide scholar Roger W. Smith indicates, "denial, unchecked, turns politically-imposed death into a 'non-event': in place of words of recognition, indignation, and compassion, there is, with time, only silence" (Smith, 2006, p. ii.).

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[1] The criteria laid out by the Convention on the Prevention and Punishment of the Crime of Genocide are as follows: 1) Killing members of the group 2) Causing serious bodily or mental harm to members of the group; 3) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; 4) Imposing measures intended to prevent births within group; 5) Forcibly transferring children of the group to another group. See "United Nations Office on Genocide Prevention and the Responsibility to Protect." *United Nations*, www.un.org/en/genocideprevention/genocide.html.

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If we consider the phenomenon of genocide and its denial as different forms of evil, as I am suggesting here, we would be assuming a moral framework. There are various moral conceptualizations that can be considered in assessing the evilness of genocide denial, hence it is important to discriminate vocabularies and frameworks that are most effective when one is dealing with the phenomenon of genocide denial. In what follows, I focus on two key scholarships that speak to this concern.

### III. Why is Genocide Denial a Form of Evil?

I already suggested that genocides need continuous remembrance and claim for recognition. It is my view that two prominent scholarly fields are relevant for understanding the ethical implications of genocide denial. In this section, I focus on one of these fields: philosophical studies on evil.

As one of the prominent scholars of philosophical studies on evil, Adi Ophir suggests that social evils have been understood as a disease in modernity, which can be cured through certain corrective and educational institutions (2005, p. 335-6). According to this Enlightenment view, the common belief maintains that evil is the result of ignorance. The problem with this type of account, according to Ophir, is that those who diagnose these evils do not recognize their own participation in the system of production of evils. Hence, the society at large is assumed to be exempt from participation in systematic wrongdoing. Rather, certain groups and individuals are criminalized and marginalized as the sources of evils within the society. This type of marginalization often targets groups that are minorities (whether sexual, racial, ethnic, religious etc.). The consequence of this kind of approach for understanding social evils is that the source of evil is always misrepresented. To avoid such a misplacement of the origin of social evils, Ophir's account offers two conceptual directions.

First, he coins the term "superfluous evil" in order to establish a domain of wrongdoing that cannot be justified as a means to a further end. He writes, "to justify is to turn evil into something useful for someone, something that takes place in order to achieve or avoid something" (Ophir, 2005 p. 340). The term "superfluous evil" is helpful for understanding the evil of genocide, since genocide, by definition, cannot be considered as a means to an end, as it directly targets the livelihood of a racial or ethnic group. Furthermore, Ophir defines two orders of evil. He writes that, "a first-order evil" is "one that did not find expression," and "a second-order evil" is "one tied to the prevention of expression" (Ophir, 2005, p. 341). Although Ophir himself does not examine genocide denial as a second-order evil, according to his taxonomy, genocide denial can be viewed as a second-order evil, since it is a form of evil that is the result of "prevention of expression." It is important to notice that these two orders of evil depend on and enable each other. The second order evil aims to perpetuate the first order evil by making sure that the harm of genocide continues to find no expression.

Another philosopher of evil, Claudia Card (2005), points out one of the key questions that scholars face: "What can make evils difficult to recognize?" (p. 3) As I have suggested above, the political tactic of denial is one of the ways through which an evil event loses recognition. According to Card's theory, one of the reasons promoting the act of denial is that "perpetrators commonly do not understand their deeds as atrocities" (Card, 2005, p. 9). In reference to a psychological experiment conducted by Roy F. Baumeister, Card states that perpetrators often distort the results to make it seem not as bad as it actually is. This situation is referred to as the "magnitude gap," where the victims' perception of the suffering is always greater than the perpetrators'. She concludes that this results in a distorted understanding of the suffering that is experienced by the victims because many evils do not appear as atrocious to the public (Card, 2005, p.10). Card's response to this paradox (i.e., magnitude gap) is to suggest that we begin our inquiry from the perspective of the suffering group or individual. If we apply this suggestion to the Turkish-Armenian case, we can infer that sharing the narratives of the survivors and listening to the stories of their descendants can be a productive way to make the Turkish public recognize the suffering that was endured by the victims (at least up to a point). The problem with this suggestion however is that when a national culture is steeped in collective denial, the narratives of the survivors will appear as lies, which is unfortunately the dominant opinion in Turkey today.

### IV. Epistemic Injustice and Genocide Denial

Another theoretical approach that I find useful for addressing the question of genocide denial is the new emerging scholarship on epistemic injustice. *Routledge Handbook of Epistemic Injustice* defines epistemic injustice by referring "to those forms of unfair treatment that relate to issues of knowledge, understanding, and participation in communicative practices" (Kidd et al., 2017, p. 1). This scholarship brings together a variety of disciplines within and outside of philosophy in connection with major social and intellectual movements. This is a fairly new literature, which emerged out of the scholarship known as "epistemologies of ignorance." The goal of this latter is to examine how ignorance is actively produced

in the service of oppression and discrimination. Although "ignorance is often thought as a gap in knowledge," this scholarship directs us to the ways in which ignorance becomes a means for oppression (Sullivan & Tuana, 2007, p. 1).If the goal of genocide denial is to create a social environment in which the perpetrators and their ideological followers do not become culpable, we can conclude that genocide denial can be considered as a form of actively distributed ignorance with a specific political agenda of making invisible the harm that was done. In light of this, we know that educational curricula that silence or distort historical evidence as well as criminalization of public opinions that recognize the genocide become the most frequently used political tools. To consider genocide denial as a form of epistemic justice (and/or as portraying an epistemology of ignorance) let us review the following question: How does genocide denial figure within the vocabulary of epistemic injustice? What is epistemologically unjust about genocide denial?

According to Linda M. Alcoff (2007) there are different ways to understand how ignorance operates. One view is that ignorance "should be understood as contextual" (Alcoff, 2007, p. 43). The claim is that ignorance should always be understood in terms of the individual's relation with the topic in question. For example, I may be very knowledgeable about other topics in Ottoman history, but I could still deny the existence of the Armenian genocide due to my lack of expertise with regard to that specific issue. According to this view, ignorance is not about the total lack of information but rather is contextual. The ignorance about specific topics result from the context in which the individual belongs. And since contexts are politically and socially formed, we can understand collective ignorance (as in the case of Armenian genocide) not necessarily as a fault of the individual but rather as a systematically and actively invested false-knowledge. Collective ignorance about the Armenian genocide is a form of epistemic injustice because it creates a social environment where the relationship between past violence and current violence cannot be understood. In other words, collective ignorance and denial prevents us from the ability to understand current state of affairs. We can address this issue further through Gaile Pohlhaus' study. Pohlhaus differentiates three types of epistemic injustice: 1) discrediting knowers and silencing a particular kind of knowledge; 2) distortion of understanding a phenomenon; and 3) using epistemic practices and institutions to produce the first two forms of injustice. (Pohlhaus, 2017, p.13). According to this taxanomy, the case of genocide denial applies to all three types of injustice. First of all, genocide deniers claim that survivors and their kin do not speak the truth; hence, they discredit the testimonies of the victims of genocide and accuse them of lying about the event. In some cases (as in the case of the Armenian Genocide), this silencing and prevention of public acknowledgement of the genocide extends to the failure of accountability, where perpetrators remain unknown and therefore not culpable. In these situations, if the survivors continue to reside in the country of origin where the genocide took place, they may face further violence and be victims of racist slurs and physical violence. The prevention of knowledge about a historical event such as a genocide, which shapes the racial and religious outlook of a country, has major ethical and political consequences, one of which is not being able to understand the suffering of one's fellow citizens. This corresponds to the second type of epistemic injustice that Pohlhaus detects. Furthermore, by using educational institutions and school curricula to spread false information about historical events, governments attempt to secure the inaccessibility of truth, and hence, enable a social environment where emotions of hatred towards the survivor group become widespread. Although effects of denial immediately and most specifically concern the targeted group, they also have an large impact on other minority communities and citizens.

## V. Conclusion

Is genocide denial a form of evil or a type of epistemic injustice? In this paper, I demonstrated that two distinct scholarly attempts provide effective vocabulary for understanding the phenomenon of genocide denial. Perpetrators are often indifferent to the magnitude of the injury that they have caused. Hence following Card's theory of evil, I suggested that we must focus on the suffering of the victims because of the "magnitude gap" in the perception of the harm that was done. Furthermore, I concluded along with Ophir that genocides should be considered as "superfluous evils." That is to say, deniers' attempts to justify genocidal acts by resorting to the language of "national security threat" should be guarded against. In connection, I have also addressed the literature on epistemic injustice, which, I argued, can provide an effective lens through which we can assess the phenomenon of genocide denial. This literature provides various frameworks to assess the effects of genocide denial as forms of injustices that take place at the everyday level.

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# When Physical and Social Distances Produce An Analogical Perceptual Bias in the Ebbinghaus Illusion

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## Abstract

Grounded theory argues that perceptual and memory processes share common sensorimotor properties, and that they influence each other during perceptual processing of the environment's features. When these principles are applied to social cognition, it was shown that to live, or represent, a situation related to a social distance concept (e.g., ostracism) leads to a similar bias on the perceptual judgements of the space's properties, illustrating that distance-physical cues are intrinsically linked to social concepts. In two experiments using an Ebbinghaus illusion based-paradigm, we investigated the symmetrical incidence produced by a perceptual physical (Experiment 1) and conceptual social distance (Experiment 2) on the perceptual judgements of size. The present findings have shown an analogical pattern of results, regardless of whether the perceived distance between the central and inducer disks was physically or conceptually manipulated. Experiment 1 indicated that when the physical distance between these latter disks was important, the size-contrast perceptual bias was weaker. Experiment 2 has shown a similar weakness of the Ebbinghaus illusion when the social distance was present between the central and inducer disks. A plausible explanation for both sets of findings is that insofar as social distance concepts are physically based, it appears that a perceptual dimension of physical distance can be reactivated by the presence of a conceptual social distance between stimuli. As a consequence, it is not surprising that a analogical size-contrast perceptual bias emerges when a perceptual physical distance and conceptual social distance are inserted in Ebbinghaus illusion figures.

**Keywords:** Grounded social cognition; physical and social distances; Ebbinghaus illusion paradigm; size-contrast perceptual bias.

## Introduction

Grounded theory argues that perceptual and conceptual processes share common sensorimotor properties and they influence each other, in such manner that memory can bias perceptual processing and perception can bias memory processing (Barsalou, 2008; Goldstone, de Leeuw, & Landy, 2015; van Dantzig, Pecher, Zeelenberg, & Barsalou, 2008). This reciprocal influence has notably been shown in the processing of perceptual components (Brunel et al., 2009, 2010; Riou, Rey, Vallet, Cuny, & Versace, 2015), as well as perceptual judgments of an object's size (Rey et al., 2014, 2015). Moreover, a grounded perspective assumes that situations in which these cognitive activities are involved are not independent of the emergent sensorimotor state, insofar as a given situation, lived or represented (i.e., simulated), is an integral part of these cognitive activities (Barsalou, 2008; Niedenthal, Barsalou, Winkielman, Krauth-Gruber, & Ric, 2005; Semin & Smith, 2013). Accordingly, when these principles are applied to the social cognition, it is not surprising to observe that to experiment or represent a social situation, such as ostracism (Zhong & Leonardelli, 2008) or feeling of social power (Yap, Mason, & Ames, 2013), leads to a similar perceptual bias of physical features of the environment or others.

The idea that concepts related to social situations can bias our perception of the physical space, as well as judgements of an object's properties, is known in social cognition literature (see e.g., Morgado, Muller, Gentaz, & Palluel-Germain, 2011; Lee & Schnall, 2014; Schnall, Harber, Stefanucci, & Proffitt, 2008). More particularly, it appears that physical-distance cues

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are intrinsically linked to social distance concepts (Knowles, Green, & Weidel, 2014; Williams & Bargh, 2008). For instance, an ostracized individual is both socially and physically kept away from the ostracizing group; this why an ostracized individual tend to perceive the rejecting people as more distant than accepting ones (Knowles et al., 2014). In the same vein, it was shown that to live or represent an experiment of social power leads to perceive others as smaller (Yap et al., 2013), which is not surprising insofar as the social concept of power is embodied within a vertical spatial dimension (Robinson, Zabelina, Ode, & Moeller, 2008; Schubert, 2005). In this respect, it is reasonable to think that it could exist a symmetrical perceptual bias between a perceptual physical distance and conceptual social distance. The present study aims to examine this analogical influence on the judgements of an object's size by using an Ebbinghaus illusion based-paradigm, which has been shown as an useful tool to investigate the reciprocity of perceptual and memory processing (see Rey et al., 2014, 2015).

// Insert Figure 1 about here //

The Ebbinghaus illusion paradigm is known to highlight a perceptual bias when two identical central disks are simultaneously displayed, which are surrounded by either smaller or larger inducers (see Figure 1). Although central disks have the same size, participants usually report that they are not. The Ebbinghaus illusion is typically explained as resulting of a size-contrast perceptual bias induced by the inducers' size, in such a way that an underestimation of the central disk's size is observed when inducers are large, and an overestimation when they are smaller (Coren & Enns, 1993; Massaro & Anderson, 1971). Recently, it was shown that this perceptual bias is not only perceptually-based and that it may be reactivated in memory (Rey, Riou, & Versace, 2014). Rey et al. (2014) have adapted the Ebbinghaus illusion paradigm by creating a color-size association during a learning phase. For instance, large inducers disks were associated to the red colour and the small ones to the blue colour. In the test phase, the inducers disks were displayed in a physically identical size, but in different colours such as previously presented (i.e., red or blue). Their results indicated that the learned color-size associations have biased the perceptual judgements of size, in such way that the inducers' size has been influenced by the reactivated memory size (for similar results, see Rey, Vallet, Riou, Lesourd, & Versace, 2015).

In the same vein, other studies have stressed that the magnitude of the Ebbinghaus illusion is also modulated by the conceptual similarity between the Ebbinghaus figure's components (e.g., Coren & Enns, 1993). For instance, Ishii & Kitayama (2011) have used the out-group homogeneity effect (i.e., the tendency to perceive out-group members as more similar than in-group ones, see Boldry, Gaertner, & Quinn, 2007 for a review) in order to show that a phenomenon related to categorical similarity can affect the size-contrast perceptual bias. To this end, the authors have inserted pictures of American adults' faces in the central and inducers disks, and manipulated the group membership by associating a specific background colour to disks (red background was associated to the out-group members, and the blue background to the in-group ones). Similarly to classical results, the perceived size of the central-target face was overestimated when the surrounding inducers-faces was small. More interestingly, Ishii and Kitayama (2011) shown that the size-contrast perceptual bias was greater when the central-target face was enclosed by inducers-faces of out-group members (i.e., red background).

Along these lines, it appears that perceptual and conceptual dimensions of an object modulate the perceptual judgment of its size. However, could these latter dimensions lead to a symmetrical size-contrast perceptual bias? Distance-physical cues appear to be deeply linked to social concepts (Knowles et al., 2014; Robinson et al., 2008; Schubert, 2005; Williams & Bargh, 2008); if so, the distance between components of the Ebbinghaus illusion figure, whether it is perceptually or conceptually based, should leading to an analogical perceptual bias. To test this assumption, we used an Ebbinghaus illusion based-paradigm, in which the size-contrast perceptual bias was induced either by a perceptual physical distance (Experiment 1) or conceptual social distance (Experiment 2) between the central and inducers disks. We expected that a symmetrical influence should occur on the perceptual judgments of size. More precisely, the magnitude of the Ebbinghaus illusion should be weaker when the physical distance between central and inducers disks is important, in a similar way to when the social distance between these latter disks is present.

**Experiment 1: Physical distance between central and inducer disks.**

**Method**

**Participants**

Sixteen undergraduate students from Paul Valery Montpellier 3 University, France, volunteered to take part in the experiment. All participants have freely given consent for their participation and reported to have a normal or corrected-to-normal vision.

**Stimuli & Apparatus**

Stimuli were based on the traditional configuration of the Ebbinghaus illusion paradigm. Each stimulus consisted to the simultaneous presentation of two black central disks symmetrically positioned on each side of the screen, one enclosed by six large black equally spaced inducers and another by six small ones. Two different central (i.e., 1.91° and 2.865° for the small and large diameter respectively) and inducers sizes (i.e., 2.387° and 3.342° for the small and large diameter respectively), as well as three different physical distances separating these latter disks were investigated (i.e., 3.342°, 4.297°, and 4.966° for the short, medium, and grand distance respectively, which were measured from the centre of the target-central disk to the centre of the inducers). These manipulations lead to a total of twelve configurations (2 central disk sizes x 2 inducer disk sizes x 3 physical distances).

Participants were positioned to 60 cm in front of the 17-inch ASUS X75A laptop (ASUSTeK Computer Inc.) used to conduct both experiments. Opensesame 3.0.7 (Mathôt, Schreij, & Theeuwes, 2012) was used to set up the experiments and for data collection.

**Procedure**

After completing and signing a written consent form, the participants were informed that they going to perform a perceptual discrimination task. Participants were asked to indicate whether the size of target-central disks was identical or different, by pressing an appropriate key on an AZERTY keyboard. The key "m" and "q" were attributed to the "identical" and "different" response, respectively. This configuration of keys was counterbalanced between participants.

Each trial began with the appearance of a fixation-cross that was presented for 1000 ms at the centre of the screen. Then, stimulus was displayed for 400 ms, immediately followed by a blank screen that was presented until participant's response. The inter-trial interval was set at 1500 ms (see Figure 2a). The twelve Ebbinghaus illusion configurations were repeated twice in a block of 24 trials, insofar as the size of the inducers was counterbalanced on each side of the screen. The 24-trial block was repeated six times in a random order, for a total of 144 trials. The duration of an experimental session was approximately 15 minutes.

// Insert Figure 2 a,b about here //

**Statistical analyses**

The mean percentages of hits (e.g., participant indicated "different" when target-central disks were presented with different sizes) and false alarms (FA, e.g., participant responded "different" when target-central disks were displayed with an identical size), as well as a signal detection quality index (*d'*) were calculated per participant and per physical distance condition (see Table 1). The *d'* indicator corresponds to the signal's strength relative to the noise, the more is higher and the better was the participant's ability to discriminate the central disks' size. The *d'* was calculated as *d'* index = z-value proportion of hits - z-value proportion of false alarms (see Macmillan & Creelman, 2005).

**Table 1. Mean percentages of hits and FA, and the *d'* indicator for each physical distance condition.**

|  | Physical distance | | |
|---|---|---|---|
|  | Short | Medium | Grand |
| Hit | 0.86 (0.16) | 0.88 (0.16) | 0.84 (0.19) |
| FA | 0.21 (0.20) | 0.15 (0.19) | 0.15 (0.12) |
| *d'* | 2.158 | 2.968 | 2.864 |

*Note*. Standard deviations are in parentheses.

For both experiments, statistical analyses were performed with R software (version 3.2.2; R Core Team, 2015). The residuals' normality of our dependent variables has been verified by means of the *shapiro.test* function (*stats* R package), excepted the *d'*s distribution for the "grand" physical distance ($W$ = .97 and $p$ = .82), all were $W$ < .89 and $p$ < .08. As a consequence, we opted for non-parametric alternative analyses by using the *friedman.test*[1] and *wilcox.test* functions (*stats* R package).

## Results and Discussion

To test the incidence of the physical distance on the magnitude of the Ebbinghaus illusion, a Friedman test was conducted to compare differences in the participants' *d'* scores across the three conditions of physical distances (i.e., short, medium, and large). As expected, the analysis provided evidence for a significant effect of the physical distance on the participants' discrimination quality, $\chi^2$ (2) = 7.23, $p$ = .027. Post hoc Wilcoxon signed-rank tests (paired method) showed that it was more difficult to discriminate the size of the central-target disks when the distance separating them from inducers disks was short compared to medium, $V$ = 15.5, $p$ = .012, and the large one, $V$ = 29, $p$ = .046. In contrast, no significant difference was found between medium and large distances, $V$ = 50.5, $p$ = .753.

Also, two separate Friedman tests were performed on the participants' hits and FA scores according to the three physical distance conditions. No significant effect was found for hits, $\chi^2$ (2) = 3.71, $p$ = .156, and FA, $\chi^2$ (2) = 3.11, $p$ = .211. However, it is important to stress that post hoc Wilcoxon signed-rank tests (paired method) showed that the participants committed more of FA when the physical distance between central and inducer disks was short compared to medium, $V$ = 69.5, $p$ = .018. No further effect was highlighted, all $V$ > 18.5, and $p$ > .09.

Similarly to prior Roberts et al.'s study (2005), Experiment 1 shown that the size-contrast perceptual bias is influenced by the physical distance between central and inducer disks. The participants' discrimination ability was weaker when the physical distance between these latter disks was short rather medium or large. In order to assess whether a conceptual social distance produces an analogical perceptual bias than this observed for the physical distance, Experiment 2 employed the same paradigm as Experiment 1 with two exceptions. First, pictures were inserted in the Ebbinghaus illusion figures. Second, the physical distance between central and inducer disks was fixed.

**Experiment 2: Conceptual social distance in the Ebbinghaus illusion figure.**

**Method**

**Participants**

Sixteen undergraduate students from Paul Valery Montpellier 3 University, France, volunteered to take part in the experiment. All participants have freely given consent for their participation and reported to have a normal or corrected-to-normal vision.

**Stimuli & Apparatus**

The central and inducers disks were identical to those in Experiment 1 with the exception that we varied the conceptual social distance between these latter disks. To this end, we used two pairs of pictures representing either a "patient and doctor" or "jester and king" association. The size of the central (i.e., 1.91° and 2.865° for the small and large diameter respectively) and inducer disks (i.e., 2.387° and 3.342° for the small and large diameter respectively) was manipulated, as well as the presence of a social distance between them (i.e., present and absent), for a total of sixteen configurations (2 central disk sizes x 2 inducer disk sizes x 2 social distance situations x 2 pairs of pictures). The physical distance between central and inducers disks was constant (i.e., 4.297°, "medium" distance in Experiment 1).

**Procedure**

The procedure was identical to Experiment 1. The sixteen Ebbinghaus illusion configurations were repeated twice in a block of 32 trials, which 32-trial block was repeated four times in a random order, for a total of 128 trials. The "patient-doctor" and

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[1] The Friedman test is employed as the non-parametric alternative of the one-way repeated-measures ANOVA design.

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"jester-king" picture associations were presented separately; no doctor or patient was surrounded by the jesters or kings pictures, and reciprocally (see Figure 2b). The duration of an experimental session was approximately 15 minutes.

## Results & Discussion

As in Experiment 1, the mean percentages of hits and FA, as well as the *d'* indicator were calculated per participant and per social distance condition (see Table 2). The residual's normality of our dependent variables was verified with the *shapiro.test* R function, all W < .94, and *p* < .06. In this respect, Wilcoxon signed-rank tests (paired method) were used as non-parametric alternative to the *t*-test.

**Table 2. Mean percentages of hits and FA, and the *d'* indicator for each social distance condition.**

|  | Social distance | |
| --- | --- | --- |
|  | Present | Absent |
| Hit | 0.85 (0.16) | 0.83 (0.20) |
| FA | 0.21 (0.28) | 0.23 (0.28) |
| *d'* | 2.514 | 2.091 |

*Note*. Standard deviations are in parentheses.

As expected, the Wilcoxon signed-rank test performed on the participants' *d'* scores have shown that participants were better to discriminate the size of target-central disks when the social distance between central and inducer disks was present, V = 86, *p* = .038. No evidence of this influence was found for the participants' hits, V = 53, *p* = .282, and FA, V = 24.5, *p* = .149.

## General discussion

The present study investigated the symmetrical incidence produced by a perceptual physical distance and conceptual social distance on the perceptual judgements of size. According to the grounded theory, memory and perceptual processes influence each other during the perceptual processing of the environment's properties. Previous works applied these principles to the social cognition and have shown that experimenting, or representing, a social situation (e.g., ostracism, social power) lead to a similar perceptual bias of the space and other's physical features. In this respect, we adapted the Ebbinghaus illusion paradigm in two experiments, in order to show that a symmetrical size-contrast perceptual bias can be obtained when a physical distance (Experiment 1) or social distance (Experiment 2) separates the central and inducer disks.

Our findings have shown that regardless of whether the distance between these latter disks was physically or conceptually manipulated, an analogical pattern of results have been observed on the participants' discrimination quality. In Experiment 1, the more the physical distance separating the central and inducer disks was important, the better and accurate were participants to discriminate the size of the target-central disks (for similar results, see Robert et al., 2005). Similarly, Experiment 2 showed that the size-contrast perceptual bias was weaker when a social distance was present between these latter disks. On this point, our findings diverge from those of Ishii and Kitayama (2011). The present results of Experiment 2 seem to indicate that when a social distance is present between the illustrations of the central and inducer disks, participants are less sensitive to perceptual bias induced by the Ebbinghaus illusion. While in their study, Ishii and Kitayama have shown that the amplitude of the Ebbinghaus illusion tends to increase when the target-central face is surrounded by inducer-faces of out-group members. The interpersonal similarity (e.g., social closeness, group membership) is known as a social distance dimension (Liviatan, Trope, & Liberman, 2008). Accordingly, participants should be more accurate to discriminate the size of the central disk when it is enclosed by outgroup members rather than ingroup ones, insofar as the perceived interpersonal similarity is minimal between these latter disks. Our results are in line with this logic; furthermore, prior studies have also highlighted such findings (Coren & Enns, 1993).

The present results are consistent with a grounded perspective arguing that perceptual and memory processes share common sensorimotor properties (for a review, see Barsalou, 2008). Following the grounded principles, physical-distance cues are intrinsically related to social distance concepts (Williams & Bargh, 2008). For instance, a social distance is typically identified by a vertical spatial dimension (e.g., social power; Schubert, 2005), and well often metaphorically expressed such as "the decisions are taken by people in above us", or "they are above average". In this sense, insofar as the social distance

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concepts are physically based, it is reasonable to think that a perceptual dimension of physical distance can be reactivated by the presence of a conceptual social distance between stimuli. Therefore, it is not surprizing that a symmetrical size-contrast perceptual bias emerges when a perceptual physical distance and conceptual social distance is inserted are Ebbinghaus illusion figures.

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**Figure Captions**

*Figure 1*. Illustration of the classical Ebbinghaus illusion paradigm (target-central disks have the same size).

*Figure 2 (a,b)*. **(a)** Example of an "identical" trial with the grand (left side) and small (right side) perceptual physical distances. **(b)** Example of an "identical" trial when the social distance is present between the king-jester pictures association.

Figure 1
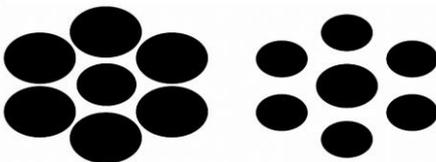
Figure 2 a,b
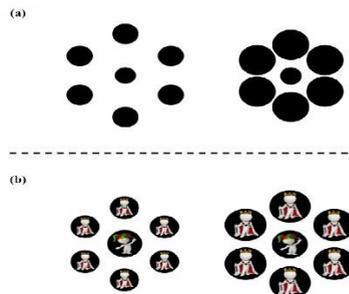
# Separation of Powers in the Kuwaiti Criminal Justice System: A Case Study

**Abdulrahman F S H Alhajri**

**Abstract**

Discussions of the Separation of Powers (SOP) tend to be related to the administrative state, at the expense of the criminal state. This research addresses the question of separating powers within the criminal justice system of Kuwait, examining the function of this division and the structures that are designed to protect the rights of citizens. Despite being regulated according to democratic principles, the criminal justice system of Kuwait has been described as excessively controlled by executive bodies. Currently, there appears to be a lack of research explaining how numerous criminal justice bodies in Kuwait can effectively promote the principles of freedom, democracy, and equality before the law. The proposed research aims to provide insights into the SOP between institutions and to assess its effectiveness in addressing the principles stated in the Constitution of Kuwait. The origins of the modern Kuwaiti criminal justice system will also be explored, with a focus on British Jurisdiction (as a past influence) and French, Egyptian and Islamic law (as continuing influences). This development history makes Kuwait an excellent example of the diffusion of law, which, although it has been investigated widely, is still a topic of interest among modern researchers, alongside human rights and their protection through the criminal law system. This is one of the first studies to discuss the SOP in the Kuwaiti criminal justice system as a mixed phenomenon that can influence the protection of Kuwaiti citizens' human rights at each stage of law enforcement and prosecution.

**Keywords:** Separation of Powers, Criminal Justice System, law.

## Introduction

The Separation of Powers (SOP) in a criminal justice system can be regarded as a method of protecting citizens' rights from bias, corruption, and inequality in judging.[1]The history of the phenomenon has involved several milestones and was the product of the minds of multiple notable figures. For example, Aristotle introduced a number of constitution-related ideas in his *Politics*, especially in books two – seven, which considered citizenship, types of regimes, and constitution. With respect to SOP, the author distinguished between "the deliberative body, the magistracies and the judges" in book four, suggesting that such separation could prevent absolute power.[2]Furthermore, in his criticism of the then-existing patriarchal system of power, Locke focused on SOP in the context of legislation and formulated the "principle of legislative supremacy … in the sense that it envisions the legislature as having an initiating place on the assembly line of law-making/law enforcement"[3], arguing that an "authority that is able to give laws to others must necessarily be the superior of the latter."[4] It can be suggested that Locke did not only try to separate the judiciary system; he also implied that there was a hierarchy of the branches of power, with judiciary being the "supreme power."[5] However, the principle of separating powers was clearly formulated by Montesquieu, who focused on the idea of SOP between "the three sorts of power: the legislative; the executive in respect to things dependent on the law of nations; and the judiciary in regard to matters that depend on the civil law."[6] Montesquieu based his view on a comprehensive analysis of a variety of systems, including ancient ones (for example, those of Romans and Barbarians)[7] and those that were contemporary at the time (for example, that of

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[1]David Samuels, 'Separation of Powers' in C Boix and SC Stokes (eds), *The Oxford Handbook of Comparative Politics* (OUP 2009) 703, 706.

[2] Aristotle, *Politics* (H. Rackham [transl]) (Cambridge University Press, 1932), at 1297b–1298a. See also Gerard Conway, 'Recovering a Separation of Powers in the European Union' (2011) 17 *European Law Journal* 304, 306.

[3] Jeremy Waldron, 'Separation of Powers in Thought and Practice' (2013) 54 *Boston College Law Review* 433, 441.

[4]John Locke, *Two Treatises On Government* (Industrial Systems Research 2009) at 188.

[5]*Ibid.*

[6]Charles Baron De Montesquieu, *The Spirit of Laws* (Cosimo 2011) at 151.

[7]*Ibid.* at 95.

England).[1]While not the first to pinpoint the idea of SOP, Montesquieu is believed to be the first person to fully and explicitly formulate the idea of tripartite SOP, aiming to "prevent the concentration of all power in the hands of a single ruler."[2] It is also noteworthy that the practice of using SOP in Islamic countries started with Umar ibn Al-Khattab (634-644 AD), who was the second Caliph of Islam. He may have been the first person to implement a form of SOP, in particular, to isolate the judiciary from the executive branch.[3]This outcome was achieved by appointing both judges and governors in the provinces, both of which were supposed to be under the supervision of the Caliph.[4] This measure ensured their independence from each other, although, eventually, the judiciary depended on the Caliph. Thus, the Islamic roots of SOP can also be found, and they are related to the practice of SOP.

It can be suggested that the discussions around the SOP tend to be related to administrative or public law in the majority of cases. In her study, Barkow states that although scholars have written many works on the SOP in a state, they "have wholly ignored the criminal state".[5]Barkow mentions at least a dozen works that illustrate her point, explaining that she had analysed only a small sample of the literature.[6] It is noteworthy that the majority of the works that she mentions were written in the previous century. Still, the issue appears to have been carried into the new century: the consideration of the administrative side of SOP is exemplified by multiple works, including those by Koven, Bruff, Kamali, and Tribe.[7] However, the criminal-matters perspective seems to be rarely mentioned. Articles by Haljan and Nelson and Ringsmuthcan be used to illustrate works that do mention it, but such examples seem to be underrepresented, and they do not focus on the topic.[8] At the same time, it is important to achieve the SOP in the field of justice as it permits the judicial system to be relatively independent and it improves its legitimacy, which is highlighted, for example, by Hall.[9] An analysis of Ashworth's conclusions can be interpreted to suggest that this importance also correlates with a history of challenges in ensuring the judiciary's independence, which the author recognises as "failures of state-led criminal justice."[10] These failures can be the result of the difficulties the judiciary experience in resisting external pressures, which the government is supposed to reduce, if not nullify. As suggested by Ashworth, "it should remain the responsibility of the state towards its citizens to ensure that justice is administered by independent and impartial tribunals."[11] Apart from that, Barkowdemonstrates that the administrative and criminal perspectives on the SOP are noticeably different, and in practice, few safeguards, including individual rights as delineated in the Constitution, are applied to the latter.[12] Thus, the author points out the tendency to ignore criminal-matter SOP, indicating the need to acknowledge and change the situation, which the proposed paper aspires to do.

The current research aims to examine how the SOP in the criminal justice system of Kuwait contributes to addressing citizens' rights, with the focus on the principles mentioned in the Constitution of Kuwait. Article 50 of the Kuwaiti Constitution declares the principle of SOP at the level of the state: "In conformity with the provisions of the Constitution the system of

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[1]*Ibid.* at 151.

[2] Anthony Murphy and Alan Stoica, 'Sovereignty: Constitutional and Historical Aspects' (2015) 2*Bulletin of the Transilvania University of Braşov*219, 224.

[3]Myra Williamson, 'The diffusion of Western Legal Concepts in Kuwait: Reflections on the State, the Legal System, and Legal Education' in S Farran, J Gallen and C Rautenbach (eds), *The Diffusion of Law: The Movement of Laws and Norms around the World* (Routledge 2016) at 32.

[4]Sharifah Hayaati Syed Ismail al-Qudsy and Asmak Ab Rahman, 'Effective Governance in the Era of Caliphate `Umar Ibn Al-Khattab (634-644)' (2011) 18 *European Journal of Social Sciences* 612, 620; see also Ata urRehman, Mazlan Ibrahim and Ibrahim Abu Bakar, 'The Concept of Independence of Judiciary in Islam' (2013) 4 *International Journal of Business and Social Science* 67, 68.

[5] Rachel Barkow, 'Separation of Powers and the Criminal Law' (2006) 58 *Stanford Law Review* 989, 989.

[6]*Ibid.* at 992.

[7] Steven Koven, 'Separation of Powers, Rule of Law, and the Bush Administration' (2009) 11 *Public Integrity* 347-361; see also Harold Bruff, *Balance of Forces: Separation of Powers Law in the Administrative State.*(Carolina Academic Press 2006) 1-526; Mohammad HashimKamali, 'Separation of Powers: An Islamic Perspective' (2014) 5*Islam and Civilisational Renewal* 471-488; Laurence Tribe, 'Transcending the Youngstown Triptych: A Multidimensional Reappraisal of Separation of Powers Doctrine' (2016) 126 *The Yale Law Journal Forum* 86-106.

[8] Done Haljan, *Separating Powers: International Law Before National Courts,* (Springer 2013) 230-231; see also Tom Clark, 'The Separation of Powers, Court Curbing, and Judicial Legitimacy' (2009) 53 *American Journal of Political Science* 971-989.

[9] Matthew Hall, 'The Semiconstrained Court: Public Opinion, The Separation Of Powers, And The U.S. Supreme Court's Fear Of Nonimplementation' (2013) 58 *American Journal of Political Science* 352, 352-353; see also Clark, *supra* (n 15) 971, 971-989.

[10] Andrew Ashworth, 'Responsibilities, Rights, and Restorative Justice' (2002) 42 *British Journal of Criminology* 578, 590.

[11]*Ibid.*at 591.

[12]Barkow, *supra* (n 12) 989, 1031.

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government shallbe established on the basis of separation and cooperation of powers", and moreover, "No Authorityshall be allowed to waive all or part of its jurisdiction as prescribed in thisConstitution".[1]Still, the legal background for the SOP principles in the state is not derived solely from the Constitution. Much attention will be paid to discussing the effect of British Jurisdiction(as a past influence), as well as the continuing impact of the French and Egyptian law on the development of the criminal justice system in a country that gained independence from the United Kingdom in 1961.[2] Furthermore, it is important to take into account the fact that Kuwait is an Islamic country, but that Muslim law has a direct impact on only the country's family law.[3]

The proposed study will examine the extent to which an effective SOP exists in the Kuwaiti criminal justice system. The first step is a general overview of the intricate net of functions that are shared and divided between institutions and personnel, and which are typical of the country's criminal justice system. The second step is a discussion of critical issues in the system and its functioning, involving the question of the protection of citizens' rights. The Kuwaiti criminal justice system can be described as mixed in its origins.[4]Also, it is not fully protected from *over-bureaucratisation*, dishonest or wrongful conduct, possible biases, and unfairness.[5] Due to the significance of these challenges, the analysis of police structures, prosecutors' responsibilities, and the judiciary, with a focus on the role of Article 50 in determining the SOP, are the most important parts of this research.

Much attention should be paid to the role of prosecutors and the prosecutorial process in Kuwait, which are influenced by the traditions of French law. Discussion of this process allows conclusions to be drawn regarding the effectiveness of the SOP in Kuwait, with the focus on conducting unbiased crime-control procedures. The analysis should include a discussion of those aspects of the criminal justice system adopted in Kuwait that can lead to a reduction in the number of crimes against citizens' rights in the country.[6] In this context, the focus is on the resources that are available to representatives of different branches of the system for the purpose of organising an effective prosecutorial process and litigation. Finally, conclusions and recommendations need to be provided regarding the role of SOP in the criminal justice system in protecting Kuwaiti citizens' rights. The recommendations will be formulated referring to the analysis of the criminal justice system's mixed structure.

A certain typology of SOP assessment criteria is also proposed for the study. A most significant criterion is the level of the independence of the judiciary, which can be assessed by pinpointing the instances of supervision and control performed by other branches of power. In particular, in Kuwait, the procedures that are related to the appointments of judges imply a lack of judiciary independence from the executive power.[7] Thus, the procedures of the judiciary, including the appointment and removal of judges, can be reviewed to assess SOP. Apart from that, the management of cases, especially those related to political crimes, the protection of the rights of offenders and inmates, and the work of the appeal system, might signal independence issues. If miscarriages of justice can be pinpointed, they should also be analysed for external pressures. Finally, police conduct, including interrogation, is of interest for the study.

It should also be mentioned that the proposed study refers to the work of Barkow. The article considers the context of the United States, and Barkow notes that although the risk of abuse and prejudice can be reduced with SOP, "more stringent enforcement of the separation of powers in criminal cases" is required in the United States.[8]As a result, Barkow's work is not directly connected to the topic of the current research, but it may be helpful to consider the research and practice in the field of SOP in several countries to form the argument for Kuwait.

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[1]Constitution of Kuwait, 1962, art. 50.

[2] Nathan Brown, 'Mechanisms of Accountability in Arab Governance' (United Nations, 2001) accessed 25 December 2016, 1, 8; see also Ahmad Hijazi, 'Kuwait: Development from a Semitribal, Semicolonial Society to Democracy and Sovereignty' (1964) 13 *The American Journal of Comparative Law* 428, 437; Daniel Treisman, 'The Causes of Corruption: A Cross-National Study' (2000) 76 *Journal of Public Economics* 399, 403.

[3] Herbert Liebesny, *The Law of the Near and Middle East: Readings, Cases, and Materials* (SUNY Press 1975), 110; Nathan Brown, *The Rule of Law in the Arab World*, (Cambridge University Press 2006) at 132.

[4]Williamson, *supra* (n 10) at 41.

[5] Brown, *supra* (n 22) 159.

[6]Williamson, *supra* (n 10) at 36.

[7]Alkarama Foundation, 'Kuwait: Report submitted to the Human Rights Committee in the context of the third periodic review of Kuwait' (Alkarama Foundation, 2016) 12. Accessed 22 March 2017.

[8]Barkow, *supra* (n 12) at 990.

### The Role of Separating Powers between Institutions in the Criminal Justice System

Throughout its existence, the idea of SOP was adopted in a number of contexts, which allows conclusions to be drawn about its theoretical and practical value. A very early example of the use of SOP is the adoption of some of its elements (in particular, the separation of the judiciary from the executive branch) by Umar ibn Al-Khattab (634-644 AD).[1] There is some debate on the topic: according to Rehman, Ibrahim, and Bakar,[2] one of the schools of thoughts argues that at that time of Umar ibn Al-Khattab, the judiciary was merged with the executive branch (which means that neither of them is controlling the other; they were just parts of the same branch). However, Rehman, Ibrahim, and Bakar highlight the evidence[3] which indicates that the caliphs did delegate part of their power to judges. Apart from that, the authors focus on the principles of justice from the Quran,[4] suggesting that in order to achieve justice, fairness, equity, and impartiality promoted by it, the judiciary needs to be independent.[5] The authors present a clear and logical argument, which is based on historical evidence and the analysis of Quran. Therefore, the Islamic roots of SOP practice may be present.

In the British and French law systems (which both developed their own monarchy-based SOP versions), the concept of the SOP was adopted in the wake Montesquieu's argument regarding the potential of this system to protect citizens' rights.[6] It is noteworthy that France's legal-matters SOP refers back to the pre-revolutionary "parlements" that performed "regulated resistance," which modified the relationships between the monarchy and the nobility, according to Goldoni.[7] In addition, the SOP has been demonstrated to be a legitimate means of protecting democracy or, rather, limiting absolute power by making it impossible to concentrate power in one place.[8]As a result, the principle of the SOP is reflected in many modern constitutions, including those of the United Kingdom, the United States and France, among other countries. Therefore, it would be feasible to state that the SOP is typical of both common law and civil law systems.[9]

The aim of SOP, as pointed out by Montesquieu, is to "prevent the concentration of all power in the hands of a single ruler."[10] Therefore, SOP in a criminal justice system is meant to prevent power abuse and ensure the protection of the vulnerable populations.[11] The population that is involved in the criminal justice system is indeed particularly vulnerable and requires effective safeguards.[12]However, historically,SOP in criminal matters was not only largely ignored by the researchers;[13]it also proved to be difficult to maintain.[14]As a result, the present study intends to rectify this issue by attracting attention to criminal justice SOP and investigating related issues.

### The Concept of a Criminal Justice System and its Patterns

The term criminal justice that is employed in this paper can be defined as "the formal social institution designed to respond to deviance defined as crime."[15]The system is typically saidto have three subsystems: "law enforcement, courts, and corrections."[16] The first one is concerned with enforcing laws, which is carried out by specific agencies through the activities related to crime: its prevention, detection, and response to it (investigation and apprehension).[17] The second one consists of the courts that uphold laws by resolving disputes,[18] and the third one is concerned with punitive operations, as well as

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[1]Al-Qudsy and Rahman, *supra* (n 11) at 620; see also Rehman, Ibrahim and Bakar, *supra* (n 11) at 68.

[2]Rehman, Ibrahim and Bakar, *supra* (n 11) at 68.

[3]*Ibid.* at 69.

[4]*Ibid.* at 70-71.

[5]*Ibid.* at 72.

[6] Marco Goldoni, 'Montesquieu and the French Model of Separation of Powers' (2013) 4 *Jurisprudence* 20, 22.

[7]*Ibid. at*31.

[8]Michael Socarras, 'Judicial Modification of Statutes: A Separation of Powers Defense of Legislative Inefficiency' (1985) 4 *Yale Law & Policy Review* 228, 228-229; see alsoSamuels (n 1) 1; Conway, *supra* (n 2) at 306- 307.

[9]Murphy and Stoica, *supra* (n 9) at 224.

[10]*Ibid.*224.

[11]Samuels (n 1) at 706; see also Hall, *supra* (n 16) at 352-353; Clark, *supra* (n 15) 971, 971-989.

[12]Barkow, *supra* (n 12) 989, 995.

[13]*Ibid*. 991.

[14]Ashworth, *supra* (n 17) 578, 590; see also Barkow, *supra* (n 12) 989, 991.

[15]Lawrence Travis and Bradley Edwards, *Introduction to Criminal Justice* (Routledge 2014) at 3.

[16]*Ibid*. at 20.

[17]*Ibid*. at 54.

[18]*Ibid*. at 57.

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rehabilitation.[1]Criminal justice systems are complex and vary from country to country. In the present study, the criminal justice system of Kuwait is going to be considered.

**Barkow's Review**

The article by Rachel E. Barkow[2]presents a critical analysis of the classical approach to SOP and demonstrates the fact that criminal-matters SOP has the specific features that require a different approach. According to Barkow, the typical approach to SOP which is applied to administrative law consists of a relatively flexible "blending of powers" combined with regular checking aimed at ensuring the lack of power abuse. The flexibility can provide the opportunity to step back from full, complete SOP in order to enable the "government to respond more readily to criminal matters."[3]On the other hand, an alternative approach would consist of strict adherence to SOP in criminal matters to ensure the lack of power abuse which, in this context, can have disastrous consequences. In other words, Barkow views SOP as a form of possible protection of the population from power abuse, which can technically be modified (be made less strict and more flexible) as long as it is combined with another safeguard (checks in the first example).

When analysing the SOP in the US, Barkow claims that the criminal-matters SOP happens to follow the flexible approach with the exception of checks, which the author defines as insufficient, claiming that only the Constitutional rights can be considered criminal-matters safeguards in the country.[4] According to the author, they are not sufficient when structural power abuse is concerned.[5]As a result, Barkow suggests that criminal-matters SOP is a field that needs separate, specific attention and consideration when determining its significance and potential forms, as well as safeguards.[6] The author criticises the lack of attention to the topic within academic literature, offers an analysis of the SOP that she observed in the US and proposes a different approach, as well as the justification of the reasons for her suggestions.

While the specifics of the US SOP are not pertinent to the present study, the rest of the article can be viewed as the framework adopted by the current investigation. In particular, Barkow claims that SOP in criminal matters is particularly important because of the potential negative outcomes (threat to human rights) of power abuse,[7]that strict SOP in criminal matters is a working mechanism for preventing power abuse because it directly prevents power from accumulating in a specific branch,[8]and that this approach would be functional within the criminal matters context specifically because of the features of that context.[9]Consequently, Barkow advocates for amore vigorous enforcement of SOP within the criminal-matters context.[10]

Barkow's investigation is based on a literature review and analysis of the Constitution of the US, as well as some cases that illustrate her points. Despite this fact, Barkow's work is of relevance to a study on Kuwait since certain similarities can be found in the development of the Kuwaiti SOP and that of other governments. For example, the process that characterises the development of the Kuwaiti SOP can be termed democratisation, which has been taking place in countries all over the world.[11]Also, Barkow provides a sound argument for the idea that criminal-matters SOP is strongly connected to, and even rooted in, the Constitution, which can be used to justify the approach used by the proposed study. Similarly, works by Samuels and Al-Zumai illustrate the way the constitutions of different countries, including Kuwait, establish the SOP principle.[12] Thus, Barkow's work can be regarded as a framework that guides the current research from the point of view of its content and methodology.

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[1]*Ibid*. at 62.
[2]Barkow, *supra* (n 12) 989, 989.
[3]*Ibid*. at 992.
[4]*Ibid*. at 993.
[5]*Ibid*.at 1031.
[6]*Ibid*. at 993.
[7]*Ibid*. at 1012-1013, 1028-1029.
[8]*Ibid*. at 1032-1033.
[9]*Ibid*. at 996.
[10]*Ibid*. at 1053.
[11]Stepan et al., *supra* (n 40) 35, 46-47.
[12]Samuels, *supra* (n 1) 1-31; see also Al-Zumai, *supra* (n 40) at 5.

**The Criminal Justice System of Kuwait**

The criminal justice system of Kuwait includes the typical elements of such a system, that is, the law enforcement agencies, the courts, and the correctional institutions.[1]The Kuwaiti Penal Code(Law No. 16 of 1960) contains the information pertinent to crimes and penalties,[2]and the criminal procedures are guided by the Kuwait Code of Criminal Procedure (Law No. 17 of 1960).[3]Overall, however, very few recent resources are available on the topic of the criminal justice system in Kuwait. For example, when researching political crimes, which is one of the SOP criteria proposed within this research, a lack of resources that would consider this phenomenon in Kuwait is apparent. The National Security Law,[4]which is the Law No. 31 of 1970 (Act Amending the Provisions of the Penal Code),seems to be dedicated to this topic. Indeed, the law focuses on the crimes that can be concerned withstate security, describing them and stating the related punishments. The law has been labelled as insufficiently detailed and termed, which, according to specialists, might result in abuse.[5]Mousavi described an example in which a woman's tweet was reinterpreted to imply "reproach of the Prince person,"[6] which is punishable according to Article 25 of the law.[7] Moreover, since the term "political crime" is not used by the document, it is difficult to determine if this category of crime is specifically acknowledged and regulated by the Kuwaiti government. Secondary sources on the topic are also rather rare, which limits the ability of this study to assess the way political crimes are handled in the country. Thus, Kuwaiti criminal system can be viewed as understudied. However, a report developed with the help of the Kuwait International Legal Research Centre and the Queen's University of Belfast has provided a short overview of the system and its issues in 2016.[8]

One of the first issues that the report considers consists of the fact that the criminal justice system of Kuwait does not exhibit a "principled" or "coherent" structure, which is why some important elements are missing.[9] According to the report, this issue makes the strategic development of the system more difficult and hinders the process of policy formation.[10] Similarly, the authors mention the lack of officials' training, insufficient guidance (code of practice) for crime investigation, and resource shortages, as wellas some more specific challenges.[11]The report focuses on issues without considering the positive elements. Still, the mentioned issues are important to review in the present research since they provide the opportunity for analysing the concerns of Kuwaiti criminal justice system, which may be pertinent to the analysis of its SOP. Apart from that, the Kuwaiti government and legal and academic communities have expressed the idea that the justice system of Kuwait requires some improvement.[12] Therefore, the analysis of the data from the report appears to be particularly important. The details about the elements of the Kuwaiti criminal justice system are presented below.

It is alsonoteworthy that Kuwait is a part of multiple international treaties and organisations, which have affected its criminal justice system. For example, Kuwait is a member of the Gulf Cooperation Council.[13] Similarly, it is a part of the United Nations, which means that it is also a member of a variety of affiliated entities, including, for instance, the United Nations Educational, Scientific and Cultural Organization or the United Nations Development Programme, which is reported to have particular influence in the country.[14]Regarding the relevant treaties, Kuwait has signed the Charter of the United Nations,[15]

[1]John Morison and Brian Grimshaw*, Investigation, Process and Legal Standards within the Criminal Justice System in Kuwait* (Queen's University Belfast, 2016) at 3.

[2]USA International Business Publications, *Kuwait justice system and national police handbook* (USA International Business Publications 2007) at 46.

[3] Kuwait, Law No. 17 of 1960: Code of Criminal Procedure, 1960, art. 1-75.

[4] Kuwait, Law No. 31 of 1970: Act Amending the Provisions of the Penal Code (National Security Law), 1970, art. 1-58.

[5]Mahmoud Rudi Mousavi, 'A Comparative Study between Kuwait and Britain Level of Understanding the Scope of Free Speech in Both Countries' (2016) 7 *International Journal of Educational Research and Reviews* 880, 884.

[6]*Ibid.* 883-884.

[7] Kuwait, Law No. 31 of 1970: Act Amending the Provisions of the Penal Code (National Security Law), 1970, art. 25.

[8]Morison and Grimshaw*, supra*(n 71) at 3.

[9]*Ibid.* at 7.

[10]*Ibid.* at 7.

[11]*Ibid.* at 7.

[12]Morison and Grimshaw*, supra*(n 71)at 5.

[13] Gulf Cooperation Council, 'Member States' (Gulf Cooperation Council, 2018), para. 6. accessed 18 March 2018.

[14] United Nations, 'The UN System in Kuwait' (United Nations, 2018), para. 1. accessed 18 March 2018.

[15] United Nations, 'Charter of the United Nations and Statute of the International Court of Justice' (United Nations, 2018), para. 1. accessed 18 March 2018

theKyoto Protocol,[1] and the Convention against Torture[2] toname just a few relevant documents. The latter convention is connected, for instance, to the National Security Law No. 31/1970, which criminalises torture.[3]The legal education in Kuwait also incorporates international law courses.[4]Thus, Kuwait's criminal justice system has been impacted by the international influences.

**Separation of Powers in Kuwait and Article 50 of the Constitution**

In Kuwait, the history of the SOP is related to the history of the country and its constitution, and it can be regarded as an example of the democratisation of a monarchy.[5]Therefore, a brief history needs to be provided. Kuwait has a rich history that, among other things, involved being a centre of trade.[6] In 1938, oil was discovered in the area, which spurred on the country's economic growth after the Second World War.[7] This possibly facilitated the democratisation of the country, as exemplified by freedom of expression in the press, which has been greater than anywhere else in the Arab world since the previous century.[8]Apart from that, the proclamation of the country's independence in 1961 was a major step towards its democratisation.[9]Thus, the specifics of the country's economic and political development might have prepared it for the introduction of an increasingly independent SOP. Also, the development of education and increased awareness of political concepts has contributed to the process.[10]Similarly, the integration of Western liberal attitudes into the life of the people of Kuwait must have mirrored the adoption of the SOP, which may have seemed premature at the time but appears to have been carried out smoothly.[11] Here, it should be pointed out that citizenship of Kuwait is a birthright[12] connected to the nationality of the father of the child.[13] In other words, a child fathered by a Kuwaiti in any country is Kuwaiti; also, foundlings found in Kuwait are considered Kuwaiti.[14] Furthermore, Kuwaiti citizenship can be granted for prolonged residence in the country (at least 15 consecutive years for Arab people), for various services to Kuwait, and other factors.[15]

According to Barkow, in the United States, "the Constitution separates legislative,executive, and judicial power to prevent tyranny and protect liberty", and this principle works for many countries, including Kuwait.[16]The Constitution of Kuwait was adopted in 1962 after the country was proclaimed independent,[17] and the principles of the codified law system were reflected in its articles.[18] According to Hijazi, the Kuwaiti Constitution reflects and determines the approach to dividing powers in the country's criminal justice system.[19]Articles 6 and 7 state that Kuwait has a democratic government and its justice system is based on the principles of democracy and equality.[20] In addition, Article 8 of the Constitution notes that the state guarantees the security and protection of its citizens.[21]

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[1] United Nations, 'A Kyoto Protocol to the United Nations Framework Convention on Climate Change' (United Nations, 2018), para. 1. accessed 18 March 2018

[2] United Nations, 'Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (United Nations, 2018), para. 1. accessed 18 March 2018

[3] Kuwait, Law No. 31 of 1970: Act Amending the Provisions of the Penal Code (National Security Law), 1970, art. 53, 56.

[4]Williamson, *supra* (n 10) 43.

[5]Stepan et al., *supra* (n 40) at 45-47; see also Salameh and Al-sharah, *supra* (n 40) 57, 57-58.

[6]Rosemarie Zahlan, *The Making of the Modern Gulf States* (Routledge 2016) at 24-27.

[7]Maria O'Shea, Michael Spilling and Marshall Cavendish, *Kuwait* (Routledge 2010) at 66-67; see also Michael Herb, *The Wages of Oil* (Cornell University Press 2014) 1-14; see also Jill Crystal, *Kuwait: The Transformation of an Oil State* (Routledge 2016) at 66-67.

[8]Michael Casey, *The History of Kuwait* (Greenwood Publishing Group 2007) at 70.

[9]Salameh and Al-sharah, *supra* (n 40) 57,58.

[10]Salameh and Al-sharah, *supra* (n 40) 57,59.

[11]Hijazi, *supra* (n 21) 428, 436.

[12]Constitution of Kuwait, 1962, art. 27-28.

[13]Kuwait, Nationality Law, 1959, art. 1-2.

[14]*Ibid*. art 3.

[15]*Ibid*. art. 4-5.

[16]Barkow, *supra* (n 12) 989, 990. See Constitution of Kuwait, 1962, art. 50

[17]Salameh and Al-sharah, *supra* (n 40) 57,58.

[18]Hijazi, *supra* (n 21) 428, 437.

[19]*Ibid*437.

[20]Constitution of Kuwait, 1962, art. 6, 7.

[21]*Ibid*. art. 8.

Article 50 of the Constitution declares the principle of the SOP for the state, which is reflected in the criminal justice system.[1]Alhajeri demonstrates that the Constitution creates a threefold SOP and entrusts specific powers in its elements, whilst also requiring that they are independent of each other. In her article, Barkowalso answers the question about the role of the Constitution in determining the SOP for the criminal justice system. She states that"each branch must agree before criminal power can beexercised against an individual. Congress must criminalise the conduct, the executive must decide to prosecute, and the judiciary (judges andjuries) must convict".[2] The same approach is also followed in Kuwait because Parliament criminalises the conduct, guidelines for prosecutors are written according to the Constitution, and the judiciary is responsible for convicting, employing the principles of law adopted from the French and Egyptian systems.[3]

An analysis of the Constitution of Kuwait reveals an important element of its articles: the figure of the Amir.The legislative power is "vested in the Amir and the National Assembly";[4] the executive power "shall be vested in the Amir, the Cabinet and the Ministers,"[5] and the judicial power "shall be vested in the Courts in the Amir's name."[6] Article 56 also states that Ministers are appointed by the Amir, but the number of Ministers cannot be greater than one-third of the National Assembly, which is formed through "general direct secret ballot."[7] Both males and females are allowed to vote after they reach the age of 21.[8] Thus, the people's will is generally expressed by the National Assembly, and the suffrage of Kuwait is considered to be "near universal" and fair.[9]

With respect to legislation, the Amir has the right to propose, sanction, and promulgate laws, and laws can be submitted by the National Assembly to the Amir. Also, the Amir can produce a variety of decrees that can be used to enforce laws, regulations, and "other necessary rules."[10] Thus, the legislative and executive powers are closely connected to the Amir, even though his power is balanced out by the Cabinet (chosen by himself, preferably from the National Assembly)[11] and the National Assembly (chosen by the people).[12] The candidates must be Kuwaiti, at least thirty years old, and fluent in Arabic; also, they have to correspond to the current requirements of the Electoral Law.[13] Overall, the Amir possesses great power, but the Constitution limits it notably.[14]

It is acknowledged that the Assembly "plays an active and substantive role in governance, both in legislating and in monitoring the government," especially when compared to the activities of parliaments in other constitutional monarchies of the region.[15] In particular, the Amir's decrees and the appointment of the Prime Minister can be controlled by the body to an extent.[16] More than that, in 2006 the National Assembly set forward the appointment of Amir Sheikh Sabah Al-Ahmad Al-Sabah, instead of the then-ailing Amir Sheikh Sa'ed Al-Abdulah Al-Sabah. This was considered an empowering step that signified a strengthening of democratic tendencies in Kuwait.[17]As a result, through the Assembly, the people became

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[1]MashaelAlhajeri, 'Judiciary and the Administration of Justice in Building and Construction Disputes Under Kuwaiti Law' (2008) 22 *Arab Law Quarterly* 199, 199-200.

[2]Barkow, *supra* (n 12) 989, 1017; see also John Manning, 'Separation of Powers as Ordinary Interpretation' (2011) 2*Harvard Law Review* 1939, 1945.

[3] Abdul Reda, 'A Summary of the Legal and Judicial System in the State of Kuwait' (1991) 6*Arab Law Quarterly* 267, 270.

[4]Constitution of Kuwait, 1962, art. 51.

[5]*Ibid*. art. 52.

[6]*Ibid*. art. 53.

[7]*Ibid*. art. 56, 80.

[8]Freedom House, 'Kuwait' (Freedom House, 2016), para. 3. accessed 12 January 2017

[9]Stepan et al., *supra* (n 40) at 45.

[10]Constitution of Kuwait, 1962, art. 71-73.

[11]Constitution of Kuwait, 1962, art. 56.

[12]*Ibid*. art. 80.

[13]*Ibid*. art. 82.

[14]Salameh and Al-sharah, *supra* (n 40) 57,65.

[15]Al-Zumai, *supra* (n 40) at 2.

[16] Freedom House, *supra* (n 114) para. 3.

[17] Al-Zumai, *supra* (n 40) at 3; see also KjetilSelvik and Ghanim Alnajjar, 'Kuwait: The Politics Of Crisis' in KjetilSelvik and Bjørn Olav Utvik (eds), *Oil States in the New Middle East: Uprisings and stability* (Routledge 2015) at 100.

the source of sovereignty for the country.[1] According to Selvik and Alnajjar, the people of Kuwait can be characterised as politically active,[2] which appears to correspond to reality, despite the relatively subjective character of the term.

The Kuwaiti judiciary is supposed to be completely separated from the Amir, since "no Authority may wield any dominion over a Judge."[3]But the judges are expected to perform their duties in the name of the Amir. Also, it is apparent that a country's judicial system is unlikely to be completely immune to varied external forces.[4] Still, it can be stated that the Constitution of Kuwait postulates and demands the independence of the system from the direct influence of external forces, including the executive power.[5]

However, certain boundaries and obstacles to the continued development of Kuwaiti democracy have been identified, including political challenges (for example, power imbalances and a lack of unity in the opposition) and economic issues – the liberalisation of the economy is considered unfinished,[6] which means that the government is not ready to relinquish its control over a number of economic aspects, for example, lending rate ceilings.[7] As shown by Al-Zumai, both economic and political issues tend to weaken the development of democracy, including the empowerment of Kuwaiti parliament and voters,[8] which eventually hinders effective SOP. It has been established that the Amir still holds impressive power, which is enhanced by the extensive involvement of the country's princes in political matters as Ministers.[9]Also, a number of setbacks before 1992 involved unconstitutional dissolutions of the Assembly.[10] Fortunately, the new century has seen only constitutional dissolutions.[11]As a result, the democratisation of the country is incomplete.

The analysis of key governmental bodies also indicates that majoritarianism appears to be present in the Kuwaiti political system. Majoritarianism can be defined as an approach to politics that favours a particular majority, resulting in that majority being able to influence a country's politics to a greater extent.[12] Given the fact that judges are not immune to these influences, majoritarianism is clearly an issue for SOP in criminal law. This is especially true for Egyptian judges in Kuwait, who are particularly unwilling to disturb the powerful groups of the country because the salary of a judge is greater in Kuwait than in Egypt.[13]As pointed out by Ashworth and Horder, the "individuals whose preferences are at odds with those of the majority" are bound to "lose out" in the case of democratic or participatory decision-making.[14]Thus, the main problem with majoritarianism is the neglect of minorities, which attracts criticism and calls for an approach that is more representative.[15] It is noteworthy that offenders are a minority, and from the perspective of the criticism of majoritarianism, a balance between the protection of the majority and the human rights of both groups needs to be found.[16] In general, majoritarianism is relatively typical for Asian countries, and Kuwait does not appear to be an exception.[17]

To sum up, the existing state of affairs in Kuwait cannot be regarded as an illustration of the theoretically ideal SOP, even though it has travelled a long way from the archetypical monarchy.[18]Nowadays, liberal tendencies in Kuwait remain strong[19]

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[1]Fadi Nader, 'Kuwait: Human Rights Under the Constitution' (2000) 7 *YB Islamic & Middle EL* 267, 267.

[2]Selvik and Alnajjar, *supra* (n 123) at 98.

[3]Constitution of Kuwait, 1962, art. 163.

[4] Hall, *supra* (n 16) at 364.

[5]Alkarama Foundation, *supra* (n 26) at 12.

[6] Al-Zumai, *supra* (n 40) at 1, 3.

[7] International Monetary Fund, *Kuwait: Selected Issues and Statistical Appendix* (International Monetary Fund 2012) at 51.

[8] Al-Zumai, *supra* (n 40) at 1, 3.

[9]Stepan et al., *supra* (n 40) 35, 46-47.

[10] Al-Zumai, *supra* (n 40) at 5; see also Salameh and Al-sharah, *supra* (n 40) 57, 66.

[11] Al-Zumai, *supra* (n 40) at 2.

[12]Petra Schleiter and Valerie Belu, 'The Decline of Majoritarianism in the UK and the Fixed-term Parliaments Act' (2016) 69 *Parliamentary Affairs* 36, 36-38.

[13] Brown, *supra* (n 22) at 159-160.

[14]Andrew Ashworth and Jeremy Horder, *Principles of Criminal Law* (OUP 2013), 26.

[15]Matthew Hall and Joseph Ura, 'Judicial Majoritarianism' (2015) 77 *The Journal of Politics* 818, 823.

[16]Andrew Ashworth, Lucia Zedner and Patrick Tomlin, *Prevention and the Limits of the Criminal Law* (OUP Oxford 2013), 89.

[17]OmarDajani, 'The Middle East's Majority Problems: Minoritarian Regimes and the Threat of Democracy' (2015) 38 *Ethnic and Racial Studies* 2516, 2527.

[18] Kristian Ulrichsen, 'Politics and Opposition in Kuwait: Continuity and Change' (2014) 4*Journal of Arabian Studies* 214, 214-217.

[19] Meir Hatina and Christoph Schumann, *Arab Liberal Thought after 1967* (Springer 2015) at 4-8, 102-103

despite the difficulties in establishing them[1] and the fact that the United Nations insist on the further development of democratic governance in the country,[2] which is its policy in the Asian region in general.[3] Kuwait seems to respond favourably to such comments as it tends to highlight the importance of freedoms[4] and equality[5] for its population, while also emphasising its agreement with the UN.[6]

It is important to note that, according to Conway, no currently existing system has managed to achieve the pure threefold SOP that, according to the author, exists only theoretically,[7] and this results in both risks and benefits for citizens. Similarly, Daughterly points out that separating the judicial branch from the executive one is a necessity, but one that is not always possible, providing an example of a politically-influenced case of criminal prosecution.[8]Therefore, the issues that are experienced by Kuwait do not indicate the impossibility of change and, in fact, signify a room for improvement.

### The Past Influence of British Jurisdiction and the Continuing Impact of French, Egyptian, and Islamic Law on the Criminal Justice System of Kuwait in Terms of Separation of Powers

The current criminal justice system of Kuwait is based on contrasting principles of British Jurisdiction(as a past influence) as well as French, Egyptian and Islamic law (that can be described as continuing influences). This feature makes the criminal justice system in Kuwait rather unique in its diffusion and dependence on several different patterns, including the reference to civil codes and Islamic views.[9]Farran, Gallen, and Rautenbach[10] offer a collection of chapters that are devoted to different cases of law diffusion. One of them isWilliamson's work,[11] which refers to Kuwait and considers the way that a variety of legal concepts are diffused within its legal system. The author also points out that scholars do not tend to have a unanimous opinion concerning the classification of the Kuwaiti legal system, which is common for the subject[12] but which results in very different appraisals of the share and influence of different sources of Kuwaiti law. The author mentions that some scholars, for example, Palmer, choose to highlight civil and Islamic law while, for example, the Central Intelligence Agency, which also devotes reports to the topic, emphasises common and French civil law.[13] According to Williamson, the country's history (in particular since colonisation and the restoration of independence) is responsible for the process of diffusion, and this process may explain "the discrepancies between these classifications."[14] The present section will consider all the pertinent influences that have had a major impact on Kuwaiti law.

### British Jurisdiction (Past Influence)

Kuwait used to be under the influence of the British Jurisdictionsince 1925and until the country became independent in 1961.[15]Technically, however, Kuwait was not colonised by Great Britain; instead, the two countries entered an Anglo-Kuwaiti Treaty, in which it was specified that Great Britain would provide protection but would not interfere with the internal

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[1] Brown, *supra* (n 22) at 158.

[2] Executive Board of the United Nations Development Programme, the United Nations Population Fund and the United Nations Office for Project Services, 'Draft Country Programme Document for the State of Kuwait (2015-2017)' (United Nations, 2014) at 23 accessed 18 January 2017

[3]Saikal A, 'Authoritarianism, Revolution and Democracy: Egypt and Beyond' (2011) 65 *Australian Journal of International Affairs* 530-544. See also, UNDEF, 'Doers of Democracy - Asia & Pacific' (UNDEF, n.d.) accessed 17 February 2017

[4]His Highness Sheikh Naser Al-Mohammad Al-Ahmad Al-Sabah, Prime Minister, 'Statement Before The Sixty-Fifth Regular Session Of The United Nations General Assembly' (United Nations, 2010) at 3 accessed 12 February 2017.

[5]*Ibid*. 2.

[6]*Ibid*. 1.

[7]Conway, *supra* (n 2) at 322.

[8] Donald Daugherty, 'Separation of Powers and Abuses in Prosecutorial Discretion' (1988) 79 *Journal of Criminal Law and Criminology* 953, 994.

[9]Liebesny, *supra* (n 22) 110.

[10]Sue Farran, James Gallen, and Christa Rautenbach, *The Diffusion of Law: The Movement of Laws and Norms around the World* (Routledge 2016), 1-235.

[11]Williamson, *supra* (n 10) 25-41

[12]*Ibid*. at 41. More discussion in the subject see EsinÖrücü, 'What is a Mixed Legal System: Exclusion or Expansion' (2008) 12 *Electronic Journal of Comparative Law*1, 3.

[13]Williamson, *supra* (n 10)34. See aslo V.V. Palmer, 'Mixed legal system' in Bussani and Matei (eds) , The Cambridge Companion to Comparative Law ( Oxford University Press, 2012) at 381.

[14]Williamson, *supra* (n 10)34-35

[15]*Ibid*. 27-28.

affairs of Kuwait.[1] Great Britain had entered such treaties with multiple other countries, including, for example, Bahrain.[2] The treaties affected the external politics of the Gulf states,[3]but they were intended to have no consequences for their internal affairs, including positive ones.[4]It is noteworthy that the level of democracy in Bahrain[5] is considered to be lower than that in Kuwait.[6] For instance, in both countries, there is a constitution, a king (Bahrain) or Amir (Kuwait), a cabinet of ministers appointed by the king or Amir, and a National Assembly elected by the people. However, in Bahrain, the ministers constitutehalf of the government,[7] and in Kuwait, ministers can only take up one-third of it,[8]providing more power for the representatives of the people. Thus, the two countries that share similar history have moved in the same direction (towards complete independence and democracy), but Kuwait has moved further. It has been suggested that the activities of colonising countries could have beeneither beneficial or harmfulfor the development of democracy in a country.[9]Possibly, the lack of direct colonisation and the presence of only treaties reduced the potential negative impacts of outside influence on Kuwaiti democratic growth.

Thus, in Kuwait, the British Jurisdiction operated separately from the National one. In other words, between 1925 and 1961, the country had two separate and very different Jurisdictions,[10] the latter of which applied to predominantly to Kuwaiti citizens while the former was applicable to other groups, mostly British, Americans, Greeks, and some others.[11]According to the literature of the time, the National Jurisdiction was " relativelysemitribal"[12]and had "no written laws, no procedure and no defined courts"[13]with the exception of the "personal status matters, which were and stillare governed by Islamic law."[14] The British Jurisdictionwas based on English legal principles and mirrored the procedures and court functions of England.[15]

The two Jurisdictions worked together for mixed cases, but in general, the existence of two different jurisdictions led to problems and confusion.[16]Given the advantages of a system with written laws and defined procedures, the British Jurisdiction became popular in Kuwait, but consequently, it was also attacked by the nationalists because it was symbolic of potentially colonialist issues.[17] Again, Kuwait was not a colony; it was a party in a treaty with Great Britain, but at the time, the presence of the British Jurisdiction in Kuwait caused unease, especially among the nationalists.[18]As a result, in 1959, it was established that the British Jurisdiction in Kuwait would be repealed after a new working system would have been implemented,[19] and in 1961, the British Parliament officially fulfilled that promise.[20]

The British Jurisprudence legacy is multidimensional. According to Professor Abdullah Alnafisi, who is a former Parliament member of Kuwait, the influence of British specialists like John Richmond, George Middleton, Edward Heath, and William Loose illustrates that legacy. In particular, the named figures promptedthe Amir to pursue democratic principles and freedom of the press.[21] On the other hand, there have been cases in which Britain hindered the development of SOP and

[1]*Ibid*. 34.  
[2]Anthony Cordesman, *Bahrain, Oman, Qatar, And The UAE: Challenges of Security* (Routledge 2018) at 34.  
[3]Carol Gillespie, *Bahrain* (Infobase Publishing 2009) at 35-36.  
[4]*Ibid*. at 37-38.  
[5] Freedom House, 'Bahrain' (Freedom House, 2016), para. 1. accessed 18 March 2018.  
[6] Freedom House, *supra* (n 114) para. 3.  
[7] Freedom House, '*supra* (n 162) para. 5.  
[8] Constitution of Kuwait, 1962, art. 56, 80.  
[9]Cathy Elliot, *Democracy Promotion as Foreign Policy* (Routledge 2017) at 18-19; see also Ewa Atanassow, 'Colonization and Democracy: Tocqueville Reconsidered' (2017) 111 *American Political Science Review* 83, 83-96.  
[10]Hijazi, *supra* (n 21) 428, 429.  
[11]Williamson, *supra* (n 10) 35.  
[12]Hijazi, *supra* (n 21) 428, 429.  
[13]*Ibid*. 429.  
[14]*Ibid*. 429.  
[15]*Ibid*. 429.  
[16]*Ibid*. 429-431.  
[17]Miriam Joyce, *Kuwait* (Cass 1998) at 57.  
[18]Williamson, *supra* (n 10) 36.  
[19]Joyce, *supra* (n 174)57.  
[20]Hijazi, *supra* (n 21) 428, 434-435.  
[21]Aljazeera Chanel, Program name is; the "Interview" published by Aljazeera on Mar 9, 2017.  
https://www.youtube.com/watch?v=GknsmBRss7o

democracy, for example, by ensuring the dissolution of the first Shura Council in Kuwait.[1]The Jurisdiction that was developed for Kuwait in the years following the decision to repeal British Jurisdiction was not based on the principles of the latter, which limits its impact on Kuwaiti legislation. However, it can be argued that the reason for choosing non-British legislation for Kuwaiti laws might be connected to colonialism and subsequent rejection of British Jurisdiction.[2] Thus, the choice of non-British legislation for Kuwait may have been the result of its presence in the country, which demonstrates that British Jurisdiction is an important influence on Kuwaiti laws.

### French Civil Law in Kuwait (Latin Civil Law)

The French law has served as an inspiration for the codified law of Kuwait in the majority of areas that do not cover personal status or financial matters (in particular, banking and tax legislation), which are governed by Islamic law.[3] This outcome was achieved indirectly: the legal system of Kuwait that was developed to supplant the British system was based on the Egyptian law,and the latter is noticeably inspired by the French law.[4] Other influences have also been noted; for example, the Kuwaiti Law of Commerce was created with the help of Iraqi law, which is also based on French legal principles.[5]In turn, a major source of the French law is the Roman law, which is associated with the prioritisation of functional codification.[6] Thus, the French law has influenced the Kuwaiti law indirectly through multiple sources while also bringing its own sources to have an impact as well.

According to Williamson, French law tends to be viewed as relatively less flexible and convenient than the British law. For example, the author notescertain French law-relateddrawbacks that can affect economic development. In particular, the British law is considered to be more business-friendly (providing "more adequate institutions for financial markets") and implies less governmental interventions than the French law.[7]Williamson amends that this idea is supported by limited evidence and can be contested, but the author also suggests that the Kuwaiti legal systemmight have inherited the issues related to the French law.[8] The author exemplifies this statement usingthe comments of the Oxford Business Group regarding the restrictive legislationin Kuwait that may result in challenges for the economic development of the country.

Admittedly, the report mentions some information about restrictive legislation, for example, that pertinent to insurance.[9]However, it also highlights some achievements in the field, including the movement of the tax legislation towards a more liberal one.[10]Therefore, it is difficult to assess the impact of French law on Kuwaiti legislation, but it is clearly present.

### Egyptian Law and the Kuwaiti Civil Code Used by Judges

The Egyptian law was particularly important for the development of the Kuwaiti legislation because the working system that was meant to supplant the British Jurisdictions in Kuwait was based on it. Indeed, Dr Abdel-Razzaq al-Sanhouri (a famous and accomplished[11] specialistfrom Egypt)was invited to develop the new Kuwaiti legislation, and since he was Egyptian, he used the Egyptian legal system for inspiration.[12]

Thus, the Egyptian Law assisted in the development of the codified Kuwaiti law in the non-personal status matters along with the French Law.[13] The Kuwaiti Civil Code was enacted in 1980.[14]It incorporates the general rules of Kuwaiti law; the

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[1]Salameh and Al-sharah, *supra* (n 40) 57,62.
[2]Joyce, *supra* (n 174)at 57.
[3]Williamson, *supra* (n 10) 34.
[4]*Ibid.* at 36.
[5] Isa Huneidi, 'Twenty-Five Years of Civil Law System in Kuwait' (1986) 2*Arab Law Quarterly* 216, 217.
[6]Eva Steiner, *French Law* (OUP 2018) at 28-30.
[7]Williamson, *supra* (n 10) 38.
[8]*Ibid.*
[9]Oxford Business Group, *Kuwait, 2013* (Oxford Business Group 2013) at 93.
[10]*Ibid.* at 206.
[11]Huneidi, *supra* (n 183) at 216.
[12]Williamson, *supra* (n 10) 36.
[13]Williamson, *supra* (n 10) 34.
[14]Kuwait, Decree Law No. 67 of 198, 1980, art. 1-3.

more specific cases (for example, commercial transactions) are regulated by specific laws (for example, Commercial Code).[1]

The new system developed by Dr al-Sanhouri was based on non-Kuwaiti legislation rather heavily and was also implemented in a very short time,[2] which is why it was not assimilated easily and is sometimes described as unnecessarily complicated and cumbersome, as well as inflexible.[3] Williamson suggests that such a conclusion is largely warranted and uses the example of the ease of conducting business in the country to demonstrate that the process is more complicated in Kuwait than in New Zealand.[4] The lack of judges and lawyers in Kuwait was resolved by attracting Egyptian specialists, which is a decision that must have been necessary at the time, but which also required a different long-term solution.[5] In summary, the development of the new system was not very smooth, and some of the issues related to it have remained topical to this day.

## Muslim Jurisprudence in Kuwait

As mentioned, the Islamic law(Shari'a) dominated Kuwait until the middle the previous century.[6] In fact, in the 1930s, the people of Kuwait petitioned for the introduction of a Shari'a-based political system.[7]The influence of the Muslim jurisprudence onmodern Kuwait is notable;[8] in fact, it is explicitly stated in Article 2 of Constitution that the Islamic Shari'a is supposed to be a primary source of Kuwaiti legislation.[9]However, according to Williamson, Islamic Shari'ais a major but not the main source of Kuwaiti legislation; the author points out that it is used predominantly for personal-status matters and financial services (Islamic banking is very well-developed in the country).[10]In the end, the result of the law diffusion in Kuwait is a combination of Muslim law and French-Egyptian-based civil law.[11] In summary, the diffusion of law in Kuwait is the result of its history, the investigation of which can help to pinpoint and comprehend some of the challenges faced by the system nowadays.

## The Kuwaiti Constitution as the Guarantor of Democracy and Citizens' Equality before the Law

The Kuwaiti Constitution is the guarantor of democracy in the country, which can be provenwith the help of Article 6, which states that the country's governmental system is democratic.[12]The rights of the population of Kuwait are proclaimed by Articles 27-46, which includes rights to privacy,[13]freedom,[14]trade unions,[15] freedom of religion,[16]expression,[17]opinion and press,[18] and so on.Also, the freedom from torture and the principle of no "punishment without law" are included in the Constitution.[19]Apart from that, the citizen's equality is directly stated in the Constitution's preamble and supported by Article 8,[20]which is concerned with equal opportunities, and Article 29,[21] which specifically points out the equality of the people of

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[1]USA International Business Publications, *supra* (n 72)at 44.

[2]Hijazi, *supra* (n 21) 428, 434.

[3]Williamson, *supra* (n 10) 36, 39.

[4]Williamson, *supra* (n 10) 36-37.

[5]Hijazi, *supra* (n 21) 428, 434.

[6]Mohammad Al-Moqatei, 'Introducing Islamic Law in the Arab Gulf States: A Case Study of Kuwait' (1989) 4*Arab Law Quarterly* 138, 138-139.

[7]*Ibid.* 140.

[8]Williamson, *supra* (n 10) 25-41.

[9]Constitution of Kuwait, 1962, art. 2.

[10]Williamson, *supra* (n 10) 34.

[11]Williamson, *supra* (n 10) 34.

[12]Constitution of Kuwait, 1962, art. 6.

[13]Constitution of Kuwait, 1962, art. 36.

[14]Constitution of Kuwait, 1962, art. 42.

[15]Constitution of Kuwait, 1962, art. 43.

[16]Constitution of Kuwait, 1962, art. 35.

[17]Constitution of Kuwait, 1962, art. 36.

[18]Constitution of Kuwait, 1962, art. 37.

[19]Constitution of Kuwait, 1962, art. 32.

[20]Constitution of Kuwait, 1962, art. 8.

[21]Constitution of Kuwait, 1962, art. 29.

Kuwait "in the eyes of the Law." In summary, the Kuwaiti Constitution guarantees human rights, democracy, and citizen equality.

## The Three Divisions of the Criminal Justice System in Kuwait

### The Police as the Law Enforcement Body and Divisions within the Ministry of Interior

Within the Ministry of Interior, which is responsible for enforcing the law, the Directorate of Police and Public Security[1]represents the law enforcement body.[2]Its divisions include those working with criminal investigation, civil defence, traffic, immigration, and so on, which corresponds to the typical activities performed by a law enforcement agency.[3]

There are some issues related to Kuwaiti police that can be found in literature. The recent report on Kuwaiti criminal justice suggests that there is no effective SOP with respect to investigative power when police and prosecutors are concerned.[4] Apart from that, the Ministry of Interior demonstrates a lack of control over the national police, its sub-divisions, and the National Guard in relation to investigations and guaranteeing public security.[5]This is the result of the existence of a rather complicated net of agencies that are responsible for internal security, which results in their responsibilities overlapping.[6]Consequently, citizens' rights can be violated when individuals are unfairly imprisoned or held in police offices for more than four days without prosecution. The criminal justice system must respect human rights and freedoms,[7]but the inefficiency of the system can pose a threat to them.

Naturally, the Penal Code of Kuwait contains Article 184, which states that imprisoning or arresting a person "without observing the procedures" must be punished.[8] Moreover, the Constitution also contains Article 31, which establishes that people cannot be "arrested, detained, searched, or compelled to reside in a specified place" unlawfully.[9] Finally, the Prison Regulation Act 26/1962 establishes the need for a legal authorisation for imprisonment.[10]Thus, there are multiple legal safeguards, but they might not be entirely successful in achieving the desired level of protection of human rights.

### Prosecutors as Part of the Criminal Justice System and Details of the Prosecutorial Process

Prosecutors are a part of the judicial system of Kuwait, appearing in the courts of different levels.[11]Public Prosecution[12] members defend the interests of the community of Kuwait.[13]The decision regarding the appointment of the candidates is made by a body called the Supreme Judicial Council.[14]The latter is comprised of the Heads and Deputies of Kuwaiti Courts (including Court of Cassation, Court of First Instance, Court of Appeal, and Supreme Court of Appeal), as well as the Public Prosecutor.[15]A representative of the Ministry of Justice is also present in the Council, but they are prohibited from voting.[16]The activities of the Council are governed by the law.[17]The appointment decision is carried out by the Minister of Justice through decrees.[18]Thus, since the decision is made by the Council, which consists of the representatives of the judiciary,it can be suggested that the appointment of prosecutors does not depend on the Minister.

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[1] Anita Burdett, *Records of Kuwait* (Archive Editions 2003) at 394.

[2]Jill Crystal, 'Criminal Justice in the Middle East' (2001) 29 *Journal of Criminal Justice* 469, 471.

[3]Travis and Edwards, *supra*(n 55)at 54.

[4]Morison and Grimshaw*, supra*(n 71)at 7.

[5]Crystal, *supra* (n 215) 469, 471.

[6]*Ibid*. 474.

[7]Ashworth and Horder, *supra* (n 137) at 48; see also Ben Emmerson, Andrew Ashworth and Alison Macdonald, *Human Rights and Criminal Justice* (Sweet & Maxwell 2012), 1-5.

[8] Kuwait, Penal Code 16/1960 (as amended), article 184.

[9]Constitution of Kuwait, 1962, art. 31.

[10] Kuwait, Prison Regulation Act 26/1962, art. 17-18.

[11]Travis and Edwards, *supra*(n 55)at 60.

[12]Constitution of Kuwait, 1962, art. 167.

[13]USA International Business Publications, *supra* (n 72)at 31-32.

[14]Kuwait, Decree Law No. 67 of 198, 1980, art. 61.

[15]USA International Business Publications, *supra* (n 72)at 32.

[16]Alkarama Foundation, *supra* (n 26) at 12.

[17]Constitution of Kuwait, 1962, art. 164.

[18]Kuwait, Decree Law No. 67 of 198, 1980, art. 61.

Liability to prosecution is governed by the Kuwait Penal Code.[1]According to a recent report, the prosecutors that were interviewed for it "appeared not to fully understand their role during the trial process."[2] Apart from that, the problem of insufficient SOP between police and prosecutors seems to be problematic.[3] Thus, the literature on the topic identifies some pertinent procedures and issues, but in general, Kuwaiti prosecution does not receive sufficient coverage in modern research. As a result, no reliable source was found that would critique the details of the prosecution processes in Kuwait.

**The Kuwaiti Judicial System and the Responsibilities of Judges**

The Judicial system of Kuwait consists of the Courts of First Instance, the Courts of Appeal, the Supreme Court or Court of Cassation, and the Constitutional Court.[4] The courts of the first two degrees are comprised of three judges, and the Supreme courtconsists of the court's heads, deputies, and Consultants. The Constitutional Court is comprised of five Consultants.[5] The first- and second-degree courts and the Supreme Court also incorporate multiple circuits dedicated to particular law branches.[6]The Constitution points out that the Military courts are "restricted to deal with military offenses committed by members of the Armed and Public Security Forces within the limits prescribed by Law."[7]

According to the recent report, the judicial supervision is crucial for Kuwaiti criminal justice, but no direct guidelines on this process exist.[8]

The independence of the judiciary is established Articles 50, 53, and 163 of the Constitution. The Kuwaiti judiciary is supposed to be completely separated from the Amir, since "no Authority may wield any dominion over a Judge."[9]But the judges are expected to perform their duties in the name of the Amir. Also, it is apparent that a country's judicial system is unlikely to be completely immune to varied external forces.[10] Still, it can be stated that the Constitution of Kuwait postulates and demands the independence of the system from the direct influence of external forces, including the executive power.[11]

Theeffectiveness of Articles may be undermined by the fact that senior judicial officials are appointed by the Minister of Justice (who belongs to the administrative branch of power) through decrees.[12]However, the Minister has to consult the Supreme Judicial Council before the appointment,[13]and the decision should belong to the Supreme Judicial Council,[14] which is comprised predominantly of the representatives of the judicial branch of power.[15]The rest of the officials are appointed by the Supreme Judicial Council. However, as pointed out by Brown, the Council includes the mentioned senior officials and is not independent in its funding.[16] Moreover, foreign judges are appointed after requests by the Ministry of Justice, without any discussions with the Council.[17] Apart from that, the Minister is lawfully vested with the power to supervise the judiciary system.[18]Thus, certain aspects of judiciary-related procedures appear to undermine the independence of the judiciary.

Some of the historical developments in the field of judicial independence can be regarded as adversely affecting the SOP. There was a notable attempt to make the justice system less dependent in the 1980s, which was curbed as a result of the suspension of Parliament in 1986 and reintroduced in the 1990s in the form of new proposals.[19]In particular, the 1990s saw

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[1]USA International Business Publications, *supra* (n 72)at 46.

[2]Morison and Grimshaw*, supra*(n 71)at 7.

[3]*Ibid.*

[4]USA International Business Publications, *supra* (n 72)at 31.

[5]Kuwait, Law No. 14 of 1973, 1973, art. 1.

[6]USA International Business Publications, *supra* (n 72)at 31.

[7]Constitution of Kuwait, 1962, art. 168.

[8]Morison and Grimshaw*, supra*(n 71)at 7.

[9]Constitution of Kuwait, 1962, art. 163.

[10] Hall, *supra* (n 51) at 364.

[11]Alkarama Foundation, *supra* (n 26) at 12.

[12]USA International Business Publications, *supra* (n 72)at 32.

[13]Alkarama Foundation, *supra* (n 26) at 12.

[14]Kuwait, Decree Law No. 67 of 198, 1980, art. 61.

[15]USA International Business Publications, *supra* (n 72)at 32.

[16] Brown, *supra* (n 22) at 158.

[17]Alkarama Foundation, *supra* (n 26) at 13.

[18]Kuwait, Decree 23/1990, article 35, 1990.

[19] Brown, *supra* (n 22) at 158-159.

a decree limiting the independence of the judiciary;[1] it prevented the Courts from considering acts of sovereignty.[2] The decree was not repealed to this day. Thus, there is a need for continuous development of SOP to ensure the independence of Kuwaiti judges.

Other issues pertinent to the judges of Kuwait may also pose a threat to human rights. They may include transparency issues.[3] Moreover, although judgements are usually declared to be in line with the principle of equality of all citizens before the law, they tend to take a lot of time to "move their way through the court system,"[4] which implies the existence of red tape.

According toLiebesny, challenges in the Kuwaiti legal system "arose initially since the courts, staffed by lawyers from Arab countries whose systems had been modernised many years ago, were not familiar with the background of the Kuwaiti system," and moreover, "the Kuwaiti court clerks and police officers on their part found the precipitous introduction of a largely alien system hard to cope with."[5]Williamsonalso agrees that "the strong presence of foreign (mainly Egyptian) judges working in the Kuwait judiciary" creates a challenge for the system.[6] The fact that judges in Kuwait are often non-citizens can undermine a sense of their legitimacy when they need to be regarded as the highest authority in determining punishments. Brown points out that the need for foreign judges is typical for some Arab countries due to their shorter legal history, which may result in less-established law schools.[7] He emphasises, however, that Kuwait's legal history is sufficient to avoid employing foreign lawyers and that Egyptian lawyers can only take overseas contracts (through which they are recruited in Kuwait) for a limited number of years, which, in his view, makes the problem less acute but still present.[8] Currently, Egyptian judges are appointed for four years (with a possible two-year extension) through an Egypt-approved request from the Kuwaiti Ministry of Justice; as of 2011, there were 300 Egyptian judges working in Kuwait.[9] The appointment of foreign judges would be expected to reduce the issue of the elitism of the judiciary, but it should be pointed out that Kuwaiti judges hold their posts for a lifetime, even though they can be removed from this position in the case of misconduct.[10]Thus, it can be suggested that Kuwait suffers "from unnecessarily complicated, inflexible and sometimes outdated laws and procedures, not to mention frustrating bureaucracy."[11] As a result, the authority of the courts becomes questionable. In this context, there is the possibility of the introduction of the jury system in Kuwait to increase the potential for fair trials, but researchers state that the criminal justice system of the state is not prepared for this pattern.[12]

It should be pointed out that the judicial independence and transparency appear to be commonly challenging to achieve, while corruption is difficult to avoid in a variety of countries, indicating that the problems are not unique to Kuwait and its SOP.[13]For example, Ashworth considers the topic of the separation of powers and responsibilities in the field of restorative justice, highlighting the role of government in ensuring the independence of justice, and pointing out that state-led justice tends to have flaws and can result in failures.[14]In particular, Ashworth states that "the list of failures of state justice is a lengthy one."[15]Still, Brown asserts that since the 1990s the process of increasing judicial independence in Kuwait has been

[1] Brown, *supra* (n 22) at 159. See Kuwait, Decree 23/1990, art. 32 and 35, 1990.
[2]Kuwait, Decree Law No. 23 of 1990: Regulation of the Judiciary Law, 1990, art. 2.
[3]Williamson, *supra* (n 10) at 36.
[4]*Ibid*.
[5]Liebesny, *supra* (n 22) at 110.
[6]Williamson, *supra* (n 10) at 36
[7] Brown, *supra* (n 22) at 159-160.
[8]*Ibid*. 160.
[9]Alkarama Foundation, *supra* (n 26) at 12.
[10]*Ibid*. 12-13.
[11]Williamson, *supra* (n 10) at 36.
[12]*Ibid* 54.
[13] Stephan Rosiny, 'Power Sharing in Syria: Lessons from Lebanon's Taif Experience' (2013) 20 *Middle East Policy* 41, 43; see also Ashworth, *supra* (n 17) 590-592; see also Omar Azfar and William Robert Nelson, 'Transparency, Wages, and the Separation of Powers: An Experimental Analysis of Corruption' (2007) 130 *Public Choice* 471, 471-490.
[14]Ashworth, *supra* (n 17) 578-579, 595.
[15]*Ibid*. at 590.

in motion.[1] This process illustrates the fact that the government tends to develop and evolve together with the evolution of the SOP.[2]

**Resources Available for the System's Functioning**

The criminal justice system requires resources for functioning just like any other system. In particular, funding, human resources, equipment (for instance, police cars or computers) are necessary.[3] However, according to the recent report on Kuwaiti criminal justice system, resources in it are not distributed adequately.[4] Therefore, at least one issue pertinent to the topic can be encountered in relevant literature. However, the topic of resources within the criminal justice system of Kuwait appears to be otherwise uncovered by recent and less recent literature, which limits the ability of the current study to draw conclusions on it.

**The Role of Article 50 in the System**

Article 50 of the Constitution which requires SOP, as well as cooperation of powers, states that "No Authority shall be allowed to waive all or part of its jurisdiction."[5]Therefore, the Article guarantees SOP and implies that each of the components of criminal justice of Kuwait must act in accordance with their authority. The significance of establishing SOP has already been mentioned,[6]which suggests that the implications of Article 50 for the functioning of the criminal justice system should be notable and beneficial. However, as it was mentioned above, the cases when the authority of the elements of the criminal justice system wasunderdefined[7] or waived do occur.[8]Consequently, the literature indicates that Article 50 is not always followed, but following it is crucial for ensuring SOP and the lack of power abuse.

**Conclusion**

The significance of SOP is easily established by the literature, but criminal-matters SOP is less extensively covered. As a result of the present literature review, no studies that would consider the criminal justice SOP in Kuwait were found, but the research and reports on the aspects that can be included in the discussion were encountered. In particular, the majority of the significant aspects of the criminal justice system can be described relatively well, which offers the opportunity for analysis. Similarly, the diffusion of law has been discussed relatively extensively.Also,the issues experienced by the criminal justice system in Kuwait appear to have received some coverage. The fact that the topic is understudied limits the ability of the literature review to respond to the research questions, but still, the following conclusions can be made.

The history of the development of Kuwaiti legal system has defined its features and some of its problems. Kuwait had experienced the impact of British Jurisdictionfor a long period, but when the country gained independence from the United Kingdom in 1961, the civil law system, based on the Egyptian law, which, in turn, is developed in accordance with the French law, was established in the country in addition to traditional Islamic law.However, the hasty introduction of the new legislation, as well as some of its inefficiencies, and the introduction of Egyptian lawyers into the Kuwaiti legal system have caused some long-lasting issues. The Constitution of Kuwait requires SOP and independence of the judiciary while also granting the citizens all the necessary rights and proclaiming them equal in the eyes of the law. However, the mentioned issues, especially those related to transparency and red tape, might endanger those rights. Moreover, there is some evidence indicating that the independence of judiciary being limited legislatively. Apart from that, the literature on the topic indicates other inefficiencies in various elements of the criminal justice system of Kuwait.

As shown by Barkow's article, which is the framework of the present study, the development of criminal-matters SOP is a crucial element of Kuwaiti's democratisation, and it is an important guarantee of the protection of the freedoms and rights of Kuwaiti people, which is especially evident in the light of the issues and barriers mentioned above. As a result, the

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[1] Brown, *supra* (n 21) 8.

[2] Jon Michaels, 'An Enduring, Evolving Separation of Powers' (2015) 115 *Columbia Law Review* 515, 515-597.

[3]Travis and Edwards, *supra*(n 55)at 22.

[4]Morison and Grimshaw, *supra* (n 71)at 7.

[5]Constitution of Kuwait, 1962, art. 50.

[6]Samuels (n 1) at 706; see also Clark, *supra* (n 15) 971, 971-989.

[7]Morison and Grimshaw, *supra*(n 71)at 7.

[8]Kuwait, Decree Law No. 23 of 1990: Regulation of the Judiciary Law, 1990, art. 2.

proposed research aspires to investigate SOP, primarily by considering its constitutional and historical roots and discussing its effectiveness from the point of view of human rights' protection.

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# Diversity and uniqueness of Family business in the North of Portugal

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**Abstract**

Family businesses are the most omnipresent form of business organisations at the international and national levels. In Portugal, family firms account for more than 70% of all businesses, contributing with 50% in employment creation. Yet, most of the existing literature does not converge in a consensual and operative definition of what are core elements which distinguish family business from non-family business. Therefore, it is crucial to extend our knowledge on important family business topics due to the broadness, diversity, uniqueness and growth potential of family business in the whole world. In this sense, the ongoing project "Roadmap for Portuguese Family Businesses" (NORTE2020/FEDER) is focused on providing a better understanding and assessment of the impact of family businesses in the North of Portugal on the local, national and international economies. This research addresses a major problem that has been identified in Europe and consists in the lack of institutional visibility, particularly of accurate and up-to-date statistics in this sector. This paper begins by identifying some of the interesting research questions that emerge from examining the business family portraits. Then, based on some preliminary empirical findings gathered from ongoing research, first of all, we intend to identify interesting profiles of family business by mobilising some socioeconomic variables; and secondly, to point out major challenges faced by Portuguese family business.

**Keywords**: Portugal, family business, diversity and uniqueness, challenges and key factors of success

## Introduction

With a long-term vision, family businesses (FB) contribute significantly to GDP and employment, to innovation and the development of local communities, constituting one of the key pillars of the growth of any country's economy. In fact, family businesses constitute the dominant business form, their success and long-term stability being essential to the economy and society. However, one of the major problems family businesses face in Europe and in Portugal is the lack of political-institutional visibility, where there are still no precise official and updated statistics on this sector of the economy. There are only a few estimates that express the importance of this business typology on private economy overall, varying from country to country.

According to the report of the Committee on Industry, Research and Energy, which is under the purview of the European Union, 85% of all the European companies are family businesses, and these represent 60% of the jobs in the private sector[1]. In Spain, family businesses represent roughly 75% of the total number of companies, whereas in Portugal, it is foreseen that family businesses may represent between 70% and 80% of the national businesses, taking up 50% of the workforce and contributing to 2/3 of the GDP[2]. Expanding to the non-European space, we observe that the relative importance of family businesses is more significant in regions like Australia (70%), Latin America (between 65% to 90%), and the United States of America (between 90 to 95%) (International Family Enterprise Research Academy [IFERA], 2003). Therefore, it is important to make available current and reliable statistic information on family businesses, whose shortcoming is signalled for the national and European context, as attested by reference documents in which the role of

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[1] Online information: http://www.europarl.europa.eu/oeil/popups/printsummary.pdf?id=1395260&l=en&t=D accessed on 4.4.18].

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small and medium family enterprises is enshrined as a substantial part of European companies - Small Business Act and of the dynamic performance of the European economy (EC, 2009).

The present article is based on the ongoing project "Roadmap for Portuguese Family-Owned Businesses" (NORTE-02-0853-FEDER-000018), in co-promotion with the Portuguese Entrepreneurial Association [Associação Empresarial de Portugal (AEP)], and funded by Norte 2020 and FEDER- Fundo Europeu de Desenvolvimento Regional, (European Regional Development Fund). This project pursues a double strategic goal: (1) to map family businesses of the North Region, whether small, medium or large; (2) to assess their impact on local, national and international economy, taking into account the dynamics of job creation, internationalisation and investment innovation, on the one hand and, on the other hand, the professionalisation of the management and governance of family companies. This is a project which aims to map this dominant business typology in the Portuguese economic fabric, characterising and identifying the main challenges and emerging trends. It will generate accurate and reliable statistical data as well as knowledge which could assist political stakeholders in decision-making, securing greater visibility for the issue of family businesses

This paper begins by identifying some of the interesting research questions that emerge from examining the business family portraits. Then, based on some preliminary empirical findings gathered from ongoing research, firstly, we intend to identify interesting profiles of family business by mobilising some socioeconomic variables; and secondly, point out major challenges faced by Portuguese family business.

**Singularities of family business**

The family businesses are cross-sectional in the economy. They exist in all activity sectors, and are not restricted to small and medium businesses, even if this is the dominant form. Similarly, family businesses maintain an emotional tie with the place they originated from, where they started their activity in the first place, and they tend to contribute to local development, not only directly through the creation of jobs, but also through regional promotional initiatives. By the influence of the founder's values, the importance of family reputation and the concern in maintaining family leadership, these businesses tend to display equally a greater willingness towards social responsibility, translated in a sense of family duty in serving society (Jayantital, 2016; Botero, De Massias, Nordqvist, 2015; Liyz, 2008). Given their national and international relevance (Graves, Thomas 2008, 2004; Gallo, GarcíaPont, 1996), three arguments are brought forward which support the diagnosis of the current reality of family businesses.

First of all, one of the greatest problems that businesses face in Portugal (and in Europe) is the lack of institutional visibility, where there are still no precise and updated official statistics about this sector of the economy. The European Commission (EC, 2009) indicates that family businesses represent more than 65% of the business fabric and 40 to 50% of employment in the European Union. In Portugal, those numbers are substantially higher, however, specific information about those companies is scarce. In Portugal, it is estimated that family businesses may represent between 70% to 80% of the national companies, taking up 50% of the workforce and contributing to 2/3 of the GDP. Nonetheless, it is still difficult to give an accurate number of how many Small and Medium Enterprises may be family businesses, and if they are, we still need to ascertain their dynamics in the (potential) contribution they can make to the national and international markets. Consequently, the mapping of this dominant business typology in the Portuguese economic fabric and their characteristics/profiles, is essential as support to the future development of public policies aimed at the support of family businesses.

Secondly, it is important to emphasise the internal heterogeneity and the specific challenges that characterise this business typology. In effect, family businesses constitute the predominant basis of the entrepreneurial fabric of most countries, and the representativeness of this company form is therefore undeniable, notwithstanding the fact that the weight varies from economy to economy. At the European level (Botero, De Massias, Nordqvist, 2015), small and medium family businesses constitute a substantial part of the European companies and of the vigour of the European economy, representing 60% of that business sector. In Portugal, this reality seems more specific since, besides integrating big businesses, it is mainly the Small and Medium Enterprises, particularly the micro-companies (comprising up to 9 workers) that have greater relevance in the economy. Family businesses are distributed by different activity sectors, such as wholesale and retail trade, accommodation and catering industry, education, human health and social assistance, fishery sector, building industry, among others. In turn, under the same designation of "family business", two distinctive realities may be included in terms of dimension, professional degree, management and government, organisational structures, including, at times, complex subcontracting networks or outsourcing to boost emerging value-added niche markets, or to externalise production chain

activities. In this context, we may include not only family businesses that survived to uphold the family "trade" but also, in the opposite direction, they include economic agents of significant importance quoted on the stock market, constituting large economic groups. They may include businesses with significant levels of innovation and professionalisation, however, the significant deficits are more meaningful concerning the digital economy and innovation in the industry framework 4.0 and of trade professionalisation (governance), managers and HR. On this last item, the lower attention and/or preparation of the family businesses for succession planning takes on a critical dimension for the sustainability of the family business (Costa, Negreiro, Negreiro, 2011; Habbershon, Williams, 2002, 1999; Gersick, Davis, Hampton, Lansberg, 1997). According to a recent study directed towards the importance of corporate succession in Portugal (AEP, 2011), 50% of family businesses are not transferred to the second generation, and only 20% reach the third generation, which explains, to a great extent, that only 11% of the surveyed companies have attributed great importance to the planning of their business succession. When we discuss this business reality, it is important to bear in mind that there is no consensual definition among the governmental entities, the economic agents and the different scientists devoted to this topic. Nonetheless, by family business we understand the company controlled by the family, in terms of appointing management positions, and some of its members participate and work in the company.

Thirdly, these family businesses adopt a certain invisibility/depreciation of their potential in the transformation of the pattern of industrial specialisation and innovation, and of transfer of technology and knowledge. Still unknown are the effects of the Family Businesses (FB) regarding: i) their economic contribution in the production chain of wealth creation and added value, especially as regards the intake of technology and knowledge transfer (mainly via start-ups and entrepreneurial initiatives linked to R&D sectors and innovation), and also via accession to the digital economy; ii) the volume of employment created and consolidated over the cycle of economic activity, particularly absorbing skilled labour; iii) the capacity for innovation at the level of processes, materials and goods/services which, produced locally, has come to win over international and globalised markets; iv) the professionalisation and leadership models, taking into account their specificities, including at this stage the most critical factors of conflict management of family business and emotional intelligence; v) the capacity to organise into networks and partnerships, sharing the available resources via the use of collaborative online platform of different social and economic agents (from R&D centres, universities, professional schools for clients and suppliers); vi) concerning the development potential of territorial cohesion for the ability to attract and set human resources locally, highlighting the role of this kind of businesses in terms of their long-run stability and the special bond they develop with local communities.

## 2. Roadmap for family business: some empirical findings

### 2.1. Methodological notes

An (online/ on-site) survey circumscribed to the North region of Portugal, was applied to a previously selected database from a systematic collection of companies that corresponded to the family business profile. From the universe of more than 41 thousand businesses that were part of the databank, a sampling plan followed, which was based on the representativeness of the distribution of family businesses per NUT III (North sub-regional divisions), and per dimension of the business defined by number of workers. For ease of reference of the collection process, only three groups of business were considered, according to the number of workers: smaller businesses (up to 10 workers), intermediate dimension businesses (from 10 to 49 workers) and larger-scale (with 50 or more workers). Bearing in mind our study goals, it was possible to ensure the constitution of a sample of 1148 family businesses, considered as robust in terms of representation of the target-universe, ensuring a trust level of 95%, with a maximum error of 3% (cf. Table 1).

Table 1 – Distribution of the final sample by NUT III (North sub-regional divisions) and size

| NUT III | Size (number of workers) | | | | |
| --- | --- | --- | --- | --- | --- |
| | Micro ≤ 3 | Micro (4 – 9) | Small (10 – 49) | Medium and Large Company (≥ 50) | Total |
| Alto Minho | 10 | 28 | 20 | 9 | 67 |
| | 14.9 | 41.8 | 29.9 | 3.4 | 5.8 |

| | | | | | |
|---|---|---|---|---|---|
| Alto Tâmega | 2 | 10 | 6 | 3 | 21 |
| | 9.5 | 47.6 | 28.6 | 14.3 | 1.8 |
| Área Metropolitana do Porto | 200 | 146 | 142 | 55 | 543 |
| | 36.8 | 26.9 | 26.2 | 10.1 | 47.3 |
| Ave | 25 | 40 | 45 | 28 | 138 |
| | 18.1 | 29.0 | 32.6 | 20.3 | 12.0 |
| Cávado | 45 | 56 | 59 | 29 | 189 |
| | 23.8 | 29.6 | 31.2 | 15.3 | 16.5 |
| Douro | 16 | 18 | 13 | 6 | 53 |
| | 30.2 | 34.0 | 24.5 | 11.3 | 4.6 |
| Tâmega e Sousa | 25 | 28 | 34 | 23 | 110 |
| | 22.7 | 25.5 | 30.9 | 20.9 | 9.6 |
| Terras de Trás-os-Montes | 3 | 14 | 8 | 2 | 27 |
| | 11.1 | 51.9 | 29.6 | 7.4 | 2.4 |
| Total | 326 | 340 | 327 | 155 | 1148 |
| | 28.4 | 29.6 | 28.5 | 13.5 | |

Source: FB Survey

To administer the questionnaire, platform *LimeSurvey* was used (June and July 2017) and an on-site application of the questionnaires to the family businesses (October 2017 to February 2018), preceded by a pre-test.

The information gathered by the family businesses in the North region via the questionnaire was geared towards the most relevant dimensions and indicators, namely: i) company identification; ii) generic characterisation of the entrepreneurial activity; iii) family structure and governance; iv) Professionalisation of the business families; v) Socio-biographical characterisation of the survey respondent, who may have been the founder himself/herself or the family business CEO, knowledgeable of the family business itself.

### 2.2. Profiles of family business

Through the intersection of some indicators such as dimension and seniority of the participating family businesses of the study, the distinguishing characteristics are listed below. These are mainly located in the metropolitan area of Porto, which is separated by a considerable percentage differential from the following: Cávado, Ave and Tâmega, and Sousa regions (cf. Graph 1).
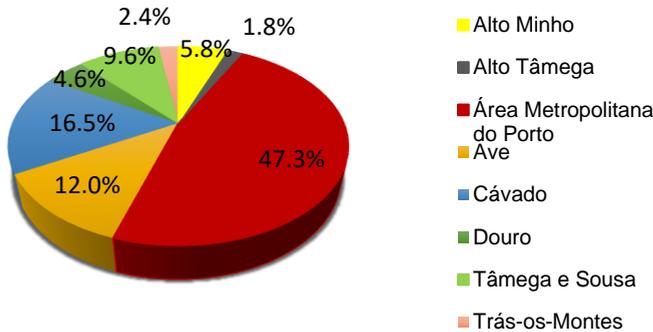
Graph 1 – Participant family businesses by NUT III (North sub-regional divisions)

Source: FB Survey

According to the three-circle model (Tagiuri, Davis, 1992, 1982), family businesses undergo an evolution cycle that goes from birth to the growth phase of both business and family all the way to their implosion. This coincides with the expansion of markets, products and services as well as with a tendentially more complex governance structure, due to the emergence of spouses and of the third generation, which fosters the emergence of family clusters. According to our results, more than half of participating businesses have up to 20 years of operation (51.8%), although the 20 to 49-year range boasts a highly significant percentage (41.3%). Businesses with 50+ years correspond to 6.7% of the sample, and only 0.3% declare to have been in operation for more than 100 years (cf. Graph 2).

We are dealing with family businesses in the phase of business and family growth, although many are already at a stage of consolidation and constitution of several family clusters. Issues pertaining to the professionalisation and growth of the business activity, on the one hand, and the constitution of households and their descendants, on the other, are the most critical challenges faced by these businesses. The most common legal form is that of limited company (71%), followed by public limited company, with equal percentage, and sole proprietorship (10.5%). As for the size of the participating family businesses, micro businesses predominate, with 58%, followed by small businesses (between 10 and 49 workers), with 28.5%. Businesses with 100+ workers are also represented in the sample, and their relative weight (6%) is significant, considering the low percentage of such businesses in the North (cf. Graph 3).

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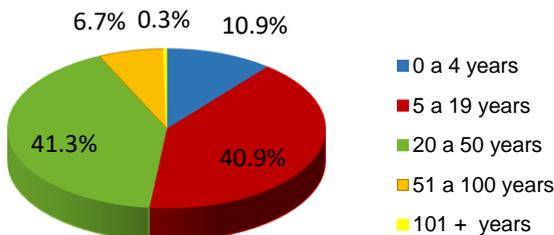
Graph 2 – Participating family businesses by seniority

Source: FB Survey
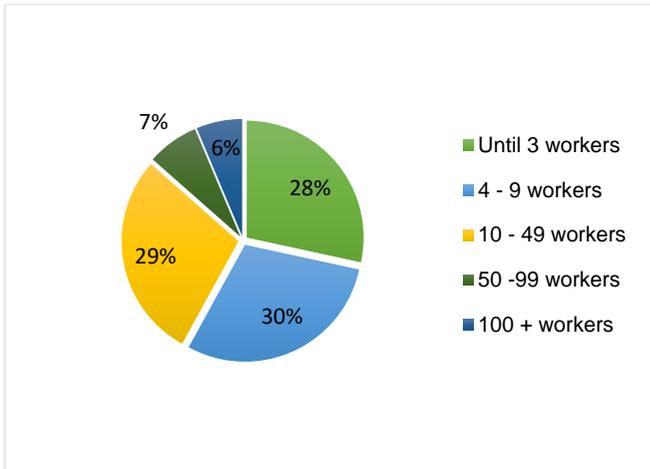


Graph 3 – Participating family businesses by size (year of 2016 as reference)

Source: FB Survey

The sectors of wholesale and retail trade, manufacturing industry and consulting, scientific and technical activities are of particular importance, as well as accommodation and catering and the building sector (cf. Graph 4).
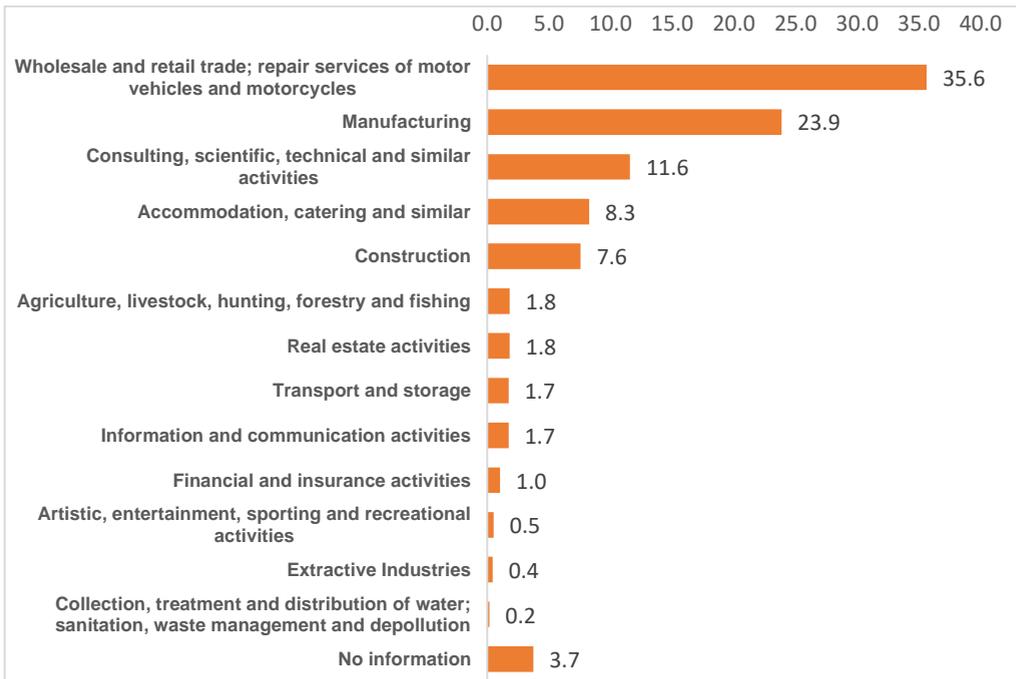


Graph 4 – Classification of economic activity of family business

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Source: FB Survey

The analysis of economic activity shows a greater number of family businesses (40.2%) had a total turnover – which includes sales of products, goods and provision of services – below 250,000 euros. However, 30.7% surpassed one million euros and 12.4% exceeded five million euros (only 2.7% were over 25 million). A large majority (86.8%) of micro businesses with up to three workers had a total turnover below 250,000 euros. As for micro businesses with four to nine workers, 48.2% did not reach 250,000 euros, 13.5% had a total turnover between 250,000 and 500,000 euros, and 7.1% exceeded 500,000 euros. The main share of total turnover of small businesses was between one and five million euros (42.8%), with 11.9% going over five million euros. Lastly, in medium and large businesses the main share of total turnover was between five and 25 million euros (49%), with 14.8% surpassing 25 million euros (cf. Graph 5).

Graph 5 – Total turnover of family businesses (on 31/12/2016)
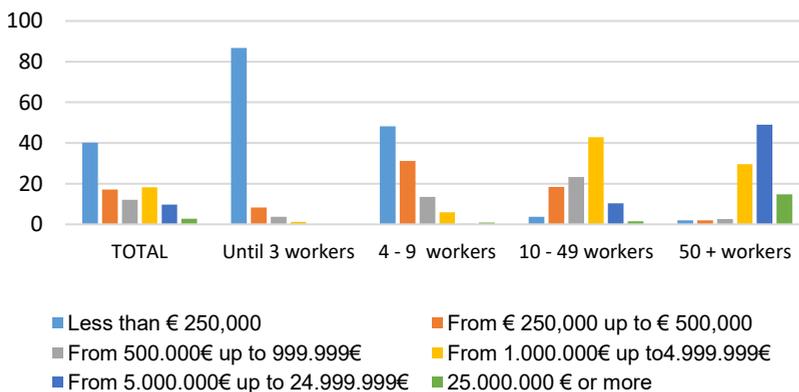


Source: FB Survey

As a rule, family businesses are characterised by low levels of risk propensity, opting for own funds and thus keeping their long-term levels of indebtedness at a minimum. This type of behavior also allows businesses to defend themselves against a possible loss of control. It should also be noted that many family businesses use their own funds because they are unable to access other forms of funding.

The results of the questionnaire given to family businesses show that self-funding (59.8%) and banks (46.3%) are the main funding sources of family businesses. However, 21.6% have to resort to family funds and 7.4% to the sale of assets. In the case of micro businesses, mostly those with up to three workers, 66.9% must use own funds, whereas small businesses mainly resort to banks (71.0% and 62.4%, respectively). The largest businesses have the least need to use family funds (7.1%) (cf. Graph 6). There is also a tendency, even if it is not very pronounced, for more recent businesses to resort proportionally to self-funding and family funds, whereas businesses with more years of existence tend to rely on banks (cf. Graph 7).

Graph 6 – Main funding sources by size

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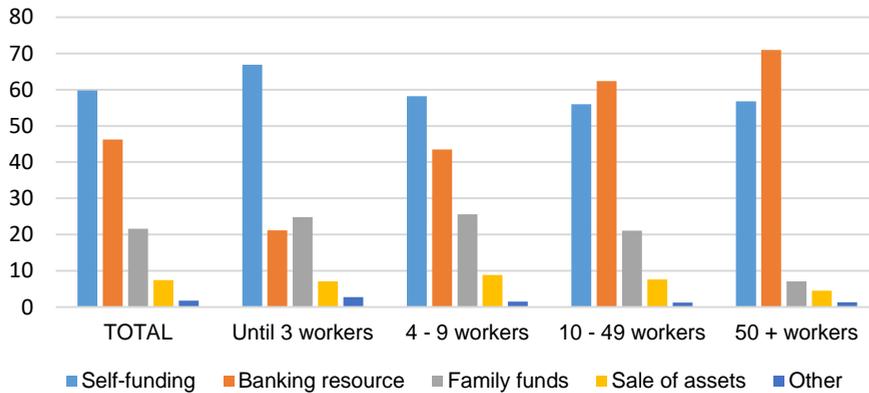
Source: FB Survey

Graph 7 – Main funding sources by seniority
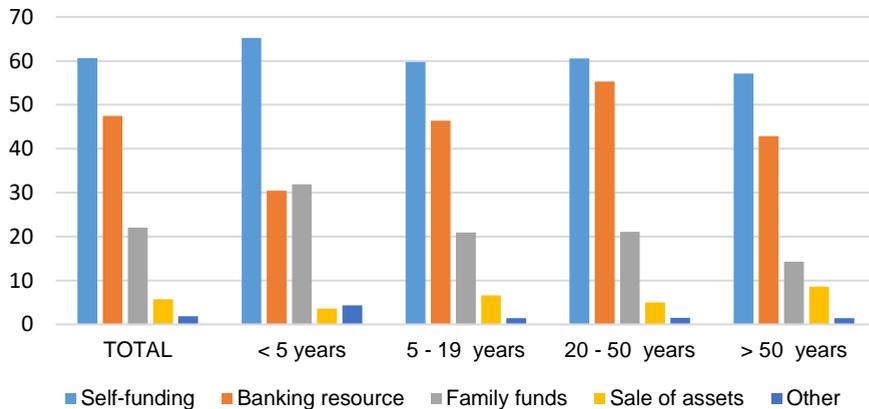


Source: FB Survey

It would appear that one of the specificities of family businesses, particularly small ones and recent ones, lies in the importance of family funds to support/implement a business or entrepreneurial endeavour, which could otherwise be unfeasible (they often serve as lenders of last resource). Nevertheless, while the family role can be crucial to the entrepreneurial endeavour and business growth, the management strategy is not always aligned with that of the family, which may raise obstacles to funding the business. For example, such options as going public (via capital market) or establishing other types of strategic partnerships (for instance, joint ventures) to elicit changes in the business may not be accepted by the family and/or property, limiting access to those means of funding.

In turn, self-funding could prove restrictive for the business, as it reduces its ability to invest and grow. But this problem becomes even more serious as the business absorbs more generations. This is because, on the one hand, some family members may withdraw from business management, demanding rewards in the form of higher dividends and, on the other hand, there is a steady increase of family members joining the business. Hence, there is inevitable pressure on the liquidity of the family business, which reduces its ability to self-fund.

The products and services of family businesses are intended for all kinds of market – the local/regional market (35.4%), the national market (29.2%) or the national market combined with the international market (35.5%). However, the type of

market towards which business are geared is mostly associated with business size. The larger businesses are simultaneously geared towards the national and international markets (76.1%), whereas businesses with up to three workers are more geared towards the local/regional market (55.8%). If should further be noted that 43.7% of small businesses extend into the international market (cf. Graph 8).

Graph 8 – Main market of products or services by business size
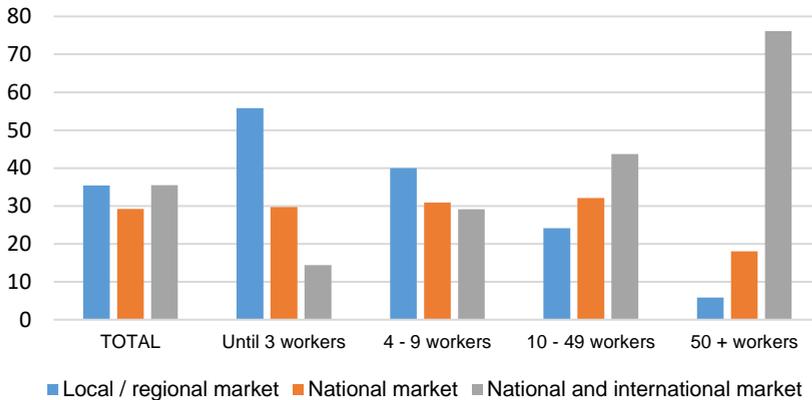


Source: FB Survey

**Key challenges faced by Portuguese family business**

Family businesses were asked to assess the importance of a set of indicators to the success of their businesses. Ten indicators were selected, and their importance was rated on a scale of 1 = Not important to 5 = Extremely important (2 = Not very important, 3 = Important and 4 = Very important) (cf. Graph 9).

On average, seven indicators were rated Very important (4), with particular relevance to the following: preparation and grooming of the successor before taking up any duties (4.13), separation between family interests and business interests (4.10) and existence of medium and long-term strategic planning (4.06). In contrast, the aspects rated the lowest by family businesses (i.e., 3 or lower) are: opening up capital to non-family members (1.99) and hiring external professional managers to run the business (2.67). Notwithstanding the fact that they display slightly different levels of importance, these indicators are not specific to a particular business size (cf. Graph 9).
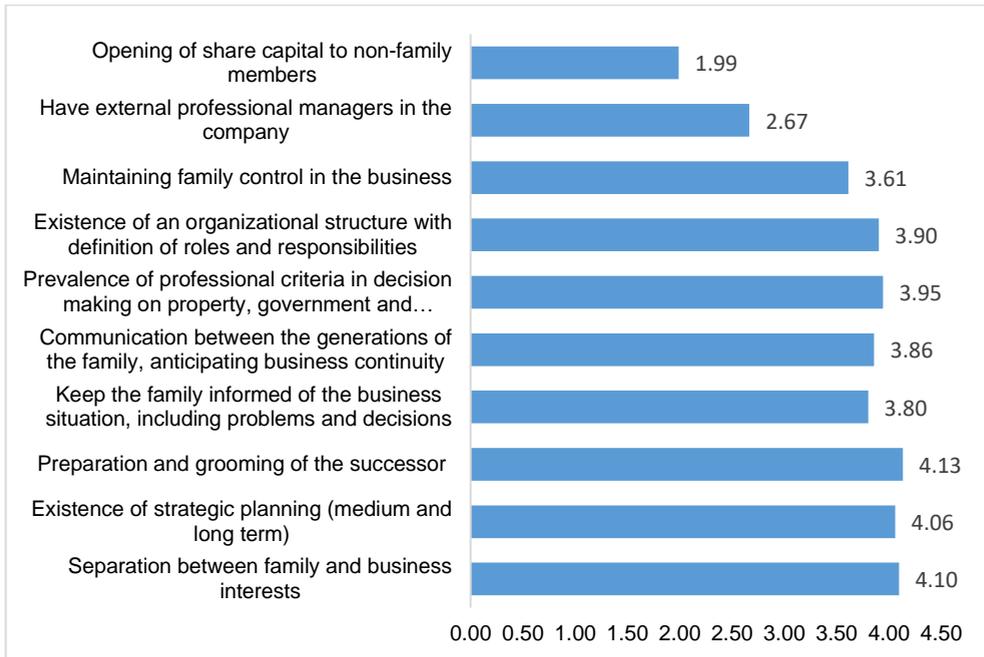
Graph 9 – Level of importance (average value) of requirements for the success of the family business

Source: FB Survey

If we sort this analysis by size and seniority of the business, the results are quite similar, which attests to the cross-cut of the three main challenges faced by family businesses: 1) preparation and grooming of the successor before taking on any duties, 2) separation between family and business interests, and 3) existence of strategic planning (medium and long term). Furthermore, in order to maintain power and control over the business in the hands of the family, there is a tendency to avoid opening up capital to non-family members and hiring external professional managers to run the business.

**Final remarks**

Family businesses are generically defined by the intrinsic involvement of family members in the management and administration boards. As such, they have interesting and unique features which set them apart from other businesses, highlighting their importance in market economies worldwide. It is acknowledged that family businesses have greater resilience and longevity when compared to other businesses, as they are characterized by the preservation of values and traditions by future generations. This helps forge a bond between the business and the family, ensuring that control over the business remains in the family.

In view of this reality, it becomes clear that the long-term strategic vision for family businesses has little interest in the possibility of opening to third parties (i.e., non-family members). Considering that business performance tends to be influenced by size and seniority: we observe that larger business with more years of existence not only have less need for self-funding and family funds, but they have a higher share of exports in total turnover.

Pursuing the effort to map the predominant business typology in the Portuguese economic sector and pinpointing its main trends and emerging profiles is key to support the future development of public policies aimed at providing support to family business.

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# Shifting Paradigm? Long-Term Value Creation as a Normative Principle in a Hostile Takeover: Evidence from the Netherlands

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**Abstract**

This article provides additional insight on the effectiveness of long-term value creation as a legally enforceable norm in the corporate governance system and provides a framework to anchor long-term value creation in takeover decisions. Since the 2008 financial crisis, a growing number of voices in the business world, government and academia, have urged Western economies to move towards a long-term sustainable growth agenda.  Boards have a vital part to play in the development of responsible companies. Corporate governance should encourage boards to do so.  This could be viewed as a reaction to the negative effects of capital markets and the resulting short-termism. One key method to encourage sustainable value creation in companies is by incorporating long-term value creation as an open norm in corporate governance systems.  In the case of a hostile takeover, the risk of short-termism is exacerbated.  As a guiding principle, long-term value (LTV) creation should prevent hostile takeovers that could harm the success of the company concerned.  In this research paper, we argue that the recent shift in Dutch case law and revision of the Corporate Governance Code in the Netherlands may serve as an important catalyst for 'sustainable' takeover decisions.  Through ground-breaking judgments by the Dutch Supreme Court and Enterprise Court, *Cancun* and *Akzo Nobel*, LTV has acquired the status of an enforceable norm.  We investigated whether this legal norm is empirically substantiated.  The research results allow us to make well-grounded statements about the effectiveness of enforcing LTV in future hostile takeover situations.

**Keywords** Long-term value creation, Takeover, Corporate governance, Normative principles, Stakeholder, Shareholder, Entity concept.

## 1. Introduction

Hostile takeovers continue to be at the centre of corporate governance debates.  We address the debate with a closer look at the purpose and the interest of the company and how these concepts affect Dutch corporate governance.  Moreover, we argue that the concept of company interest in creating long-term value creation, as a legally enforceable norm, might be a promising perspective to overcome the shareholder/stakeholder dichotomy in corporate governance debates.  Furthermore, we argue that recognising the characteristics of company interest is an important step in making progress in this discourse.

We will start this paper with reflections drawing from economic literature on capital markets and theory of the firm that have provoked the need to revive the 'company interest' in the corporate governance debate.  We argue that capital markets have become increasingly short-term oriented or less patient, which could be detrimental to long-term value creation.[1]  This problem is particularly acute in a hostile takeover situation.  We have taken the Netherlands as a case study to investigate how well long-term value creation is grounded in the Dutch corporate governance system.  We have conducted the case

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[1] Graham et al. (2005), Barton, et al. (2016),  Serafeim, et al. (2017),  Barton (2017). For an opposite view, see Kaplan (2017).

study by, first, systematically reviewing the body of case law produced by Dutch courts from 1971 to 2017. Secondly, we have conducted in-depth interviews with the most prominent decision-makers in takeover conflicts. We coded the important and relevant recurring themes in the case law and the interviews and clustered them. In the paper, we synthesize these themes, showing a more accurate conceptualization of the company, the firm, and the positioning of takeovers in the corporate governance system. We conclude by discussing the relevance of anchoring long-term value creation in corporate governance systems.

Economic reflections

Corporate governance systems all share underlying ideas, ideologies and/or theories about the purpose of the company and its stakeholders and how these are related to capital markets. Governance systems can improve the functioning of the capital market, even make the functioning possible, but governance systems can also have the effect of hampering the performance of capital markets. This depends on how we conceptualize the capital markets, the company and the firm.

Capital markets, institutions and intermediaries are essential elements in our modern economic society. Ideally, a properly functioning and developed financial system can contribute to economic growth and prosperity if the flow of capital is efficiently organized and contributes to value increasing activities. There is a strong belief that capital markets contribute to the long-term value creating process of companies and societies. This belief depends heavily on an ideal type characteristic of capital markets: their efficiency. In an efficient capital market, prices fully reflect all relevant information (Fama, 1970: 383-417) and market prices are the best available estimate of the fundamental value of the relevant assets. In the Kay-Review (Kay, 2012: 71) it was recognised that the central focus of regulators has been on fighting specific abuses, reporting misleading information, fraud, conflicts of interest and foreknowledge; these could all be labelled as information asymmetries.[1] The efficient market hypotheses became the ideological underpinning for governance purposes to eliminate these market failures.

One related belief is that the company is considered to be an extension of its shareholders (Fox and Lorsch, 2012). Anonymous shareholders are considered to be perfect and efficient monitors of managers. If a company moves away from shareholder wealth maximization, it will be disciplined by the market, because shareholders will sell the shares of the company. This will decrease the value of the shares, which will make a company more amenable for a (hostile) takeover. The company is thus disciplined beforehand. The concept of shareholder value thus provides timely, relevant and reliable financial information to diminish information asymmetries (Kay, 2012: 71) .

If the capital market is efficient 'there is nothing to worry about'. Market efficiency implies that the conflict between short and long term, and between shareholder value and stakeholder value are non-existent. An efficient capital market takes future consequences and future reactions of other stakeholders into account. There are however important developments[2] that undermine the central tenet of the efficient market hypotheses.[3] In general, capital markets have become more international, pluralistic, anonymous and diffuse. Due to an increase in specialization and number of intermediaries, the equity-investment-chain has become larger, and changed from a relation-based to a transaction-based model. Within this chain, agents are frequently monitored with the use of benchmarks. The capital markets financing function is very low; their main function seems to be offering liquidity to larger multinationals exclusively (Eumedion, 2014). There are serious doubts whether the capital market performs its basic functions as a monitor and valuator and thereby improves long-term value creation. Moreover, would an efficient capital market reflect the underlying fundamental value - the long-term value - of the company and its affiliated firm? This question cannot be easily answered. The essence of long-term value creation is that this value, in principle, is unknown (Pitelis and Teece, 2009: 5-15). Value creation and the sustainability of a firm are the outcome of an uncertain market process – it depends on numerous interacting factors. Paradoxically, if the future value created by the company and its affiliated firm can be determined beforehand, it cannot be created anymore. Everybody then would know the details of its creation, while value creation could only occur when the origin - the idea - is

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[1] The upswing of the 'shareholder value' movement is usually assigned to Jensen and Meckling (1976), see Fox and Lorsch (2012).

[2] Number of listed companies has declined from 160 (2003) to 97 (2013); relative importance of foreign investors has increased from 37% (1995), 70% (2007) to 76% (2010); pension funds increasingly invest indirectly via intermediaries; this relative amount increases from 39% (2006) to 82% (2012), (Eumedion, 2014). Number of corporate takeover defenses decreased substantially (Bootsma, 2015); Average holding period of shares has decreased due to anonymous computerized trading (Haldane, 2010); Level of concentration of ownership declined from 34.6% to 24.1% during 2006-2016 (de Jong, 2017).

[3] See Haldane (2010) for a lot of anomalies of the EMH.

kept secret. Amit and Schoemaker (1993) recognize the following characteristics of valuable resources: complementary, scarcity, low tradability, inimitability, limited substitutability, appropriability, durability, and overlap with strategic industry factors. Bowman and Ambrosini (2007: 321-322) conclude that value depends on a complex pattern of interlinked, context-specific factors, and a single resource is unlikely to be isolatable as the sole source of firm performance: "due to the many difficulties resources will resist any attempt at precise valuation."

Accordingly, if we are suspicious of whether the efficient market hypotheses is a suitable, sole or overarching mechanism to open up Pandora's box of a value creating firm, we should also critically reposition takeovers as a value enhancing mechanism and reassess the underlying corporate governance system. We propose that such reassessment should focus on the company and its affiliated firm(s) as a separate entity, moving beyond the classical dichotomy of shareholder and stakeholder orientation.[1]

## 2. Beyond shareholder and stakeholder orientation: the company interest in hostile takeovers

The significance of legal fiction

A firm (or enterprise)[2] is an organized economic activity. Large firms are typically organised using companies which allow them to operate in the legal system and the economy and which structure their economic activities (Robé, 2011: 3).

A company and its affiliated firm can function in the economy as if it is a human being. Of course, it is true that companies are legal fictions. Even so, companies are significant 'fictions' and (the consequences of) their actions – always done or committed by natural persons – are in principle attributed to these fictions by law. Companies protect the illiquid irreversible investments in the firm, to reap the benefits or capture the value created by the firm. By creating liquid markets, individual shareholders can exit on a daily basis and the company can transcend the time horizon of individual shareholders.[3] Moreover, the company can transcend the time horizon of any other stakeholder making a contribution to the firm. The notion that companies are legal persons and are able to structure the economic activities of firms is of tremendous importance for the understanding of their governance.

Company purpose

The first key structuring element is that a company has a purpose. For each legal person under Dutch private law (i.e. the company), the law requires a purpose to be specified. It requires that the deed of incorporation contains the articles of association of the company and that these articles of association contain the purpose of the company.[4] At its core, the purpose of the company is simply to develop certain activities to achieve certain results (Assink, 2015). Many legal systems, adopt an open-ended and value-neutral approach to the purpose of the company. To put it differently, there is no company law rule which requires that the purpose of a company is to direct its activities towards shareholder value maximization for the short or long term.[5] Likewise, companies are under no legal obligation to advance wider, social, environmental, religious and/or public objectives. Admittedly, the company and its activities can be restricted via specific laws and regulations, for instance, securities law, tax law, labour law, environmental law, telecom law, energy law, and health care law. In those cases, the company must abide by these specific laws. However, to comply with specific laws is clearly distinct from incorporating a purpose wider than profit maximization, such as the care for the environment. In the latter situation, company law allows a company to internalize environmental care (or any other wider orientation) as part of its purpose by anchoring such purpose voluntarily in the articles of association.

Company's interest and the interest of the firm

The second key structuring element is that a company has a distinct interest. The notion that a company is a legal person with a definable purpose is accompanied with the acknowledgment that the company could be seen as an actor with its own interest, to be distinguished from those involved in or who have a stake in the company and its activities. The view that company interest could exist, distinct from the interests of the stakeholders of the company, applies best in the situation

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[1] In the 1930's Berle and Dodd were already debating about the ontological existence of the firm as a separate entity (Robé, 2011).

[2] In this article firms and enterprise are used interchangeably to denote the organized economic activities that may be structured by companies.

[3] The origin of the corporation – to stress the long term perspective – contradicts with the short term pressure of equity markets.

[4] Compare article 2:66/177 of the Dutch Civil Code (DCC) and section 31 of the UK Companies Act, 2006.

[5] For example, article 2:66(1) DCC.

when a company maintains a firm. In a series of judgments in the takeover context,[1] the Dutch Supreme Court explicitly acknowledged the distinction between the 'company interest' and the interests of 'others involved in the company'. Effectively, as we will demonstrate in section 3, the Supreme Court has consistently rendered its decisions based on the directors' obligation to act in the interest of the company and its affiliated firm (article 2:129/239(5) DCC, as codified in 2013), in conjunction with the standards of reasonableness and fairness to take due care of the interests of those involved in the company (article 2:8 DCC).

The growing body of case law in the Netherlands indicates that – although recognizing the open ended nature of the purposes companies may have – in the typical situation where a firm is connected to a company, the purpose of the company is to promote the interests of the firm.[2] Yet, it was not until the *Cancun* judgment in 2014, that the Dutch Supreme Court explicitly assigned legal significance to the interest of the firm by interpreting the scope of the company's interest: *'if a firm is connected to a company, the company's interest is, as a general rule, mainly determined by promoting the sustainable success of this firm'*.[3] When treating this ruling formalistically, one could argue that the Supreme Court has attempted to define, or even to restrict, the interests of the company (Blanco Fernández, 2012, Raaijmakers, 2014). A closer reading suggests that the Supreme Court may not have intended such a narrow view. It is more likely that the Supreme Court's decision was intended to formulate a legal norm to rebut the absolute primacy of any single constituency's interests or entitlements, including the director's invested strategy in the firm. This argument may have greater substance, considering our understanding and deployment of the corporate entity and its affiliated firm in daily business and transitionary circumstances (Whincop, 2001: p. 48-49). Most companies are established for an indefinite period of time and operate in a changing environment. Not only do the external circumstances change over time forcing the company to make transitions, those involved in the company – the stakeholders – change too, sometimes within a split second.

That is not to deny that the ruling of the Supreme Court is without any effect. On the contrary. After *Cancun*, the amended Dutch Corporate Governance Code 2016 (DCGC 2016) acknowledged that the purpose of the company was *'to create long-term value'*.[4] It is important to note here that before the amendments to the Code, from 2003 onwards, the view of the Corporate Governance Monitoring Committee was that '*a company endeavours to create long-term* **shareholder** *value* [emphasize added]'.[5] Moreover, in the recent high profile takeover contest between Akzo Nobel and PPG, the Dutch Enterprise Court applied the *Cancun* formula and decided that company boards are obliged to direct their actions towards *'the long-term value creation of the company and its affiliated firm'*.[6]

Without negating the significance of the above-mentioned rulings and developments in the Netherlands, one could argue that in effect 'the Dutch' are now merely 'in sync' with the 'neighbouring Europeans'. Germany, Sweden, Norway, Denmark, Austria and Belgium, have long emphasised the company's sustainable value creation.[7] The orientation of the company towards sustainable value creation is not difficult to justify given the increased importance of the social embedment of companies, in particular those companies maintaining large firms, operating across the world. The company's license to operate might well depend on the extent to which the company and its connecting firm(s) succeed in creating value, globally and locally (de Jongh, 2011: 3). The legal translation could be argued as follows: that the company's interest to create value is regarded as a legal norm which is addressed to the company, to the constituents of the company such as the board of directors, the supervisory board and the general meeting of shareholders, and any other stakeholder involved in the company and its affiliated firm. Accordingly, acknowledging the company's interest as a legally enforceable norm is not without consequence, nor does it leave the corporate governance debate unaffected. Three major principles should be

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[1] See section 4 of this paper.

[2] See section 4 of this paper.

[3] Dutch Supreme Court, 2014 NJ 2014/286 (Cancun), paragraph 4.2.1. We will be introducing our own translations of the Dutch court judgments.

[4] See the preamble of de DCGC 2016 and article 1.1.1 (strategy for long-term value creation) of the Code.

[5] See the preamble of the DCGC 2003, under paragraph 3.

[6] Dutch Enterprise Court 29 May 2017 ECLI:NL:GHAMS:2017:1965, paragraph 3.34 (Akzo/Nobel), JOR 2017/261 with annotation from C.D.J. Bulten.

[7] See the Corporate Governance Codes of these countries, article 4.1.1 (CGC 2017 Germany), article 3.1 (CGC 2016 Sweden), pages 32 and 48 (CGC 2014 Norway), art. 4 (Denmark 2017) preamble, article 26a (Austria 2018), preamble under paragraph 2, article 1.1 (Belgium 2009).

contemplated to overcome the shareholder/stakeholder dichotomy and to make progress in the corporate governance debate:

The interest of the company in the sustainable success of its affiliated firm transcends any stakeholder and shareholder interests;

Executive directors, under the supervision of supervisory directors, have an obligation towards the company to make business decisions (including strategic decisions) to further pursue the sustainable success of the interest of the company and its affiliated firm[1] and when making these business decisions have an obligation towards the company's stakeholders, including shareholders, to take due care and not cause unnecessary or disproportionate harm;[2]

The company's shareholders, when acting collectively in the general shareholders meeting in the pursuit of their (collective) interests, are bound via the standards of reasonableness and fairness, to not disproportionately harm the company's interest, under the penalty of deterioration of the shareholders' resolution.  A situation where individual shareholders are confronted with a bid and are incentivized to put their private interests first, may legitimately face frustration of the bid by the target board.

We investigated the robustness of these principles in a hostile takeover situation.  We reviewed the case law from 1971 to 2017 with the aim of testing how well rooted these principles are in the Dutch legal framework in situations where target boards resisted an uninvited proposal from a bidder to take over the target company and/or situations where target boards have withstood shareholder activism to overrule board strategies or to force the replacement of incumbent board members (section 3).[3]  In addition, we reflected on the results of the case law analysis by conducting eight interviews with participants who hold positions which can be regarded as highly influential in shaping Dutch corporate governance (section 4).

### 3. Results of the case law analysis 1971-2017

### Takeovers and the right of inquiry

A few preliminary remarks on the structure and legal context of the case law analysis should be made to allow better insight into the results of the research.  Takeover conflicts are mainly (not exclusively) reviewed through an inquiry procedure before the Enterprise Court, by submitting a request for an investigation into the policy and affairs of the legal person (article 2:350 DCC) under the review of the Supreme Court.  The legal person – the company – is thus the object of review.  Unlike the civil procedure, the inquiry procedure is not aimed at settling disputes of a pecuniary nature, but foremost to re-establish healthy relations within the company.  Given the particularity of the inquiry procedure, the Enterprise Court may review the actions of company boards and of the company shareholders.  We investigated whether in a hostile takeover situation long-term value creation was a determining factor for the courts[4] to review and decide the takeover conflict.  More specifically, we focused on finding the conditions and circumstances an anti-takeover defensive measure (ATD) taken by the company, by means of its target board, was allowed, or in legal terms, was justified.[5]  If an ATD was not justified, it might be an indication that mismanagement has taken place and that there are well-founded reasons to doubt that the company's policy or state of affairs was in order.  In the cases under study, the judicial review was mainly focused on assessing the obligations of the company and its board in taken the decision to implement an ATD and whether this decision was justified.  At the same time, we extrapolated our analysis to assess the duties of other stakeholders, namely those of the shareholders in a takeover situation.

Reasonableness and fairness as the dominant standard of review of target boards' decisions – 1971

In the earliest cases, courts reviewed anti-takeover defensive measures on the basis of reasonableness and fairness, without explicit mention of sustainability or long-term value creation.[6]  The starting point in early rulings has been that an

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[1] Accordingly, exercising their legal task (article 2:129/239 DCC).
[2] Accordingly, to abide by the standards of reasonableness and fairness (art. 2:8 DCC).
[3] The case law analysis ended on 1 December 2017.
[4] Referring to the Enterprise Court and/or the Supreme Court.
[5] Rb. Haarlem, 12 June 1990 ECLI:NL:RBHAA:1990:AC2566 (Asko/Ahold).
[6] Hof Amsterdam 1 April 1971, ECLI:NL:GHAMS:1971:AB6704 (Immofarm AG/NV Handelsvereening v/h Reiss en Co ea); Rb. Haarlem, 12 June 1990 ECLI:NL:RBHAA:1990:AC2566 (Asko/Ahold).

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ATD is justified if a company could '*reasonably expect a possible threat to its continuity and own identity*'.[1]  This line of reasoning has been reaffirmed in later judgments.[2]

In *Immofarm,* the '*continuity of the company*' and *'the autonomous existence of the company', 'the preservation of its own Dutch character and its staff*' were reasoned as part of the duties of the executive and supervisory board towards the company.  These company interests were in the realm of director duties, acknowledged as legitimate interests that could justify ATDs.[3]  As the legitimacy of ATDs could depend on whether the continuity or identity of the company may be harmed, a target board's decision to establish an ATD under such conditions was regarded as not being contrary to what the standards of reasonableness and fairness dictate and therefore was not unlawful.[4]  Accordingly, the legal norm of reasonableness and fairness is first addressed to the company – without aforementioned justification, the acts of the company are contrary with 'reasonableness and fairness' – and second to the target board, whose obligation towards the company requires the target board to take defensive measures. Reasonableness and fairness thus delineates the leeway for target boards to take ATDs.

Company interest as a safe harbour for target boards – 1993

In the *GTI Holding* case, the GTI board issued shares to defeat a change of control.  The ATD was justified, not only because the '*autonomous existence of the company and independence of the company*' was under threat, but also because of concern for the '*wellbeing of the company'*.[5]  The dispute involved a minority shareholder of a competing company who secretively enlarged his shareholding to 32%, after the GTI board rejected his proposal to cooperate.  In the *GTI Holding* judgment, the threat to the autonomous existence and independence of the company was objectively assessed as follows:

The acquirer or bidder has given evidence of hostile intentions with regard to gaining control e.g. against the wish of the board and supervisory board of the target company;

And the actions of the hostile party are a threat to the autonomous existence of the company and the independence of the company.  The mere statement that the secretive acquisition of a larger shareholding was not done with bad intentions, does not take away that the company could perceive it as a threat.[6]

If these conditions are not met, the use of a target board's competence to establish an ATD are contrary to reasonableness and fairness, exposing the decision to annulment (article 2:15 DCC).  In other words, a (threat to) the interest of the company serves as a safe harbour for target boards to take ATDs within the boundaries of reasonableness and fairness.[7]  This safe harbour argument can also be inferred from the *Heineken Holding N.V.* decision,[8] which was rendered eight years after *GTI Holding*.  Heineken explicitly defined the purpose of the company's interest to ensure the continuity of its group in the company's articles of association.  Interestingly, the court ruled that when the main goal of a company is to ensure continuity, and this purpose is well known to the shareholders of the company, the shareholders cannot demand that the company will take extreme measures, such as the repurchase of its own shares, that would diminish its influence or even prompt its own liquidation, to increase shareholder value.[9]

The influence of the company's statutory structure on the interests of the company's stakeholders - 2003

In the landmark case *RNA,* rendered in 2003, the Supreme Court further specified conditions for protecting the company interest.  The (use of an) ATD must be temporary, so long as it is not found that the company interest is disproportionately harmed.  Here, proportionality is understood as not going any further than required regarding the object of protection.[10]

[1] Rb. Haarlem, 12 June 1990 ECLI:NL:RBHAA:1990:AC2566 (Asko/Ahold).

[2] 23 January 2009, JOR 2009 / 69 (Beheermaatschappij Trial).

[3] Hof Amsterdam (OK) 1 April 1971, ECLI:NL:GHAMS:1971:AB6704 (Immofarm AG/NV Handelsvereening v/h Reiss en Co ea).

[4] Rb. Haarlem, 12 June 1990 ECLI:NL:RBHAA:1990:AC2566 (Asko/Ahold).

[5] Rb Utrecht 15 September 1993 ECLI:NL:RBUTR:1993:AC4321 (GTI Holding).

[6] Rb Utrecht 15 September 1993 ECLI:NL:RBUTR:1993:AC4321 (GTI Holding), see consideration 5.8.

[7] Rb Utrecht 15 September 1993 ECLI:NL:RBUTR:1993:AC4321 (GTI Holding), see consideration 5.9.

[8] Hof Amsterdam (OK), 18 October 2001, ECLI:NL:GHAMS:2001:AD4646, NJ 2001, 641 (Heineken Holding NV).

[9] Hof Amsterdam (OK), 18 October 2001, ECLI:NL:GHAMS:2001:AD4646, NJ 2001, 641 (Heineken Holding NV).

[10] Compare Hof Amsterdam (OK) 5 August 2005, JOR 2005/241 (VIBA).

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Accordingly, the company's structure may be a relevant factor in determining the legitimacy of a target board's defensive measure, taking into account the position of (minority) shareholders.

The investment company, RNA, was confronted with cooperation plans from minority shareholder, Westfield, who exploited competing activities.[1] Westfield wished for a special shareholders' meeting to discuss his plans, but RNA did not want to discuss Westfields' plans and set up a 'Stichting Belangenbehartiging Beleggers RNA' (SBBR) as an ATD.[2] The Enterprise Court ruled that the fact that a minority shareholder can exercise a decisive influence due to an open statutory structure is in itself an insufficient justification for establishing an ATD and even more so when considering:

that the minority shareholder is an expert in the same sector as the legal person,

that this shareholder has the support of another important minority shareholder,[3]

that the legal person in question is an investment company with variable capital with the sole purpose of investing and spreading risk, so that other interests than that of the shareholders carry less weight.

The RNA case underlines the importance of the statutory structure and purpose of the company when deciding what the legitimate interests of the company and other stakeholders are. Accordingly, the legal structure of the company may raise reasonable expectations. However, despite the open structure of a company, a target board's decision to establish an ATD could nonetheless be justified based on the norms of reasonableness and fairness.

Going from stakeholder value to long-term value creation of the company – 2007- 2017

In the *Stork* decision, in 2007, it was for the first time ruled that company boards are obliged to take into account the interests of all stakeholders.[4] More specifically, the Enterprise Court judged that Stork's board had legitimately taken the interests of all stakeholders into account, and not solely of shareholders, when it established the ATD.[5] In this particular case, the relationship between the company's board and its shareholders, Centaurus and Paulson, both hedge funds, was distorted. Since the board has a primary responsibility for determining the company's strategy and had wide support for its successful strategy from important stakeholders, the Enterprise Court deemed the board's strategy to be sound. Accordingly, Stork was not obligated or could not be forced to abandon its stand-alone strategy and opt for the plans of Centaurus, which would involve high risks for all stakeholders.[6]

A few months later, finally, in the *ABN AMRO* case, the Supreme Court, recognised that the company's interest and its affiliated firm's interest as being a distinct interest from those of the company's stakeholders.[7] But it was not until 2014, in *Cancun*, that the Supreme Court rendered its progressive decision. The Court first clarified what the company's interest may encompass if there was a firm connected to the company, which is '*to promote the sustainable success of the company*'. Second, that the company interest is a separate, distinct interest from the interest of the company's stakeholders. And third, that a company board, first and foremost owes its duty to the company to promote the interest of the company and its affiliated firm. While discharging this legal obligation, the board has to take into account the interests of the company stakeholders according to the requirements of reasonableness and fairness.

Three years later, *Cancun* was put to an ultimate test. In the *Akzo Nobel* decision, the Enterprise Court reinforced *Cancun* and gave legal effect to the revised Corporate Governance Code. The memorable ruling is as follows: '*in the face of propositions of a potential bidder, the board of the company has to focus on – in the terms of the Corporate Governance*

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[1] Hof Amsterdam (OK), 16 October 2001 (ECLI:NL:GHAMS:2001:AD4598), NJ 2001, 640 (Westfield Limited ACN/Rodamco North America NV).

[2] Hof Amsterdam (OK), 16 October 2001, ECLI:NL:GHAMS:2001:AD4598), NJ 2001, 640 (Westfield Limited ACN /Rodamco North America NV), see point 3.7.

[3] Hof Amsterdam (OK), 16 October 2001, ECLI:NL:GHAMS:2001:AD4598), NJ 2001, 640 (Westfield Limited ACN /Rodamco North America NV), see point 3.13.

[4] Hof Amsterdam (OK), 17 January 2007, ECLI:NL:GHAMS:2007:AZ6440 (Stork), 3.16-3.17.

[5] Hof Amsterdam (OK), 17 January 2007, ECLI:NL:GHAMS:2007:AZ6440 (Stork), 3.16-3.17.

[6] Hof Amsterdam (OK) 17 January 2007, ECLI:NL:GHAMS:2007:AZ6440, (Stork), see consideration 3.16-3.17 and HR 13 July 2007,ECLI:NL:HR:2007:BA7972; NJ 2007, 434 (ABN AMRO),ECLI:NL:PHR:2007:BA7972.

[7] HR 14 July 2007, ECLINL:HR:2007:BA7972, (ABN AMRO) 3.14.

Code – the long term value creation of the company and its connecting firm and to weigh the interests of all relevant stakeholders.[1]

One could argue that the importance of the company's interest and its firm has gained importance, even legal significance; and as was shown in *Akzo Nobel*, the capability of being legally enforced. The evolution in case law in takeover conflicts shows very clearly the distinct characteristics of Dutch Corporate Governance. The prevalence of the company's interest demonstrates that it is inaccurate to continue to narrow the corporate governance debate to a shareholder/stakeholder dichotomy. Persisting in such conventional thinking is denying the fundamental revolution in company law, which to a greater or lesser extent, is already manifest worldwide (Timmerman, 2014).[2]

## 4. Results of the interviews

### In-depth interviews

This section contains the results of eight interviews. We asked participants to reflect on some major takeover conflicts, international developments in corporate governance, recent court decisions and the adoption of long-term value creation of the company and its connecting firm in the Dutch corporate governance system. Among the participants were some key executive and supervisory directors, judges from the Dutch Supreme Court and the Enterprise Court, an Advocate General, a member of the Corporate Governance Monitoring Committee and institutional investors. The interviews were conducted in spring 2018 and lasted about an hour to an hour and a half. The interviews were in-depth interviews to allow the participants to speak freely about a number of themes based on their roles, experiences and preferences. All interviews have been tape-recorded and transcribed. Interviewees have been promised anonymity. The next sections contain ideas and opinions of the participants clustered by different themes followed by a section in which we reflect on the main trade-offs that can be derived from these themes.

When the legal and the social discourse on corporate governance coincide

Judges are not and do not proclaim to be a policy-making body. They prefer to refrain from entering into discussions about company interest, long-term value, sustainability, stakeholder or shareholder value – issues that the legislator should resolve. In addition, judges do not take a position on the company's policy – that is the prerogative of the company director, nor are judges inclined to scrutinize business decisions. Judges are bound by marginal judicial review on the basis of open norms. Both mechanisms are in place to respect the director's discretionary decision making power. The participants from the judiciary clearly stress that 'judges mainly follow, they do not form'. This statement should be viewed critically. In section 3, we have demonstrated that it is the cornerstone in Dutch company law, that company directors discharge their obligations in the interest of the company and its connecting firm. Company interest involves an open norm. Not only does the open norm allow directors discretion, it also allows judges discretion to properly apply the norm to a specific case at hand. Participants have argued that judges have simply applied and interpreted the open norm in *Cancun* and *Akzo Nobel* as was required within the boundaries of Dutch law:

*"I think we can safely say that in the Netherlands, the stakeholder approach is prevalent. This affects the standard of company interest. There is some latitude when you explain the standard and I think that the social debate then plays a role…*

*Of course we have room to maneuver, but it is all within the limits of the law and when there is openness, you take account of the social debate. I myself think that if a Supreme Court says that the company interest is focused on the firm's success, it is not a view of the judge himself. It is something that the judge thinks: "Well, this seems now widely supported. It is the basis of Dutch law. We can safely say: The company's sustainable success".* " (participant 2).

Indeed, for a judge, the assessment of the process is part of judicial review not the assessment of the content of a business decision. Judges examine which rules have been followed, which participants are involved in the process and whose interests have been considered. The company interest is used by the courts as a key to justify the choices made in the

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[1] See also Hof Amsterdam (OK), 29 May 2017, ECLI:NL:GHAMS:2017:1965 (AkzoNobel), see consideration 3.12.
[2] Also in Anglo-American traditions, see Orts (2013: 109-131 and 175-222).

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process, as company interest is recorded in the law. Only if the board of directors exceeds the limits of company interest, the judge will retain company interest as the standard. In this case, the norm is addressed to the judge.

Company interest

Although it is the task of a board of directors to determine the company interest, we asked participants to reflect on factors that may be tested to determine whether the company's policy is in line with the company interest.

Several factors have been mentioned that may determine the company interest, including: the nature of the company (e.g. national security or national importance), principles laid down in the articles of association, and a clear picture of the company's stakeholders as well as their interests and the consequences of the takeover. Occurrences such as hostile takeover attempts may not cause disproportionate damage to the company interest. It could even be a safe line. Therefore, the target board must form a clear picture of what the consequences of the acquisition are for the company and its connecting firm, thereby taking into account employment opportunities, competition law, and synergies. Particularly in a calm period, each board should clearly formulate what the company interest involves, and which interests and policies are part of the company's interest, for instance the environmental and/or social policies. A clear formulation of the company interest by the board of directors could guarantee a credible story with any stakeholder of the company including shareholders in case of a hostile takeover attempt, and with the judge in case of a takeover conflict. As one of the participants puts it: *"As a business, you have to be able to anticipate in stead of thinking in terms of anti-takeover measures. We have passed that time, it is not sustainable."* (participant 5).

This statement is in line with the explanation of executive and supervisory directors. The participants indicated that during a hostile takeover, the board went through a list of conditions that had to meet the company interest. The list consisted, among others, a fair price, the interests of the company's stakeholders, and, where applicable, the national security and whether the bidder could be considered a bona fide bidder.

Although none of the participants could deny that shareholders have a strong position in an open public limited company, the majority of the participants agreed that a considered strategy which is plausible, defensible, up-to-date, adequately communicated and made transparent – showing the trade-offs – gives CEO's leeway to determine a long-term route to create long-term value by which it can sustain the business. The best protection of a company is not determined by sophisticated anti-takeover measures, but a sound and clear business policy and strategy that creates long-term value.

**Long-term value creation**

The corporate governance code was also brought to the attention to the participants. In particular, the fact that it states that the company must strive for long-term value creation, so that the interests of the company and its connecting firm are served.

A takeover can be the best option for the company and its connecting firm, especially in cases where a lot of investments for long-term stand-alone survival are needed and financing is doubtful. In taking a position in the takeover battle, the level of supposed added value is not the critical element, but how this added value is created. The central consideration is if the interests of stakeholders are not disproportionately harmed.

The general opinion was that concepts such as success of the firm, continuity of the firm and long-term value creation overlap. The meaning of long-term value was interpreted differently by the participants. Company boards tend to interpret long-term value creation as striking the right balance in the actions of the board of directors for the different stakeholders of the company.

Investors tend to view long-term value as more comprehensive than company interest. It also consists of Environmental, Social & Governance (ESG) criteria of a company and other non-financial values. One of the participants also argued that ESG should be more clearly expressed in the long-term strategy of the company.

The present attitude, perceptions and discussion about shareholder-, stakeholder and/or long-term value is a response to the fear of the short-sighted pressure of the capital markets, and in special cases e.g. the ABN-Amro traumatic battle, which tore the company into three pieces and was severely detrimental to the national interest. Due to these forces, firms cannot or can to a lesser extent, implement sound business policies. One of the participants from the judiciary described this as a "*sad state of affairs*". Judges however cannot disclose all considerations in legal decisions. The legal attitude seems to

be: "*we are not going to co-operate with a hostile takeover, unless*", which is only marginally reviewed. Judges seem also fear the consequences of their verdict because it can open the door to an uncontrollable process, which can be - due to capital market dynamics - irreversible. It seems that judges are inclined to slow down the process, so that a more balanced judgment can be made concerning trade-offs. The hostile takeover process is influenced by a lot of lobbying, by lawyers, banks, activist shareholders, and the company itself, according to participant 8.

Being a member of the Monitoring Committee, participant 7 stresses the importance of long-term value creation as an enforceable norm, particularly in the face of a hostile takeover. Hostile takeovers typically involve the absence of dialogue between target and bidder and due diligence. Incumbent boards will tend to resist access to due diligence when faced with an uninvited bid. The participant therefore asks boards to critically reflect on the question whether a hostile takeover is an appropriate instrument to create value for the business at all. Without dialogue and due diligence a bidder company could be exposed to excessive risks which may not be in the long-term interest of the bidder company.

Broad support and critical voices

The participants seem to support the importance of the adoption of long-term value creation as a norm. It is interesting to observe that investors express their broad support. As one of the participants remarks, shareholders seem to attach more value to long-term value creation than before. For instance, ESG criteria of a company are becoming more important in investment decisions of investors/shareholders. However, the participant stressed that the accountability of boards of directors and their companies on non-financial values can be further improved: *"Investors want to be better informed and convinced about the long-term strategy. Not all boards of directors are sufficiently sharp and responsive. There are few good examples such as DSM, Philips, AMSL. They are at the forefront and therefore are able to avoid threats of activism."* (participant 6).

Yet, there are also critical voices about long-term value creation as a norm. There is a risk that such an open norm would end up to be a panacea. Participant 6 argued that in a public bid situation, the shareholder should be in the driver's seat, not the board. According to the participant, long-term value creation should not play a role in a public bid situation. The participant argued that in the event of a takeover bid, there cannot be any going concern conception of the target company. The shareholders will base their decision to sell their shares on the price that is offered in a public bid situation. Therefore, the price offered should be the guideline for a target board. *"Everything is accounted for in the price."* Moreover, the participant believed that other factors, such as ESG indicators, are also included in the price mechanism.

The above view contrasts significantly with the view of judges. The company interest may differ from the interest of the shareholders to receive the highest price possible. Under Dutch law, target boards may lawfully decide against the shareholders' interests. As one of the participants stressed, if a firm is connected to a company, that company and its board are obliged to promote the long-term value of the company and its firm. It seems indeed that, at least from a legal perspective, long-term value creation has become a legally enforceable norm in a takeover situation. *"That is what the court ruled".* (participant 1).

Reflection

The communis opinio was that open norms have been gradually introduced to the Dutch hostile takeover market. Company and firm interest, long-term value creation, lasting success, sustainability and continuity have been established and consolidated as open norms in the Netherlands. Shareholder value – a hard one-dimensional norm – has been suppressed by long-term value creation – a soft multi-dimensional norm. Some participants suggested that this is a reaction to recent hostile takeovers that had sizable negative repercussions on the Dutch economy (for instance the ABN AMRO trauma). Others also connected this movement to the purported short-term pressure of capital markets. This was the standard reasoning in the past, when the norm – shareholder value maximisation – was based on principles of corporate finance and characteristics of capital markets. Institutional investors, however, still see a more important role for the capital market, even if it is conceded that open norms are now a fact of life. They should act in the interest of their constituents; and they have something to explain when they do not go for the highest bid.

Open norms are only limitedly enforceable. Executive directors are, in large part, autonomous in choosing a strategy. So, in principle, executive directors have the benefit of the doubt. Judges only marginally review a hostile takeover. The executive director is, in principle, the best equipped person to make such a decision. However, not every strategy is plausible, sustainable or feasible in the context of long-term value creation. An up-to-date strategy containing trade-offs

may protect a company against hostile takeover attempts and provide executives room for action. This protection is not unlimited, because the strategy and the reaction to the offer have to be convincing. Company interest should not be confused with strategy. But judges sometimes feel that they have to pronounce a verdict. They fear the unknown consequences of a hostile takeover; there are high risks involved when a company changes their market/product portfolio. But of course not changing means that there are no risks. This also depends on the guarantees offered by the bidding company. Even when a stand-alone choice is not always the best option, judges may fear that an early opening of the door of negotiations sets an irreversible process in motion and careful consideration of the offer is no longer possible.

## 5. Conclusion

An important conclusion is that the dominant Anglo-American agency theory is not easily applicable in Dutch corporate governance. Agency theory assumes that the interests of the agents (directors and supervisory directors) do not always run parallel to those of the principals. Agents should not be trusted because they are continually tempted to make decisions in their own interest over those of the principal. There are alternative views on how we assume people behave however, for instance as one of the participants from the judiciary concisely commented: "*I strongly believe in the mechanism of trust. I would rather be cheated now and then, instead of wanting to check everything. I also know that some people say 'trust is good, control is better'.*" The differences in the concept of mankind may have major consequences for the way corporate governance is structured and rationalised. In Anglo-American traditions, the communis opinio is that the shareholders are the ultimate principals. This stands in stark contrast with the Dutch pluralistic view. The company is the principal, so that directors and supervisory directors must direct their actions to further the company's interests. Recognising that shareholders' interests and company interests may differ has the implication that disciplining the management by shareholders does not necessary serve the interests of the company. This observation does not undermine or diminish the need to discipline executive and supervisory directors. It does however create more complex questions about what solutions are most appropriate. The 'Dutch' seem to no longer look at shareholder value, or the bid price in takeover situations, in isolation as it is simply a one-dimensional inaccurate measure of the value of the firm. Moreover, the belief in the efficiency of capital markets has been kept in check. The 'Dutch' have long learned from the 'ABN AMRO traum', that the pursuit of shareholder wealth could significantly harm the company's interests and society at large.

It seems that, as a consequence of the long-term value creation norm, a new conceptualisation of the company and the affiliated firm has emerged next to the shareholder and stakeholder view, as a reaction to less patient capital markets: the company as a real entity. As a result an alternative principal-agent model arises: the principal (company) and the agent (the board of directors). Long-term value creation changes the attachment of legal scholarship and business studies, and press both disciplines to (re)examine and (re)establish the company interest in the corporate governance debate.

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# Developing Russian Phd Students' Academic Culture in EAP Courses for International Communication and Co-Operation

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## Abstract

The paper gives a didactic insight into the concept of "intercultural academic communication" /IAC/ analyzing its types, forms, structure and bilingual input for the purposes of improving Russian advanced students' communication skills as intercultural speakers and writers in English-speaking academic settings. On the basis of the 2015-2017 cross-cultural analysis of Russian Master's Degree & PhD Students' experiences of intercultural communication it provides a didactically-oriented and competency-based classification of communicative barriers to effective cross-cultural academic communication, describing such of them as linguistic, pragmatic, sociocultural, cognitive and visual communication barriers. The paper argues that the theoretical framework for designing tasks aiming at improving PhD students' bilingual pluricultural competence to use English as a lingua franca in intercultural academic settings is to be based on L. Vygotsky's cultural historical theory, A.N Leontiev's activity theory, A.A. Leontiev's psychological theory of communication, S. Hall's theory of cultural factors and contexts and culturally-oriented FLT approaches to developing students' bilingual academic competences on a multidisciplinary basis. The paper concludes with some recommendations on creating a hierarchical set of multidisciplinary problem-solving tasks and activities specifically designed to help PhD students meet new 21st century challenges of intercultural communication & co-operation, avoiding culture-bound academic pitfalls in today's extremely complicated world. Among these tasks are those that involve PhD students' into: a) observing and generalizing the similarities and differences of communicative and/or cognitive academic schemata in Russian and in English; b) classifying communicative barriers between intercultural speakers or  writers (incl. English native & non-native speakers); c) interpreting the appropriacy of academic products in a FL from a global intercultural perspective; d) making suggestions for necessary pluricultural academic self-education in order to be able to foresee and/or identify communication barriers and find effective communicative tools to bridge intercultural academic gaps; e) doing thought-provoking case-studies in IAC; f) transforming interculturally inappropriate academic products in a FL into appropriate ones; g) group role-playing of IAC schema modes involving different academic roles that are typical of English-speaking international science co-operation settings; h) doing "Study & Innovate" projects.

**Keywords:** intercultural academic communication, academic culture, cross-cultural barriers, multidisciplinary problem-solving tasks, ELT.

## Introduction

It is a well-known fact that a marked increase of international scholarly co-operation between Russian researchers and researchers from other countries has been taken place in the country since the end of the 20th century. For the last twenty five years many Russian universities, especially research universities, have done much to encourage and promote international partnerships, collaboration and co-operation in research and education (Frumina & West, 2012). In 2016 V. Kaganov, the former deputy minister of Education and Science of the Russian Federation, in his speech "The Role of Russian Educational Policy and International Scientific and Educational Co-operation in the Development of Innovation and the Formation of "Knowledge Triangle"(2004) ,stated that in Russia the situation in these fields is characterized by: (a) the active participation of Russian educational and scientific organisations within the international partnership in the framework

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of the European Union's programs and the program "Horizon 2020" and Shanghai Co-operation Organisation's international scientific and educational programs; (b) the creation of the BRICS Network University within the research and Innovation initiative of the BRICS, which includes the implementation of mega-science projects, large- scale national programs, and also the development of joint research and innovation platform; (c) the co-operation of Russian universities with a number of international organizations and international projects (Kaganov, 2016, p.2-3) . All these steps made a great impact on developing and , then, renewing Russian Higher Education Standards in 2016-2017 in general, and on choosing new approaches to designing Master's and PhD's educational programmes, in particular. Quite recently, Russian universities have been widely discussing the Pan-European ideas and concepts of Open Education, Open Science, Open Innovation and Open to the World (The Three Os: Open Innovation, Open Science, Open to the World, 2016; G7 Science Ministry Ministers' Communiniqué, 2017) and how to implement them into training Russian researchers for effective international academic communication (Artamonova, Demchuk, Kagneev, Safonova, 2018).

As English has been for a long time a lingua franca in the world of international science across the globe (including contemporary Open Education and Open Science fields), there are no doubts that it should be taught as a lingua franca of international research co-operation and collaboration, and not only with native English speakers, but with non-native English speakers as well. And that necessitates developing a pluricultural model of tertiary language education, involving teaching English for academic purposes /EAP/ with cross-cultural or pluricultural input. And though some steps have been made in EAP in terms of exploring cultural clashes experienced by international students, for example in the UK and other English-speaking countries (Jordan, 1997; Brick, 2006; Etherington, 2013), nevertheless the EAP methodology in general has not been fully oriented yet towards the real needs of postgraduates to become *proficient intercultural academic speakers and writers, and experienced researchers* in a globalized, increasingly digitalized multilingual and multicultural world of academic communication, and besides this, some national modifications of teaching EAP, for example, in Russia, are only on the way of forming linguacultural and methodological basis for solving contemporary educational EAP problems faced in its various educational contexts.

Speaking about the linguacultural basis for teaching & Learning EAP in Russia, it seems worth mentioning that it presupposes to be formed on the results of a didactically oriented analysis of barriers to academic communication that have been faced by Russian postgraduates and postdocs in different settings of formal and informal academic communication, because in a number of works on comparative studies of sociocultural characteristics of academic communication in different cultural settings (see e.g. Jordan, 1997; Sternin, 2009; Etherington, 2013) it has been convincingly proved that sometimes international educational co-operation and research collaboration may be not effective enough because of sociocultural differences in educational, academic or research cultures (Sternin, 2009; Safonova, 2015). And as such, the latter often provoke communication gaps and barriers to efficient and successful academic communication. In other words, it seems reasonable that Russian EAP Methodology should be developed in the context of pluricultural approach (CEFR, 2001; CEFR/CV, 2018), trying to give a clear view of what the most common types of barriers Russian postgraduate students may come across in international settings of r academic communication worldwide, how to make them aware of these barriers & teach them to overcome them, at what level of tertiary education and self-education it seems most appropriately to be done and what approaches are to be used in Russian various educational contexts in order to develop step-by-step postgraduates' academic culture. Due to the considerations mentioned above, this paper discusses the concept of intercultural academic culture, focuses on providing a didactically-oriented classification of communicative barriers to Russian PhD students' effective international academic communication and gives some recommendations on designing problem-solving tasks to be used in the university classroom to help postgraduate students adopt proper communication strategies to overcome communication gaps in international academic contexts.

**Literature Review**

In the mid-1970s and early-1980s the concept of "English for Academic Purposes" was introduced into the British language methodology (Jordan, 1997) and since that time the EAP methodology has become a challenging research field not only in the UK, but across the world. Its rapid development as a branch of ESP (Jordan,1997) has been caused to a considerable extent by the intensive Internationalization and globalization of the world economy and all other spheres of human life, and, accordingly, the internationalization of Higher Education in which English functions as an academic lingua franca (Whong, *2009*). Nowadays EAP is taught worldwide in a variety of sociocultural and didactic contests (Alexander, O. Argent, S. Spencer, J. 2008). Within the last two decades much has been done in establishing the theoretical framework for teaching EAP at tertiary level (see. e.g. Alexander, Argent, Spencer, 2008; Hyland, 2009) and improving classroom practices to help

university students develop their academic voice in English (Brick, 2009). The studies undertaken over the last forty years in EAP provide us with:

some definitions of EAP as a complex many-sided discipline (Jordan, 1997; Alexander, Argent & Spencer, 2008; Kemp, 2017) and special emphasis in these definitions is put on EAP interdisciplinary nature (Etherington, 2011; Bruce, 2015);

the relatively new methodological concepts of "general EAP" and "specific EAP" (Hyland, 2011, pp.14-15) which are crucial for designing EAP curricula/syllabi and teaching materials for an endless variety of EAP educational contexts and settings in a close collaboration between language teachers and profile subjects teachers (Hyland, 2011);

methodology appropriate to EAP that has been developed within a communication-oriented, learner-centered and specific-profile-oriented paradigm of university language education (Jordan, 1997, pp. 109-125);

linguadidactic basis for teaching academic reading (see. e.g., Jordan, 1997; Alexander, Argent & Spencer 2008, academic listening and speaking (see, e.g., Jordan, 1997; Brick, 2006; Alexander et.al.2008; Bruce, 2015), academic writing (see, e.g., Jordan, 1997; Alexander et.al., 2008; Hyland, 2009; Bruce, 2015) and some integrated communicative and cognitive skills (Bruce, 2015);

a product-based approach (Jordan,1997), a process-based approach (Jordan, 1997), a genre-based approach (Brick, 2006, Hyland, 2009; Bruce, 2015) and a corpus-based approach (Bruce, 2015) to developing university students' academic skills related to their academic language competence in English and research powers in their specific profile fields of research;

much evidence of some cultural or cross-cultural challenges (Jordan,1997, Brick, 2006: Sternin, 2009; Etherington, 2011; Okamoto, 2015; Sarmadi, Nouri, Zandi, Lavasani, 2017) facing international postgrate students which could not and should not be ignored in the theory and practices of teaching EAP.

The methodological findings on academic culture (Jordan,1997, Brick, 2006; Okamoto, 2015; Sarmadi et.al., 2017) have raised a very important question about broadening the objectives and scope of EAP as a discipline or a number of interrelated subjects. These EAP studies have given special attention to the conceptualization of the notion of academic culture, considering it as a prerogative of any didactic model aiming at developing students' efficient academic skills and appropriate academic behaviours. But the thing is what we mean by academic culture , because in the EAP research field the concept may refer to:

some universal characteristics of academic culture (Bergquist & Pawlak, 2008; Brown & Coombe, 2015) and its structural components (Bergquist & Pawlak, 2008);

cultural/sociocultural characteristics of a particular academic culture in a particular culture -bound educational context (Jordan, 1997, Ballard & Clanchy 1984, 1991; Sternin, 2009);

levels of academic culture, such as a macro level (national science policy, Institutional infrastructure, mission of academics in society, academic knowledge in society) and a micro level (academic discourse practices, publication practices, managing academic activities, knowledge acquisition practices, discipline practices) (Okamoto, 2015);

special relations in academic world, including hierarchy / status, gender, nationality / ethnicity (Okamoto, 2015);

discipline-specific academic subcultures, for example, the paper "Culture Shock? Genre Shock?" by Feak (2011) argues that though a larger academic culture exists, international students should realize that different disciples need to be viewed as cub-cultures with their specific values, processes, and world of value (Feak, 2011, p. 43-44).

Referring to the last point, we could agree that these discipline-specific academic subcultures may be associated with the concept of academic culture (native or no-native), but at the same time we should not overestimate their role in academic settings, and, accordingly, in EAP methodologies. In truth, what is really badly needed is a much broader conceptualization of academic culture in EAP methodology, the one that was firstly put forward by Jordan in 1997. According to Jordan ,"Academic culture consists of a shared experience and outlook with regard to the educational system, the subject or discipline, and the conventions associated with it." (Jordan,1997 p.98). While reinforcing the ideas expressed in the cited definition of academic culture further , Jordan finds it necessary to focus on such elements (that are related, from his point of view, to academic culture) as: a) academic cultural clashes recorded in different British educational contexts as a

consequences of existing differences in educational background and cultural background between native teaching staff and non-native Master's and PhD Students (Jordan, 1997, p.99-101), and b) academic conventions ( a clear understanding of academic hierarchy, academic verbal and non-verbal behavior schemas ) that are to be followed by international students in a culturally new academic context (Jordan, 1997, p. 101-103). Jordan's EAP assumptions were based on his brief analysis of the research findings reported by Thorp (1991), Coleman (1997), Holliday (1994) in their works and the research findings presented in his own study as well (Jordan,1997). All the findings and experiences in EAP discussed by Jordan lay reasonable grounds for drawing the scholars' attention to the necessity of designing a set of culture-bound courses including not only those that relate to the modes of academic behavior in the UK, but also those that help international students adapt themselves to the new cultural settings in different spheres of communication in the country. His suggestions on designing a course in British (Cultural) Studies may serve as an example of the courses dealing with general aspects of the host country.

Jordan's ideas and approaches to developing students' academic culture are almost entirely based on his understanding of EAP problems that have been identified in the so-called anglophone educational contexts, in other words, in the UK universities and other universities within the Inner Circle of English (Kachru, 1996). Meanwhile, nowadays teaching EAP has also entered the non-anglophone zone within not only the Outer Circle of English, but the Expanding Circle of English (Kachru, 1996) as well, for example, in Russia. And recently in some top Russian universities EAP has started being taught through a set of interlinked subject-specific language courses with some linguacultural bilingual input. These courses have been designed to increase Russian postgraduates' employability skills and opportunities in the country and worldwide by developing their academic culture on an interdisciplinary and cross-cultural or pluricultural basis. Russian educationalists have come to a consensus that EAP courses should be designed with the view to developing postgraduate students' awareness of:

global characteristics of academic communication (that is to a great extent a westernized Pan-European mode of academic patterns of perception, interaction and production);

an international code of ethics in academic research:

global academic & business academic etiquette;

universal and specific academic practices in Russian academic communities and other linguacultural communities across the global:

international research culture in comparisons with Russian & other academic and research cultures.

In other words, the EAP in Russia is mostly focused on internationalized academic communication as a specific phenomenon of the today's globalized, internationalized and digitalized academic world, but all the same the teaching of EAP in the country should not and would not ignore multicultural nature and pluricultural realities of contemporary academic communication.

Not once has it been proved by scholars that academic clashes and communicative and/or cognitive barriers to effective academic communication can substantially impair students' academic achievements at university (Coleman, 1987; Jordan, 1997; Ballard and Clanchy, 1984, Holliday, 1994; 1991; Sternin, 2009; Feak, 2011) and their after-university professional life, however, these barriers have not been given a necessary methodological consideration in the EAP didactics yet, because till that time these barriers have been mostly studied in such fields of human knowledge as communicative linguistics (see, e.g., Sternin, 2009; Bogatikova, 2009) and cross-cultural or pluricultural studies, especially in business (see e.g. Gibson, 2002). But could we really nowadays move on in developing postgraduates' academic culture without making postgraduate students aware of those cultural clashes and barriers that they may come across in intercultural academic communication? Could we really train them for being efficient and competitive professionals and researchers without involving them in foreseeing, identifying and solving general and specific cultural academic problems that may often face them when they are involved in cross-cultural or pluricultural academic interaction? And could that be done without exploring and classifying the cultural difficulties experienced by postgraduates in a particular country's educational context or in a pluricultural environments?

3.Discussion

3.1. Conceptualizing the notions of academic communication and intercultural academic communication

As has been mentioned before, the focus of EAP methodologists in anglophone contexts is on academic communication (mostly formal) related to scholastic environments. In Russia, meanwhile, especially when referring to intercultural academic communication, it is thought necessary to give a broader interpretation and conceptualization of academic communication with the view to bringing global perspectives into Russian cross-cultural / pluricultural tertiary education and into postgraduates' bilingual/trilingual and pluricultural developments through Russian and English (plus any other foreign/second language) , educating them as intercultural academic speakers and writers able to act in various national and international academic settings. Thus, international academic communication is understood as one of the spheres of professional intercultural communication that is related to scholastic environments and to research environments as well in which specifically structured verbal and non-verbal patterns of academic behavior are followed in English, general and specific characteristics of different academic discourse communities are taken into consideration while a) perceiving, collecting and evaluating academic information, b) producing academic products and reflecting on their quality, c) interacting in intercultural academic settings with native and non-native English speakers as representatives of cultural and/or subcultural and/or linguacultural academic communities, and d) using academic mediation activities (if the latter are required in particular academic situations for effective international collaboration and active academic co-operation).

The 2015-2017 survey results of 46 Russian Arts & Humanities postdocs' showed that among the biggest problems facing them in international academic settings were as follows:

**Listening comprehension difficulties,** because some times they could not concentrate on the academic issues that were raised, discussed or argued because of :

a variety of Englishes used by the speakers (75% of the respondent) ;

sociocultural terminological lacunas used by the academics (50 %) ;

cross-cultural differences in research methodology, results delivery & their evaluation (91%).

**Speaking difficulties in formal academic settings.** These problems often occurred in formal oral academic communication and they were due to:

conceptual (including terminological) lacunas provoking academic misunderstanding between Russian academics and some other representatives of the English-speaking audience (84 %);

sociocultural differences in English-speaking conventions of formal academic communications (e. g., in academic public speaking) and informal academic interactions (75 %).

**Speaking difficulties in informal academic settings.** They often occur in the situations of informal academic communication and they were caused by the lack of the required knowledge and skills for being good at small talks (and not only academic ones) and lack of confidence in themselves in English informal academic environment (85%).

**Writing difficulties.** Writing problems occurred mostly when the postdocs were to answer the calls for abstracts and papers this or that international conference, not missing the deadline, and, then, to structure their presentation texts in accordance with the conference requirements. These difficulties were mostly caused by postdocs' lack of knowledge on producing the academic genres mentioned above (75 %) in English in accordance with the international structural and content requirements.

**Behavioral verbal and non-verbal difficulties that were caused by:**

existing differences in understanding & following some sociocultural codes and schemas of academic interaction that have been established in Russian and English academic communities for years & years (86 %) ;

the lack of experience in foreseeing or identifying and overcoming verbal and/or non-verbal misunderstandings that often led to break-downs in academic communication;

the lack of mediating skills to repair academic communication reakdowns (92%).

**3.2. Classifying cross-cultural/pluricultural barriers to international academic communication**

Conceptually, there should be a clear differentiation between the notion of communicative barriers as regularly occurred and may be easily recorded in communication and the notion of communication break-downs that may have an occasional character.

In contrast to occasional communication breakdowns, communication barriers can be defined as a permanently fixed cross-cultural phenomena that can be regularly watched, identified (and if necessary & possible recorded) whenever it occurs in the formal or informal situations and settings of intercultural communication and destroys the latter. Barriers may occur in communication because speakers or writers do not share similar discourse modes of thinking , verbal and non-verbal behavioural schemas, sociocultural traditions and values.

In terms of competence-based pluricultural approach (CEFR, 2001: CEFR/CV, 2018) communication barriers can be classified into a) linguistic barriers (including lexical., grammatical, semantic, phonological and orthographical barriers) , b) pragmatic barriers ( including discourse, functional and behavioral-scheme barriers) , c) sociocultural barriers (including cultural, sociolinguistic, ideological and ethical barriers), d) cognitive barriers and c) visual barriers (Safonova,2017). The diagrams below give some comparative information on the types of barriers that were named by MDs Students and PhD students from their own experiences .What do these diagrams say?

**Diagrams A-D**

**The 2015-2017 Survey Interview Results: Types of Communication Barriers (to Effective Intercultural Academic Communication) Named by Russian MDs and PhD Students Specializing In Linguistics , Intercultural Communication and FL Methodology)**

MDs Students = 28 Respondents

PhD student = 26 Respondents

**Types Of Barriers to Academic Communication**

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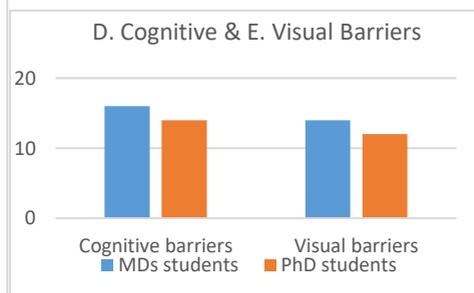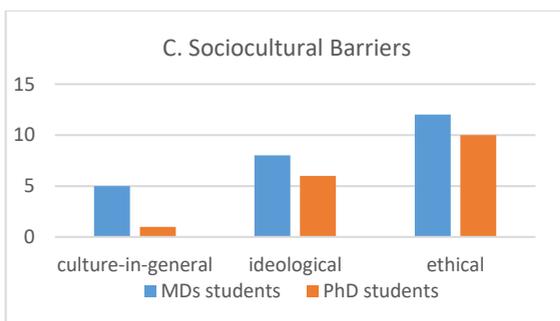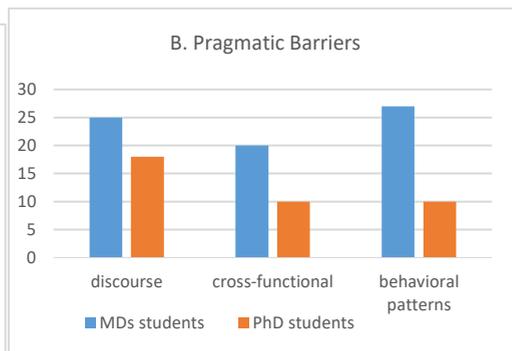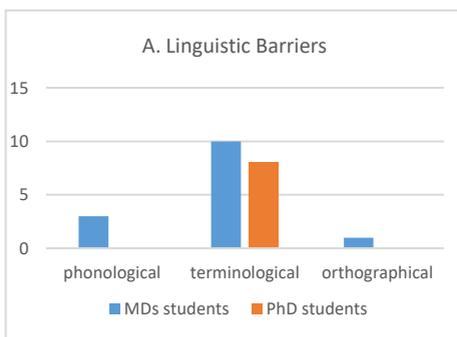
First, these diagrams show that linguistic barriers (with the exception of terminological ones with reference to MDs students) do occur far less in their actual intercultural academic interactions than pragmatic and sociocultural barriers or cognitive and visual barriers. Second, if there was an expected difference between MDs Students and PhD students concerning how often they could face linguistic barriers, but in terms of the frequency of the appearance of pragmatic and especially sociocultural barriers in their academic communication it was a rather surprising situation because no really noticeable differences between MDs students and PhD students had been recorded, despite the fact that these two groups of postgraduates represent different levels of tertiary education. And, finally, these diagrams give us an indirect support to the ideas expressed earlier in the paper that barriers to intercultural academic communication should be careful studied in the EAP methodologies with a Pan-European dimension, especially oriented towards postgraduate levels.

The data on PhD students' experiences in EAP and their self-assessment of the skills under consideration is given in tables 1-3.

**Table 1**

| PhD Students' activities IN ENGLISH as Intercultural speakers | Data on Russian PhD Students' Experiences in EAP Respondents= 26 Russian PhD Students | | | Self-Assessment Data | |
|---|---|---|---|---|---|
| | I have got enough experience in doing this activity | I have very little experience in doing this activity | I have not got any experience in doing this activity | I can easily do this | I can do this, but not always successfully |
| Giving a speech on subjects of general interest | 10 | 8 | 10 | 3 | 15 |
| Giving a presentation on their research findings | 18 | 2 | 6 | - | 14 |
| Giving a lecture on an academic subject in English-speaking settings | 5 | 12 | 9 | - | 17 |
| Asking questions during a lecture | 3 | 6 | 7 | - | 3 |
| Answering lecturer's questions during an interactive lecture | 7 | 7 | Not willing to do | 1 | 5 |
| Conducting interviewers for research purposes | 1 | - | 25 | - | 1 |
| Delivering a conference paper | 2 | - | - | - | 2 |
| Presenting a report on research project results | 12 | 6 | 8 | - | 12 |
| Taking part in informal discussion on the topics of general interests | 21 | 5 | - | 12 | 14 |
| Taking part in academic small talks (e.g. during conference coffee-breaks) | 7 | 5 | 14 | - | 7 |
| Taking part in an academic discussion | 5 | 4 | 17 | - | 9 |
| Acting as a member of the debate audience | 2 | - | - | - | - |
| Acting as the debate proposer/opposer | - | - | - | - | - |

This data, though the number of respondent is not very large, still gives us some food for thought. First, the most part of the respondents didn't have much experience to use English even in traditional academic activities. Second, academic discussions and academic debates being very important academic activities are somehow their terra incognita . And finally, it seems, that the most of the respondents have hardly been involved in any real international academic co-operation or collaboration when English might have been used as a lingua franca of science, but without their real participation in international conferences and projects it is hardly possible for them to gain a valuable academic experience how to collaborate and co-operate efficiently with other academics and researchers.

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**Table 2**

| PhD Students' activities IN English as Intercultural WrIters | Data on PhD Students' Experiences Respondents= 26 PhD Students | | | Self-Assessment Data | |
|---|---|---|---|---|---|
| | I have got enough experience in doing this activity | I have very little experience in doing this activity | I have not got any experience In doing this activity | I can easily do this | I can do this, but not always |
| Writing lecture notes | 23 | 3 | - | 15 | 10 |
| Writing a presentation text of a lecture | 12 | 5 | 9 | 6 | 6 |
| Writing lecture diaries | - | 3 | 23 | - | 3 |
| Writing critical essay | 10 | 7 | 9 | 6 | 4 |
| Writing case-study essay | - | - | - | - | - |
| Writing case-study report | - | - | - | - | |
| Writing a site visit report | - | - | - | - | - |
| Constructing questionnaires | - | - | - | - | - |
| Filling in the registration conference form | 26 | - | - | 25 | - |
| Writing resume | 23 | 3 | - | 19 | 4 |
| Writing conference abstracts | 12 | 7 | 7 | 4 | 8 |
| Writing research papers | 4 | 2 | 20 | - | 4 |
| Writing reviews on academic papers | 3 | 7 | 16 | - | 3 |
| Writing an application for the research writing | - | 2 | 22 | - | 2 |
| Writing research proposals | - | - | 26 | - | - |
| Writing research questions | 5 | 4 | 17 | - | 2 |
| Writing a literature review | - | 5 | 21 | - | 5 |
| Writing about research findings | - | 5 | 21 | - | 3 |
| Writing research reports | - | - | - | - | - |
| Critiquing the research of others | - | - | - | - | - |
| Writing on controversial academic topics | 10 | 2 | 14 | - | 5 |

The data given in Table 2 also indicates the lack of the respondents' experience in doing regularly various types of academic and research writing in English. Partly if is because of the fact that some types of academic writing are not peculiar to Russian academic culture (e.g. writing lecture diaries, case-studies, essays and reports, applications for the research, research questions, and the like). And even if some types of academic writing are used in Russian academic culture (e.g. conference abstracts, conference papers, research reports , thesis), their structural composition and discourse characteristics are quite different from the similar writings in English, especially if we compare discourse schemas and stringency of academic requirements to academic products in Russian-speaking and English-speaking academic communities.

In the group of sociocultural barriers, *ethnocentric, cross-cultural and sub-cultural constraints* are quite noticeable in all spheres of cross-cultural communication, as for *ideological* barriers or barriers provoked by differences in world outlook, *pluricultural and metacultural barriers*, it is in the political, academic and management spheres of intercultural communication that they manifest themselves most strongly. It is also worth mentioning in passing that cognitive barriers in academic communication may be caused not only by some cultural factors, but they can be easily provoked if the level of information culture of some members of the project group is rather low, for example, there are communication partners who are unable to articulate clearly their information needs and are unaware of reliable information sources, and/or who demonstrate poor search skills and inability to deal with information overload . In this case, information and intellectual spaces in academic environments are being distorted and that leads, in its turn, to cognitive misunderstandings, inconsistencies in intellectual actions and academic communication breakdowns.

While answering interview questions, some students who once studied abroad , made comments on what might have helped them in their preparation for studying abroad more effectively And among these comments were such as:

*It might have been much easier to study abroad if Russian universities offered pre-exchange online courses in academic written and spoken communication with the view to our studying in a particular country and a particular destination university.*

*Online courses in Comparative Cross-Cultural Studies in Academic communication might be really helpful, something like Russian-French or Russian-Swedish or Russian-Norwegian Comparative studies.*

*Additional cross-cultural academic training is surely needed to help us to avoid cultural pitfalls in administrative communication, informal academic communication, not only formal academic communication.*

The data in table 3 indicates that till that time mediation skills have not been given a proper place in Russian PhD programmes, and I believe, not only in Russia, because you can hardly find a section on developing mediation skills at tertiary levels in any EAP methodology books (see, e.g ,.Jordan, 1997), not to speak about EAP courses (see, e.g., Alexander , et.al.,2008).

**Table 3**

| PHD STUDENTS AS INTERCULTURAL MEDIATORS | DATA ON RUSSIAN PHD STUDENTS' EXPERIENCES Respondents= 26 PhD Students | | | SELF-ASSESSMENT DATA | |
|---|---|---|---|---|---|
| | I have got enough experience in doing this activity | I have very little experience in doing this activity | I have not got any experience In doing this activity | I can easily do this | I can do this, but not always successfully |
| Mediating a text | 1 | - | 25 | - | 1 |
| Mediating concepts | 3 | 3 | 20 | - | 4 |
| Acting as an intermediary in informal everyday situations | 19 | 6 | 10 | - | 8 |
| Acting as an intermediary in informal academic situations (academic small talks) | 3 | 2 | - | - | 3 |
| Acting as an intermediary in formal academic situations | 2 | - | 24 | - | 2 |
| Facilitating pluricultural space in the situations of everyday communication | 10 | 6 | 10 | - | 5 |
| Facilitating pluricultural space in university situations | 2 | 0 | -24 | - | 2 |
| Facilitating pluricultural space in academic situations | 1 | - | 25 | - | 1 |
| Facilitating pluricultural space in research situations | - | - | - | - | - |
| Translating for academic purposes | 14 | 8 | 4 | - | 16 |
| Interpreting in academic environments | 3 | - | -23 | - | 3 |

**3.3. Designing a hierarchical set of multidisciplinary problem-solving tasks and activities for developing PhD students' academic culture on cross-cultural/pluricultural basis**

The findings on the communication barriers to effective intercultural academic communication that occur between Russian PhD students /postdocs and other representatives of academic linguacultural communities quite obviously indicate that the EAP methodology specialists involved in designing and implementing Arts & Humanities postgraduate programmes in Russia should reconsider the existing EAP theoretical framework and teaching & learning practices in order to make university language education capable of developing PhD students as:

bilingual intercultural speakers who are active & interactive academic listeners, flexible, confident & professionally interesting speakers, and who are aware of verbal and nonverbal barriers in international communication and are able to overcome them;

intercultural academic writers with advanced writing academic skills necessary for being able to produce academic products relating to general and subject-specific academic genres;

academic mediators who are able to mediate academic texts, theories and core concepts underlying them, academic communications and to apply appropriate mediation strategies (CEFR/CV, 2018);

international researchers who are able to act in academic settings across the globe in accordance with the European Code of Conduct for Research Integrity (2017).

The theoretical framework for designing tasks aiming at improving postgraduate students' bilingual pluricultural competence to use English as a lingua franca in intercultural academic settings is to be based on L. Vygotsky's cultural historical theory (1934, 1991), A.N Leontiev's activity theory (1975), A.A. Leontiev's psychological theory of communication (1999), S. Hall's theory of cultural factors (1971, 1980) and contexts and culturally-oriented FLT approaches, for example, pluricultural approach (CEFR, 2001; CEFR/CV, 2018) or sociocultural approach (Safonova, 1996) or culture-sensitive approach (Holliday, 1994) to developing students' bilingual academic competences on a multidisciplinary basis. Besides, the implementation of these goals in the training model of postgraduates as international researchers through co-learnt languages (Russian, English and other FL) presupposes the development of a system of interlinked courses in teaching Russian and English (and any other FL) for academic purposes, Cultural Studies in Academic Communication and subject-specific theoretical tandem courses that are read in the co-learnt languages. This system should be an instrument for adopting global perspective on training postgraduates as international research collaborators. The chart below shows some possible correlations between the European researcher's status (Towards a European Framework for Research Carriers, 2011) and researchers' intercultural bilingual activities.

**Chart 4. Global Perspectives in Researchers' Bilingual and Intercultural Development**
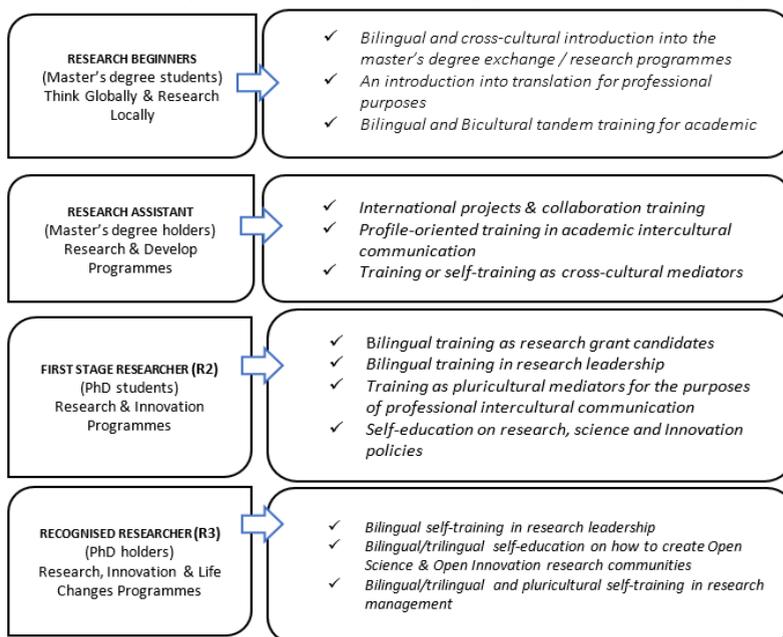


With the view to achieving the global goals mentioned above in Russia, what is  suggested in the country as a didactic instrument for developing academic culture is a hierarchical set of multidisciplinary problem-solving tasks and activities specifically designed to help Russian PhD students meet new 21st century challenges of intercultural communication & co-operation, avoiding culture-bound academic pitfalls in today's extremely complicated world. Among are those that involve PhD students' into: 1) observing and generalizing the similarities and differences of communicative and/or cognitive academic schemata in Russian and in English; 2) classifying communicative barriers between intercultural speakers or writers (incl. English native & non-native speakers); 3) interpreting the appropriacy of academic products in a FL from a global perspective and/or an intercultural perspective; 4) making suggestions for necessary pluricultural academic self-education in order to be able to foresee and/or identify communication barriers and find effective communicative tools to bridge intercultural academic gaps; 5) doing thought-provoking case-studies in intercultural academic communication; 6) transforming interculturally inappropriate academic products in a FL into appropriate ones; 7) group role-playing of IAC schema modes involving different academic roles that are typical of English-speaking international science co-operation settings; 8) academic and research simulations, 9) doing "Study & Innovate" projects involving PhD Students from other

countries and discussing their results at Young Researchers' Forums, 10) organizing interdisciplinary conferences of Arts & Humanities PhD students with academic debates.

Some of the tasks mentioned above (1-4) may be introduced into EAP courses much earlier, starting with Master's Degree programmes and even sometimes with Bachelor's programmes, because, in truth, what we really need is a three-level EAP system.

A pre-condition for designing interdisciplinary problem solving tasks listed above is a comparative cross-cultural analysis /CCA/ of academic communications, first, cross-cultural, then, pluricultural, in Russian and in English. The CCA data can provide much food for thought in terms of : a) hypothesising schemas underlying a particular academic event in official and unofficial modes of professional intercultural communication in English; b) outlining relevant verbal and non-verbal intercultural speakers' resources & strategies; c) making decisions on the professional core knowledge and macro skills (with detailing a set of micro skills for each of them) that may be developed and then internally assessed in the Russian university classroom.And now it is high time to do this job without which it is hardly possible to bring real innovations into teaching EAP with global perspectives in Russia.

**Conclusions and Implications**

The teaching of EAP in Russia is undergoing serious changes with new challenges in developing Russian bilingual/trilingual researchers in the context of Open Education, Open Science and Open to the world. What has been discussed in this paper is only a beginning of introducing changes into the EAP/FLAP methodology in this country. Further researches in the field under consideration are planned to go on with collecting data on academic barriers (in order to get statistically reliable data), to focus on a detailed comparative cultural analysis of academic products that are expected to be professionally produced by postgraduate students at different tertiary levels and by postdocs, to develop evaluation instruments for measuring intercultural academic competence relating to four modes of academic communication: perception, interaction, production, mediation (CEFR/CV, 2018). Again the results of comparative cultural analysis of academic discourse could provide grounds for outlining academic-life based assessment criteria & designing multi-level scales for measuring core verbal & non-verbal skills that are crucial to intercultural academic communication.

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# Diversity Management: An Overlook on Brazil's Largest Companies

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**Abstract**

This article outlines the results of qualitative research on Diversity Management carried out with Brazil's 20 largest companies. The objective of the study was to map the perception of employees and managers on Diversity in the context of the organizations, confronting the corporate discourse with the perspective of professionals who identify with this theme. Therefore, we interviewed, using qualitative techniques, managers of 12 out of 20 national companies and 45 employees, representing all selected companies. The results show a very incipient management in Brazilian companies, with a discourse that is little aligned to the practice and almost no practical demonstration of results, perceived by employees with mistrust and a sense of exclusion.

**Keywords**: Diversity; Organizational Culture; Organizational Communication; Inclusion; Employee Communication.

**Introduction**

Brazil has a very mixed population. Brazilian's physical expression reflects the country's more than five centuries of history, scarred by hundreds of thousands of immigrations, centuries of slave trade, and remnants of native traits. This high level of miscegenation resulted in a population currently comprised of 53.6% of individuals declaring themselves as black or mulatto (IBGE, 2014).

One does not have to take a deep plunge into the reality of Brazil's largest organizations to acknowledge that these figures are not reflected in their higher ranks. According to Instituto Ethos (2016), in Brazil's 500 largest companies, only 4.7% of executive positions are held by black people of mulattoes. The discrepancy showed by numbers is not an isolated fact. Other figures corroborate this reality in the labor market: even though 51.4% of the population is female (IBGE, 2014), women make up only 11% of Brazilian management boards (Ethos, 2016). Also, in this country 61% of all LGBT professionals hide their sexual orientation in their professional environments (CTI, 2016).

These data – anda series of other quantitative reports released by different business publications – have contributed to the growth of studies on diversity in the organizational context since the 1980s (Saraiva & Irigaray, 2009). To Oliveira and Domingos (2017, p. 4088), "the emphasis on the diversity of the workforce has been increasingly discussed and required to respond to a change in globalized culture", although it seems to be related mainly to a business discourse issue (Saraiva &Irigaray, 2009).

It is worth outlining, at this point, our understanding or diversity aligned to what was proposed by Ferreira (2012):

has the conceptual sense of social, ethnic and gender segments, among others, that, regardless of quantity, have little social, political and economic representation (insertion in the job market, occupation of positions of power and others) and has as historical equivalents the expressions "minorities", "minority groups" or "minorised groups". (Ferreira, 2012).

Thus, we understand "diversity management" as a set of management practices intending, in a certain way, equal access to work. The concept is related to the identity of the groups that constitute the organizations, to the recognition of the minority groups in this context and to the social and corporate history of these groups (Alves & Galeão-Silva, 2004).

In this paper, we present the results of the qualitative research conducted between August and November 2017 on Diversity Management in Brazilian companies. Starting from a group of Brazil's 20 largest corporations by revenue (Forbes, 2016),

we sought to map the perception of employees and managers about Diversity in the context of these organizations, to confront the corporate discourse with the perspective of professionals who identify themselves with the theme.

From a qualitative perspective, the research extends the understanding, in an interdisciplinary way, of the concept of Diversity within Brazilian organizations, perceiving it both as a cause and as a symptom of contemporary social behavior. We chose Brazilian companies since it is well known that almost all existing studies are, in addition to quantitative, based only on the experience of multinational companies.

This analysis is relevant not only to the theoretical and academic field but also - if not mainly - to the practice and the experience of individuals immersed in a formal or informal market logic. The results have been split into six, to be disclosed in this paper. Before that, we believe a brief theoretical contextualization of the subject, from a bibliographic review, is necessary.

**Diversity Management**

Diversity is a concept with vague outlines. There is not even a theoretical consensus. The subject reverberates in scientific productions in the fields of communication, psychology, sociology, anthropology, and administration. However, it is in the area of administration that the subject gains more defined management contours, in the context of organizations.

To Alves and Galeão-Silva (2004), the technical rationality, a trait of the consolidation of capitalism, gave way to technocratic ideology, "which is expressed through the attempt to portray the administration of companies as a neutral function, based on a modern scientificity that has expert and technical managers with influence and responsibilities" (p.25).

This belief, however, tends to lead organizations to adopt an attitude of homogenization, as described by Saraiva and Irigaray (2009).

[Organizations] deal with their employees as if their differences could disappear under the formality of hierarchy. In a certain way, it is assumed that individuals can separate their personal traits and interests from their professional ones, subjecting the former to the latter within an organizational environment (p. 339).

But it is also from this perspective, that diversity begins to gain space in academic production, reflecting the context of US organizations. First, from the 1980s, "various studies on workforce diversity started, questioning the hegemonic view that individual differences had little influence on an organization's environment and results" (Saraiva &Irigaray, 2009, p. 339). In 1990, Harvard Business Review published the first relevant work using the term "diversity management", by R. Roosevelt Thomas, which advocated that companies start facing this issue in a way to replace, in the organizational context, public policies of affirmative action avoiding setbacks to the principle of meritocracy (Alves & Galeão-Silva, 2004).

For Coelho Jr. (2015), diversity management happens as a discursive practice related to a desire of organizations to align themselves with an emerging social demand, and as a way to reinforce the legitimacy of the current capitalist model. To him, this movement is strongly related to globalization, which has transformed business culture.

One of the characteristics of this transnational business culture, which works as an ideological framework of the business world, is the search for translating the contemporary sociopolitical agenda regarding managerial technology. Among the examples of managerial technologies originated in this movement are, according to him, the management of diversity: a response from the business world to the social changes articulated around the right to difference, such as the black movement, women's movement and the LGBT movement (Coelho Jr., 2015, p. 81).

Therefore, production in the academic-scientific area during the 1990s and 2000s has come to account for justifying, in a technocratic way, the benefits of diversity from a management point of view, not to the social demands per se. In Brazil, Maria Tereza Leme Fleury, from the Economics and Business School at USP was the first researcher on the theme, and her production, according to Coelho Jr (2015), reinforces and validates "the pragmatic, schematic and triumphalist logic of this managerial technology specific to the transnational business culture, which [...] has the mission to neutralize the challenging potential of multicultural movements, transforming them into something palatable to organizations" (p. 84).

Fleury's academic production was an essential first step to put the issue on the agenda of Brazilian society, more specifically, of the corporate environment. With her article "Gerenciando a diversidade cultural: experiências de empresasbrasileiras" (freely translated as "Managing cultural diversity: experiences from Brazilian companies"), published

by Revista de Administração de Empresas from FundaçãoGetúlio Vargas (Fleury, 2000), the topic also begins to gain relevance among journalists covering the corporate environment, along with business consultants and even the think tanks funded by organizations, such as Instituto Ethos (Coelho Jr., 2015).

Thus, a discursive construction on Diversity in the context of organizations arises, supported by the academic production, media, consultancies and business entities, helping the subject to gain relevance. It is also important to note, however, that the discursive construction, by itself, is not enough to transform reality within organizations. Neither are independent policies and norms capable of promoting real changes in the practice of companies since any practice is aligned to the organizational culture, which, in turn, is constituted and reconstituted on the actual experience of the employee.

A true collection of learning, organizational culture influences the way how employees react to demands from both internal and external environments and "is an informal and shared way of perceiving life and participation within the organization, keeping its members together and influencing what they think of themselves and their work" (Carramenha, Cappellano, & Mansi, 2013). Thus, beyond management aspects, diversity is firmly connected to each organization's - unique - cultural context and, therefore, depends on the learning that constitutes the fabric that forms the identity of the organization.

Therefore, understanding Diversity Management requires, necessarily, an understanding of how inclusion – effectively – happenswithin organizations. On the other hand, inclusion refers to subjective aspects that are related to the perception of the employees' experience, not to numbers, which are recurrent when illustrating the good performance of Management (whether related to Diversity or not).

## Methodology

The main motivation for this work was to understand what is behind the numbers illustrating the management (or lack thereof) of diversity in organizations. For this to be possible, only a qualitative research technique would assure us of this deeper understanding, since it allows us to "explore the spectrum of opinions, the different representations on the subject in question" (Gaskell, 2011, p. 68).

For this research, we reached out to diagnosis based on Corporate Listening, proprietary method of consultancy firm 4CO, which follows the principles of multiple methods, customized and refined for the corporate environment. Nevertheless, this method is not limited to a single and rigid flow, in order to account for the complex cultural and social context of organizations.

The research is based on a methodology that started with the exploration of secondary data to outline our initial scenario. Vast desk research on all themes related to Diversity in the corporative context helped to identify previously conducted researches and press articles on the topic. This phase allowed us to properly delimit the research objective, as being the mapping of employees' and managers' perception of Diversity within the corporate context.

To promote a large cutout of Brazilian companies, we chose not to segment our research by type of economic activity or by the market. Thus, the universe of the corporations surveyed was selected according to the economic aspect: the 20 largest companies by revenue in the year 2016, according to Forbes magazine (The World's Biggest Public Companies, 2016).

After correctly qualifying the universe of the research, a cut line was elaborated for the definition of the sample field. Therefore, we chose to limit our universe using the technique of interest. Thus, among the 20 companies of our universe, our defined sample was:

- 15 managers linked to our theme, regardless of their hierarchical level, who acted as official representatives of Diversity in their organizations;

- 45 employees identified in any of the Diversity-related groups.

- It is worth mentioning that the defined sample was 100% achieved, with following highlights:

- Out of the 20 companies of this universe, 16 answered officially on their participation through managers in charge of this theme. Of those, 12 companies were interviewed for the research and four declined formally, stating lack of interest or having nothing to declare no the subject.

- Of the 45 employees interviewed, we spoke with at least one of each of the 20 participating companies and with a maximum of three employees of the same corporation.

The following steps involved the definition of a work schedule, the elaboration of the exploratory field itinerary, the script test and the invitation to the participants, which, in the case of the first group, of professional managers of the theme, was made directly by e-mail. Employees were invited in two distinct ways: a) through the researcher's network, which was later expanded using the "snowball" technique to reach all other respondents; and b) through direct approach, made by sending private messages via LinkedIn.

The research was conducted through in-depth individual interviews, in person or by phone, according to the availability of each respondent. Each session lasted around 45 minutes, according to the evolution of the participants. The survey included professionals from Brazil's Northeast, Midwest, Southeast and South regions.

**Results**

The results have been split into six main findings, quickly described as follows. Each finding has the potential for scientific exploration in different articles, a task that we intend to develop over time, to confront the results with different theoretical repertoires in more depth.

*Finding #1: Diversity matters, but is not relevant*

Corporations are not isolated from the social milieus in which they are immersed (Kunsch, 2003). Therefore, as a result of the pulsating and recurring manifestations of social collectives, companies have been more attentive to the theme of Diversity.

As I see it, Diversity is still at a very early stage. I work at a company where they recently established a board. I feel that over the last year they have been looking at this subject from an institutional stand. When it comes to practice, it's really tough. As I see it, there is still a long way to go. Maybe because it's all very recent. When it comes to practice, I notice that there is still bias, though subtle. Also, all discussions regarding Diversity are still "enveloped" in the cause of women. I don't know if this is a first step, but it's our current scenario.

The interviewees, both employees, and managers of the theme perceive this as an important agenda in Brazilian society, some of them attach this phenomenon to the higher visibility promoted by social media, however, within the work environment, we see some timid steps towards an inevitable transformation driven by the social context.

Thus, it is possible to say that this is an important subject for companies, even if they are yet not ready to deal with it, as one manager says.

We have no formal committees yet. When we want to address this theme, we seek for partners in other areas. There are no formal structures; it depends on our needs. It's all being studied, right now this theme is in the spotlight (...) I believe I'll have more to share in a year.

Based on this understanding about the intimate relationship and influence of the social context on companies and vice versa, it is possible to identify a few interviewees who present statements contrary to the advance of this discussion within organizations.

There is a strong feeling that Diversity is not very relevant. By understanding this perception of the interviewees, it is easy to infer something most of them signaled during the interviews: Diversity, at least today, is just a fad in companies.

I see this as a fad, you know? Like, the company is thinking: 'everybody else is doing it, and we're not?' I believe that many have taken on this quest for Diversity because they had no other option.

When it comes to addressing this subject, Brazilian corporations are still taking their first steps, which is only reinforced by the fact that only a few companies have areas dedicated to it. To stem their latent evolutionary needs, Brazilian organizations rely on references and benchmarks from multinationals to reach a turning point that never happens.

*Finding #2: An empty speech, a poor experience*

The structural complexity of organizations, which are permeated by a particular view of the world and by a unique set of rules, rites, and assumptions (Schein, 2001) hinders the sedimentation of new initiatives and favors the misalignment of discourse with corporate practice. This is exactly what happens when it comes to Diversity Management, according to our research results. Managers of the theme show keen interest in implementing initiatives to promote diversity in their companies, however, only a few have been able to demonstrate such practices that are already in progress. In most cases, there are no internal policies formalizing the subject, which contributes to it being conducted procedurally and simplistically. "We don't have any specific actions, but we are uploading articles and discussions on this subject on our internal blogs. And it never evolves, it's just stuck there", reveals one of the theme managers.

All this corroborates the understanding that these efforts are, therefore, little noticed by employees. "After seven months in the company, I only saw a poster with Diversity written on it once.  I guess it must be some kind of program, but I'm not sure", says and employee. Once in a while, employees are impacted by superficial communication initiatives or occasional and generalist approaches that do not stimulate critical reflection on the subject. All this dense texture breaks with the general perception that there is no lasting and long-term perspective on this subject within the companies.

I think it's just a complete lack of will to put it into practice, you know? Unfortunately, I believe it's all just talk. Just like environmental responsibility. It's only to improve the company's results. So the client has a better impression of the company. I think they just don't want to offer opportunities, to see people for their skills. I believe they don't want to face this in a fair way.

Add to this the strong perception of employees that the barriers to diversity are set from the doorway up to the admittedly flawed systems of promotion. According to the interviewees, the selective processes give preference to the normative and tend to suppress the dissonant (diversity in the workplace happens, mostly, by operation of law, in case of the mandatory inclusion of people with disabilities in companies). The organizational environment is considered by the interviewees as being selective, segregationist and restrictive. A place that avoids the entrance of diversity and that curbs individual manifestations and expressions.

*Finding #3: There is Diversity, but it is waiting to be embraced*

Organizations are influenced by their environment (Sriramesh, 2009), therefore, the existence of Diversity in its many representations is natural, since we are a diverse country. However, despite the miscegenation of Brazilian society, there is a historical prejudice that is rooted and spread throughout our culture. According to our interviewees, both traits directly affect the way organizations face and conduct their debates on Diversity. In other words, there is Diversity in the companies, even if just a little, the problem is that there is no representative space for it. This lack of representativeness manifests itself in objective questions, such as in "I work in an office that has 150 people, and only has one black person", but also manifests itself in subjective issues, which trigger a systemic social discrimination, in which the rule is to find the employee carrying some Diversity feature limited to lower positions. "We do have people with disabilities, but they always hold jobs in back-office positions. We meet our quota, and that's about it", says a theme manager.

Banned from leading positions, the one who differs becomes an increasingly rare person as we go up the hierarchy ladder. And because this employee does not become a role model, the segregation scenario is fed back.

Gay people face barriers on their way up, but they get promoted. When it comes to people being openly gay, I think it's not very likely that they will get promoted. I've only ever heard of one gay person who got it that far.

As a symptom, as much as someone diverse is hired, they immediately risk being rejected by the organizational culture (deliberately or not). "Many years passed before I was promoted, they always preferred the girls. 'Let's just leave the transsexual working where she is; she'll quit soon enough'". Another statement, now from a gay employee, who said he could not show any effeminate mannerisms, reflects the normative power of culture. "We tolerate [difference], but don't come rub it in our face or we'll find a way to get rid of you."

It was also noted that it is not uncommon for interviewees to identify themselves with a group of Diversity and to adopt a stance contrary to the theme, for fear of inciting corridor conversations, prejudice or retaliation. It is part of their survival strategy to swallow hard, accept prejudice and intolerance, and not speak up or ask for help, since - because there is no trust in the formal channels of denunciation - there is a risk that the victim will be undermined and discredited.

*Finding #4: With constant prejudice, tolerance is confused with inclusion*

Although subtle in organizations, interviewees report that it is common to be confronted with judgments based on race, religion, sexual orientation, gender, apparent disability, and other nuances, whether while selecting, assessing or dismissing an employee - or simply while coexisting with the difference.

Nowadays, it is rarely blatant. People are more subtle when it comes to prejudice. There is never a word of prejudice to a person's face, but there is always a discriminatory speech behind their backs.

This should cause distress or astonishment, but, with prejudice being recurrent in Brazilians' social daily lives, similar facts occurring in the corporate environment are normalized. This normality hinders the recognition of discriminatory acts and, therefore, the majority of employees had difficulty in discerning whether they had suffered prejudice at work or not. One interviewee's statement illustrates what we are trying to say. "I've heard my manager making fun of my disability many times, and she didn't realize it might affect me. She'd make fun of disabilities in general. She wasn't talking about me. I don't know if this is prejudice, but it does affect me."

Although they have experienced discriminatory, disrespectful and embarrassing situations, many try to diminish what happened. "Fourth-grade bullying is still there when it comes to gay people... it's the 'being a faggot' thing. I never say anything about my private life there, that's why I never experienced anything like it." It is therefore not surprising that employees do not know how to deal with prejudice, much less how to combat it - turning a blind eye to events that would require an attitude part of the company are evident in all reports.

Whenever confronted with harassment, I try to reach out to my manager or HR. It is so common that we often end up doing nothing because that's just the way it is. If we were to take any measures, they'd have to dismiss half the team.

Such elusive behaviors are reinforced by the organizational culture itself since it is common to sweep prejudice under the rug. Furthermore, there is a recurrent perception of the interviewees that reports and complaints about discrimination are not put forth, generating more damage and exposure to the victim than to the perpetrator. In this sense, ethics hotlines and similar channels are discredited.

There are zillions of reports of sexual harassment, bullying, vendors who don't feel respected. But I do not know how much is done. They give the guy a warning, say he can not do that, and then the guy puts a lot of effort in trying to find out who reported him rather than changing his behavior and manages to get the other person fired.

All this keeps the employees from believing that problems like this can be solved. Leaving things as they are is the safest solution when ones' very own job is at stake. This overview leads to the understanding that Diversity is not embraced; only tolerated.

*Finding #5: Oblivious, absent and sarcastic leadership*

When it comes to diversity, the importance of the leader in the organizational context becomes clear (Saraiva & Irigaray, 2009). To almost all topic managers that were interviewed, it is clear that when leadership is involved and engages with the issues of Diversity, the theme gains relevance within the organization. In this sense, it is worth mentioning that the theme needs a relevant sponsor to be put into practice.

If they had high-level leaders who truly cared about Diversity, this could be a top-down policy. Here in the company leadership has no interest in it, they are retrograde and follow a pattern. An uncommitted leadership, which follows a pattern and does not see the impact of it in the end.

For the majority of the participants, the top leaderships does not show any interest in prioritizing issues related to Diversity. "It does not seem to me that Diversity is a priority issue for our leadership."

It's a similar scenario from the perspective of employees, with more emphasis on the behavior of middle managers. According to them, leaders are usually oblivious to the theme and absent of all related discussions. Besides, they show difficulty in developing concrete action with their teams.

[Due to my disability] I need a particular computer screen. My manager took a very long time to figure this out. One day, she saw me reading very close to the screen and said, 'Jeez, what are you doing?' She knew I had a disability, because of my position, but she didn't realize it because my disability is not so apparent. But, if you know that a person has a disability, you know she has special needs.

There is one interesting point about leaders that deserves to be highlighted. It is evident in the interviewees' statements that leaders do not directly incite prejudice, but they do not take a stand when witnessing intolerance. Reports of leaders who joke about in their day-to-day are not uncommon, and therefore they are not perceived as effective agents of change when it comes to this topic.

The other day I was in a meeting with my direct superior. Then she started telling a story. It wasn't really prejudicial, but I was offended. She said she was watching TV [...] and saw a scene of two women kissing. And that she had to switch channels quickly because she was afraid her kids would want to try.

In a scenario where no one takes responsibility, Diversity becomes an easy target of gnawing indifference, favoring discomfort in interpersonal relationships, gives way to insecurity and results in a lack of dialogue, which is the main source of all taboos related to this theme within companies.

*Finding #6: Diversity: how much is it worth*

Companies act around a specific theme as it gains more significant social outlines and, however important an agenda becomes it has to demonstrate its direct and tangible benefits before gaining effective space in the corporate environment. The same happens with Diversity.

For both employees and managers related to this subject that have been interviewed for our research, there is a general feeling that the subject is attractive but still needs to prove financial impact before gaining relevance. According to them, what really matters at the end of the day are business indicators.

As long as senior leadership does not understand tangibly, through results, how much it loses by not embracing Diversity, it will not dwell on that agenda. Companies always work with priorities, as long as this is not a priority, it will not be treated as it should. Even if it's just a fad.

The counterpoint, however, is signaled by one of the interviewed managers. "The problem of companies is to see and understand that it's not always about results. There are people. People generate results. It's not results that generate people. We need an open discussion on how to treat these people."

The technocratic approach, however, is the one that has been gaining space within organizations (Alves & Galeão-Silva, 2004). And since Diversity is a complex and somewhat intangible subject, measurement becomes difficult to implement - something that can be aggravated by the lack of clarity related to the subject, as described in Finding #1.

A few managers of the subject who were interviewed reported dribbling this scenario when working on the issue of Diversity "from the outside". In other words, they got some attention on Diversity after demonstrating the importance of the theme to consumers or clients, highlighting the financial improvements this would bring to the business. According to these interviewees, the company understands that the client is diverse and that it is important to understand them in their plurality, but, as for the employee, a posture of denial and indifference is maintained, as mentioned by one interviewee: "Marketing does lots of videos and talks about diversity to the external public. These videos focus a public that is different from ours, but it was only for YouTube. But once through the door, there is absolutely no space for it."

This posture not only proves the company's immaturity in the face of Diversity.  It ignores a critical point in the PR and communication strategy of any business: understanding that publics are multivalent, occupying multiple places in an organization's relationship ecosystem (França, 2009). It is not uncommon to note that the consumer and the employee are often the same person and part of the same society. Moreover, this narrow perspective on the theme disregards other relevant aspects, such as human dignity involved in this process.

**Final Considerations**

Since the corporate environment is not isolated from social context, the relevance of Diversity to contemporary companies is evident. Just like the social behavior, Diversity is still taboo in most researched companies. A sad truth about the cultural logic of organizations that avoid addressing difficult issues that could destabilize previous historical-normative outlines.

If Organizational Culture is the *locus* of group behavior, it is urgent to evaluate the way organizations are managing it, to make such a semantic space effectively permeable to diversity in all its aspects. Thus, it is possible to conjecture that being a diverse company needs much more than only fostering tolerance. It is imperative to indeed accept and include the

multiplicity of all forms, building on a daily basis an environment in which employees live with the plural and feel safe in establishing long-lasting and trusting relationships.

There is no space left for dull answers to the question "why work with Diversity in our business?". After all, it is not just an increase in financial results, but rather a fulfillment of their concrete social role and, also, of the symbolic seat of organizations in the collective imagination.

Conducting this researach enabled us to successfully achieve the initially proposed goal of mapping of employees' and managers' perception of Diversity within the corporate context. We understand that the findings, in the way they were organized, deliver - albeit in a succinct way, in the space that fits us in this work - a response to the objective, a response that opens space for new dives in the results, with a view to other possible problematizations.

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# Investment Trios Are Less Prone to the Hot Hand and Gambler's Fallacies and Make Better Investment Strategies

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**Abstract**

An experimental study was conducted to determine the minimum group size for which the mitigating effect for the hot hand and gambler's fallacies can be felt. This is quantified by looking if groups are as prone to the hot hand and gambler's fallacies in making decisions as their individual counter parts. Results suggest that groups maximize their investment returns better than individuals as the former choose to decide on their own more and rely on the experts' opinions less. Triads are the least biased with the hot hand and gambler's fallacies and thus are able to make more rational decisions and consequently maximize their investments better than the other treatments.These data allowed us to recognize the benefits of forming investment clubs consisting of three members since their decisions are more likely in line with the profit maximizing strategy in comparison with the decisions made by pairs and individuals.

**Keywords:** Investment, hot hand, gambler, profit

## Introduction

The hot hand fallacy and the gambler's fallacy are two of the most common behavioral errors in the financial market. These biases cause people to misinterpret random sequences believing that some past event can be used to predict future outcomes. People who exhibit the hot hand fallacy expect an increasing trend to continue in the near future. This bias is observable when people mostly buy from funds who were successful in the past because they are convinced it would continue to be successful in the latter periods (Sirri & Tufano, 1998). On the other hand, people who exhibit the gambler's fallacy expect a current trend to 'break and reverse' in the future. This bias is observable when people buy losing stocks, which are stocks who have recently declined in prices, because they expect a reversal of their losses later. However, the efficient market hypothesis (Fama, 1991) showed that trends in the prices of stocks are unreliable to consumers because the stock prices instantaneously adjusts to new information by taking into account the discounted future value of that information. Rufino (2013) demonstrated that the Philippine stock market exhibits this market efficiency and thus shows a random walk phenomenon. Therefore, it is unreliable to use past information to predict future prices.

Groups tend to decide more optimally than individuals in both strategic and nonstrategic situations (Feri et al., 2010; Linder & Morgan, 2005). Despite this optimality, both groups and individuals alike still fall prey to behavioral biases. Investors who are exposed to these fallacies end up holding less diversified portfolios, which can affect their expected returns and exposures to risk. However, Stöckl et al. (2015) pointed out that groups are actually less prone to the hot hand fallacy and gambler's fallacy as compared to individual investors. Thus, we are looking at a possible 'mitigation effect' on the overall proneness to behavioral biases by making decisions as a group. With this, we can say that there is a so-called wisdom in groups. Yet, the desired group size in achieving this mitigation effect has not yet been established.

To address these problems, we use a two-dimensional analysis on investment behavior for our objectives on 1) the investment strategy and 2) the behavioral biases that affect these decisions. Generally, we say that individuals and groups make investment decisions differently. However, since the scope of the differences is broad, we narrowed it down to two research questions that are aligned with the objectives. The first research question focuses on the investment strategy; we ask ourselves "Do individual and group investors make investment decisions differently? How reliant are they on experts

and who chooses the riskier option more?" The second research question focuses on behavioral biases; we ask "Can we mitigate the overall proneness to the hot hand and gambler's fallacies by making decisions as a group?  If so, how large does a group need to be in order to feel this mitigating effect?"

In the perspectives of the investors, this study will be able to aid them in critical investment decisions. As they become more aware of their proneness to these behavioral biases when investing their money, individual investors can look for ways to reduce their exposure to the fallacies by joining investment groups that satisfy the minimum group size in order to experience the mitigation effect. Making investment decisions as a group can be thought of as "investment clubs" where non-professional investors combine their investable wealth through a partnership or a limited liability company, make investment decisions together, and split any earnings among themselves. Investment clubs differ from mutual funds since the latter is funded by shareholders who waive their rights to manage the portfolios to a professional fund manager. In the perspective of the academe, this research shall fill the gaps in the current literature by establishing the minimum group size in order to reduce the overall proneness to the behavioral biases.

This study will make use of a coin-toss investment simulation model where participants aim to correctly predict which side of the coin will appear. Their investment decisions will determine their investment strategy and overall proneness to the hot hand fallacy and gambler's fallacy. The experiment proper was conducted in De La Salle University- Manila during the third term of the Academic Year 2017-2018. Market investors will be represented by bonafide undergraduate students ages 18 to 23 years old. The simulation will be divided into three treatments (INDIV, GROUP2, GROUP3) with a total of 180 participants for which we have gathered 3,600 decisions for analysis. In this study, only pairs and trios were tested for group classifications. Therefore, we can only provide evidence for the minimum group size for the mitigation effect to be felt instead of the boundary condition that provides the optimal group size with the greatest mitigation effect.

Currently, there have been numerous studies that revolve around the hot hand and gambler's fallacies. Fischbein (1975) showed evidence of the hot hand fallacy when successive outcomes of heads would lead individuals to believe that the probability of another head appearing to increase. On the other hand, Tversky and Kahneman (1971) showed that when three successive heads appear, people would infer that the next outcome is a tail as a manifestation of the gambler's fallacy. Further studies by Stöckl et al. (2015) showed that individuals and group alike were both prone to the hot hand and gambler's fallacies. However, O'Leary (1993) was able to discover that groups are less prone to biases that occur naturally in individuals. Therefore, the overall proneness of groups to the hot hand and gambler's fallacies were significantly less than individuals. However, the desired group size to feel the mitigation of the proneness to fallacies has not yet been thoroughly studied.

Since some investment decisions can be done in a group environment, Simmel (1950) and Weick (1969) noted the importance in determining the optimal group size that can mitigate the existence of these fallacies, especially in smaller groups. When it comes to the crucial transitions in group sizes, which consists one to two, two to three, three to four, four to seven, and seven to nine members, trios are one of the most crucial group sizes. In organization theory, Weick (1969) refers to groups of three as the basic unit of analysis since it is the smallest possible group size that allows two group members to be allies against one. Groups of three allow for cooperation, control and competition.

For larger group sizes, another group of three can be formed as subgroups. Since groups of three are still considered when it comes to forming larger groups, this group size will be the focus of the paper. O'Leary (2011) performed an experiment comparing groups of three and individuals and discovered that groups mitigate the effect of these biases but do not completely remove its impact, as the performance of groups was not perfect.

The wisdom of crowds is an event where a group of people make better decisions compared to individuals who are experts in a particular subject matter (Surowiecki, 2005). Crowds tend to be wiser than individuals but too many members in one group can lead to herd behavior which causes poor decision-making. Furthermore, Goldstein, Mcafee, and Suri (2016) applied the wisdom of crowds in a experimental setting where a smaller group of 30 people were grouped together from a crowd composed of 100 members and compared the groups' decisions against an expert in Fantasy soccer. They discovered that the smarter and smaller crowd beat the wisdom of the larger crowd.

To fulfill our first objective, we try to identify the different investment strategies by using a probit model on the three treatments. The probit model was chosen because the dependent variable is either 1 or 0. The regression results would allow the researchers to assess the likelihood of choosing between the RISKown, RISKexpert, and RISKfree options.

Specifically, the probit regression coefficients would determine the relationship of the dependent and independent variables. Additionally, we use the marginal effects of the coefficients to determine the respective likelihood of choosing each of the three options mentioned earlier. For additional robustness checks on the results provided by the individual probit model, we also run a multinomial probit model to take into account the fact that subjects can only choose one out of three options.

On the other hand, to fulfill the second objective regarding behavioral biases, we used a tobit regression model since some of the dependent variables are unobservable. This means that if the Classical Linear Regression Model (CLRM) is to be used, it would drop the unobservable dependent variables, therefore making the results unreliable by omission. Instead, we use the tobit model in order to include and still consider these unobservable dependent variables. Furthermore, since the experiment was designed in such a way that the subjects do not have any choice but to invest, it is considered to be a single hurdle process instead of a double hurdle process which makes the tobit model more superior to both the craggit and heckit models.

Theoretical models such as the rational choice theory shows that individuals are rational in making their decisions by knowing which option they prefer and going for the option that would give them the highest utility. On the other hand, the prospect theory accounts for decision-making behavior under risk and uncertainty. As individuals' have successful experiences, they tend to prefer risk-free assets over risky assets. Consequently, when these individuals are experiencing losses, they tend to invest more on risky assets than risk-free ones (Kahneman and Tversky, 1979). However, exposures to the hot hand fallacy and gambler's fallacy lead to suboptimal outcomes and decisions.

Aside from confirming past literatures which stated that groups are less prone to behavioral biases as compared to individuals, the research gap this study aims to bridge is the establishment of the minimum group size in mitigating the proneness to the hot hand fallacy and gambler's fallacy. We also analyzed the differences in decision-making between individuals and groups of varying numbers particularly in pairs and trios as well as exploring any gender effects. For the first research question on investment strategy, we test the hypothesis that groups rely less on experts and choose riskier options as compared to individuals. For the second research question on behavioral fallacies, we test the hypothesis that groups are less prone to the hot hand and gambler's fallacies, and there exist a minimum group size for the mitigation effect.

## 2. Experimental Design

*Sample.* We gathered 180 undergraduate students (92 males and 88 females) through an online signup link shared on social media. Participants aged 18-23 are all from De La Salle University-Manila. The participants are divided into three treatments: individuals (INDIV), groups of two (GROUP2), and groups of three (GROUP3).

*Task.* Throughout the experiment, the subjects had to decide on their own whether they wanted to choose heads or tails by themselves (RISKown), delegate the decision to an expert (RISKexpert), or choose the risk-free alternative (RISKfree) for 40 periods.

*Design.* The experiment was conducted in a computer laboratory setting using Google Forms and Google Sheets as the online softwares. At the start of the experiment, each participant was given an initial endowment of 500 Taler, which is the experimental currency. The RISKfree alternative guaranteed the participants 5 Taler regardless of the outcome of the coin toss. The risky alternative is replicated using a coin toss where heads and tails have equal probabilities. When choosing the risky alternative, the participants need to select one side of the coin, and the goal is to correctly predict the outcome of the coin toss to receive a positive payoff. The participants have two options when deciding for the risky alternative. First is by choosing RISKown where they have to guess on their own whether the outcome of the coin toss is heads or tails, or second, by choosing RISKexpert where they delegate the decision to one of the five "experts", who will then randomly select heads or tails for the participants. However, participants are not informed that the experts are mere randomizers. We use the same coin toss realizations, which were drawn randomly in advance, for every session to ensure comparability across all observations.

For every correct RISKown decision, 100 Taler will be added while 50 Taler will be deducted if otherwise. For RISKfree, 5 Taler will be immediately added to their accounts. For RISKexpert, a management fee of 5 Taler will be deducted to the payoff regardless of the outcome of the coin toss. 95 Taler will be added if the expert made the correct decision while 55 will be deducted if otherwise.

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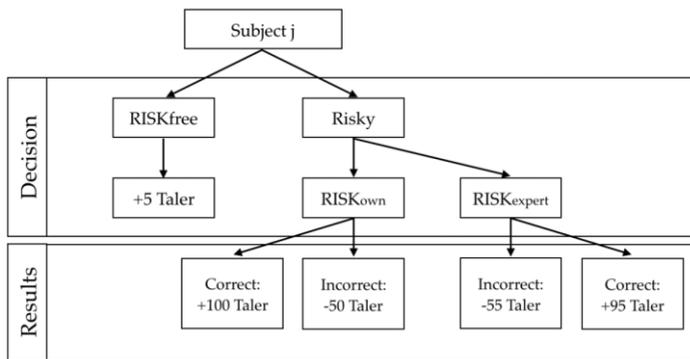
**Figure 1.** Flowchart of the entire experimental design

Before the experiment, the subjects were informed that three screens will be used throughout the 40 periods. The first screen is the decision screen where the participants' decisions will be inputted for each and every decision made. The second screen is the results screen where the summary of all their decisions, their successes and failures in predicting the outcomes, the respective payoffs in every period, and the running balance of their accounts are shown. The third screen is the trading screen which contains information on the current period, the results of the coin toss for every period including all past periods, and the successes and failures of the experts in predicting the results of the immediate previous four periods. The track record of the experts is updated per period and can be accessed at any time during the experiment.

For the INDIV treatment, participants decided on their own were only needed to make one decision per period. They were not allowed to seek help from other individual participants. For the group treatments, all members of the group had to collectively decide on which decision to make every period. Communication was allowed but only within the group members. Each member had separate accounts for the group's total balance which meant that the earnings were not divided equally and that their total balances were paid to each member at the end. They also had separate screen which means that each group member still had to enter his decisions in his decision screen. Groups only have a chance of getting a positive payoff if all members choose the same decision. In the event that they do not come up with the same decision in their first try in any period, they are given a second chance to decide and come up with a unanimous decision. A penalty of 50 Taler will be deducted from their individual accounts in the event that their decisions are still inconsistent. A total of 3,600 observations (1,200 per treatment) were gathered at the end of the experiment.

For the hypotheses in both research questions, we consider the INDIV treatment as the control group. All characteristics of INDIV are present in the GROUP2 and GROUP3 treatments including the assumption of common knowledge in investing and optimization. However, the variable characteristics of communication and joint decisions are only present in the GROUP treatments.

*Payouts.* At the end of the experiment, the total Taler balances were converted to Philippine Peso using an exchange rate [1 PhP=15 Taler(for INDIV and GROUP2) and 20 Taler(for GROUP3)]. Cash was immediately paid after the experiment. In addition, a participation fee of PhP 20 as a compensation for their time was also added.

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## 3. Results
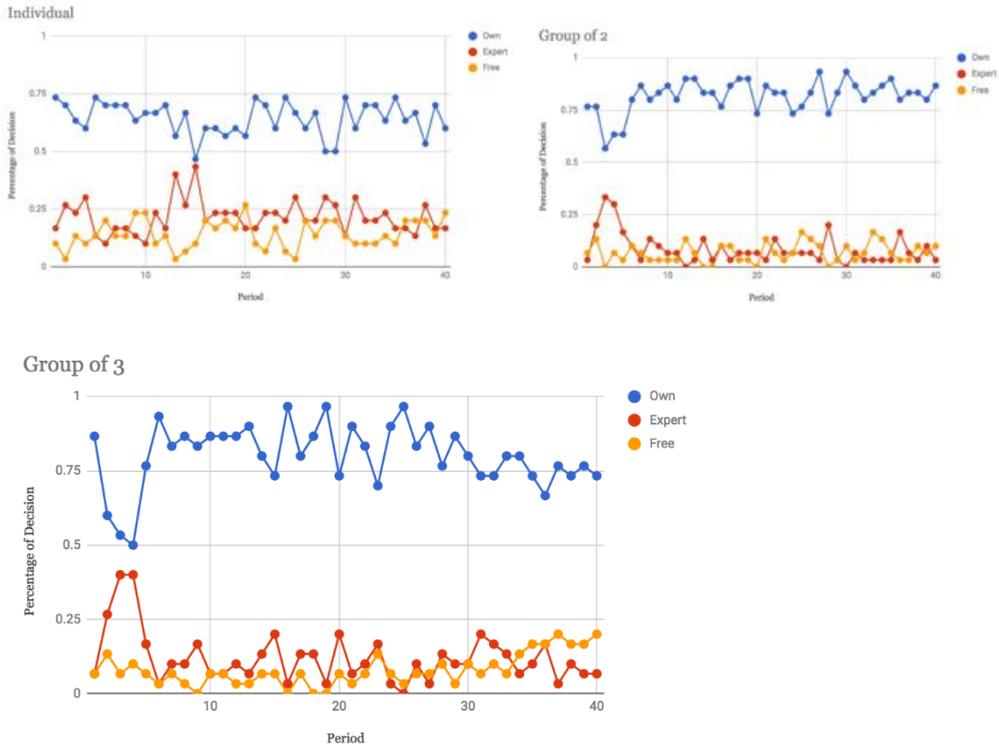






**Figure 2.** Proportion of total decisions per period allocated to RISKown, RISKexpert, and RISKfree options.

*Did groups rely more on experts than individuals? Did they choose riskier options as compared to the risk-free options?*

The proportion of total decisions allocated to RISKown, RISKexpert, and RISKfree options with respect to each of the treatments (INDIV, GROUP2, GROUP3) is shown in figure 2. INDIV participants have a higher reliance on the experts and choose the RISKfree options more rather than making the decisions by themselves as compared to both GROUP2 and GROUP3 participants. We found from running a Mann Whitney U-test that there are significant differences between the samples. For the decisions made by the participants themselves (RISKown), there is clearly gender and group effects that differentiates the treatments. For decisions delegated to experts (RISKexpert), *FF*, *MMM*, *FMM*, and *FFF* are derived from the same population. For decisions involving no risk (RISKfree), only *FMM* and *FFF* come from the same population.

| Table 1: Probit Regression Model 1 | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | RISKown | | | RISKexpert | | | RISKfree | |
| Variable | Probit Coefficient | | Marginal Effect | | Probit Coefficient | Marginal Effect | | Probit Coefficient | | Marginal Effect | |
| Constant | 0.2469 | *** | 0.7517 | *** | -0.4266 *** | 0.1393 *** | -1.3624 | *** | 0.1055 | *** |
| Group of 2 | 0.3489 | *** | 0.1057 | *** | -0.7073 *** | -0.1479 *** | 0.2009 | * | 0.0356 | * |
| Group of 3 | 0.9863 | *** | 0.2989 | *** | -1.1689 *** | -0.2445 *** | -0.3337 | ** | -0.0592 | ** |
| Period | 0.0023 | | 0.0007 | | -0.0089 *** | -0.0019 *** | 0.0066 | *** | 0.0012 | *** |
| F | 0.1373 | * | 0.0416 | * | -0.3727 *** | -0.0780 *** | 0.2657 | *** | 0.0471 | *** |

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| Variable | Probit Coefficient | | Marginal Effect | | Probit Coefficient | | Marginal Effect | | Probit Coefficient | | Marginal Effect | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| FF | 0.4120 | *** | 0.1249 | *** | -0.1062 | | -0.0222 | | -0.5642 | *** | -0.1001 | *** |
| FM | 0.3284 | *** | 0.0995 | *** | -0.1124 | | -0.0235 | | -0.3551 | *** | -0.0630 | *** |
| FFM | -0.7161 | *** | -0.2170 | *** | 0.9738 | *** | 0.2037 | *** | 0.1105 | | 0.0196 | |
| FMM | -0.4634 | *** | -0.1404 | *** | 0.5135 | *** | 0.1074 | *** | 0.2877 | ** | 0.0510 | ** |
| FFF | -0.4381 | *** | -0.1328 | *** | 0.6852 | *** | 0.1433 | *** | 0.0007 | | 0.0001 | |

| *** - Significant at 99% confidence level |
|---|
| ** - Significant at 95% confidence level |
| * - Significant at 90% confidence level |

We then run a probit regression model (Model 1) to predict the probability that treatments would select either RISKown, RISKexpert, or RISKfree. From Model 1, we find evidence that GROUP2 and GROUP3 are .1057 and .2989 more likely to make the decisions on their own (RISKown) than INDIV. Female individuals are .0416 more likely to take the risk on their own than their male counterparts. Female pairs are also more likely to choose RISKown than a male dominated pair or a mixed pair. An all-male trio is most likely to make the decision on their own than the *FFF*, *FFM*, and *FMM* counterparts. Only *Period* was the insignificant variable for the RISKown. For delegating the decisions to experts, we find that participants under the GROUP2 and GROUP3 treatments are less likely to delegate the decision by .1479 and .2444 respectively. Females are also .0779 less likely to delegate the decision than males. Female-male pairs and all-male trios are the least likely to delegate the decision to an expert. For choosing the RISKfree option, GROUP2 are .0356 more likely to chose the risk-free option while GROUP3 are less likely to choose this. Female individuals also prefer the risk-free options than male individuals. On the other hand, females in pairs are least likely to choose risk-free than male-male or female-female participants. All male trios are the least likely to choose the risk-free option.

| Table 2: Probit Regression Model 2 | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | RISKown | | | | RISKexpert | | | | RISKfree | | | |
| Variable | Probit Coefficient | | Marginal Effect | | Probit Coefficient | | Marginal Effect | | Probit Coefficient | | Marginal Effect | |
| Constant | 0.3456 | *** | 0.7517 | *** | -0.5971 | *** | 0.1394 | *** | -1.3170 | *** | 0.1056 | *** |
| Group of 2 | 0.0749 | | 0.0227 | | -0.3959 | ** | -0.0826 | ** | 0.3114 | * | 0.0551 | * |
| Group of 3 | 0.9401 | *** | 0.2843 | *** | -0.9092 | *** | -0.1897 | *** | -0.6400 | *** | -0.1132 | *** |
| Period | -0.0024 | | -0.0007 | | -0.0006 | | -0.0001 | | 0.0045 | | 0.0008 | |
| F | 0.1367 | * | 0.0413 | * | -0.3695 | *** | -0.0771 | *** | 0.2649 | *** | 0.0469 | *** |
| FF | 0.4164 | *** | 0.1259 | *** | -0.1118 | | -0.0233 | | -0.5611 | *** | -0.0992 | *** |
| FM | 0.3301 | *** | 0.0994 | *** | -0.1175 | | -0.0245 | | -0.3499 | *** | -0.0619 | *** |
| FFM | -0.7156 | *** | -0.2164 | *** | 0.9883 | *** | 0.2062 | *** | 0.1138 | | 0.0201 | |
| FMM | -0.4641 | *** | -0.1404 | *** | 0.5217 | *** | 0.1089 | *** | 0.3038 | ** | 0.0537 | ** |
| FFF | -0.4401 | *** | -0.1331 | *** | 0.6917 | *** | 0.1444 | *** | 0.0118 | | 0.0021 | |
| Group2Period | 0.0136 | *** | 0.0036 | *** | -0.0158 | *** | -0.0033 | *** | -0.0055 | | -0.0010 | |
| Group3Period | 0.0022 | | 0.0006 | | -0.0135 | ** | -0.0028 | ** | 0.0133 | ** | 0.0024 | ** |

| *** - Significant at 99% confidence level |
|---|

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| ** - Significant at 95% confidence level |
|---|
| * - Significant at 90% confidence level |

We then run another probit regression model (Model 2) for all three decisions with the addition of interacting variables *Group2Period* and *Group3Period* to account for the learning differences between the respective treatments. For the RISKown, the *Group2Period* indicates that the interacting variable increases the probability of choosing the RISKown by .0036. Likewise, both the interacting variables lead to a significant decrease in the probability of delegating the decision to an expert (RISKexpert). However, the *Group3Period* interacting variable leads to a .0023 increase in the risk-free option as well.

Table 3: Multinomial Probit Regression Model 1

| Variable | Risk Own | | | | Risk expert | | | Risk free | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Probit Coefficient | | Marginal Effect | | Probit Coefficient | | Marginal Effect | Probit Coefficient | | Marginal Effect | |
| Constant | 0.4676 | *** | 0.7540 | *** | Base Outcome | 0.1401 | *** | -0.9817 | *** | 0.1059 | *** |
| Group of 2 | 0.9290 | *** | 0.1142 | *** | Base Outcome | -0.1475 | *** | 0.9569 | *** | 0.0332 | * |
| Group of 3 | 1.7068 | *** | 0.2985 | *** | Base Outcome | -0.2437 | *** | 0.8977 | *** | -0.0548 | ** |
| Period | 0.0105 | *** | 0.0007 | | Base Outcome | -0.0019 | *** | 0.0169 | *** | 0.0012 | *** |
| F | 0.4508 | *** | 0.0354 | | Base Outcome | -0.0777 | *** | 0.6585 | *** | 0.0423 | *** |
| FF | 0.2927 | * | 0.1199 | *** | Base Outcome | -0.0206 | | -0.5133 | ** | -0.0993 | *** |
| FM | 0.2631 | | 0.0875 | *** | Base Outcome | -0.0248 | | -0.2641 | | -0.0627 | *** |
| FFM | -1.3684 | *** | -0.2142 | *** | Base Outcome | 0.2031 | *** | -0.9639 | *** | 0.0111 | |
| FMM | -0.7643 | *** | -0.1474 | *** | Base Outcome | 0.1049 | *** | -0.2610 | | 0.0425 | |
| FFF | -0.9400 | *** | -0.1347 | *** | Base Outcome | 0.1433 | *** | -0.7825 | ** | -0.0086 | |
| *** - Significant at 99% confidence level | | | | | | | | | | | |
| ** - Significant at 95% confidence level | | | | | | | | | | | |
| * - Significant at 90% confidence level | | | | | | | | | | | |

Table 4: Multinomial Probit Regression Model 2

| Variable | Risk own | | | | Risk expert | | | Risk free | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Probit Coefficient | | Marginal Effect | | Probit Coefficient | | Marginal Effect | Probit Coefficient | | Marginal Effect | |
| Constant | 0.7001 | *** | 0.7540 | *** | Base Outcome | 0.1401 | *** | -0.7429 | *** | 0.1059 | *** |
| Group of 2 | 0.4549 | ** | 0.0298 | | Base Outcome | -0.0800 | ** | 0.7219 | *** | 0.0502 | * |
| Group of 3 | 1.3993 | *** | 0.2927 | *** | Base Outcome | -0.1843 | *** | 0.2629 | | -0.1084 | *** |
| Period | -0.0009 | | -0.0008 | | Base Outcome | -0.0001 | | 0.0054 | | 0.0008 | |
| F | 0.4459 | *** | 0.0351 | | Base Outcome | -0.0766 | *** | 0.6504 | *** | 0.0416 | *** |
| FF | 0.3014 | * | 0.1205 | *** | Base Outcome | -0.0220 | | -0.5028 | ** | -0.0985 | *** |
| FM | 0.2691 | | 0.0874 | *** | Base Outcome | -0.0259 | | -0.2529 | | -0.0616 | *** |

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| FFM | -1.3892 | *** | -0.2153 | *** | Base Outcome | 0.2061 | *** | -0.9938 | *** | 0.0092 | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| FMM | -0.7726 | *** | -0.1497 | *** | Base Outcome | 0.1054 | *** | -0.2612 | | 0.0443 | ** |
| FFF | -0.9477 | *** | -0.1366 | *** | Base Outcome | 0.1438 | *** | -0.7787 | ** | -0.0073 | |
| Group2Period | 0.0238 | *** | 0.0042 | *** | Base Outcome | -0.0034 | *** | 0.0119 | | -0.0008 | |
| Group3Period | 0.0161 | ** | 0.0006 | | Base Outcome | -0.0030 | ** | 0.0302 | *** | 0.0024 | ** |
| *** - Significant at 99% confidence level | | | | | | | | | | | |
| ** - Significant at 95% confidence level | | | | | | | | | | | |
| * - Significant at 90% confidence level | | | | | | | | | | | |

To confirm the results of the individual probit models, we ran a multinomial probit regression model for both the Model 1 and the Model 2. The multinomial probit models take into account that the subjects can only choose one out of the three alternatives. Therefore, the three alternatives are mutually exclusive. The results produced by the different probit models yield the same interpretation. Groups are still less risk averse than individuals with GROUP3 being the least risk averse. They are the most inline with the profit maximizing strategy. Similar with the individual probit regression models, we could see that both GROUP2 and GROUP3 rely less on experts overtime. Lastly, for additional robustness checks, we also ran several logit regression models (see Appendix D). We can see that both the probit and the logit regression models yield the same result and interpretations, hence we can conclude that the results produced by the two models are robust.

Generally, we see that there are differences among the investment decisions between individuals and groups. INDIV has a greater inclination of relying on experts and choosing the risk-free option than groups. Particularly, male individuals delegate the decisions more than their female counterparts while female individuals have a greater preference for the risk-free option. On the other hand, GROUP2 and GROUP3 are more geared towards making the decisions by themselves. Female pairs and male trios make the decision on their own more frequently than their pair and trio counterparts. Female pairs and all male trios are least likely to select the risk-free option. In terms of the existence of a learning curve, only GROUP2 had a significant learning curve.

| Table 5. Tobit Regression Models | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Hot hand Fallacy | | | | | | Gambler's Fallacy | | | | |
| Variables | INDIV | | GROUP2 | | GROUP3 | | INDIV | | GROUP2 | | GROUP3 | |
| Constant | -0.0108 | | -0.0188 | | -0.0133 | | 0.0235 | *** | 0.0210 | *** | 0.0217 | *** |
| Streak 0 | 0.0754 | *** | 0.0723 | *** | 0.0674 | *** | - | | - | | - | |
| Streak 1 | 0.0613 | *** | 0.0604 | *** | 0.0605 | *** | - | | - | | - | |
| Streak 2 | 0.0378 | ** | 0.0412 | ** | 0.0549 | *** | -0.0179 | *** | -0.0121 | *** | -0.0138 | *** |
| Streak 3 | - | | - | | - | | -0.0275 | *** | -0.0203 | *** | -0.0196 | *** |
| Streak 4 | 0.0497 | ** | 0.0782 | *** | 0.0306 | * | -0.0374 | *** | -0.0273 | *** | -0.0257 | *** |
| Streak 5 | 0.0613 | ** | 0.1079 | *** | 0.1035 | *** | -0.0345 | *** | -0.0259 | *** | -0.0262 | *** |
| Streak 6 | 0.0380 | | 0.0980 | *** | 0.0897 | *** | - | | - | | - | |
| *** - Significant at 99% confidence level | | | | | | | | | | | |
| ** - Significant at 95% confidence level | | | | | | | | | | | |
| * - Significant at 90% confidence level | | | | | | | | | | | |

*Does the Hot Hand Fallacy exist in both individuals and groups?*
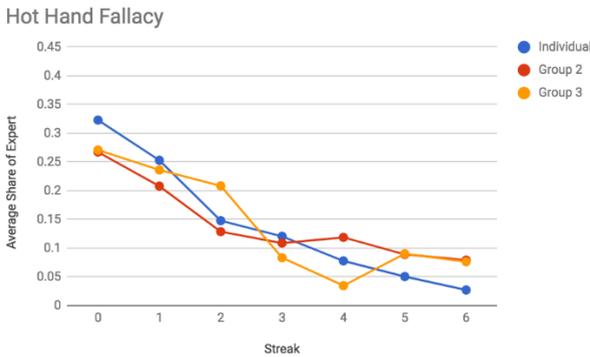


**Figure 3.** Average share of Expert against the streak of correct predictions

Figure 3 provides a graph that shows the percentage of decisions that are delegated to the experts conditional on the streaks of successful expert decisions. We plot the average share of decisions that expert $i$ gains from all decisions under RISKexpert against his recent streaks of successful predictions. An unbiased decision by the market participants would lead to each expert gaining $\frac{1}{5}$ of all decisions since we have a total of five experts in the industry. When a decision is unbiased, the past performances by the experts should not matter. We have observed and discovered a distinctly different pattern for the hot hand fallacy as compared to previous literatures which had a steady increasing trend on the percentage decisions delegated to the experts as the streaks increased (Stöckl et al., 2014). In all treatments, one can easily see the percentage share of decisions that expert $i$ loses despite his increasing correct predictions during lower streaks (below streaks of 3) while having an increasing percentage share for higher streaks (above streaks of 3). Since the participants are also given the experts' success rates from negative four periods back before the game actually started, it can be observed that the reliance on experts is quite high when there has been no streaks yet. The declining trend can be attributed to the participant's analysis and updating of beliefs regarding the experts ability since they are not explicitly aware of how experts make their decisions. The hot hand fallacy is observed when the treatments relied on the experts once again from the moment they have reached a certain number of correct predictions.
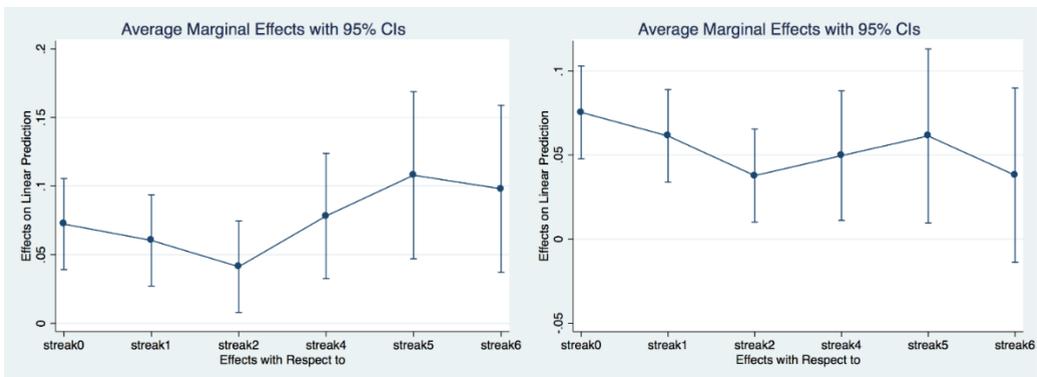


a) Individual          b) Group2
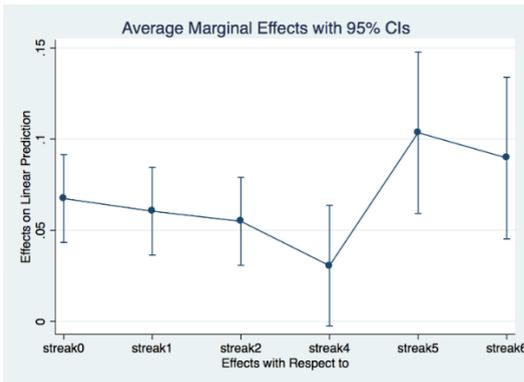
c) Group3

**Figure 4.** Average Marginal Effects for the Hot Hand Fallacy Tobit Regression

These were verified by running a tobit regression model where a streak of three correct predictions is the base dummy variable. For INDIV, there is a significant declining trend in the percentage of decisions delegated to expert $i$ during periods of streaks of 0, streaks of 1, to streaks of 2 correct predictions. An expert $i$ has a higher percentage share by 0.0754 when there is no streak while there is a lower percentage share for streaks of 1 and 2. However when expert $i$ experiences a streak of 4 and streak of 5 only, his percentage share of decisions increased. For GROUP2, the same declining trend is significant except only until streaks of 2. An expert $i$ has a higher percentage share by 0.0722 when there is no streak yet while his percentage share decreases for streak of 1 and streak of 2. When expert $i$ experiences a streak of 4, streak of 5, and streak of 6, there is a higher percentage share increase by .0782, .1079, and .0980 respectively. For GROUP3, the declining trend is until streaks of 4. The percentage share increases by .1035 for streak of 5 although it declines to .0897 for streak of 6. We have observed that GROUP2 is the most prone to the hot hand fallacy.

*Does the Gambler's Fallacy exist in both individuals and groups?*
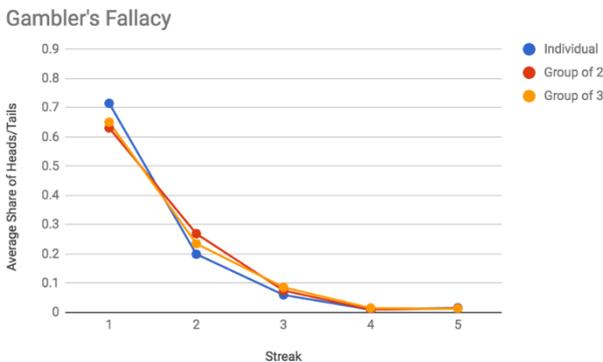


**Figure 5.** Average share of Heads/Tails against the frequency of appearance on past realizations/Streak.

Figure 5 shows the graph for the average frequency of choosing heads or tails depending on the streaks of head/tail realizations drawn immediately before from all decisions under RISKown. An unbiased behavior by the market participants should yield half of all RISKown decisions per each side of the coin. When a decision is unbiased, the past realizations of the coin should not influence the decision of the participants. In all treatments, we can see a declining trend in the average share of the side of the coin relative to the frequency of its appearance from previous realizations. During the first appearance of the coin side from previous realizations, if the participant selects the same side it is considered as a streak

of 1. If the same side appears again and the participant selects the same side, it is considered as a streak of 2 and so on. During a streak of 1, all treatments would still opt to choose the same side as evidenced by the high rate of average share of the head/tail side. However, after a streak of two consecutive appearance, the average share of the coin side declines for all treatments with INDIV having the most decline. We can observe the gambler's fallacy when a side of a coin is chosen less frequently after the same side appeared in a streak of several identical realizations.
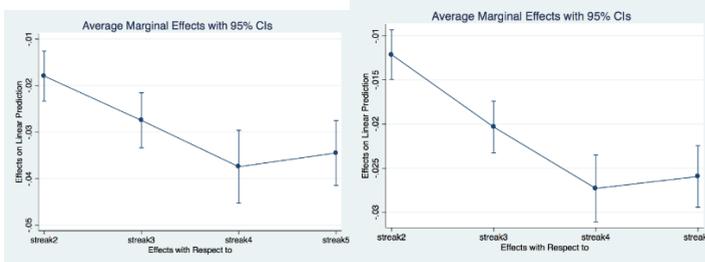


a)    Individual b) Group2
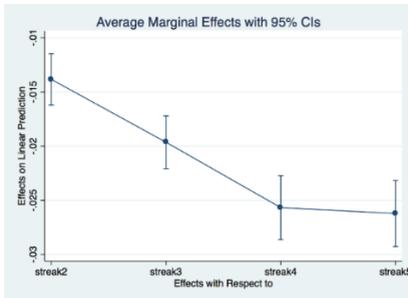


c) Group3

**Figure 6.** Average Marginal Effects for the Gambler's Fallacy Tobit Regression

We run a tobit regression to verify the results with the dependent variable as the percentage share of the each side relative to the streaks of its previous appearances with the streak of 1 as the base dummy variable. For all treatments, the coefficients are getting more negative as the streaks increases. This is an indication of the gambler's fallacy as the percentage share of the coin side decreases as it appears more frequently in the previous realizations. For INDIV, the participants would have an average percentage share of a particular coin side of .0235 for a streak of 1. When the streak increases to 2, the percentage share of that coin side decreases by -.0179. When the streak increases to 3, the percentage share decreases further by -.0275. The greatest percentage share decrease happens in a streak of 4 with a decrease of -.0374. For GROUP2,  the participants would have an average percentage share of .0210 for a streak of 1. The percentage share decreases by -.0121 when the streak increases to 2. The percentage share further declines by -.0203. The greatest percentage share decrease still happens in a streak of 4 by -.0275. For GROUP3, the participants would have an average percentage share of a particular coin side of .0217 for a streak of 1. When the streak increases to 2, the percentage share of that coin side decreases by -.0138. When the streak increases to 3, the percentage share decreases further by -.0196. Unlike the other treatments, GROUP3 has the highest percentage decrease during a streak of 5.

| Table 6. Treatment Average Earnings (in Taler) | |
|---|---|
| Treatment | Average Taler Earnings |
| INDIV | 1,258.83 |
| GROUP2 | 1,323.83 |
| GROUP3 | 1,507.00 |

GROUP3 has the highest average earnings while INDIV has the lowest. If an individual decides to become part of a pair or a trio, he would receive a marginal earning of 65 Taler by being in pairs or 248.17 Taler by being in trios on average. If pairs were to include one more member in the group to become a trio, each member of the group could have earned an additional 183.17 Taler on average.

## 4. Discussion

In terms of investment strategy, we find that groups make investment decisions differently from individuals. Particularly, they prefer to make the investment decisions on their own, not rely on experts, and choose the risk free option less. We also looked into some gender differences. In terms of the behavioral fallacies, we find that both groups and individuals alike are still prone to the hot hand fallacy and gambler's fallacy, but groups are marginally less prone indicating that there is a mitigation effect by being in a group. We find that trios are the least prone to the both biases, but does not completely eliminate it.

Our study presents new findings in both the hot hand fallacy and gambler's fallacy. We discovered pairs are the most prone to the hot hand fallacy while individuals are the most prone to the gambler's fallacy unlike in Stockl et. al (2015) where pairs are less prone to both fallacies as compared to individuals. We also discovered a different trend for the hot hand fallacy where participants actually chose the experts less during lower streaks of correct predictions (below streaks of 3) and relied on them during periods of higher streaks only (above streaks of 3) unlike in previous literatures which observed an upward trend in the share among all experts when their streaks increased even at low levels (Stockl et al., 2015)

A key assumption of the study is that participants possess common knowledge in maximizing returns. Therefore, using students as participants for the study is deemed to be sufficient as using actual investors. We give particular importance on the design of the experts in the experiment. It may be criticized that their expertise is unconvincing since the study only has two outcomes, thus the probability for correctly predicting the coin toss by oneself is relatively high. This indicates that convincing the participants that the experts possess expertise in an environment where one outcome has a 50% probability of happening may have posed a challenge. Additionally, the researchers recognize that the pricing of the services offered by an expert could be further improved by dividing the cost into fixed and variable fees, especially since this represents a more accurate picture of how experts are in reality. Lastly, the researchers recommend that further studies expand the group size in order to discover the boundary condition or the optimal group size with the greatest mitigation effect to the hot hand and gambler's fallacies. This study only focused on discovering the minimum group size where the mitigation effect begins.

To address our first research question on investment strategy, we tested the hypothesis that groups rely less on experts and choose riskier options as compared to individuals. Our main finding is that groups are far better optimizers of their investment returns than individuals since the latter had chosen more RISKexpert and RISKfree options, which provided a lesser payoff as compared to choosing the RISKown option.

In terms of a profit maximizing strategy in decision making, we look at the RISKown option. We discovered that groups make investment decisions closer to the expected return maximization than individuals since RISKown decisions yield higher returns than RISKexpert and RISKfree. Both GROUP treatments chose the RISKown option more and the RISKexpert and RISKfree options less. However, GROUP3 has the best profit maximizing strategy among all treatment from the Probit Regression Model 1. Conversely, this signifies that INDIV strays from the payoff maximizing strategy because they relied more on the experts and selected the guaranteed return more often.

In terms of expert reliance, we look at the RISKexpert option. It is important to remember that the so-called "experts" are mere randomizers, but the participants are not made aware of this. By virtue of their titles as experts, participants had relied on their predictions and paid a certain fee. We found that both GROUP treatments had relied less on the experts as evidenced by their negative significant coefficients under the regression model with GROUP3 relying on the experts the least. On the other hand, we find that INDIV had the highest reliance on experts. This implies that INDIV prefers to be less in control with the outcome of their decisions because they have higher proportions of decisions delegated to RISKexpert and more RISKfree options. Additionally, we find that INDIV had steadily relied on the experts throughout the duration of the experiment. There is no period where INDIV participants did not invest in an expert.

In terms of risk aversion, we look at the RISKfree option. The higher frequency of RISKfree decisions indicates a higher level of risk aversion because the RISKfree option guarantees a small return with no possibility of a loss. INDIV selected the RISKfree option the most and is thus the most risk averse. We find that both GROUP treatments have a lower risk aversion because they chose the RISKfree option less. However, GROUP3 has the lowest risk aversion in comparison to GROUP2. During the last five periods of the experiment, it is interesting to note that all treatments selected the RISKfree option more because they were trying to shield their earnings from any possible losses.

Since the experts in the experiments were mere randomizers, we explored the possibility whether the treatments would realize that there is in fact no expert opinion. This is made possible by adding an interacting variable *Period* to the treatment variables. We find that *Group2Period* and *Group3Period* are actually significant with negative marginal effects indicating that the likelihood of delegating their decision to an expert actually decreases for every period. As time progresses, GROUP2 and GROUP3 treatments relied less on the experts than their INDIV counterparts. This suggests that both GROUP treatment exhibits a learning curve while INDIV does not. By learning curve, we imply that they are slowly beginning to realize that delegating the decision to an expert will not give them the maximum results and that the experts are merely randomizing their predictions.

When we decompose the investment strategy by gender differences, we show significant results for RISKown, RISKexpert, and RISKfree. In terms of RISKown, female INDIV, female GROUP2, and all-male GROUP3 are the most likely to make the decisions on their own respectively. They prefer being in control of the outcome of their decisions and employ the most profit maximizing strategy. In terms of RISKexpert, female INDIV, female-male GROUP2, and all-male GROUP3 are the least likely to delegate the decisions to the experts respectively. They show greater skepticism in the ability of the experts. In terms of RISKfree, female INDIV, male GROUP2, and female-male-male GROUP3 prefer the RISKfree option the most.

To address our second research question on behavioral fallacies, we tested the hypothesis that being in groups can lessen the overall proneness to the hot hand and gambler's fallacies, and there exist a minimum group size for the mitigation effect. Our main finding is that while both individuals and groups are prone to the hot hand fallacy and gambler's fallacy, groups are less influenced as compared to individuals. Specifically, GROUP3 is the least prone to both fallacies.

In analyzing the existence of the hot hand fallacy, we noticed a difference from previous literatures that have observed an increasing trend as the streaks increased (Stöckl et al., 2015). In our results, we noticed a different general pattern of behavior. Initially, experts are chosen more frequently when they correctly predict the most recent previous period as compared to when they correctly predict the outcome of two and three periods back. Additionally, they are again selected more frequently after they have reached a certain number of correct streaks. Therefore, we observed a declining trend in choosing an expert during lower streaks (streaks below 3), but an increasing trend during higher streaks (streaks above 3). The hot hand fallacy is only observed for all treatments when they select an expert after that expert has reached a certain number of correct predictions.

In all treatments, the high frequency of choosing an expert when they predicted the most recent period correctly can be attributed to what we refer to as the "recency effect." Subjects are more influenced by the latest information presented to them when faced with a list of information for immediate free recall (Baddeley and Hitch, 1993). The decline in the frequency during correct streaks of 2 and 3 can be attributed to the wariness of the subjects regarding the expert's ability. Since they were not explicitly informed about how experts come up with their predictions, the subjects are observing the experts and updating their previous beliefs regarding the expert's abilities. It is only when the experts reach a certain number of correct predictions that the subjects begin to select the experts once again. This is an indication of the hot hand fallacy similarly observed by Stock et. al (2015). We find that INDIV and GROUP2 are more prone to the hot hand fallacy because they began to select the experts more frequently once again for streaks of 4 and 5. We consider GROUP3 as the least prone to the hot hand fallacy because they only selected the experts again after a streak of 5.

In analyzing the gambler's fallacy, we observed that the frequency of a particular coin side being selected decreases as the streaks of the opposite side increased. This is evidenced by the negative coefficients in the regression results. As the streak used in the regression increases, all coefficients become more negative, which is a clear indication of the proneness to the gambler's fallacy. This is in line with the findings by Stöckl et al. (2015) where the frequency of selecting the opposite outcome increases as streaks of the same side realized increased.

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INDIV is the most prone to the gambler's fallacy among all treatments since it has the most negative coefficients across all streaks and the greatest incremental change between streaks. Consequently, GROUP3 is the least prone to the gambler's fallacy as it has the lowest incremental change in coefficients between streaks.

After analyzing the treatments, we find evidence that groups are superior to individuals in terms of their investment strategy. Specifically, we find that GROUP2 shows significant learning curves on both RISKown and RISKexpert decisions while GROUP3 only has a significant learning curve on RISKexpert decisions. INDIV has no significant learning curves on both RISKown and RISKexpert. Comparing the magnitude of the learnings curves for RISKexpert, GROUP3 has a faster learning rate since it has a greater negative coefficient indicating it began to rely less on the experts earlier than GROUP2. Examining both the hot hand and gambler's fallacies, we find GROUP3 is the least influenced. Contrary to previous literature, we have found evidence that deciding individually can mitigate the effect of the hot hand fallacy rather than working in pairs since results suggest that pairs are actually the most prone to the hot hand fallacy. On the other hand, our findings on the gambler's fallacy support existing literature that INDIV is the most prone to the gambler's fallacy.

Some investment decisions made by individuals can also be made by groups. From the findings of our study, we recommend group investment decisions because of their more optimal investment strategy and less proneness to the hot hand and gambler's fallacies. After collectively taking into consideration all criteria, we find that GROUP3 is the most efficient treatment. It is more superior to GROUP2 because it is the least prone to the fallacies and have better investment strategies whereas GROUP2 is actually the most prone to the hot hand fallacy. Comparing INDIV and GROUP3, where INDIV represents an individual expert and GROUP3 representing an investment trio, we find evidence that investment trios make better investment strategies than experts as seen by our results. The results are in agreement with O'Leary (2011) and the Organization Theory where group performances, notably triads, mitigate the effects of biases, but the impact is not completely removed. For this study, we identify GROUP3 as the minimum group size where the mitigation impact is first felt.

As a policy implication, we recognize the benefits of forming investment clubs. Investment clubs are formed by non-professional investors who pool their money into a common fund and make investment decisions together. After establishing the minimum group size that mitigates the impact of the fallacies, we believe that the ideal investment club size is a triad. After factoring in the risk appetites of the investors, the triad can be further decomposed into specific genders. An all-male triad employs a more profit-maximizing strategy and higher risk appetite. However, for those who prefer a more risk-averse approach despite being less optimal, the composition of the triad should be female-male-male.

Investment clubs are applicable in settings where people would want to earn money through speculative markets such as the stock and bond markets when there are new information and opportunities to invest. We believe that the goals of the investment clubs are in line with the profit maximizing strategy supported by the rational choice theory since gathering a crowd to decide on investment strategies are found to be the smarter decision (Goldstein et al., 2014). This further heightens the implications of the Wisdom of Crowds where pooling non-professional investors together create superior decisions versus relying on the wisdom of the experts on investing.

Informal theory on financial economics provides that one of the investment strategies in maximizing returns is to buy low and sell high to reap capital gains (Raymundo, 2018). However, individual investors behave oppositely as they prefer to buy winning stocks and sell losing stocks (Johnson, Tellis, & Macinnis, 2005) since they are more prone to the hot hand fallacy, believing that the respective increase and decrease in prices will continue in the future periods. Since our results suggest that triads are the least affected by these behavioral biases, therefore they are more inclined in buying at low prices and selling at high prices, thus subsequently aligning their decisions with the objective of reaping the maximum capital gains available in accordance with their reaction on all available information on future prices.

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APPENDIX

Appendix A: Coin Realizations and Expert Performance

| Period | Coin | Expert 1 | Expert 2 | Expert 3 | Expert 4 | Expert 5 |
|--------|------|----------|----------|----------|----------|----------|
| 1 | Tail | L | W | W | L | L |
| 2 | Heady | W | W | W | L | W |
| 3 | Tail | W | L | W | L | L |
| 4 | Head | W | L | L | L | W |
| 5 | Tail | L | L | L | L | L |
| 6 | Tail | L | W | L | W | W |
| 7 | Tail | W | W | W | W | L |
| 8 | Head | W | L | L | L | L |
| 9 | Head | W | L | L | L | L |
| 10 | Head | L | W | W | W | L |
| 11 | Tail | L | L | W | L | L |
| 12 | Head | L | W | W | W | W |
| 13 | Tail | L | L | W | L | L |
| 14 | Head | W | L | W | L | L |
| 15 | Tail | W | W | L | L | L |
| 16 | Tail | W | W | W | L | W |
| 17 | Tail | L | L | W | L | L |
| 18 | Head | L | L | W | W | L |
| 19 | Tail | W | L | L | W | W |
| 20 | Tail | L | W | L | W | W |
| 21 | Head | L | W | W | L | W |
| 22 | Tail | W | L | W | L | L |
| 23 | Tail | W | W | L | L | L |
| 24 | Head | W | L | L | W | L |
| 25 | Head | L | L | W | W | W |
| 26 | Head | L | W | L | L | W |
| 27 | Tail | L | W | L | W | W |
| 28 | Head | W | W | W | L | L |
| 29 | Head | L | L | L | L | L |
| 30 | Tail | W | W | W | W | L |
| 31 | Tail | L | L | W | W | W |
| 32 | Head | W | L | L | L | L |
| 33 | Head | L | W | W | W | W |
| 34 | Head | L | W | L | W | W |
| 35 | Head | L | W | W | L | W |
| 36 | Head | L | L | L | W | L |
| 37 | Tail | L | W | W | W | L |
| 38 | Head | W | W | L | L | L |
| 39 | Tail | L | W | L | L | L |
| 40 | Tail | W | L | L | L | L |

Source: Stockl et al. (2015)

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Appendix B: Screens used during the experiment



Decision Screen



Results Screen



Trading Screen

Appendix C: Talers earned

| Tag Number | Taler Earned | Tag Number | Taler Earned | Tag Number | Taler Earned |
|------------|--------------|------------|--------------|------------|--------------|
| I-000 | 1,570.00 | G-000.a | 545.00 | K-000.a | - |
| I-001 | 1,350.00 | G-001.a | 1,685.00 | K-001.a | 1,350.00 |
| I-002 | 550.00 | G-002.a | 750.00 | K-002.a | 2,290.00 |
| I-003 | 1,640.00 | G-003.a | 1,015.00 | K-003.a | 2,090.00 |
| I-004 | 1,020.00 | G-004.a | 1,800.00 | K-004.a | 1,550.00 |
| I-005 | 2,170.00 | G-005.a | 1,490.00 | K-005.a | 1,350.00 |
| I-006 | 930.00 | G-006.a | 555.00 | K-006.a | 925.00 |
| I-007 | 895.00 | G-007.a | 1,500.00 | K-007.a | 2,440.00 |
| I-008 | 1,500.00 | G-008.a | 900.00 | K-008.a | 1,000.00 |

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| I-009 | 665.00 | G-009.a | 1,150.00 | K-009.a | 1,700.00 |
| I-010 | 760.00 | G-010.a | 1,405.00 | K-010.a | 1,485.00 |
| I-011 | 1,345.00 | G-011.a | 2,195.00 | K-011.a | 1,855.00 |
| I-012 | 995.00 | G-012.a | 1,085.00 | K-012.a | 1,465.00 |
| I-013 | 1,995.00 | G-0.13.a | 1,870.00 | K-013.a | 715.00 |
| I-014 | 1,115.00 | G-0.14.a | 1,660.00 | K-014.a | 2,250.00 |
| I-015 | 1,760.00 | G-015.a | 1,090.00 | K-015.a | 1,500.00 |
| I-016 | 1,200.00 | G-016.a | 1,950.00 | K-016.a | 800.00 |
| I-017 | 1,160.00 | G-017.a | 2,095.00 | K-017.a | 1,730.00 |
| I-018 | 1,420.00 | G-018.a | 1,800.00 | K-018.a | 2,005.00 |
| I-019 | 1,550.00 | G-019.a | 2,085.00 | K-019.a | 1,745.00 |
| I-020 | 1,350.00 | G-020.a | 645.00 | K-020.a | 1,645.00 |
| I-021 | 520.00 | G-021.a | - | K-021.a | 375.00 |
| I-022 | 585.00 | G-022.a | 1,035.00 | K-022.a | 1,330.00 |
| I-023 | 1,315.00 | G-023.a | 1,160.00 | K-023.a | 1,205.00 |
| I-024 | 1,135.00 | G-024.a | 1,450.00 | K-024.a | 1,445.00 |
| I-025 | 1,520.00 | G-025.a | 280.00 | K-025.a | 2,005.00 |
| I-026 | - | G-026.a | 1,375.00 | K-026.a | 1,455.00 |
| I-027 | 1,150.00 | G-027.a | 325.00 | K-027.a | 1,640.00 |
| I-028 | 850.00 | G-028.a | 950.00 | K-028.a | 1,280.00 |
| I-029 | 2,095.00 | G-029.a | 1,920.00 | K-029.a | 1,350.00 |
| I-030 | 1,655.00 | G-030.a | 1,950.00 | K-030.a | 1,235.00 |

Appendix D: Logit Regression Results

| Logit Regression Model 1 | | | | | | | | | |
| | RISKown | | | RISKexpert | | | RISKfree | | |
| Variable | Logit Coefficient | | Marginal Effect | Logit Coefficient | | Marginal Effect | Logit Coefficient | | Marginal Effect | |
| Constant | 0.3986 | *** | 0.7517 | *** | -0.6860 | *** | 0.1393 | *** | -2.3409 | *** | 0.1056 | *** |
| Group of 2 | 0.5733 | *** | 0.1022 | *** | -1.2720 | *** | -0.1455 | *** | 0.3692 | * | 0.0342 | * |
| Group of 3 | 1.7248 | *** | 0.3075 | *** | -2.2164 | *** | -0.2535 | *** | -0.6565 | ** | -0.0608 | ** |
| Period | 0.0036 | | 0.0006 | | -0.0150 | *** | -0.0017 | *** | 0.0122 | ** | 0.0011 | ** |
| F | 0.2227 | * | 0.0397 | * | -0.6441 | *** | -0.0737 | *** | 0.4901 | *** | 0.0454 | *** |
| FF | 0.7219 | *** | 0.1287 | *** | -0.2001 | | -0.0229 | | -1.1068 | *** | -0.1024 | *** |
| FM | 0.5712 | *** | 0.1018 | *** | -0.2145 | | -0.0245 | | -0.6706 | *** | -0.0621 | *** |
| FFM | -1.2813 | *** | -0.2284 | *** | 1.8813 | *** | 0.2151 | *** | 0.5675 | | 0.0210 | |
| FMM | -0.8532 | *** | -0.1521 | *** | 1.0511 | *** | 0.1202 | *** | 0.2269 | ** | 0.0525 | ** |
| FFF | -0.8111 | *** | -0.1446 | *** | 1.3845 | *** | 0.1583 | *** | -0.0126 | | -0.0012 | |
| *** - Significant at 99% confidence level | | | | | | | | | |
| ** - Significant at 95% confidence level | | | | | | | | | |
| * - Significant at 90% confidence level | | | | | | | | | |

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**Logit Regression Model 2**

| Variable | RISKown Logit Coefficient | | Marginal Effect | | RISKexpert Logit Coefficient | | Marginal Effect | | RISKfree Logit Coefficient | | Marginal Effect | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Constant | 0.5556 | *** | 0.7517 | *** | -0.9738 | *** | 0.1394 | *** | -2.2527 | *** | 0.1056 | *** |
| Group of 2 | 0.0969 | | 0.0172 | | -0.6505 | ** | -0.0743 | ** | 0.5894 | * | 0.0551 | * |
| Group of 3 | 1.6545 | *** | 0.2943 | *** | -1.7473 | *** | -0.1995 | *** | -1.3307 | *** | -0.1132 | *** |
| Period | -0.0040 | | -0.0007 | | -0.0007 | | -0.0001 | | 0.0081 | | 0.0008 | |
| F | 0.2227 | * | 0.0396 | * | -0.6409 | *** | -0.0732 | *** | 0.4895 | *** | 0.0469 | *** |
| FF | 0.7276 | *** | 0.1294 | *** | -0.2020 | | -0.0231 | | -1.1050 | *** | -0.0992 | *** |
| FM | 0.5759 | *** | 0.1025 | *** | -0.2165 | | -0.0247 | | -0.6693 | *** | -0.0619 | *** |
| FFM | -1.2809 | *** | -0.2279 | *** | 1.8904 | *** | -0.2159 | *** | 0.2292 | | 0.0201 | |
| FMM | -0.8530 | *** | -0.1518 | *** | 1.0545 | *** | 0.1204 | *** | 0.5742 | ** | 0.0537 | ** |
| FFF | -0.8109 | *** | -0.1443 | *** | 1.3899 | *** | 0.1587 | *** | -0.0127 | | 0.0021 | |
| Group2Period | 0.0238 | *** | 0.0042 | *** | -0.0330 | *** | -0.0038 | *** | -0.0106 | | -0.0010 | |
| Group3Period | 0.0034 | | 0.0006 | | -0.0244 | ** | -0.0028 | ** | 0.0292 | ** | 0.0024 | ** |

*** - Significant at 99% confidence level

** - Significant at 95% confidence level

* - Significant at 90% confidence level

| Multinomial Logit Regression Model 1 | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Variable | Risk Own Logit Coefficient | | Marginal Effect | | Risk expert Logit Coefficient | | Marginal Effect | | Risk free Logit Coefficient | | Marginal Effect | |
| Constant | 0.5421 | *** | 0.7540 | *** | Base Outcome | | 0.1402 | *** | -1.3863 | *** | 0.1059 | *** |
| Group of 2 | 1.2449 | *** | 0.1129 | *** | Base Outcome | | -0.1451 | *** | 1.3855 | *** | 0.0322 | * |
| Group of 3 | 2.3233 | *** | 0.3065 | *** | Base Outcome | | -0.2517 | *** | 1.3470 | *** | 0.0548 | ** |
| Period | 0.0136 | *** | 0.0006 | | Base Outcome | | -0.0017 | *** | 0.0234 | *** | 0.0011 | ** |
| F | 0.5934 | *** | 0.0323 | | Base Outcome | | -0.0734 | *** | 0.9379 | *** | 0.0411 | ** |
| FF | 0.3237 | | 0.1206 | *** | Base Outcome | | -0.0196 | | -0.8184 | ** | -0.1010 | *** |
| FM | 0.3137 | | 0.0864 | ** | Base Outcome | | -0.0250 | | -0.3993 | | -0.0613 | *** |

| Variable | Logit Coefficient | | Marginal Effect | | | Marginal Effect | | Logit Coefficient | | Marginal Effect | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| FFM | -1.9147 | *** | -0.2244 | *** | Base Outcome | 0.2131 | *** | -1.4751 | *** | 0.0113 | |
| FMM | -1.1060 | *** | -0.1600 | *** | Base Outcome | 0.1170 | *** | -0.4588 | | 0.0430 | |
| FFF | -1.3910 | *** | -0.1463 | *** | Base Outcome | 0.1581 | *** | -1.2869 | ** | -0.0118 | |
| *** - Significant at 99% confidence level | | | | | | | | | | | |
| ** - Significant at 95% confidence level | | | | | | | | | | | |
| * - Significant at 90% confidence level | | | | | | | | | | | |

| Multinomial Logit Regression Model 2 | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Risk own | | | | Risk expert | | | Risk free | | | |
| Variable | Logit Coefficient | | Marginal Effect | | Logit Coefficient | Marginal Effect | | Logit Coefficient | | Marginal Effect | |
| Constant | 0.8359 | *** | 0.7540 | *** | Base Outcome | 0.1402 | *** | -1.0552 | *** | 0.1059 | *** |
| Group of 2 | 0.5675 | ** | 0.0225 | | Base Outcome | -0.0718 | ** | 1.0052 | *** | 0.0493 | * |
| Group of 3 | 1.8792 | *** | 0.3089 | *** | Base Outcome | -0.1910 | *** | 0.2939 | | -0.1179 | *** |
| Period | -0.0011 | | -0.0008 | | Base Outcome | 0.0000 | | 0.0072 | | 0.0008 | |
| F | 0.5897 | *** | 0.0321 | | Base Outcome | -0.0729 | *** | 0.9318 | *** | 0.0408 | ** |
| FF | 0.3288 | | 0.1208 | *** | Base Outcome | -0.0201 | | -0.8128 | ** | -0.1007 | *** |
| FM | 0.3172 | | 0.0865 | ** | Base Outcome | -0.0254 | | -0.3952 | | -0.0611 | *** |
| FFM | -1.9204 | *** | -0.2236 | *** | Base Outcome | 0.2136 | *** | -1.4921 | *** | 0.0101 | |
| FMM | -1.1053 | *** | -0.1597 | *** | Base Outcome | 0.1167 | *** | -0.4573 | | 0.0430 | |
| FFF | -1.3951 | *** | -0.1459 | *** | Base Outcome | 0.1584 | *** | -1.2989 | ** | -0.0126 | |
| Group2Period | 0.0357 | *** | 0.0047 | *** | Base Outcome | -0.0039 | *** | 0.0213 | | -0.0008 | |
| Group3Period | 0.0232 | ** | 0.0003 | | Base Outcome | -0.0031 | ** | 0.0493 | *** | 0.0028 | ** |
| *** - Significant at 99% confidence level | | | | | | | | | | | |
| ** - Significant at 95% confidence level | | | | | | | | | | | |
| * - Significant at 90% confidence level | | | | | | | | | | | |

```
. ranksum  own, by( MM)                      . ranksum  own, by( M)

Two-sample Wilcoxon rank-sum (Mann–Whitney) test   Two-sample Wilcoxon rank-sum (Mann–Whitney) test

        MM |    obs    rank sum    expected          M |    obs    rank sum    expected
-------------+-----------------------------------   -------------+-----------------------------------
         0 |   8599   37904848    38695500          0 |   8439   37180853    37975500
         1 |    400    2590652     1800000          1 |    560   3314647.5    2520000
-------------+-----------------------------------   -------------+-----------------------------------
  combined |   8999   40495500    40495500   combined |   8999   40495500    40495500

unadjusted variance   2.580e+09         unadjusted variance   3.544e+09
adjustment for ties  -9.523e+08         adjustment for ties  -1.308e+09
                     ----------                              ----------
adjusted variance     1.627e+09         adjusted variance     2.236e+09

Ho: own(MM==0) = own(MM==1)          Ho: own(M==0) = own(M==1)
         z = -19.599                          z = -16.805
    Prob > |z| =   0.0000                 Prob > |z| =   0.0000
```

```
. ranksum  own, by( F)

Two-sample Wilcoxon rank-sum (Mann-Whitney) test

        F |     obs    rank sum    expected
----------+---------------------------------
        0 |    8359   36560134    37615500
        1 |     640   3935366.5    2880000
----------+---------------------------------
 combined |    8999   40495500    40495500

unadjusted variance    4.012e+09
adjustment for ties   -1.481e+09
                      ----------
adjusted variance      2.531e+09

Ho: own(F==0) = own(F==1)
         z = -20.977
  Prob > |z| =   0.0000
```

```
. ranksum  own, by( FM)

Two-sample Wilcoxon rank-sum (Mann-Whitney) test

       FM |     obs    rank sum    expected
----------+---------------------------------
        0 |    8679   38287094    39055500
        1 |     320   2208406.5    1440000
----------+---------------------------------
 combined |    8999   40495500    40495500

unadjusted variance    2.083e+09
adjustment for ties   -7.689e+08
                      ----------
adjusted variance      1.314e+09

Ho: own(FM==0) = own(FM==1)
         z = -21.198
  Prob > |z| =   0.0000
```

Appendix E:

## Mann Whitney U-test for RISKOwn

```
. ranksum  own, by(FF)

Two-sample Wilcoxon rank-sum (Mann-Whitney) test

       FF |     obs    rank sum    expected
----------+---------------------------------
        0 |    8519   37140145    38335500
        1 |     480   3355355      2160000
----------+---------------------------------
 combined |    8999   40495500    40495500

unadjusted variance    3.067e+09
adjustment for ties   -1.132e+09
                      ----------
adjusted variance      1.935e+09

Ho: own(FF==0) = own(FF==1)
         z = -27.176
  Prob > |z| =   0.0000
```

```
. ranksum  own, by(FFF)

Two-sample Wilcoxon rank-sum (Mann-Whitney) test

      FFF |     obs    rank sum    expected
----------+---------------------------------
        0 |    8799   39146180    39595500
        1 |     200   1349320       900000
----------+---------------------------------
 combined |    8999   40495500    40495500

unadjusted variance    1.320e+09
adjustment for ties   -4.872e+08
                      ----------
adjusted variance      8.326e+08

Ho: own(FFF==0) = own(FFF==1)
         z = -15.572
  Prob > |z| =   0.0000
```

```
. ranksum  own, by(FFM)

Two-sample Wilcoxon rank-sum (Mann-Whitney) test

      FFM |     obs    rank sum    expected
----------+---------------------------------
        0 |    8719   38714440    39235500
        1 |     280   1781060      1260000
----------+---------------------------------
 combined |    8999   40495500    40495500

unadjusted variance    1.831e+09
adjustment for ties   -6.759e+08
                      ----------
adjusted variance      1.155e+09

Ho: own(FFM==0) = own(FFM==1)
         z = -15.332
  Prob > |z| =   0.0000
```

```
. ranksum  own, by(FMM)

Two-sample Wilcoxon rank-sum (Mann-Whitney) test

      FMM |     obs    rank sum    expected
----------+---------------------------------
        0 |    8559   37540495    38515500
        1 |     440   2955005.5    1980000
----------+---------------------------------
 combined |    8999   40495500    40495500

unadjusted variance    2.824e+09
adjustment for ties   -1.043e+09
                      ----------
adjusted variance      1.782e+09

Ho: own(FMM==0) = own(FMM==1)
         z = -23.098
  Prob > |z| =   0.0000
```

```
. ranksum  own, by( M)

Two-sample Wilcoxon rank-sum (Mann-Whitney) test

        M |     obs    rank sum    expected
----------+---------------------------------
        0 |    8439   37180853    37975500
        1 |     560   3314647.5    2520000
----------+---------------------------------
 combined |    8999   40495500    40495500

unadjusted variance    3.544e+09
adjustment for ties   -1.308e+09
                      ----------
adjusted variance      2.236e+09

Ho: own(M==0) = own(M==1)
         z = -16.805
  Prob > |z| =   0.0000
```

```
. ranksum  own, by(MMM)

Two-sample Wilcoxon rank-sum (Mann-Whitney) test

      MMM |     obs    rank sum    expected
----------+---------------------------------
        0 |    8719   38480466    39235500
        1 |     280   2015034      1260000
----------+---------------------------------
 combined |    8999   40495500    40495500

unadjusted variance    1.831e+09
adjustment for ties   -6.759e+08
                      ----------
adjusted variance      1.155e+09

Ho: own(MMM==0) = own(MMM==1)
         z = -22.216
  Prob > |z| =   0.0000
```

```
. ranksum  expert, by( M)

Two-sample Wilcoxon rank-sum (Mann-Whitney) test

        M |     obs    rank sum    expected
----------+---------------------------------
        0 |    8439    37432136    37975500
        1 |     560     3063364     2520000
----------+---------------------------------
 combined |    8999    40495500    40495500

unadjusted variance   3.544e+09
adjustment for ties   -2.984e+09
                      ----------
adjusted variance     5.601e+08

Ho: expert(M==0) = expert(M==1)
           z = -22.960
    Prob > |z| =   0.0000
```

```
. ranksum  own, by( F)

Two-sample Wilcoxon rank-sum (Mann-Whitney) test

        F |     obs    rank sum    expected
----------+---------------------------------
        0 |    8359    36560134    37615500
        1 |     640   3935366.5     2880000
----------+---------------------------------
 combined |    8999    40495500    40495500

unadjusted variance   4.012e+09
adjustment for ties   -1.481e+09
                      ----------
adjusted variance     2.531e+09

Ho: own(F==0) = own(F==1)
           z = -20.977
    Prob > |z| =   0.0000
```

```
. ranksum  expert, by( MM)

Two-sample Wilcoxon rank-sum (Mann-Whitney) test

       MM |     obs    rank sum    expected
----------+---------------------------------
        0 |    8599    38624919    38695500
        1 |     400     1870581     1800000
----------+---------------------------------
 combined |    8999    40495500    40495500

unadjusted variance   2.580e+09
adjustment for ties   -2.172e+09
                      ----------
adjusted variance     4.076e+08

Ho: expert(MM==0) = expert(MM==1)
           z = -3.496
    Prob > |z| =   0.0005
```

```
. ranksum  expert, by( FM)

Two-sample Wilcoxon rank-sum (Mann-Whitney) test

       FM |     obs    rank sum    expected
----------+---------------------------------
        0 |    8679    39023333    39055500
        1 |     320   1472167.5     1440000
----------+---------------------------------
 combined |    8999    40495500    40495500

unadjusted variance   2.083e+09
adjustment for ties   -1.754e+09
                      ----------
adjusted variance     3.291e+08

Ho: expert(FM==0) = expert(FM==1)
           z = -1.773
    Prob > |z| =   0.0762
```

```
. ranksum  expert, by( FF)

Two-sample Wilcoxon rank-sum (Mann-Whitney) test

       FF |     obs    rank sum    expected
----------+---------------------------------
        0 |    8519    38284999    38335500
        1 |     480     2210501     2160000
----------+---------------------------------
 combined |    8999    40495500    40495500

unadjusted variance   3.067e+09
adjustment for ties   -2.582e+09
                      ----------
adjusted variance     4.846e+08

Ho: expert(FF==0) = expert(FF==1)
           z = -2.294
    Prob > |z| =   0.0218
```

```
. ranksum  expert, by( F)

Two-sample Wilcoxon rank-sum (Mann-Whitney) test

        F |     obs    rank sum    expected
----------+---------------------------------
        0 |    8359    37303693    37615500
        1 |     640   3191807.5     2880000
----------+---------------------------------
 combined |    8999    40495500    40495500

unadjusted variance   4.012e+09
adjustment for ties   -3.378e+09
                      ----------
adjusted variance     6.340e+08

Ho: expert(F==0) = expert(F==1)
           z = -12.383
    Prob > |z| =   0.0000
```

```
. ranksum  expert, by( MMM)

Two-sample Wilcoxon rank-sum (Mann-Whitney) test

      MMM |     obs    rank sum    expected
----------+---------------------------------
        0 |    8719    39256286    39235500
        1 |     280   1239214.5     1260000
----------+---------------------------------
 combined |    8999    40495500    40495500

unadjusted variance   1.831e+09
adjustment for ties   -1.542e+09
                      ----------
adjusted variance     2.893e+08

Ho: expert(MMM==0) = expert(MMM==1)
           z = 1.222
    Prob > |z| =   0.2217
```

```
. ranksum  expert, by( FFM)

Two-sample Wilcoxon rank-sum (Mann-Whitney) test

      FFM |     obs    rank sum    expected
----------+---------------------------------
        0 |    8719    39040310    39235500
        1 |     280   1455190.5     1260000
----------+---------------------------------
 combined |    8999    40495500    40495500

unadjusted variance   1.831e+09
adjustment for ties   -1.542e+09
                      ----------
adjusted variance     2.893e+08

Ho: expert(FFM==0) = expert(FFM==1)
           z = -11.475
    Prob > |z| =   0.0000
```

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## Appendix F: Mann Whitney U-test for RISKExpert

```
. ranksum  expert, by( FMM)                          . ranksum  free, by( M)

Two-sample Wilcoxon rank-sum (Mann-Whitney) test     Two-sample Wilcoxon rank-sum (Mann-Whitney) test

      FMM |      obs    rank sum    expected               M |      obs    rank sum    expected
----------+-----------------------------------         ----------+-----------------------------------
        0 |     8559    38418963    38515500                   0 |     8439    37802931    37975500
        1 |      440     2076537     1980000                   1 |      560     2692569     2520000
----------+-----------------------------------         ----------+-----------------------------------
 combined |     8999    40495500    40495500            combined |     8999    40495500    40495500

unadjusted variance    2.824e+09                       unadjusted variance    3.544e+09
adjustment for ties   -2.378e+09                       adjustment for ties   -3.114e+09
                      -----------                                            -----------
adjusted variance      4.463e+08                       adjusted variance      4.300e+08

Ho: expert(FMM==0) = expert(FMM==1)                    Ho: free(M==0) = free(M==1)
           z =  -4.570                                            z =  -8.322
    Prob > |z| =   0.0000                                  Prob > |z| =   0.0000


. ranksum  expert, by(FFF)                           . ranksum  free, by(FM)

Two-sample Wilcoxon rank-sum (Mann-Whitney) test     Two-sample Wilcoxon rank-sum (Mann-Whitney) test

      FFF |      obs    rank sum    expected              FM |      obs    rank sum    expected
----------+-----------------------------------         ----------+-----------------------------------
        0 |     8799    39519714    39595500                   0 |     8679    38994814    39055500
        1 |      200      975786      900000                   1 |      320   1500686.5     1440000
----------+-----------------------------------         ----------+-----------------------------------
 combined |     8999    40495500    40495500            combined |     8999    40495500    40495500

unadjusted variance    1.320e+09                       unadjusted variance    2.083e+09
adjustment for ties   -1.111e+09                       adjustment for ties   -1.830e+09
                      -----------                                            -----------
adjusted variance      2.086e+08                       adjusted variance      2.527e+08

Ho: expert(FFF==0) = expert(FFF==1)                    Ho: free(FM==0) = free(FM==1)
           z =  -5.248                                            z =  -3.817
    Prob > |z| =   0.0000                                  Prob > |z| =   0.0001


. ranksum  free, by(F)                               . ranksum  free, by(FF)

Two-sample Wilcoxon rank-sum (Mann-Whitney) test     Two-sample Wilcoxon rank-sum (Mann-Whitney) test

        F |      obs    rank sum    expected              FF |      obs    rank sum    expected
----------+-----------------------------------         ----------+-----------------------------------
        0 |     8359    37251154    37615500                   0 |     8519    38305214    38335500
        1 |      640     3244346     2880000                   1 |      480   2190286.5     2160000
----------+-----------------------------------         ----------+-----------------------------------
 combined |     8999    40495500    40495500            combined |     8999    40495500    40495500

unadjusted variance    4.012e+09                       unadjusted variance    3.067e+09
adjustment for ties   -3.525e+09                       adjustment for ties   -2.695e+09
                      -----------                                            -----------
adjusted variance      4.868e+08                       adjusted variance      3.721e+08

Ho: free(F==0) = free(F==1)                            Ho: free(FF==0) = free(FF==1)
           z = -16.513                                            z =  -1.570
    Prob > |z| =   0.0000                                  Prob > |z| =   0.1164
```

## Appendix G: Mann Whitney U-test for RISKfree

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```
. ranksum  free, by( MM)                   . ranksum  free, by(FFF)

Two-sample Wilcoxon rank-sum (Mann-Whitney) test   Two-sample Wilcoxon rank-sum (Mann-Whitney) test

          MM |      obs    rank sum    expected        FFF |      obs    rank sum    expected
-------------+---------------------------------    -------------+---------------------------------
           0 |     8599    38497031    38695500           0 |     8799    39579506    39595500
           1 |      400   1998469.5     1800000           1 |      200      915994      900000
-------------+---------------------------------    -------------+---------------------------------
    combined |     8999    40495500    40495500      combined |     8999    40495500    40495500

unadjusted variance      2.580e+09             unadjusted variance      1.320e+09
adjustment for ties     -2.267e+09             adjustment for ties     -1.160e+09
                        -----------                                    -----------
adjusted variance        3.130e+08             adjusted variance        1.601e+08

Ho: free(MM==0) = free(MM==1)                  Ho: free(FFF==0) = free(FFF==1)
         z =  -11.218                                    z =   -1.264
   Prob > |z| =    0.0000                          Prob > |z| =    0.2063


. ranksum  free, by( FFM)                   . ranksum  free, by( FMM)

Two-sample Wilcoxon rank-sum (Mann-Whitney) test   Two-sample Wilcoxon rank-sum (Mann-Whitney) test

         FFM |      obs    rank sum    expected        FMM |      obs    rank sum    expected
-------------+---------------------------------    -------------+---------------------------------
           0 |     8719    39194211    39235500           0 |     8559    38396623    38515500
           1 |      280   1301289.5     1260000           1 |      440   2098877.5     1980000
-------------+---------------------------------    -------------+---------------------------------
    combined |     8999    40495500    40495500      combined |     8999    40495500    40495500

unadjusted variance      1.831e+09             unadjusted variance      2.824e+09
adjustment for ties     -1.609e+09             adjustment for ties     -2.482e+09
                        -----------                                    -----------
adjusted variance        2.222e+08             adjusted variance        3.427e+08

Ho: free(FFM==0) = free(FFM==1)                Ho: free(FMM==0) = free(FMM==1)
         z =   -2.770                                    z =   -6.422
   Prob > |z| =    0.0056                          Prob > |z| =    0.0000


. ranksum  free, by( MMM)

Two-sample Wilcoxon rank-sum (Mann-Whitney) test

         MMM |      obs    rank sum    expected
-------------+---------------------------------
           0 |     8719    39212209    39235500
           1 |      280   1283291.5     1260000
-------------+---------------------------------
    combined |     8999    40495500    40495500

unadjusted variance      1.831e+09
adjustment for ties     -1.609e+09
                        -----------
adjusted variance        2.222e+08

Ho: free(MMM==0) = free(MMM==1)
         z =   -1.563
   Prob > |z| =    0.1181
```

# Employer Attractiveness to Chinese Potential Employees

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**Abstract**

Many multinational enterprises (MNE) are struggling with attaining economic revenue by controlling talent shortages in highly competitive emerging economies, such as China. Thus, competition is increasing to seem as an attractive employer by the target employees group. Employer brand building plays an important role for MNEs to attract and retain talents. However, few researches are focus on its effects on Chinese potential applicants' perceptions. This study aims to label Chinese potential employees' expectancies of future employers. It inquires to what extent employer attractiveness factors (from EmpAt) influence company reputation and intention of job application among Chinese students overseas. It asked Chinese students from three different universities in the UK to access an online survey. The conclusion is based on 300 responses to a hypothetical ideal employer. The conclusions proof that company reputation positively contributes to job applying intentions; also employer attractive factors of non-financial features, such as Interest value and application value have positive contributions to company reputation. Furthermore, some strategic advice is made for companies. The study is original because it focuses on MNEs' employer branding toward Chinese student and which will be valuable to companies in their upcoming recruitment.

**Keywords:** Human resources management, Corporate reputation, Employer attractiveness, Employer branding, Multinational enterprises, Recruitment

## 1. Introduction

### 1.1 The Background of the study

Many multinational enterprises (MNE) struggle for attained economic revenue and survived in highly competitive emerging economies, such as China (Sivertzen, 2013). As UNCTAD report shows, the number of Chinese employees of 100 world-famous MNEs far exceeds that of other countries (UNCTAD, 2016). Also, the proportion of Chinese employees is increasing year by year (UNCTAD, 2016).Human resources (HR) symbolise the investment in knowledge intensive companies, which are critical for securing competitive advantage (Wright et al., 1994). The potential employees' recruitment requires a high motivation to display productive behaviours. An MNE can get an advantage by finding productive staffs and maintaining them longer than their competitors (Boxall, 1996). Company reputation and employer branding are critical for attracting the talent (Cappelli, 2001). Brand and reputation are important in the product market, and are more and more critical in the labour market as well. It is vital to measure whether the company banding strategies work in practice. Thus this paper expands the model to cover the Chinese context, and explores the relationship between employer attractiveness and company reputation.

Employer branding is based on HR theories, and pays attention to improve the picture of companies for potential employees(Jiang and Iles, 2011). Only a few studies focus on the Chinese potential employees' expectation for future employers. (Anon, 2015; Jiang and Iles, 2011; Sivertzen et al., 2013; Zhu et al., 2014).

## 2. Literature Review

### 2.1 Employer Branding

Applicants often use company reputation as a reference for work environments when they compare several employers (Cable and Turban, 2003). Reputations are features, which are socially reviews according to their previous behaviours

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(Weigelt and Camerer, 1988). Employers want to reinforce their names as a brand by improving their reputation and strengthen their attractive factors, which is named employer branding.

Backhaus and Tikoo (2004) comment two transformations of branding. On one hand, employer branding is explicitly faces recruitment process and shapes the company's employer image. On the other hand, employer branding is explicitly faces audience both internal and external.Companies' internal branding focuses on employers' image creating process, its connection to employees, and employees' understanding of that image. Employer branding puts its emphasis on external people. It includes companies' self-exposition and social evaluation (Martin et al., 2005; Sivertzen et al., 2013).

Employer branding has different definitions. In this studythe author collects previous definitions to describe employer branding as structuring employer image focusing on potential employees, to distinguish the company in the industry (Backhaus and Tikoo, 2004).

The contents of employer branding vary, as employer branding is a developing concept. In this paper, the employer branding is on the resource and HR based views. Employer branding is a tool to grow employer attractive factors and expand company reputation. Some studies show that job applicants match the company's picture with their own requirements and standards (Sivertzen, 2013). Only when a job applicant's requirements and standards match the company's picture can the company enhance its attractiveness for this potential employee (Backhaus and Tikoo, 2004).

### 2.2 TheEmpAt Scale

The EmpAt scale is used to measure the employer attractive factors (Berthon et al., 2005), which evolvedfrom another scale (Ambler and Barrow, 1996). This scale contains of 25 points establishing five of them:Interest value, development value, social value, economic value and application value(Berthon et al., 2005). Interest value includes innovation and passionate for work (Ambler and Barrow, 1996 in Sivertzen, 2013). Social value covers the working environment and employees' relationship. Economic value means economic benefits. And, development value links with the potential development. Finally, application value includes the customer-oriented extent. This paper will pose its hypotheses, followed by the methodological section.

### 3. Methodology

### 3.1 Research Purposes and Question

### 3.1.1 Research Purposes

This study aims to label Chinese potential employees' expectancies of future employers. It inquires to what the extent employer attractiveness factors influence company reputation and intention of job application among Chinese students overseas.

### 3.1.2 Research Question

The research question for this study: how are Chinese potential employees' expectancies of the employer attractive factors linked to company reputation and job applying intentions? Increased knowledge of potential employees' expectancies will allow companies to shape their recruitment process and employer branding towards Chinese students more efficiently.

### 3.2 Hypothesis

When employers use employer-branding strategies, they need to identify the features, which link to a positive company brand. Because of this, companies can shape the strategies with the clear targets of attractiveness improvement. In the Berthon's (2005) study, participants were requested to rank the attractive factors of a celebrated company, against the EmpAt scale's five indicators. The positive relationship was proved between company attractive factors and the indicators. This paper takes Berthon's research deeper and involves the company reputation and application intentions as new variables with the extents of employer attractive factors. Several researches verify the relationship between a company's reputation and the employer attractiveness (Collins and Han, 2004). This paper presumes the relationship between employer attractiveness's dimensions and company reputation is unknown. In this regard, two hypotheses are as below:

*Hypothesis 1:*"Chinese potential employees' awareness of the five values of employer attractive factors has a positive contribution to their awareness of a positive company reputation."

From the psychology view, Edwards (2010) finds that a company with a good reputation encourages job applications. Through a study of business students, Walter et al. (2013) demonstrates that companies' positive opinions affect the candidates' job applying intentions due to the result from a survey faces business school students at 25 European universities. In the Zhu's study (2014), company's reputation has contribution to employees' psychological contract; then it will have an impact on employees ' job applying intentions, but there is no clear statement of the relationship between the two elements. Building on the literatures this paper is testing the relationship between job applicants' awareness of company reputation and job applying intentions.

*Hypothesis 2:* "High company reputation has a positive contribution to the Chinese potential employees ' job applying intentions."

### 3.3 Research Model

According to the literature review and these hypotheses above, this paper built a research model as below (Figure 3.2).
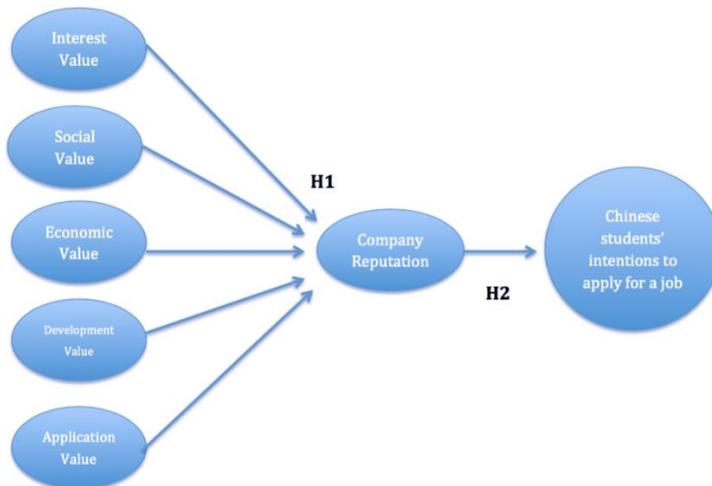


**Figure 3.2** Research model

3.4 Research Subject and Survey

This study asked Chinese Human Resource Management (HRM) students to access an online survey about a hypothetical ideal employer. Using hypothetical employer as a research object creates some potential problems. For example, the questionnaire participants cannot combine the hypothetical employer with the actual situation; the participants imagine the hypothetical employer as the perfect employer, resulting in the subjective result (Zhu et al., 2014). However, the use of hypothetical employers simplifies the structure of questionnaires and facilitates participants to answer the questionnaire. At the same time, the hypothetical employers will also resolve the errors caused by different employers' brand promotion efforts in different regions (Zhu et al., 2014). The students fit for this study, as they have job applying intentions and are also applicants for the employer. Choosing Chinese HRM students as sample because most of them enter the job market after graduation and there is a competitive recruitment among companies. Because of the enterprise architecture development in MNEs according to Chinese economy booming, the headquarters has more complex control over HRM activities and needs more HRM professionals (Chen et al., 2016). However, the current Chinese HRM's higher education cannot provide enough talents for MNEs (Li and Sheldon, 2010). There is a competition for Chinese HRM overseas returnees among MNEs (Cooke and Wang, 2014). Thus, employer branding is of special interest among this field.

Considering that for Chinese HRM students, if this survey directly names specific MNEs as future employers, some participants may not be familiar with those companies and will not have enough knowledge to answer the questions. In order to solve this problem, this study does not give designated employers, but provides a hypothetical ideal employer, so that the students can complete the survey according to their own image of ideal employer.

There is no transformation of the scale in this survey. The respondents are all Chinese students, who study in the UK. They should achieve at least grade 6.5 in the International English Language Testing System (IELTS) with the admission requirements, which means they can fully understand the questionnaire and address it appropriately. Moreover, more complex questions were placed at the front of the survey to attract the attention of the responders, and demographic questions were placed at the bottom.

## 3.5 Measures

### 3.5.1 Employer attractiveness

Employer attractiveness is testedagainst five values from the Berthon et al.'s (2005) EmpAt Scale. This paper chooses five out of 25 dimensions from the scale, namely, interest value, development value, social value, economic value and application value(Berthon et al., 2005). A five-point Likert Scale covers 5 levels (strongly agree to strongly disagree/1-5) was used.

### 3.5.2 Company reputation

Company reputation is tested using Turban et al.'s (1998) scale. In the Zhu's study (2014), this scale is used to measure the reputation of the company and proved to be effective in the final analysis of results. This scale involves four indicators, for example, "I have heard a lot of good things about this firm". This part uses the Likert scale as well.

### 3.5.3 Intentions to apply for a job

Intentions was tested using the scale build by Highhouse et al. (2003), such as, "I would accept a job offer from this company", with the Likert scale applied.

### 3.5.4 Control variables

Several control variables, for example, gender, age, academic results, and work experience, are included.

## 4. Presentation and Results

The Statistical Package for the Social Sciences (SPSS Ine, 2000) software package version 24 was used to analyse the data.The first section examines the accuracy of research measures by using reliability and factor analysis. The second section offers the inter-correlation among all variables. The mean and standard deviation of the each factor is shown. Finally, the hypotheses are verified through hierarchical regression analysis. In addition, the conclusions will be given at the very end of this part.

## 4.1 Data Gathered Overview

| Number of Questionnaires Distributed | 300 |
|---|---|
| Number of Questionnaire Collected Back | 300 |
| Response Rate | 100% |
| Number of Questionnaire Used For Analysis | 300 |

**Figure 4.1** Sample Profile

The sample profile of the survey is presented in Figure 4.1 the link to the online survey was accessible to the Chinese HRM students at the University of Edinburgh, Edinburgh Napier University and Heriot-Watt University in the UK. There is a total of 300 sets selected respondents.

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## 4.2 Data Presentation

| Variables | Categories | Frequency | Percentage (%) |
|---|---|---|---|
| Gender | Male | 90 | 30 |
| | Female | 210 | 70 |
| Age | Under 20 | 0 | 0 |
| | 21-24 | 270 | 90 |
| | 25-29 | 20 | 7 |
| | Above 30 | 10 | 3 |
| Work Experience | Under 1 year (include 1 year) | 270 | 90 |
| | From 1-3 years (include 3 years) | 10 | 3 |
| | From 3-5 years (include 5 years ) | 20 | 7 |
| | Others | 0 | 0 |

**Figure 4.2** Demographic Characteristics of Respondents

## 4.3 Reliability Analysis

| Variables | Number of Items | Cronbach Alpha |
|---|---|---|
| The five EmpAt factors (Total) | 15 | 0.860 |
| Interest value; | 3 | 0.486 |
| Social value; | 4 | 0.786 |
| Economic value; | 2 | 0.645 |
| Development value; | 2 | 0.817 |
| Application value. | 4 | 0.705 |
| Company reputation | 2 | 0.672 |
| Intentions to apply for a job | 3 | 0.847 |

**Table 4.3** Results of Reliability Test

The Cronbach Alpha of each item is presented in Figure 4.3. From this Figure above, the Cronbach Alpha values of Interest Value is lower than the standard. Therefore, the invalidity problem (Innovation Q2) is removed and the corrected Cronbach Alpha is reached 0.773. Others' Cronbach Alpha is ranged from 0.645 to 0.860. This Reliability analysis can ensure all used items are no error (Rashid et al., 2015).

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## 4.4 Descriptive Analysis

| Variables | Mean | Standard Deviation |
|---|---|---|
| The five EmpAt factors (Total) | | |
| Interest value; | 1.83 | 0.88 |
| Social value; | 1.55 | 0.80 |
| Economic value; | 1.42 | 0.59 |
| Development value; | 1.42 | 0.62 |
| Application value. | 1.8 | 0.70 |
| Company reputation | 1.57 | 0.62 |
| Intentions to apply for a job | 1.57 | 0.65 |

**Figure 4.4** Descriptive Analysis

All the variables' means and standard deviations are shown in Figure 4.4. The range of all means is between 1.57-1.83. Mean is used to measure the central tendency due to its mathematical qualities; the value, which exceeds the maximum and minimum limits,is named as average and sensitive (Rashid et al., 2015). In Figure 4.4, the interest value has the highest mean of 1.85 and the highest standard deviation of 0.88. It means the fluctuation of the sample data is bigger than others.

## 4.5 Factor Influence Company Reputation towards Chinese Potential Employees
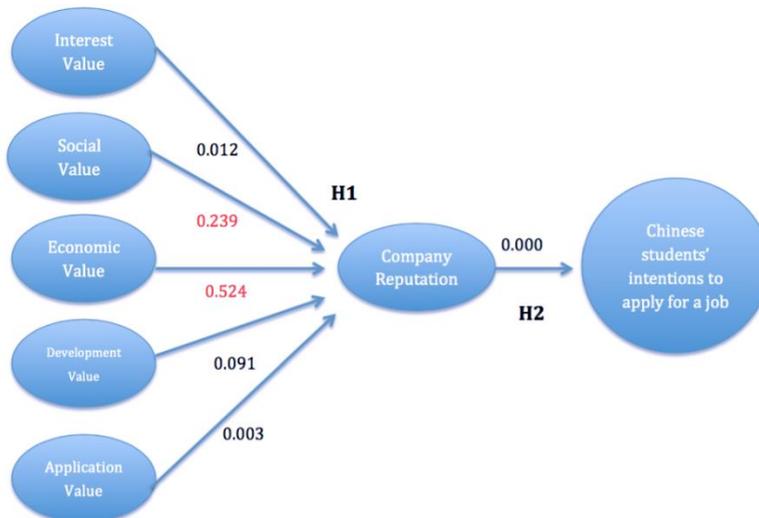


**Figure 4.5** Results of Regression Analysis on Turnover

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The results of significant effectbetween each variable from the regression analysis presented in Figure 4.5. The general level of significant effectis not good. However, compared to other variables, the economic value have the weakest significant effect, which is Sig t = 0.524 with the company reputation. This presented that economic value was not an indicator that will affect the company reputation towards Chinese potential employees. Similarly, the result can prove that both the social value and the development value cannot influence the company reputation. Thus, this paper can find that hypothesis 1 is partly confirmed as a consideration that affecting the company reputation as three out of five values were not indicators and there is a significant positive relationship between the EmpAt and company reputation, r (28)=.427, p=.000 (P value < .05). The regression analysis shows that the company reputation has significant effect with the job applying intentions towards Chinese potential employees, due to the Sig t = 0.000 and r (28)=.632, p=.000 (P value < .05). Consequently, the hypothesis 2 is accepted.

### 4.6 Conclusion

This part will show hypothesis testing' consequences in Figure 4.6. It analyze through the statistic data above.

| No of Hypothesis | Statement of Hypothesis | Results |
|---|---|---|
| H1 | Chinese potential employees' awareness of the five values of employer attractive factors has a positive contribution to their awareness of a positive company reputation. | Accepted |
| H2 | High company reputation has a positive contribution to the Chinese potential employees ' job applying intentions. | Partly Accepted |

**Figure 4.6** Results of Hypothesis Testing

## 5. Conclusion

### 5.1 Conclusion

This paper examines relationships between the EmpAt scale (Berthon et al., 2005), company reputation, and job applying intentions in an employer-branding standpoint so as to discover critical features a company should pay attention to in the employer branding strategies. All two hypothesesare accepted, though hypothesis 1 is partly accepted. Based on the results of data analysis, this study found that not all five employer attractive values have a positive link with employees' awareness of good employer's reputation.

First, the accuracy of this EmpAt scale has changed their linked indicators according to the originalscale.It may be because of the cultural differences between the scale country of origin (Australia) and China. One of the main reasons can be the cultural dimension of individualism versus collectivism; in Jie's report (2012), he scores Australian individualism dimension as 90 and only 20 for China. The more collectivist countries attach more importance to corporate reputation because people generally believe that groups with good reputation will bring benefits to individuals. However, at the individual level, the factors for evaluating whether a group has a good reputation are also more complicated (Zhu, F. et al., 2014). This result is also different from the study of Arachchige and Robertson (2011). Their studies used eight factors, beyond the 25 indicators from the original scale and three new ones were created. All three of these new factors are related to the psychological contract between employees and companies, the psychological factors may have not been fully considered in this study. This could be the explanation for the difference in results.

Second, this paper identifies employer attractive factors that Chinese potential employees may need to value in companies. Precisely, conclusions proof that the attractive factors of five values apart from social, economic and development value have positive contributions to company reputation. Consequently, non-financial features of the employers may be more critical to build a good reputation of the company to Chinese job applicants. The absence of social value is debated, since the working environment in social relations may also be important. The absence of development value is complex to clarify. One likely clarification may be that it is hard to evaluate self-feelings in a hypothetical ideal employer, than it is to evaluate it in a specific named company.

In Berthon et al.'s (2005) study, all five values in the EmpAt scale indicate the importance for potential employees' awareness of the company brand. Following this paper's results, companies should highlight innovation, self-worth, confidence, training, and the possibility of employee practice rather than financial reward in their employer branding strategies. Moreover, some similar theories were found in attractive factors of disabled employees (e.g. Nadeau and Olafsen, 2015), and non-financial features are more considerable in recruiting and maintaining staffs (Hiltrop, 1999). That the social value dimensions play a less important role may be because the Chinese overseas students' social characteristics. Many of them are used to living far away from their hometowns, lack of social life (Wu, 2016). Thus, social value is not their priority when seeking a job.

The company reputation has a positive relationship with job applying intentions. Moreover, this finding shows that Chinese HRM potential employees appear to choose a company that gives them a better self-feeling as future employer. This conclusion links to the importance of psychological contract with employer to maintain staffs (Wu, 2012).

Last but not least, not unexpectedly, this paper finds that company reputation positively contributes to job applying intentions, consistent with previous studies (Sivertzen, 2013).

### 5.2 Practical Implications

To the HR practitioners, the findings of this paper offer some proposals. Firstly, the employer branding strategies for the recruitment process should focus on non-fanatical features and avoid 'only driving employees by money'. Especially, this paper highlights the importance of application values as well as innovation values for Chinese candidates, when they appraise their ideal employers. This covers innovation, self-worth, confidence, training, and the possibility of employee practice. Those factors may improve job-applying intentions in Chinese job applicants. Secondly, companies that need Chinese employees with HRM professional background, or general talents, should shape their recruitment strategy against this appraisal as well.

In the practice of the company, group cooperation training based on solving practical problems in the work can be applied, so that the employees can understand the practical problems in the training, and also strengthen the confidence in solving the problems in the future work. At the same time, this kind of training can also help cultivate the innovative spirit of the employees. For example, in Google China, solutions and even patents generated during the training process can be applied to practical work (Feldman, 2012). This can increase the number of patents copyrights owned by the company, because employees' invention patent rights belong to the company during the work hours (Feldman, 2012), and it can also give employees a win-win opportunity to learn more skills.

### 5.3 Limitations and Further Research

This paper has several limitations. Firstly, because all conclusions are according to the survey data, assumptions link to the relations between variables are unjustified.

Secondly, Chinese HRM students are selected as respondents for this survey as they are popular for MNEs. This causes the competition of hiring talents between those companies, and they will highlight employer branding for Chinese HRM employees. The situation may differ from position to position and country to country. Generally speaking, using Chinese students as respondents is a double-edged sword. For the negative part, it may reduce external validity (Wells, 1993, in Sivertzen, 2013). In this paper, Chinese HRM students as a homogeneous group may isolate the results. Besides, this paper selects Chinese students from non-Chinese universities. Their expectations may differ from those students studying domestically. For the positive part, companies have graduate schemes whose target employees are mainly students. Hence this paper can be used as theoretical references for those schemes.

Thirdly, in terms of the outputs from the reliability test of the EmpAt scale one item was removed. Yet the theoretical appraisal proofs that items are credible. Finally, a mixture of data analysis methods may be used for related topics in future studies, considering the limits of small sample group adopted by this paper.

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# Peculiarities of the "Estonian" Tax Model in Taxation System of Georgia

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**Abstract**

Georgia is a country of a transitional economy, one of the most important financial determinants of which is the tax system, which is constantly undergoing the changes to different directions in terms of perfection and development. Taxes somehow create a peculiar "bridge" between the macrofinance and microfinance, among which the corporate income tax gains the function of the crucial important tax in terms of efficient operation of the business sector. Among the reforms carried out in the economy of Georgia, one of the most topical directions among the economic reforms is establishment of the so-called "Estonian" model and its further implementation. The present paper deals with the relative aspects of traditional and Estonian models of taxation and substantiates the necessity of determination of the main directions of its perfection.

**Keywords**: Taxation System; Corporate Income Tax; The Traditional Tax Model; Tax Deduction; The "Estonian" Tax Model; Taxable Expenses; Distributed Profit; Retained Profit.

## 1. Introduction

One of the most innovative reforms implemented in transitional economy of Georgia, namely in its tax system is the implementation and operation of the so-called "Estonian" model (hereinafter: The Estonian model) since 2017, aimed to promote the economic growth on the basis of increasing business reinvestment in terms of proper tax administration. That's why implementation of the model in the practice has been preceded by the significant macroeconomic (i.e. fiscal) and microeconomic (i.e. reinvesting) analysis (4). Due to the fact that the corporate income (profit) tax is the basic tax for any business entities, it is important to emphasize the main features that distinguish the Estonian model from the traditional one. The principal peculiarity in the new model is the fact that the corporate income taxation of the company is prolonged by the period of profit distribution which allows companies to save funds from the day of gaining the profit till the day of distribution of the profit and direct the mentioned funds to the reinvestment, or carry out its transformation into capital of the financial resources.

It is important to emphasize that the classical and imputation systems of corporate income taxation are used in the worldwide taxation systems. In the classical system, the distributed dividends are subject to taxation in parallel to corporate income taxation, while in the imputation system, the corporate income taxation excludes the moment of taxation of the profit distributed as dividends. There are also the half-imputation taxation systems, which provide partial exemption of the dividends from taxation or deduction in order to avoid the double taxation (James, Nobes, 2009, pp. 258-260). In Georgian reality, the Estonian model can be considered as a peculiar modification of the half-imputation system of taxation in which the profit distributed as dividends are taxable if it is aimed to reinvestment of the business subject as well as in other specific cases.

It should be noted that the results obtained using the Estonian model should be considered in the short-term and medium- and long-term periods of time. In the short term period, the tendency of decreasing the corporate income tax in the budget revenues is remarkable, while the expected trend of revenue, investment and economic growth - in medium and long-term periods. For the economy of Georgia, which seeks to attract foreign investments, it is especially important to carry out the qualitative and quantitative analysis of the Estonian model, where the above mentioned model was introduced in 2000, and the results of its effect on investment activity and, overall, on economic growth was observed from the medium-term (approximately after 2-3 years). The following table gives a clear highlight

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Table 1. Investment Characteristics of Estonia (Million Euros)

|  | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 |
|---|---|---|---|---|---|---|
| Foreign Direct Investments | 284.3 | 424.7 | 602.7 | 306.8 | 822.2 | 838.0 |
| Share Capital | 163.1 | 250.9 | 232.7 | 52.5 | 340.6 | 296.5 |
| Reinvested Profit | 46.1 | 116.0 | 247.9 | 215.4 | 409.5 | 573.0 |
| Miscellaneous | 75.0 | 50.9 | 123.1 | 67.0 | 94.2 | -40.9 |
| Foreign Investments Abroad | -79.2 | -66.7 | -225.5 | -139.9 | -137.4 | -216.5 |
| Net Foreign Investments | 205.0 | 358.0 | 377.2 | 166.9 | 685.0 | 621.5 |

Source: http://pbo.parliament.ge/media/k2/attachments/Profit_Tax_Reform.pdf

## 2. Comparative analysis of traditional and Estonian tax models

The main distinguishing features between the traditional and Estonian models of corporate income taxation can be summarized as follows:

The traditional model focuses primarily on the formation of financial results of the business, or on getting profit (result), while the Estonian model focuses on the distribution of financial results (process), which represents a peculiar "starting point" of the corporate income taxation;

According to the traditional method, all economic subjects (resident enterprise and permanent establishment of non-resident enterprise) are tax payers if it is not subject to exemption from the appropriate taxation, while according to the Estonian model, the taxation doesn't apply to commercial banks, micro financial organizations, credit unions, insurance companies, pawnshops (before the deadline defined by the transitional provisions of the Tax Code), system-electronic forms of totalizators and enterprises defined by the law on "Oil and Gas";

The difference between the gross income and the deductible expenses is the object of corporate income taxation in traditional model, or the taxable profit [(Gross Income - Deductions) x 15%], therefore, the focus is on the full taxation of income and the correct mechanism for the deduction of the expenses, while the Estonian model is fully focused on the mechanism of taxable disbursements/expenses, and offset/deductible funds [Taxable disbursements: 0.85 x 15% - offset and deductible funds].

According to the traditional method, the declaration is due to the annual declaration resulting from the consequences of the last year, while the Estonian model envisages a monthly declaration based on taxable disbursements, (accordingly, in case of absence of taxable disbursement, there will be no necessity of submitting the declaration);

The calculation of corporate income tax rate with respect to tax base considers on the one hand the standard ad valorem tax rate (15%), on the other hand it comprises the so-called "gross up" taxation (0.85 x 15%);

The traditional model is primarily focused on tax accounting, while the Estonian model is interlinking the financial and tax accounting systems (e.g. permanent and temporary differences caused by the depreciation and other similar moments are ignored);

The traditional model uses the so-called loss scheduling (prolongation) mechanism in the form of deduction of the losses of the previous years from the profit to be gained in the following years that is not familiar for the Estonian model due to its content;

According to the traditional approach, the expenses incurred by the company were ranged as deductible and non-deductible expenses and consequently, the fully or partially deductible taxes, allowed by legislation were considered to be tax expenses, while the non-deductible expenses were covered by the net profit received after taxation.

As for the new approach, according to which the very non-deductible expenses turned into the main deductible disbursements, except for separate exceptions (e.g. according to the traditional model, the financial sanctions paid in the budget in the form of the fines and penalties were not deducted while according to the Estonian model, they are not taxed unlike the other non-deductible expenses);

In the case of traditional taxation, the exemption from profit taxes in case of reinvestment concerned only agricultural enterprises and medical institutions, while the Estonian model due to its content, exempts the reinvestment activities of all enterprises;

The Estonian model provides a certain "asymmetrical taxation" with respect to organization which implies taxation of organizations in case of economic activity according to traditional rules of taxation, unlike the enterprises, representing the business entrepreneurs.

Table 2. Comparison of Traditional and Estonian Tax Models in Georgia

|  | Criterion | Traditional Model | Estonian Model |
|---|---|---|---|
| 1. | Emphasis on financial result | Getting of financial results | Distribution of financial results |
| 2. | Taxpayer | Each enterprise | Each enterprise (Except of financial institutions and other business entities) |
| 3. | Objectives of taxation | Taxable profit | Taxable expenses |
| 4. | Period of declaration | Each year | Each month |
| 5. | Tax rate | 15% | 15% by ,,gross up'' (15/85) |
| 6. | Oriented | On tax accounting | On proximity of financial and tax accounting systems |
| 7. | Loss scheduling (prolongation) | Is allowed | Does not exist |
| 8. | Non-deductible expenses | Do not enrolled in deductions and were so levied | Belongs to deductible expenses and are so levied |
| 9. | Exemption | In reinvestment cases belonged only to agriculture enterprises and medical clinics | In reinvestment cases belonged to each enterprises |
| 10. | Taxation of organizations | Envisaged (In certain cases) | Is not equalized with enterprises (i.e. is levied according to the early rule) |

Source: Author's own; based on the tax legislation of Georgia.

## 3. The main characteristics of the Estonian tax model

According to the Estonian tax model, the object of taxation is to actually carry out the following disbursements: 1. Distributed profit (including differences between prices); 2. Expenses and other payments not related to economic activities; 3. Free of charge supply of goods/services and/or transfer of funds; 4. Representative expenses exceeding the maximum amount defined in the Tax Code.

The distributed profit (2, Article 98[1]) is the profit of an enterprise that is distributed by the enterprise to its partners, in the form of dividends, in monetary or non-monetary form. The distributed profit also includes the so-called differences between prices (difference between the transaction price and the market price). The distributed dividends shall be taxed at the moment of payment, if it is distributed to a natural person, non-commercial (non-entrepreneurial) legal entity, non-resident or an enterprise exempted from the profit tax. Dividend is not subject to taxation if it is distributed to the enterprise, using the Estonian model of taxation. The essence of such mechanism of taxation is that the funds distributed in the form of dividends are not subject to taxation if remains in business and creates the relevant added value (enterprise), while the funds, distributed "out" of the business (natural person, non-commercial legal entity). Funds that will be distributed outside the country as repatriation of capital (non-resident entities) and funds, the distribution of which is potentially connected with such economic subjects with which the enterprise may have some "transactions" for avoiding taxation (the enterprise exempted from the profit tax), such disbursements are subject to relevant taxation.

It should be mentioned that in case of distribution of profit in the form of dividends, the year of profit gained doesn't matter for taxation but for avoidance of double taxation, the enterprise is entitled to set off accrued and paid the amounts of corporate income taxes during distribution of the net profit as well as the during 2008-2016, if the profit gained in these periods are distributed. In addition, the profit tax paid is calculated using a special formula that significantly facilitates the establishment of a tax base in similar cases.

For the purpose of corporate income taxation, the differences between the prices are equal to the transaction price and the market price for the operations carried out by the enterprise: 1. With interdependent person; 2. Offshore company (controlled operation); 3. With the person exempted from corporate income tax. Important nuance is also, that the difference between the prices is not subject to corporate income taxation if the party of the operation in case of the interdependent entity is the enterprise using the Estonian model, while in case of the entity exempted from the corporate income tax is the budget organization.

For accurate definition of the distributed profit as the main object of taxation and accurate calculation of the corporate income tax to be paid it's principally important to state what is not considered to be a distributed profit for the business entities. Such directions include: Amount equal or less than the amount paid in the equity capital of the partner when redeeming the share or for the liquidation of the enterprise (as such kind of disbursement is not considered as the dividend for the tax purposes); The dividends distributed as shares or by transferring into the ownership (while distribution of dividends in this manner, the funds are "not flowing" from the business, despite the enterprise is obliged to tax the paid dividends at source); The dividends distributed on entrepreneurial entities (except the individual entrepreneur and persons exempted from the corporate income tax, e.g. the company with a status of high-mountainous enterprise; agricultural company, the income of which received by the supply of agricultural products before the industrial processing does not exceed 200,000 GEL; organization, etc.); Transfer of assets to the state and / or local self-government through capital reduction, if most of shares belong to them; Distribution of dividends received from foreign enterprises (excluding offshores) (if dividends are derived from foreign enterprises and the profit gained from the local activities is distributed, then the profit gained as the dividends from abroad will be excluded and the profit remained from the difference will be subject to taxation).

Expenses and other payments not related to economic activities (2, Article 98[2]), together with the distributed profit, are another large group subject to corporate income taxation, including such expenses and payments which are not related to its economic activity. Such as: Expenses that are not documented (for example, the enterprise has acquired the supplies of the certain value however it can't be properly substantiated by bill of lading. Also, if the person accountable to the enterprise was given some funds by which he has made a purposeful procurement, but failed to submit the relevant document, which will be deemed as documented and will be relevantly taxed, etc.). Expenses which are not intended to gain profits, income or compensation (for example, the enterprise transferred a certain amount of money to the company with which no business connection is confirmed or some assets were acquired by the document written out on under the name of the company, e.g. furniture and it was used for private purposes, etc.); Expenses incurred from the goods purchased from a person with microbusiness and fixed taxpayer status (e.g. the enterprise has purchased stationery items from a person with microbusiness status on which the relevant document of expenditure is available but such expenses would not be deducted according to the traditional model, analogically, according to the Estonian model, such expenses are deemed to be the taxable disbursement); The interest paid on the loan  higher than the established interest rate (this is regulated by the subordinate act, namely the relevant order of the Minister of Finance). Furthermore, if the traditional model implied the taxation by using the accrual principle, the new model implies taxation of the existing financial expenses above the norm at the moment of paying); The mentioned group of taxation also include expenses in the amount exceeding the customs value of the goods purchased from the special foreign trade company; Payment for the purchase of the capital contribution, share of the non-resident or the entity exempted from the corporate income tax and other analogical taxable disbursements; The following payments carried out by the persons registered in the offshore country and persons exempted from the profit tax are also equated with non-economic costs and payments: for purchase of the loan securities; financial sanctions derived from contractual relations; advance payment; loan issuance; purchase of demands on them and the loss incurred by the transfer of the right of demand and others (the corporate income tax reduction with appropriate amount will be made in the relevant monthly declaration in case of return of loans, paid advance payments and other above listed payments). Expenses that are not related to the economic activity of the enterprise, also include provide loans to individuals and non-resident individuals, because in both cases, the usage of resource goes beyond business activity.

Free of charge supply of goods/services and/or transfer of funds (2, Article 98[3]) – according to the Estonian model of corporate income taxation, donation of the funds is subject to taxation, as well as the free of charge supply operations and loss of goods. In particular, the supply of goods or services are considered free of charge if it does not aim to gain profit, income or compensation from this point of view, as well as the loss of inventories and/or fixed assets at the moment of their identification. According to the traditional model, the identified loss of goods would be included in gross incomes and taxed on the basis of the annual declarations, in case of the Estonian model the identified loss of goods will be considered as free of charge supply of goods and taxed in the same year of the loss identification.

Some operations are not considered free of charge, ones which are related to the supply of the goods and services and cases after the transfer of funds: Free supply of goods, transfer of services or transfer of money (donation), which was taxed at the source of payment with income tax; Donations issued to charity organization not more than 10% of the net profit in previous calendar year (it should be taken into consideration that the donation shall be taxed not according to the relevant months of the charitable expenditure, but only from the reporting period when the total amount of donation paid in the current year exceeds the net profit margin of the previous year); Free of charge supply of goods and services to the state, local self-governance and/or public law entity (LEPL) or transfer of funds and free delivery of the bail or easement envisaged by the Civil Code; Delivery of real estate to a charitable organization if the recipient organization of this property carries charity at least in the last three calendar years to persons with disabilities.

Representative expenses exceeding the maximum amount defined in the Tax Code (2, Article 98[4)]) are also taxable expenses, the margin of which consists of 1% of the income received during the previous calendar year, and if the expenditure exceeds the income received – then 1% of the expenditure (it should be taken into consideration that like charitable donations, representative expenses are taxed not according to expenditure of all months but only from the reporting period when the total expenditure incurred during the current year exceeds the corresponding marginal indicator). The amount of representative expenses incurred during the year of establishment of an enterprise shall be determined by 1% of the expenditure incurred until the end of the current year. In the latter case, the following circumstance should be considered: in particular, if the annual expenditure will be more than 1% of the total expenditure incurred by the end of the year, or exceed the permissible norm, the enterprise must specify the declaration based on the appropriate correction.

Thus, based on the comparative analysis of the traditional model to the Estonian model and the detailed characteristics of its taxation objects, we can evaluate the positive and negative aspects of the Estonian model functioning. In particular: within the terms of tax administration, an ambivalent attitude is observed, i.e. the tax administration is relatively simplified in accordance with the convergence of financial and tax accounting systems and it's complicated because of the monthly declaration in terms of "labor-intensiveness"; The model incites the reinvestment of the business entities, but at the same time creates preconditions for reducing operating liquidity (monthly outflow of funds in the form of corporate income tax); The model stimulates the companies to save the financial resources from profit generating till it's distribution, but in some cases, vice versa, aggravates the tax burden (in relation to controlled and similar operations); From the position of business, the annulment of the mechanism of current payments can be considered as a positive moment, while the automatic dysfunction of the loss prolongation can be considered as negative; The possibility to set off the corporate income tax paid in the last years (2008-2016) can be considered as the positive side, too, while the negative side is an "asymmetric" taxation of organizations as compared to enterprises.

Table 3. The Positive and Negative Sides of Estonian Tax Model in Georgia

| Positive Sides | Negative Sides |
|---|---|
| Simplifying of tax administration (in terms of financial and tax accounting systems proximity) | complicated tax administration (in terms of monthly declaration procedure) |
| Encouraging and stimulating of reinvestment | Reducing of operating liquidity (Monthly cash outflow in the form of corporate income tax) |
| Saving of financial resources from profit generating till its distribution | Growing of tax burden in some cases (Offshore dealings and others) |
| Annulment of current payments | Cancellation of loss rescheduling mechanism |
| Possibility of offsetting of corporate income tax payed in previous (2008-2016) years | "Asymmetric" taxation of organizations compared to enterprises |

Source: Author's own; based on the tax legislation of Georgia.

## 4. Conclusion

Therefore, all of the above-mentioned allow us to assess the following key directions for the improvement of Estonian tax system-model: For the purpose of improving the efficiency of the taxation mechanism, it is necessary to establish and permanently update the unified registry of enterprises exempted from profit tax payment (like the registry of the offshore countries); In terms of taxation of the non-economic expenses, it is expedient to review the legislative norm regarding entities with micro business and fixed taxpayer status in terms of equal conditions with other entities; Transition to the Estonian model of financial institutions will only be based on adequate analysis and macroeconomic and microeconomic trends and a thorough assessment of the current situation; Assess the efficiency of model operation in terms of state-payer administrative relations; Implementation of qualified complex-detailed intermediate empirical research by the state, from the point of view of study of the expectation of Estonian model (the impact on the medium term budgetary revenues, internal and foreign investments and economic growth) as a possible increase of business reinvestment potential in terms of the macroeconomic consequences, which will enable the appropriate policy-makers to carry out a balanced and effective corporate taxation policy aimed to the long-term prospects.

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# Mapping Albania's Path in the 1990s: Between Authoritarianism and Democratisation

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**Abstract**

For nearly half a century as one of the most repressive communist dictatorships of Eastern Europe, thoroughly lacking a democratic political culture, Albania is considered to have undergone a prolonged and difficult transition towards liberalisation. Despite the political transformations that occurred in the beginning of the 1990s, the democratic quality continued to be influenced by the legacies of the past. In this context, the article focuses on the trails of Albania's political behaviour during the new pluralistic order where features of authoritarianism and intolerance were continuously manifested by the country's leadership. Given the frequent instability atmosphere, the article analyses and assesses the key moments of the first post-communist decade by trying to demonstrate that the need to build a proper democratic political system was (un)intentionally ignored by the ruling elite in turns, consequently leading to a rather distorted picture of Albania's transition path in the 1990s.

**Keywords:** Transition, authoritarism, democratisation, Socialist Party, Democratic Party

## 1. Introduction

Despite the deep scars that the totalitarian regime had left since the end of World War II, Albania showed its first signs of movement towards an atmosphere of eventual liberalization from the mid 1980s (Biberaj, 2000, p.55). In his speech to the 9th Congress of the Labour Party, the communist leader spoke of the freedom-loving, democratic and peace loving aspirations of the European peoples (Vickers, 1995, p.211). Being uttered in an era of totalitarianism, such words demonstrated that the future pathway of the country would be different in a way or another. The factors that would shape it, be they political, economical, social, cultural, historical or international were not going to operate separately but intertwined with one another. Indeed, it was noticeable, that Albania would soon embark 'on nothing less than a metamorphosis away from communist dictatorship' (Elbasani, 2004, p.33). However, it still remained to be seen what this phase of transformation was going to produce, and whether the country would find the energy to move beyond authoritarian politics and embark on a successful democratisation trajectory.

Paradoxically, during the first post-communist decade of the country, a "democratic deficit" was noticed. The political culture of authoritarianism remained deeply embedded, and as a result, the state failed to function [properly] in the new pluralistic context (Jano, 2008, p.59). Therefore, in order to shed more light on this important period of history, by employing some relevant interpretative literature on post-communist transition, this article outlines some of the key moments that shaped the bumpy trajectory of the Albanian fledgling (il)liberal model of governance. By examining some of the peculiarities of the transition process throughout the 1990s, reminiscing the old ways despite their new wrap up, it is argued that the lack of proper commitment to democratic norms of thinking and behaviour by the new ruling elite, unavoidably led to a much polarised political scene and a harder path along the democratisation journey.

## 2. The early steps towards change

The collapse of the communist regimes in Eastern Europe would unavoidably have a domino effect on Albania as well. The country's 1988 participation in the Balkan Co-operation Conference in Belgrade was a notable landmark for Albanian diplomacy, as it meant that the system's isolationism was over (Vickers & Pettifer, 1997, pp.15-16; Vickers, 1995, p.211). Despite this, in reality the Labour Party still maintained its strong grip over the country, at least until the revolution in Romania made it clear that popular ferment was toppling communist regimes elsewhere (Elbasani, 2004, p.33). The first appearance of intellectual dissidents in late 1989 was soon followed by 'the first gestures towards political liberalization' (Vickers, 1995, p.215; Biberaj, 2000, pp.58-61), but the set of lipstick concessions undertaken by the ruling elite to avoid the fate of communism in other Eastern European countries, were not sufficient to prevent the escalation of unorganised

popular demonstrations. The wind of change finally led to the formation of the first opposition Democratic Party (DP) in December 1990 around a small group of intellectuals and students, whose program, among others, consisted in Albania's "return to Europe" and commitment to a multiparty system (Biberaj, 2000, p.140; In Elbasani, 2004, p.34).

Such a large and challenging leap, however, could not be properly and substantially faced yet. The apparent 'confined track' that the new party system had to face, accounted for the weakness of a massive 'bottom-up movement' and lack of an "Albanian Havel" (Cotta, 1994, p.122; Pridham, 1997, p.35). Indeed, a great number of intellectuals, students, or simply non-conformists – who had dreamed of liberalism, democracy, and pluralism – had already started to think about their future by emigrating abroad, whereas for those who remained, politics would serve as a good career. The first multi-party peaceful elections in March 1991, won by the communists, showed that the DP was still not appealing to the large rural population (Vickers & Pettifer, 1997, pp.57-58; Biberaj, 2000, p.156). Therefore the new opposition had to make use of other means to get to power and institutionalize the scale of the wind of change.

Even the newly elected government led by Fatos Nano, despite its communist background, 'envisaged fundamental reforms, including an extensive privatisation and a rapid shift to a market-based economy' (Vickers & Pettifer, 1997, p.64; see also Kubicek, 1998). In a situation of rapid economic disintegration, such measures were the only way that could help become competitive and 'convert the existing power…to liberal democracy' (Lewis, 1997, p.402). A similar policy was also reflected in the deep reformation process to which the ruling left-wing party subjected itself, logically, in order to adjust to the necessities of the new era. However, the trade unions' general strike, along with the opposition deputies' frequent abstentions, could not save the so-renamed Socialist Party (SP) from losing governance of the country any longer. Two successive provisional governments proved to be a useless attempt. 'The power-hungry Berisha and his group' constrained President Alia to decree fresh elections, and give Albania a second chance to have a breakthrough with the past. (Vickers & Pettifer, 1997, p.65; Biberaj, 2000, pp.197-200).

The March 1992 elections finally brought to power the "progressive" new Democratic Party. What needs to be emphasized is 'the good luck wish' that the DP received from the defeated chairman Nano, something which would show for the first and probably the last time, that democracy means acceptance of the people's will (Vickers, 1995, p.231). The misery and despair that Albania was facing, was answered by 'the Democrat's own admission, that the rebuilding of the country's devastated economy would be a long and slow process' (ibid, p.233). The 'first priority' of the new government just a few days later would be the exhuming processes and the expropriation of the SP's main building in Tirana, these actions practically signalled that the future political environment in Albania would most likely be based on intolerance. Although analysts expected that after the first excitement of democratic transition the post-election country would have to face a series of problems and overcome a difficult legacy, few could foresee the trajectory of its adventure in realising democracy (Elbasani, 2004, p.34).

## 3. Settling the old scores through old methods

'The eagerness for power regardless of the cost' was the first real threat that the Albanian fledgling liberal democracy had to face (Vickers & Pettifer, 1997, p.87). To distract the people's attention from the deteriorating economy, a series of 'show trials' was 'settling the old scores' (Vickers, 1995, pp.235-238). The credibility of the democratic government was damaged even more when the opposition leader, Nano, faced trial. Indeed, 'the subsequent resignation of two... judges, and widespread adverse comment on the judicial procedures' (ibid. pp.238-239) was sufficient evidence to cast doubts upon the nature of the final verdict, which could signal the shaking foundations of Albania's liberal democratic dream. Elements of 'the openness to alternative leadership' were already fading in parallel sequence with the growing centralization of all the real power around President Berisha (Lewis, 1997, p.417). The continuous expelling of every opposing voice even within the Democratic Party itself and the replacement of specialists with party partisans was leading unavoidably to the creation of a new party state (Elbasani, 2004, p.35; 2009, p.77; Kubicek, 1998, p.2) that gradually elevated people's crisis of confidence towards the new intolerant leadership.

'The first opportunity that the Albanians would be offered in order to express their opposition to such authoritarian trends, was the 1994 Constitutional referendum...' (Vickers & Pettifer, 1997, p.246). The final draft, which attempted to create a strong central presidency at the expense of the parliament, did not proceed through normal steps. The matter being put to people, resulted in 'an overwhelming anti-government vote' (ibid, p.261), and this defeat was a real test for the government. Indeed, it was a 'nay' to the state's inefficiency in building independent institutional bodies and a 'nay' to the visible past patterns' legacy. Surprisingly, instead of serving as a warning bell, the ballot results helped the leadership of the country

draw distorted lessons for the future. The subsequent "response to approaching elections was quite authoritarian: the use of all means to retain power, showing contempt for the rule of law and fundamental democratic principles" (Elbasani, 2004, p.36).

'The domestic unpopularity, which continued to dominate political life throughout 1995, was also associated by contradictions within the Democratic ruling Party (Vickers & Pettifer, 1997, p.270). Berisha's old policy of expelling or eliminating opponents had continued affecting even the Chairman of the DP, Selami; the co-founder of the DP, Pashko; the head of the Supreme Court, Brozi; and the leading newspaper publisher, Lesi. Fearing an opposition victory in the upcoming elections, the DP devised a number of radical laws, in the hope that it would generate a second victory and re-establish a one-party state (Vickers, 1995, p.276; Elbasani, 2004, p.35). The Genocide Law of 1995 was a negation of the right "to elect and get elected". The implementation of this law would ban more than a quarter of the SP parliamentarians, including the leaders of the two main opposition parties, from holding any kind of office based on their political background (Dinmore, 1997, p.2). Indeed, such an open violation of the democratic competition rules would widen the path for an eventual 'looming crisis'.

The 1996 elections' campaign signalled the foreseeable results of the approaching ballot. The state-controlled media and 'the police and the secret service (SHIK) intimidation of the opposition candidates' implied that the 'survival of the party was equated directly with the survival and welfare of the state' (Greco, 1998, p.203; Vickers, 1995, p.242). Unable to resists the state-led pressure and massive irregularities, the opposition parties 'boycotted the balloting just hours before it ended' (Vickers & Pettifer, 1997, p.282). The doubtful victory of 122 (out of 140) seats for the democrats was a warning that this could possibly 'jeopardise the country's prospects for democratic developments' (ibid, p.283). By the mid 1990s it was quite obvious that Albania had failed to make a decisive break with the old authoritarian model of governing, despite having embarked on some reforms that would move the country from isolationism to democratic changes. As an analyst pointed out, while President Berisha "wanted democracy for Albania, it looked like he didn't understand the meaning of it or how it worked" (In Elbasani, 2004, p.35).

## 4. State of Albanisation - the wind of collapse

The successive focus of the democratic government on its own personal survival was accompanied by a lack of anticipation of a major common threat. Despite some international agencies' warnings – like from the Word Bank or the International Monetary fund about some shadowy economic activities – President Berisha restrained his government from interfering in the money-lending schemes (Greco, 1998, p.203). This was probably associated with his intention of not alienating people before the local elections. Therefore, this lack of state intervention unavoidably led towards a total bankruptcy of the domestic economy and people's growing resentment because of the collapse of pyramid dealings. Approaching the end of the 20th century, Albania was drifting backwards further and further backwards due to the 'poor management of the economic transition' (Elbasani, 2004, p.36).

Eventually the protesters' demands for political changes were answered by the use of force. What was 'considered as a political crisis' soon escalated to an armed one (Dinmore, 1997, p.2). The rebels' demands for Berisha's resignation were soon responded to by his re-nomination for a second mandate (ibid. p.2). His call for a multinational force could be judged as meeting his need to hold on power. But the multinational "ALBA forces" role was mainly crucial in the securing of a peaceful electoral environment which would settle the future government's legitimacy on leading the devastated country. What remained to be seen was whether problems were frozen or resolved! (Greco, 1998, p.56) Although some observers backed the claims of Berisha that the riots of 1997 were a counterrevolution aimed at restoring communism, they actually simplified a more complex situation – a rough-edged level of political culture combined with a facade democracy, which had morphed into an authoritarian system and a failed first transition (Elbasani, 2004, p.36).

Indeed, the process of Albanian politics' civilisation would be rather hard to reach. Unsurprisingly, the crisis led to the ousting of the DP and the election (in another dubious electoral contest) of the former communist party successors, the SP (O'Brennan & Gassie, 2009, p.64). Their victory on 29 June 1997 was followed by a campaign of political dismissals reflecting behaviours as if they owned the state. Moreover, Prime Minister Nano, who had already suffered imprisonment for nearly four years, displayed the same inclination to concentrate and personalise power against the formal separation of powers, the opposition who was refused to be seen as anything more than corrupted and criminalized, and the internal fractions organized around new party members like Ilir Meta and Pandeli Majko (In Elbasani, 2004, p.36).

In addition, the similarly intolerant mentality of the SP ruling elite, led to six arrests among the DP opposition deputies charged for crimes against humanity during the clashes of 1997, adding further fuel to the hot and fierce polarised atmosphere that existed between the two camps (Gazeta SOT, 2015, p.11). Coinciding with a period when the opposition was attempting to overthrow the government through a frequent boycotting policy, the assassination of the prominent opposition deputy, Hajdari, after having survived previous attacks, blew up the era of dialogue (Kubicek, 1998, p.7; Vickers & Pettifer, 2007, pp.158-170). An attempted *coup d'état* in September 1998 put the country once more under threat, but the people's lack of enthusiasm together with the international factor brokerage brought a quick end to it. The enforced resignation of Prime Minister Nano gave hope to a new generation of politicians, but the question remained whether the political class would move beyond cosmetic changes.

## 5. Picking up the pieces

The second period of transition was rendered moribund by power struggles among elites which determined the nature of much of political life (O'Brennan and Gassie, 2009, p.64). The new SP successor, Majko, indeed scored more popular support because of his cooperative spirit. The new constitution draft that he led towards victory by the end of 1998 brought the country a feeling of humble stability. Being broadly praised for its conformity with the international democratic standards, this constitution would guarantee fundamental rights and freedoms, and reinforce the separation of powers. 'The problem, however, is that the democratic institutions have often become instruments of political struggle, and forced to take sides with the party in power' (Elbasani, 2004, p.41).

One of the main differences between the new generation of the Albanian political class and their older colleagues of the first transition phase was that they were not encumbered by the hatreds and injustices they think to have suffered in the past and the perceived need to use their power for their own revenge (ibid., p.42). However, the structural-historical deficit of the weakness of the state compounded by the tendency to converge not around ideologically defined party programmes but rather around networks based on ties to family, clan and kinship (O'Brennan and Gassie, 2009, p.72), continued to cause serious problems to the political and institutional stability and efficiency of the country. Therefore, the atrophy of the journey towards democratisation kept remaining an endemic feature of Albania.

The political dynamics, by and large, showed that there was a huge gap between the ratification of a muddle of democratic codes and their implementation in practice (Elbasani, 2004, p.41). On the one hand, the former Berisha's self-proclaimed democratic leadership was characterised by a notable set of authoritarian features which, to a certain extent, were expected due to the inertia of the totalitarian legacy of the country. On the other hand, even the successive SP governments did not distance themselves from the use and abuse of democratic institutions that often produced 'administrative tsunamis' and 'wholesale changes' leading to greater difficulties in consolidating rule-based democratic institutions and the rule of law (O'Brennan and Gassie, 2009). Indeed, the tendency of identifying the state with the party in power continued to constitute the most identifiable feature of domestic politics of Albania even by the end of the first post-communist decade, putting a barrier to the consolidation of democracy and leaving its chances for success as an open-ended issue.

## 6. Conclusion

The democratisation processes in Albania proved to be long, difficult and tiring during the 1990s. The end of the one-party state and the emergence of a free-market economy initially raised high hopes among the people, but the fragility of the new democratic institutions, the atrophy of the rule of law, and the continuous serious problems of the political spectrum were regularly manifested in the Albanian post-communist governance by affecting the nature of transition profoundly. Indeed, the post-communist state and even society found great difficulty in breaking with many habits of the past, both personal and institutional alike (Vickers & Pettifer, 1997, p.3). The prevailing authoritarian fashion, unsurprisingly, reflected its negative impact on the demonstrably unfair elections and extreme party political contestation (O'Brennan & Gassie, 2009), showing that the first decade of the country's transition was not very fertile for the introduction of the political culture of liberal democracy.

Meanwhile, throughout the mid-1990s, poor management of the economic transition achieved its climax with the collapse of the fraudulent pyramid schemes that wiped the people's savings. The subsequent Albanian anarchy of 1997 and the quasi-destabilization in 1998, – also results of the conflicting political culture demonstrated by the parties – proved that they were as 'infected' as of their communists predecessors, since political opponents were considered as 'enemies' (Jano, 2008, p.59). Changes in government were followed by inevitable changes in every layer of the public administration as the

SP and DP rewarded supporters and punished public servants indentified with the other side (O'Brennan & Gassie, 2009, p.72); this added continuous fuel to the polarised environment of the country, making its democratisation journey longer and rougher.

The political dynamics, by and large, showed that there was a huge gap between the ratification of a muddle of democratic codes and their implementation in practice (Elbasani, 2004, p.41). The personalisation of power, the use and abuse of democratic institutions and widening the gap with the opposition were typical features that accompanied the trajectory of Albania's transition path even during the late 90s. In this respect, 'the main lesson to be drawn here is that democratization is possible but only if we are prepared to think 'outside the box'' (Warleigh, 2003, p.200). Indeed, the commitment to democratic norms and standards has not been able to go beyond the facade rhetoric of the country's elites from both sides of the political spectrum, resulting unavoidably in very poor management of the transition processes during the first post-communist decade.

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# The British Gendarmerie Mission in Albania, 1925-1938

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## Abstract

By 1925 Albania was striving for its existence as political and social chaos prevailed in the country. Once returned to power Ahmet Zog pursued an ambitious goal and sought to create a united and stable Albanian state. To this end, he believed the re-organization of an efficient gendarmerie would be the most urgent question he needed to address. In order to establish a neutral and effective force he believed the most appropriate choice was to hire British officers. This proved to be a complicated task as HMG did not want to interfere in Albanian internal affairs. However, they had long been champions of Albania's independence and territorial integrity, considering it the key to preserving peace in the Balkans. Integrating these two viewpoints the British will come up with an ad hoc solution. The gendarmerie mission in Albania will be instructed and trained by ex-British officers with no official ties to HMG. They will be hired as private individuals in order to avoid the resentment of Italy for interfering in Albania's internal questions. The British officers will remain in charge of the Albanian gendarmerie from 1925-1938. Their mission is an example of Great Britain's contribution in giving Albania a chance to consolidate its independence. On the other hand, the British official disentanglement with the scheme was part of the strategy to appease Italy and avoid friction between the two powers. Although faced with various difficulties, the gendarmerie mission managed to slow down the Italian penetration in Albania and became a stability factor in the country.

**Keywords:** Albania, Zog, gendarmerie, Britain, Italy

## Introduction

After WWI, brigandage and lawlessness were commonplace in Albania and made the country lag behind in stability and economic progress. Moreover, continuous uprisings and revolutions caused tremendous political upheaval which made the situation worse. There was an urgent need to ensure security and stability otherwise the country would be trapped in a vicious circle.

After his return to power, at Christmas Eve 1924, through a counter-revolution, Ahmet Zog started to take several measures which aimed at putting Albania on its feet. As he had promised earlier, Zog suppressed the army, believing this would bring stability and internal order. During the few years of Albania's independence, the army had been the greatest danger to central power, as it had failed to defend the country's borders which in its turn had led to troubles with the neighbors and had seriously threatened peace in the region. In addition, the army officers "spent their time plotting political intrigues"[1], which had produced a number of coups. It was obvious that so far it had weakened the state's integrity rather than protect it. Zog planned to change all this by substituting the army for a small and efficient gendarmerie

This article deals with Ahmet Zog's attempts to establish a functional gendarmerie which would ensure the preservation of law and order in Albania. As Zog himself explained 'the keystone of the arch of his building was reorganization of the gendarmerie.'[2] For this purpose, he would insist on having as inspectors, to organize the force, British officers. The attempt to involve Britain in the internal affairs of Albania will have implications which are representative of the weak international position of Albania in the 1920's and a reflection of the, rivalry, prejudice and fear that existed among the European Powers in the interwar years.

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[1] Bernd Fischer, King Zog and the struggle for stability in Albania, Çabej, Tirana 2004. p. 88.

[2] Jason Tomes, King Zog, self-made monarch of Albania. Sutton Publishing Limited, London. 2003. p. 76.

Britain was a disinterested power in the internal developments of the Balkans but at the same time, its foreign policy's cornerstone was the preservation of peace and the *status quo*. In the case of the Albanian gendarmerie mission, Britain found it hard to integrate these two objectives, although not without success. One of the main obstacles in implementing this scheme was the Italian resentment towards any interference from another country in the internal issues of Albania. Moreover, Britain and the other Great Powers had recognized Italy's special interests in Albania with the resolution of 9 November 1921. British engagement with the gendarmerie scheme could be interpreted as a breach of this resolution.

At the same time, Britain was considered 'the sponsor of Albania's independence'[1] and insisted in giving the country 'a fair start'[2]. But by 1925, the Italian attempts to gain predominance in Albania were threatening her integrity and independence. That was something that the British government wanted to avoid.

In March 1925 in Albania arrived 9 ex-British officers with the task of re-organizing the gendarmerie. HMG did not take any responsibility for their mission and they were considered private British subjects hired by the Albanian government. Thus, the Albanian gendarmerie was run by ex-British officers from 1925-1938 becoming an example of Great Britain's contribution in giving Albania a chance to consolidate its independence. On the other hand, the British official disentanglement with the scheme was part of the strategy to appease Italy and avoid friction between the two powers. Although faced with various difficulties, the gendarmerie mission managed to slow down the Italian penetration in Albania and became a stability factor in the country, thus partly fulfilling the objectives set since when it was founded.

**Albanian attempts to establish a gendarmerie mission organized by British officers**

In January 1925, following the example of western countries, similar in size to Albania, such as Switzerland, Zog established a small gendarmerie force to safeguard law and order. Such a police force had several advantages to maintaining an army. It was obvious that Albania could not defend itself from possible foreign attacks as all the potential countries that might want to invade it possessed a superior military force. Therefore, the army was a waste of money and a burden to the state budget. Moreover, this change would reassure the neighbors that Albania had no irredentist intentions dispelling prejudice and tension that already existed. However, the gendarmerie needed to be organized and trained as a modern institution to fulfill the needs of the young state and this required experience and expertise which Albania lacked.

The engagement of British officers as inspectors for the Albanian gendarmerie was thought to be the right solution. As Vickers puts it: "In comparison with other police forces, the British police were thought to be relatively honest, reliable and loyal."[3] Moreover, the presence of British officers in Albania would remove the Italian and Yugoslav suspicions that Zog favored one over the other, especially when earlier there had been rumors that "the organization of the gendarmerie would be trusted to a Yugoslav officer"[4] Therefore, Zog approached Great Britain for support and assistance.

In January 1925, under the instructions of Zog, the British Colonel W.F. Stirling, who had been adviser for the Albanian Ministry of the Interior since 1923, headed to England with the aim of recruiting a small number of officers who under his command would deal with the re-organization of the Albanian gendarmerie.[5] Through his personal contacts in England, he had advertised this employment opportunity, and even before his arrival in London the War Office started to get applications from interested officers.[6] Not being sure what to do, they turned to Foreign Office for advice. At a time when, Zog's scheme was simple and straightforward, the wide range interests of Great Britain made it a complicated matter.

The main British interest in the 1920's was the maintenance of the global balance of power and preservation of the status quo and peace.[7] While with regards to the Balkans, Austen Chamberlain, the British Foreign Secretary, declared that the lack of immediate British interests in the region precluded a necessity to plump for "any particular solution of any of its

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[1] TNA FO 371 11206 C 8933/391/90 Foreign Office Memorandum, British policy in Albania, 3 August 1926.

[2] W.N.Medlicott, Douglas Dakin, Gillian Bennett (eds.) Documents on British foreign policy, 1919-1939. first series, vol. xxii, no. 609. HMSO Press, Edinburgh 1980.

[3] Miranda Vickers, The Albanians, a modern history. MPG Books, London 1999. p. 119.

[4] Pietro Pastorelli, La penetrazione italiana in Albania (Gli accordi economici italo-albanesi del marzo 1925). Rivista di Studi Politici Internazionali, vol 33, no. 1. January-March 1966. p. 13.

[5] TNA FO 371 10656 C 1208/763/90 Eyres to FO, Re-organization of Albanian gendarmerie, 26 January 1925.

[6] TNA FO 371 10656 C 1208/763/90 Minutes by Nicolson, 28 January 1925.

[7] Michael Dockrill and Brian McKercher (eds.) Diplomacy and world power. Studies in British Foreign Policy, 1890-1950. Brian McKercher, Old diplomacy and new: the Foreign Office and foreign policy, 1919-1939. Cambridge University Press, 1996. p. 110

many problems"[1]. Obviously, there was a contradiction in the two attitudes. If the many problems of the region were not given a solution, friction among neighbors would lead to trouble and possibly war. The balance of power in the interwar years was so fragile that any disturbance, no matter how small, could have unpredictable results. Thus the Foreign Office found itself in front of a delicate situation. Should Britain interfere in Albania in order to avoid troubles in the region and contribute to preserving peace and the status quo, or should it remain neutral and not meddle in Balkan affairs?

There were several elements that needed to be considered before coming to a final decision. Any British approach towards Albania would be resented by Italy and this could weaken the ties between the two Great Powers. This was the last thing that Chamberlain wanted, especially after having established promising personal relations with Mussolini.[2]

At the same time, when the issue of the gendarmerie mission was being discussed in the FO, the British were in another dispute with Italy over Albania. In order to raise money he badly needed to consolidate the state administration, Zog had offered a number of economic concessions to foreign companies. Britain and Italy were competing for the Albanian oil prospecting rights which they both considered as lucrative. The British had been trying to resolve this issue through an understanding with the Italians, but the gendarmerie question would make a settlement improbable. In the instructions for Harry Eyres, the British Minister in Albania, the FO officials underlined that: "the matter is complicated on account of question of petroleum and tobacco concessions, both disliked by Italians, being raised in an acute form at the same time. These two questions may very likely prove capable of satisfactory arrangement if not treated in atmosphere of tension with Italy over gendarmerie.[3] As Harold Nicolson put it, the British government "did not wish, even in an indirect manner to be concerned in the internal affairs of Albania" and "would not be in favor of the proposal."[4] When informed of the British skepticism about the scheme, Zog felt disappointed. He was convinced that "there was no rational alternative to his plan as Albanians were kittle cattle to deal with and Englishmen alone had the requisite racial characteristics"[5]

However, in the FO there were also officials who thought differently. Eyre Crowe, the Permanent Under-Secretary, believed that a strong and efficient gendarmerie was the only chance Albania had to consolidate its independence and, preserve law and order as a precondition for the country's development. Although, the British government had done nothing to promote the scheme, if the British refused such a proposal, which for Albania was a "matter of life and death" and was considered "really the last chance"[6], only because the Italians were sensitive about it, this would be a heavy moral burden for them. In Crowe's point of view, this was an exaggerated whim of Italy, which "prefers that Albania should go to pieces rather than British officers should be employed to keep her together."[7]

Britain needed to find a middle course solution to the Albanian gendarmerie question. Howard Smith was convinced that: "if Zog shows some patience,…he will get his scheme through."[8] Whereas a month later, it was the same Smith who reported that "nine officers that colonel Stirling tried to hire are already in Albania.[9]

Even without the official involvement of the British government, the scheme for the re-organization and training of the Albanian gendarmerie by British officers had gone through.[*] As Chamberlain once noted: "in difficult times there is no more common ending to a political discussion between Englishmen than the phrase: 'Well, I suppose we shall muddle through somehow.'[10] Colonel Stirling had not been put obstacles but had not received official support either. This way HMG did not take any official responsibility, avoiding Italian resentment, and at the same time, gave Albania a chance to establish order

[1] TNA FO 371 10695 C 6952/251/62 Minutes by Chamberlain, 21 May 1925.

[2] Peter Edwards, The Austen Chamberlain Meetings. The Historical Journal, vol. 14. No 1. March 1971. pp. 153-164.

[3] TNA FO 371 10656 C 2063/763/90 FO to Eyres, 13 February 1925.

[4] TNA FO 371 10656 C 1208/763/90 Minutes by Nicolson, 28 January 1925.

[5] TNA FO 371 10656 C 2985/763/90 Eyres to FO, 17 February 1925.

[6] TNA FO 371 10656 C 2063/763/90 Minutes by Eyre Crowe, 13 February 1925.

[7] TNA FO 371 10656 C 1570/763/90 Minutes by Eyre Crowe, 3 February 1925.

[8] TNA FO 371 10656 C 2985/763/90 Minutes by Howard Smith, 4 March 1925.

[9] TNA FO 371 10656 C 4748/763/90 Memorandum by Howard Smith, 2 April 1925.

[*] There were nine ex-British officers engaged in the re-organization of Albanian gendarmerie. To administer the force more effectively, the country was divided in four zones with one inspector and a deputy each. Lieutenant Colonel Stirling who held the post of general inspector was located in Tirana. Major Palmer and captain Barbrook were responsible for the area of Tirana; lieutenant colonel Richey and captain Hunt responsible for Shkodra; major Sutton and lieutenant colonel Macmullen responsible for Peshkopia; major Jackson and captain Reypert responsible for the region of Saranda.

[10] Austen Chamberlain, The Permanent Bases of British Foreign Policy. Foreign Affairs, vol.9, no. 4, July 1931. p. 535-36.

and law, by employing ex-British officers in a private capacity. The only thing left to do was to see how this experiment would work, although it was known that its success was not an easy task.

**The reasons for the successes and failures of the gendarmerie mission**

For little more than one year the gendarmerie mission led by Colonel Stirling made little progress. There were a number of organizational and personal issues that contributed to this.[1] However, Zog was determined to continue with the scheme and decided to trust this task to another British officer. In October 1926, General Jocelyn Percy arrived in Albania and was appointed Inspector General of the gendarmerie. Even though, HMG was not involved in the selection of the General, it had been Harry Eyres, the now retired British diplomat who had negotiated his employment.[2] Seeds, the British minister in Albania declared that "for however undesirable the engagement of these officers may rightly be in the opinion of HMG, a collapse of the scheme … would be most regrettable from the point of view of British prestige."[3] However, the lack of cooperation and support from the Albanian officials and the Italian intrigues to impede and denigrate the gendarmerie scheme, on several occasions put into question its continuity.

As soon as he took the post of inspector-general, Percy implemented several substantial changes to increase the force's effectiveness and prevent the Italian penetration in Albania. He reduced the force from 3000 men to 2300 making it more manageable and efficient. Percy introduced a rotation system for his inspectors so that they would be always active and not establish personal ties in the regions they covered. He was responsible directly to president Zog, thus avoiding obstacles which in the past had been created by the lack of ability and negligence of the Albanian officials. All these changes were highly appreciated by HMG who considered the gendarmerie "indispensable for policing the country districts by small groups in a manner for which the army is entirely unfitted..."[4]

Moreover, the force was a crucial instrument in balancing the Italian influence in Albania and served to preserve peace and tranquility. Seeds reported that: "British prestige and reputation for impartiality, stands high and while they remain here the officers will produce a soothing moral effect on Albanians inclined to *chafe* at what seems a complete Italianisation of their country."[5]

Despite the difficulties, General Percy slowly took the mission forward. In the north, the most troublesome area of the country, he was a well known and liked figure and "the stream of Albanian officers coming to the General's office at the Prefecture in Scutari to obtain action and decisions on points at issue, was a striking testimony to the prestige which he and his staff were acquiring."[6]

The work of the General and his officers was so impressive and important that in 1928 they were considered a factor contributing to preserving peace in the Balkans. The Yugoslav minister in Albania, Mihaillovic, in a conversation with Hodgson, the British Minister in Albania, declared that: "the British officers now in the country were up to their work and of tried neutrality. It would be a bad day for Yugoslavia were they to be withdrawn and the frontier exposed to be the scene of unending incidents which any troublous faction could create at will and in which Yugoslavia would invariably play the role of villain"[7]

However, General Percy held the control of the gendarmerie at a time when having results was a difficult task. On several occasions the force was faced with insurmountable difficulties which put in doubt the success and continuation of the mission. The most delicate issue was the lack of financial support which impeded the implementation of substantial reforms. The amount of money available to meet the needs of various state departments was small and there was a harsh competition to get it. In view of the amount finally placed at his disposal general Percy had been obliged to make various modifications in his intended program. The pay of the men had had to be reduces, effectives cut down and projected

[1] For more details see: Simon Martin, The Gendarmerie Mission in Albania, 1925-38: A move on the English chess board? Contemporary European History, vol. 7, no. 2. July 1998. pp. 143-159.
[2] TNA FO 371 12068 C 5387/787/90 Minutes by Harvey, 17 June 1927.
[3] TNA FO 371 11209 C 11060/1077/90 Seeds to Chamberlain, 5 October 1926.
[4] TNA FO 371 12068 C 3905/787/90 Seeds to Chamberlain, 19 April 1927.
[5] Ibid.
[6] TNA FO 371 12069 C 8803/946/90 Wyndham to Harvey, 20 October 1927.
[7] TNA FO 371 12845 C 5992/1090/90 Hodgson to A.Chamberlain, 27 July, 1928.

improvements in transport arraignments sacrificed. Hodgson reported for the FO that: "The day when an efficient gendarmerie will be created in Albania is not yet in sight.[1]

Another obstacle in the work of the gendarmerie was also the mentality and attitude of the Albanian officials. Politicians would interfere in the appointment or promotion of the gendarmerie's officers making the force lack professionalism. It was also common for the gendarmes to receive their salaries several months in arrears therefore bribes and abuses were considered acceptable. General Percy by his repeated threats of resignation followed by no sequel, had so weakened his own position that no pressure he could bring to bear was likely to be effective. It was clear that the Albanians were using the British officers as: "a very convenient screen behind which they can hide the vices of their administration."[2] Was the British mission to withdraw from Albania to avoid disgrace?

Even though, this was a matter of prestige, British diplomacy had to take other developments into account before deciding the course of their policy in relation to Albanian gendarmerie. In 1931, Italy had started a new attempt to advance its penetration in Albania. The difficult economic situation of the country gave Italy a good chance that in exchange for a financial loan, it could impose political conditions that restricted the independence of the country. The Italians suggested that Albania should be given a loan of 10 million gold francs a year, on condition that it would continue to spend 15 million gold francs to buy arms and ammunition and recognize Italy the right to control its spending. Practically, this "was nothing but an attempt to turn the Albanian army into a mercenary force paid by Italy."[3] In order to avoid such an eventuality, the British considered as crucial for Albania's independence to remind King Zog "of the value in the long run, in his own interests of having a few neutral advisers"[4] The British gendarmerie inspectors had already proved up to the task.

By 1934 the Italian government had intensified its forward policy in Albania aiming at taking full control of the country. The Italian actions convinced HMG that the Italian penetration in Albania did not aim at preserving peace in the region but seriously threatened it. That is why British diplomacy considered the gendarmerie mission as a valuable tool to check upon the Italian interference and that is why they insisted that the gendarmerie mission should go on. If before HMG were reluctant to get involved and concealed their attitude because of the Italian resentment, now it was clear that maintaining peace and counter balancing Italian influence was more important than preserving good relations with Italy. Thus, Hodgson explicitly stated to King Zog, the Foreign Secretary's view, that for HMG it was desirable "of his continuing to employ General Percy and the British officers under him as organizers of the Albanian gendarmerie. It was, too, preferable, on general grounds that the organization of the armed forces of this country should be entrusted to officers of two nationalities rather than that is should be in the hands of officers of one country only."[5]

The British demand was in accordance with Zog's desire to resist the Italian control and have British support in it. Therefore, he acknowledged that "General Percy and his officers had rendered signal service to Albania and that he would try so to arrange matters that the contracts of the British officers were prolonged without delay."[6] That would put the Italians in front of a *fait accompli*. The official British support for the gendarmerie scheme made the British officers continue their mission for another four years.

**The epilogue of an experiment**

By 1938, with the international crises the European Powers were involved in, the British attention had moved away from the small country in the Balkans. King Zog had been unable to resist alone to the Italian pressure and they had managed to take control of all the state institutions, including the gendarmerie. As Ryan, the British Minister reported from Albania: "The officer commanding the gendarmerie has become devoted to Italians and that the second in command is in their pay."[7] For HMG it did not matter anymore if the British officers left Albania. The fate of the small country could not influence the international peace any more. Britain had long started the preparations for war against Germany and the presence of its officers in Albania would only create troublesome complications with the Italians, at a time when the final configuration

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[1] TNA FO 371 13562 C 3383/3383/90 Hodgson to Austen Chamberlain, 7 May 1929
[2] TNA FO 371 15148 C 4338/1053/90 Hodgson to A. Henderson, 16 June 1931.
[3] Bernd Fischer, King Zog and the struggle for stability in Albania, Çabej, Tirana 2004. f. 210.
[4] TNA FO 371 15149 C 123/123/90 Minutes by R.M.A Hankey, 21 January 1932.
[5] TNA FO 371 18339 R 6486/67/90 Hodgson to John Simon, 14 November 1934.
[6] Ibid.
[7] TNA FO 371 22308 R 1959/1575/90 Ryan to FO, 22 February 1938.

of the Alliances had not been established. The FO concluded that they "would not be altogether sorry to see the disappearance of British subjects generally from the Albanian state service. Their position is anomalous and there is always the danger of their getting into difficulties from which we may have to extricate them at the cost possibly of direct friction with the Italians."[1]

In September 1938, General Percy and the last three British officers under his command, were considered to have fulfilled their mission in Albania and had been asked to return home. Their performance had been praised and criticized, but by the time their mission was over General Percy and his assistants were considered "entirely as useful agents of British influence in Albania"[2] And as David Funderburk puts it:

"The British ex-officers' contribution to the spread of English influence was considerable. The British mission, by instruction of the Albanian gendarmerie and the close relations between General Percy and King Zog, provided somewhat of a check to Italian ambitions. ….The British mission was indicative of the extension of British influence in Albania beyond political and economic relations."[3]

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[1] TNA FO 371 22308 R 1959/1575/90 Minutes by FO, 19 March 1938.

[2] Ibid.

[3] David Funderburk, Anglo-Albanian Relations, 1920-1939. Revue des Etudes Sud-Est Europeennes, t.XIII, 1975, no. 1. p. 120.

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TNA FO 371 22308 R 1959/1575/90

# The First Attempts for the Syntax of the Regional Variety of Chameria

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**Abstract**

This paper is part of the chainwork that deals the syntax study of the dialect of the province of Chameria, a prominent and conservative language of the south of Albania. This study is the second in this regard. Initially, we were dealing with the intonation of Chams and mainly with its syntactic value  (Troplini 2016). For the syntax of the of the regional variety of Chameria, there is no previous effort. In this paper, as a basic literature, we have only used our previous works for the Cham in the sociolinguistic framework, where we were dealing with phonetic, morphological, lexical, historical linguistics etc. Our first effort also underlines the first diffculties of this syntactic treatment, as well as the objectives that need to be fulfilled in the perspective, through a deep scientific monograph that will conclude a long-term gap in the study of the cham variety in terms of syntax. The method we used is the inductive one. The work has been based on a qualitative research basis. We are based on a series of direct interviews with elderly speakers of this province who were born mainly in Chameria and subjected to ethnic cleansing. This generation well preserves the most southern and extreme Albanian talk. In this study, we intend to highlight some of the most important phenomena of the Cham variety which will then serve for a deep work in terms of syntax.

**Keywords**: Cham, conservation, syntax, phenomenon

## Introduction

Chameria is a province of Albania which was annexed by Greece after the Great Powers decision at the Ambassadors Conference in London on July 29, 1913. Although it is an Albanian land, it still continues to be today part of Greece. Residents of this province have undergone mandatory resettlement, driven either through psychological violence (and here we consider the Turkish-Greek exchange signed under the Lausanne Agreement in January 1923, where a good part of the Cham population by their Muslim beliefs became unjustly  part of this exchange being referred to as Turks), or through physical violence after 1944 (here we consider the violent cleansing of the population of this province from the homeland by associating it with inhumane massacres towards Albanian territory). After these two events, there is evidence that the departure of the Chams occurred both before 1923 and after 1944, where the Chams due to insecurity for life have been removed not only in the two directions above, but also in America, Australia, Canada and so on. Part of Orthodox Chams have remained in their territories and continue to live there to this day. The cruel and violent part is denied to this day the right to return to the homeland (although it is an Albanian land).

We recall that the Cham talk belongs to the South Tosk subdialect, along with the Laberia dialect. It is separated from the latter by the Shalësi River in the south of Delvina and includes the inland dialects that lie geographically from Konispoli throughout Chameria to the Preveza bay (Gjinari, Shkurtaj 1997: 184).

For a reader who is unaware of the linguistic values of this speech, we summarize them briefly with two words:

- The Cham speech still shows similar resemblances with the first written document of written Albanian of Gjon Buzuk's "Meshari".

- The talk of Chameria now shows common phenomena of the system with Arbëresh's dialects (early Diaspora in Italy, Bulgaria, Ukraine, America, etc.).

- There is now a noticeable similarity with some of the most extreme state and ethnic Albanian dialects and of the Chameria regional variety.

- After that (relying on in-depth studies on this subject) we say with conviction that Cham dialect is a pure argument that the premise for studying Albanian beyond the documented period is great (Troplini 2016: ).

## RESULTS & DISCUSSION

Language developments in us began to be inspired by the panorama of generative-transformative grammar which began to franticize **the attempt to see language in context** (Robins 2007 )

According to Totoni, the syntax of the Albanian language is characterized by two important approaches:

Traditional syntax. The syntax that it was customary to practice to school.

Syntax studies of recent years. This direction has attempted to see as object of syntax the study of the structure of the living language, the structure of the discourse, in the entirety of the factors that characterize it, both linguistic and extralinguistic ... (Totoni 1970: 143)

Regardless of this study, our aim regarding the syntax of Chameria is guided by the second approach, therefore, according to recent developments in the syntax field. The variety of the syntax of the Chameria promises a lot in this regard. A clear argument for this is the treatment we have done in cham intonation (Troplini 2016 ), a special intonation, important for the science of phonetics, with a syntax function, which we have named: **intonation with expressive function**, which differs for the *distinctively stylistic expressive intonyms*.

In this paper we thought the reader to get familiar with her condition, giving him the opportunity to be familiar with some phonetic, morphological, lexical and semantic phenomena, which have a special significance in the syntax. So this study initially starts with the so-called simple syntax, to then go on in other deep syntax studies for this talk. Although apparently it seems that we have adhered to the formal-grammatical direction (so, it looks like a kind of morphology of the syntax), we are convinced that the treatment of the following phenomena should be initially done in this way because of the special significance they carry in inside the sentence or phrase, and moreover, this type of treatment leaves us room to deepen even further in the future.

As we know, syntax is not a new science. Although the word *syntaxis* was used in Dionysus Trachas's work (about 100 BC) the greatest disadvantage of the "Tèchnē *grammatikē*" work was the syntax treatment. However, in the first works on the syntax (2nd century AD) Apollo Diskoli (Apollonios Dyskolos) has used the class and grammar categories system of the "Tèchnē grammatikē" without any changes. This is what he did two centuries later (II century AD). He is also known for the treatise titled "On Syntax." (Robins 2007)

According to Graffi, the treatise clearly mentions the so-called *solosms* (Graph 2003: 17) (syntax errors within the phrase). If we were to refer to Cham and use Apolo Diskol's term about how he called and what he considered *syntaxial mistakes*, we would say that the "solosms" are really numerous in Cham dialect and comparatively more higher than in other Albanian dialects, as it is an ancient variety and as such, well preserved, it seems still underdeveloped alongside other Albanian speeches.

Cham is, on the one hand, a regional speech, but compared to the Albanian, along with the Arbëresh speeches (Arberesh's everywhere, in Italy, Greece, Mandria, Zara, etc.), it can be considered as a conservative language, antique, with visible distinctions from the Albanian, in the phonological, morphological and lexical system (Troplini 2017). Grammatical mismatches are numerous in it, also because cham is a language with noticeable recurrence during the discourse. Therefore, in Cham we find them present everywhere. We are putting some examples (few in number, if we would consider their great presence in this speech):

*Kërkoj numër shtatë* (I'm searching number seven); Na sell qahi (He brought the pie); s'biheshin këmbët (I couldn't walk); kalova gjithë shpitë (I passed all the houses); *kish çelur zjarrë* (Light the fire); *u kthe prap në shtëpi (*He is back home again); *nuk lii njeri as të hin / as të dil ka porta* (he did not allow anyone to enter nor to go out)

These grammatical abnormalities can be observed both in phonetic and morphological terms, which has been noted in previous syntactic papers, since these words, despite these anomalies, retain the same syntax functions as in normal uses.

If we look at the verbal system, it serves a study space in which we can see endless uses of "normative errors" in the syntax. More and more varied, this phenomenon occurs when we consider the types of verbs in sentences, unformatted forms, the nominal or composite predicate, as well as all possible predicate links. Examples are also inevitable in complementary limbs.

Since this is a very common phenomenon in this talk, we have avoided the detailed descriptions of the examples (of the type, *in the phrase "had fired fire", it is noted the use of the unspoken form instead of the remarkable form in the direct object*), as in every cham sentence three or four wrong adjustments of this type can be found and it is impossible to do all a detailed description as long as it is about the same phenomenon.

It should be said that in ancient times this is a repeatable phenomenon, but that does not mean that they constitute an obstacle to the handling of the syntax of speech, we quote:

"*Syntax (like all language), being a descriptive and non-normative discipline, cannot be confined to considering only sentences judged correctly by school and normative grammar, but instead be based on intuitive judgments of native speakers of a certain language, which evaluates the combinations of words as correctly or wrongly formed*"(Graffi 2003: 27)

On the other hand, it should be emphasized that the no-grammatical forms are present in various forms for different talks. As we said earlier, it is much more noticeable in the old Albanian languages, where the Cham, the Early Diaspora and all the ends speaking dialects of the Albanian are listed, ranked on the basis of the conservative criterion in them. The more conservative they appear, the higher is the phenomenon of grammatical abnormalities within them.

On the other hand, it should be said that such anomalies cannot be avoided either in the everyday spoken and written language, nor in the other types of written and oral communication of modern Albanian, but in the dialect in words (in our case to cham) this phenomenon seems quite interesting for the fact that not only is it a dialectical speech but also that it is quite conservative. Cham is the epitome of that early expression in the language according to which, there is always a rule for any irregularity.

We go along with some other typical phenomena of this syntactic speech.

What is remarkable in the Chameria variety is the use of the same word with different meanings and with some syntax functions simultaneously. Regarding this phenomenon we have examined the words:

- **çish** as an interrogative pronoun or as a conjunction pronoun with various syntax functions;

- the verb **bëri** (did) with some syntax functions and different semantics in different contexts;

- the words **një** and **pa** with a multiple use, but with the same syntax and the same semantics function in different contexts.

Before examining these three phenomena in detail, we must clarify that they are always considered in the context of the lecture context, even though they are treated simply as a limb. What we should point out is that the following phenomena and most of the overwhelming majority of the phenomena discussed in this paper are mainly used in the phrase of the characteristic sentence of the Chameria variety, where the most typical would be the summoning sentence (demonstrative-summoning, stimulating- summoning, causative-summoning, questionable - summoning) accompanied mostly by its characteristic intonation and in some cases with a special kind of intonation typical of this speech, intonation with expressive function. The following appearances are seen only within the particular cham melody, through which its sentences are distinguished (especially the summoned one). Their annotating voices emerge only through the various syntax connections of the limbs discussed below, highly characteristic of the Cham.

The form **çish** (what)

As a conjugal pronoun the form **çish** is often used **in the function of the object**: *harroi **çish** kish vënë atje/ nuk kish parë **çish** kish vënë jati poshtë; ja ba vesh i tha kali djalit // tani do biç prapë **çish** të them ù; shkoni **çish** hanë ata zagarë atje; i muarrnë vëllezër/ baballarë/ **çish** kishnë; **çi** ka duqani të gjitha..(çi=çish) ; **çi** zuri, vrau (çi= kë the apocryphal form of the pronoun who*)

Even as questionable pronouns the **çish** form is used in the function of the object: *çish thatë? **çish** do na bën baba? **çish** thua ti?*

In this function there is also the expression **me se** (prepositional + questionable pronoun se = what): *me se do i bìnī? me se do jetoni? me se e do bukënë?me se d'e marrish?me çi do na mbahej (çi=se= what)?*

So, as is evident from the examples, semantically the pronoun **çish** is equivalent to the questioning and conjugal pronoun **çfarë** (what). So it is used in the same function as the object **çfarë** (what) in Albanian. The same proclamative value also has the expression *me se* (what) which is also evident from the example, as it has the same apocument **çi** equal to **çish.**

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The conjunctive pronouns **çish, çil** which are also used **in the function of the subject**: *edhe mua **çish** të më lipset kutu e pesë vjet do m'i sillni bërna kutu (çish = çfarë : ajo që (do të më lipset);* **çila** *isht nana,* **çila** *isht bila,* **çila** *isht e vjemea,* **çila** *e sivjemea*

Sometimes the forms **çil** and **çi** substitute the form **kë** (*what*) of the questionnaire or the conjugal pronoun, **in function of the object:** **çil** *kapi greku i therte*; **çi** *zuri vrau.*

Semantically, the form **çish** sometimes coincide with adjectives **qysh** and **si** (how) that even though appear to be questionable, they are way or manner adjective so are used **in the context of the mode of manner:** **çish** *veni/ si jeni....//* **çish** *do vemi/ i tha baba. **Çish** i thonë atij vëndi......?.*

All the aforementioned examples clearly speak for a frequent use of the form **çish**. As it is noticed in its place, sometimes even the forms **çil, çi, ç** are used, but these uses are quite insensitive compared to the use of the form **çish** with all the above mentioned functions. Cham is a spoken language that argues prominently, even because of its conservation, that already-spoken Albanian language phenomenon where a part of the sentence can be used with several functions at one time.

As mentioned above, another phenomenon of interest in this speech is the use of the verb **bëj** (**do**) in the function of the predicate. After its phonetic and morphological examination, we also observed the varied and very specific functions of this **verb – predicate** even in the syntax.

Interestingly enough, it has appeared to be its frequent use instead of different verb forms, both the function and the proclamation: *i hodhi dorën në feste/ ja merr asaj / e/ hëë* **bëri** (=*u largua=went away*) */* **duallë** *ka kufia; prof e prof* **u bëri** (=fërkoi duart= rub hands) *duarve nja di herë/ e* **bëri** *brup pallatin e ri.* (Isufi 1978)

In Cham there is also a special form of compound tenses of predicated verbs: *u kam bënë (= jam bërë= I've become)*, *u kesh bënë (=isha bërë= I was done)*, *u kam lodhur (=jam lodhur= I am tired)*, *u kam rrihtur (=jam rritur= I grew up)*, *u kan martuar (=janë martuar= they married)*, *u ka lagur (=është lagur= he is wet)*, *u kish sellë (ishte sjellë= was brought)*, *u ka gritur (është ngritur=is raised)*, *u ka sumurë (është sëmurë= got sick)*, *u ka qorruar, u kanë bashkuar* etj: *kur u kanë martuar të gjashta gocat e mia me dimi e me jelek, kanë lënë mënd, kanë lënë mend.* As can be seen from the examples, this form is used in the function of the non-action of the imperfect. So, the **formatted forms** of the above composite forms, together with the particle *u* setted before, **have a passive voice function.**

At this point, it is worth recalling the preservation of the participle *bëj* (make) in its earliest form **bënë**(=bërë=done) in the Cham variety, as the remnant of that transgressed phase of Albanian when the phenomenon of rotation had not yet appeared. That is why the forms *u kam* **bënë** (*jam bënë = jam bërë= I've become)*), *u kesh* **bënë** (isha bënë=isha bërë= I was done)*, *e ka bënë* (e ka bërë)*, *u ka bënë* (është bërë)... etc, falls more in look at this variety.

It is quite characteristic for the syntax of Cham some typical forms formed by words **një** and **pa**: **një të bënë** meaning =*bëri (në këtë rast, veproi) menjëherë në çast=he has done it* (immediately)*; **pa t'e qëlloi=** *e qëlloi (menjëherë në çast)= he hitted it,* (immediately) etc.

The form using **një (një të bënë)** has a frequent use in daily speech in cham: **një të gritur**= *u ngrit* (menjëherë në çast)= *stand up* (immediately) and , **një të bënë**, meaning *bëri/ menjëherë në çast=acted* (immediately)*; apo, **një të kapur** (*e kapi,* menjëherë, në çast)= *caught it* (immediately) *......*etc. The form using **një** can be noticed also in the lower Coastline (Totoni 1964 ).

The form using **pa** is just as characteristic of this talk: **pa t'e qëlloi=** *e qëlloi (menjëherë në çast)=he hitted it* (immediately), **pa** *të pienj,* **pa** *t'e ndiejmë,* **pa** *t'e ndoqi me vrap,* **pa** *t'ia dha të klarit,* **pa** *t'e ngriti.* This form, among other things, is noted in the Arvanites' talk, in the texts of Rainhold, argued by Klosi "as a form with **pa**" (which we will consider below) (Klosi 2000)

After that, we must explain that in no case, such as in Totoni and Klosi, these forms have not been clarified in this way, although (in some uses) are the same examples.

In Cham, two characteristic shapes, **një** (*një të gritur)= u ngrit* (menjëherë në çast)= stood up;*) dhe **pa** *(pa të pies)* = *të pyes (tani në çast)=to ask* (immediately), semantically follow the same logic line. Our interpretation of either the Cham or the Lower Coast and the Arvanitas is this: the semantics of the forms **një** and **pa** in the context of use is related to the context of the time mode, **menjëherë (**immediately), **në çast** (instantly), for example:

*pa të pies= të pyes* (tani në çast)=*to ask* (immediately); *pa t'e ndiejmë= ta dëgjojmë* (tani në çast)= *to listen* (immediately); *pa t'e ndoqi me vrap= e ndoqi me vrap* (tani në çast)= *he followed it* (immediately)*; pa t'ia dha të klarit=* (në çast) *ia dha të qarit= to cry*(immediately); *pa t'e qëlloi=* (në çast) *e qëlloi= he hitted it* (immediately) (Troplini 2014);

*Një të gritur= u ngrit* (menjëherë në çast)= stood up; *një të bënë = bëri* (menjëherë në çast)=he does, *një ta kapur= e kapi* (menjëherë në çast) caught it.

Sometimes the **një** form is accompanied by another form of this type ex. **një** *të bënë e* **një** *të gritur...;* **një t***ë kapur e* **një** *të bënë,* where the word **një të bënë** often carries even an exclamation nuance *një të bënë e një të gritur...* equal to *Brof!* = *(very fast) -U ngrit në këmbë stood up* *(Brof!=exclamation)*

It should be said that although with an adverbal function, the words **një** and **pa** inherit some qualities of the emotional particles (*një* and *pa*).

In both cases, with *pa* and *një*, we think that we are dealing with uses that lead us to the **circumstance of time** even though these uses are separated by a thin blade from the circumstance of the way.

Let's go with some other phenomena of this speech within the limbs of the sentence.

A common phenomenon in the Cham variety is the melting or elimination of short shapes, which are **in the function of the object**, with:

- Conjuctive tense particles: *t'e sheroj= ta shëroj= I'm going to heal it, t'e jap, t'e marr, t'e shoh, t'e hajë, t'e digjosh; t'e shoh; t'e hedh, t'e urrej; t'e ngriti* etc.

- Conjuctive tense particles in the function of future tense: *do t'e rrahish –d'e rrahish= do ta rrahësh= to beat somebody (do t'e= d'e)* ; *do t'e marrish –d'e marrish* etc.

- Short shapes of dative **më, të:** *të m'e theriç= të ma therësh= to kill me , do m'e març, të m'e damkosni.. m'e mori* (ka dora)*, t'e dhashë, t'e thashë*

- Any other connectors: *kam treqind vjet q'e kam hedhur purtekën (që e kam hedhur= that I have threw*

Klosi to the Arvanites mention only melting of short shapes with the particles of the Conjuctive tense (Klosi 2005: 18-19)

In the same context we also mention that in the verbs - predicating of the future tense does not appear the particle **të** (with a rare exception when it is merged): *do theç ( do të theç= do të thuash= you are saying), do thetë/ do themi, do thenë, do selli, do lemë, do veç, do baç, do dersi; do vejë, do nis* etc.

- It is also quite characteristic the predicting verb of the future of the past, for example: *do viî* (*do vente= do (të) vente= do të shkonte= he would go* ); *do liî* (do linte); *do marton* (do martonte) etc. (Note the preservation of the length of the vowel, which is a conservative phenomenon for this variety).

- We also add that in cham there is in general a tendency not to manifest not only the particles of the future conjuctive tense, but such a phenomenon can be seen also in the gender nod mainly in the pronouns with a nod **in the function of the determinants or counterparts (objects):** *ja thaçë gjithëve= ja thaçë **të** gjithëve=ja thashë të gjithëve= I told them all; djali tia= djali **i** tij= his son, djelvet saj = djelve **të** saj=djemve të saj=her sons* etc.

A characteristic trait that we find from Buzuku (1555) to the early diaspora as a whole, is the abbreviated term **ù,** e përemrit vetor **unë (I)** të shqipes së sotme, **in function of the subject of the sentence**: *Tani Tasù, **ù** do iki (Tani Tasu **unë** do të iki= Tasu, now **I'm** going); **ù** do shkoj një vërdallë saraive e do hegëllij/ se **ù** do hegëllij aq fort sa do bien podhètë e shtëpisë bedhe (përdhe) Po ti do t'merrja leje **ù,** o Miço (Dhimitër)?*

Interestingly enough, in Cham appear to be the ancient forms of the composite predicate: *vate të mirr (shkoi të merrte=he went to take)*, *zuri të klajë (filloi të qante=started crying* etc.

Even the characteristic form **nek** of the Cham performs several functions simultaneously. So besides its use as a prefix associated with names (**ne, nek**) **in function of the circumstance of place:** *e more vesh **tanì,** kur qepeshim ne(tek) ajo vi:la:..( te ajo vila= at that villa . ; erdhi **nek** ai (tek ai= at him)qe vëzhdri**n** përpjeti: një grusht lira edhe atij),*it is also used as:

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Adverb in the function **of the circumstance of place**: *nek mirr abdes hoxhallartë (atje ku mirrnin abdes hoxhallarët=where the preachers take ablution, ikte gjaku vuuuuu...; fërkoi sitë e i erdhë përgjisëm// vate e gjeti e ujët nek laheshin ato / opo i erdhën gjisej sitë*)

Adverb in the function **of the circumstance of time** where can be noticed even the word **kaa** *(kaha= ndërkohë që=kur= while=during): djali **kaa** vate të mirr kutinë ka xhepi/ i feksi gugusheja*) (Isufi 1978)

It seem to be very characteristic, in the daily variety of Cham, some conservative words or phonetic and morphological phenomena that, in addition to their importance and value as such, give an even greater coloring to the characteristic sentences of this dialect. They contribute to highlighting the special features of summoning sentences. They also help to better notice and understand the expressive intonation of cham (which in some cases accompanies these sentences), as well as the emotional characteristics of this speech. As such we have distinguished:

The predicate **am** *(epimë>epmë> **jepm**ë= give me): Xhdo grua që gëcente, vijnë u zijnë dorën kshtu (tregon se si..)* : **ame** *dorën? Ma jep (**jepm**ë) pak dorën?= Can you give me the hand? - U zijnë dorën që gëcejnë edhe vijnë (vente, shkonte) në fund ajo...*

A typical form that cannot be surpassed is the form ***shklata*** *(si ka mundësi= si është e mundur një gjë e tillë=* **How can it be possible?**) that in most of cases shows astonishment, wonder, but as a exclamation it contributes to highlighting cham intonation with a syntax function: ***Shklata*** *more djaalëëë? S**hklata** vjëhrra jote nuk e ka bën ndonjëheerëëë?!*

In the same context we can also mention the value of the exclamation **eni** (për përshtatjen e së cilës është vështirë të gjendet gjegjësja në shqip): ***Eni** moj vaajzëëë?! (**Hë** moj vaajzëë!?= Come you girl!) **Eni** moj tha naanaaa?!*

Characteristic enough seem to be the negative particle ***se*** or ***nuku*** in Cham that fulfills **the negative meaning of the sentence** *Vallahì **se** të fal; vëllah, **nuku** e fal (në emër të Zotit **nuk** e fal= In the name of God I do**n't** forgive him.*

We cannot left without mentioning the prefix ***ja:m, njam*** *(deri= to, until)*and sometimes **jaram** (rarely) that accompanies a noun, pronoun or adverb in the function of **the circumstance of place:** *krësëla e glatë, **njam** kutù; vate **jam** në sinuar të bukrës dheut/ atje na e she e bukura dheut e qorrohet ka sitë breti; atje kishte njerëz me kostume **njam** (jaram> nga) kutu e **njam** kutu (... nga këtu e deri këtu= from here **to** here).*

The predicate verbs ***çel** (ndez= light up), **gjegj** (dëgjoj=listen)* of Cham, are the early forms that can be found in Meshari of Buzuku (first Albanian written book) and other ancient authors in general. Apart from the Cham, we find them today as in the diaspora varieties, as well as in some of the Low Coast varieties.

Characteristic in this regard also seem the earliest forms of auxiliary verbs as part of the predicate of old Albanian language:

*jesha (isha= I was), jeshe ( ishe= you were, ish (ishte= he was),* njëjës *// jeshëm ( ishim= we were), jeshët ( ishit= you were), jeshën (ishin= they were),* shumës.

*kesha (kisha=I had) , keshe (kishe=you had, kish( kishte= he had),* njëjës *keshëm( kishim=we had), keshët (kishit=you had), keshën (kishin= they had),* shumës.

*kleva (qeshë=have been), kleve (qe= you have been), pava (pashë=I saw), pave (pe=you saw)* etc.

Some typical phonetic phenomena that give color to Cham variety are noticed in some words with different syntax functions, such as predicates, circumstantials, determinants etc: *aχere (atëhere=then, so).**, pë**noj (punoj=I work), t**ë**në (tonë=ours), **ku**tu (këtu=here), ima (imja=mine), jota ( jotja=yours) etc.*

Some of the syntax elements that Klosi has first noted in the Arvanitas language also appear in the Cham (Klosi 2005: 19-21).

In Cham, preference is given to **co-ordinated construction** instead of a subordinate one with a purpose or cause function. Such a thing is fulfilled using the connection ***e (and)*** , which has a frequent use in Cham: *atje na e she e bukura dheut **e** qorrohet ka sitë breti (atje e pa e bukura e dheut ( figurë mitologjike) dhe për këtë arsye qërrohet nga sytë mbreti= There, Beauty of the Earth (mythological figure,) saw him and for this reason the king became blind; paaç të bukurën e dheut **e** u qorruaç; ja do heqësh kpucët e do rrish kutu me mua; i shoqi kish një karrocë **e** me atë nxirr bukn' e gojës.............. etc.*

It should be emphasized that this fact should not be confused with other frequent use of the connection **e** *(and),* where its repetition is for the connection of the sentences **with coordination**, or for the connection of the coordinating limbs where

it is often used in function of the coordinating particle *dhe* *(and)*: *na ish **e** diç na ish; ja hipi **e** u nis*;  *e pa **e** e vuri në xhep (e pa **dhe** e vuri ne xhep= He saw it and put it in his pocket)*

At this point we should mention the absence of the connectors: *Po…tani….s'ba mënd, për Zotin**, vata tetëdhjetë e katër vjeçe (Po........ tani........ nuk mbaj më mënd për Zotin **sepse** shkova (u bëra)tetëdhjetë e katër vjeçe**= But...now...I don't remember, in the name of God, **because** I'm eighty four years old)*

In the Cham the determinants are placed the first: *të këqinj njerëz që janë (**të këqinj** njerëz= njerëz **të këqinj**=mean people ) ; më të prapë djel s'më kanë zënë sitë; më të keqe nuse nuk kam parë, të mbëdhenj fiq* etc.

Cham is one of those varieties that after having known her well, leaves you with a special impression on a "great wealth in words and phraseology" that deserve a separate treatment: *spaçë ka sitë do shoh ka vetullat (spashë nga sytë do shoh nga vetullat=I can't see from my eyes, how can I see from my eyebrows); të dahet gruri ka egjëra, vë krietë ndë trastë ...*etj

## *CONCLUSION*

The above treatments and variety of examples show in the first place the great linguistic richness that keeps our varieties. Cham estinguishes for it specific phenomena of syntactic value which are indicative of particular importance for such studies, primarily for these varieties and their documentation, and secondly for Albanian linguistic.

The aforementioned phenomena are an important part of the physiognomy of this variety and as such, for the linguistic value they carry, also constitute important alarm signals for in-depth studies leading to two indispensable edges, on the one hand, in historical linguistic studies and on the other hand, they give us the possibility of in-depth developments in coherence with the latest linguistic developments of our day.

### Literature

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