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Dynamic Positioning for Survival in Political Marketing Warfare

Mugabe's Manoeuvrings out of Crises in Zimbabwe

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Abstract

Zimbabwe became independent in 1980 after nearly a century of British colonial settler rule but soon deteriorated into chaos, repression and economic dilapidation under the leadership of Robert Mugabe.

Mugabe engineered a major constitutional amendment that saw him amass absolute power by creating an executive presidency as head of state in 1987. The opposition was tortured and stifled through outwitting and outmanoeuvring them and the ordinary people were intimidated and lived in fear. Despite the many crises faced, Robert Mugabe and Zanu PF continue to extend life in government and maintain a reasonable control of the country.

This paper concludes that topmost on the reasons for survival through crises is Mugabe's ingenuity in political marketing warfare and dynamic positioning of the party in accordance with the appealing themes and its systematic destruction of the opposition through a variety of tools, among them torture, blackmailing, propaganda and through instilling fear into the voters, creation of pseudo political parties, repressive constitutional amendments to ensure supreme power and dominance.

Keywords: Managing Crises, Marketing Warfare, Positioning, Political Cultures

1. Introduction

Zimbabwe is a country of 390 580 square kilometres, about one-and-a-half times bigger than the UK with a population of about 12.3 million and located in Southern Africa. The country became independent from British rule in 1980 after being a colony for nearly one hundred years. The black majority of Zimbabwe had for a long time been subjected to systematic torture, repression and above all were a bunch of citizens without rights and were at the mercy of the ruling whites since colonisation in 1890 at the hands of the pioneer column. When freedom beacons upon Zimbabwe in 1980 and the promise for a bright future created a boost in the economy, education, infrastructures, international investment and the country was soon in the top league of fast developing countries.

Independence for Zimbabwe came through a negotiated settlement that was prompted by a ravaging war that had protracted over years. The government of then Prime Minister Robert Mugabe leader of Zanu (PF) the chief protagonist in the liberation struggle proclaimed Reconciliation of the former enemies and that created harmony in the country. But unfortunately another key player PF Zapu by design or by default came under heavy intimidation and systematic elimination from the political map of Zimbabwe. A dissident war ensued particularly around the Matebeleland to the West of the country where PF Zapu's support base was. As a result of the warring the government of Robert Mugabe sent the Korean trained fifth Brigade on a massacre mission and they killed an estimated 20 000 people. Ultimately the leadership of PF Zapu would buckle and join Zanu PF to form what today is the United Zanu PF in 1987 by signing what has come to be called the Unity Accord on 22 December 1987.

Zimbabwe pursued the Marxist Leninist brand of socialism that failed and had to embark on the IMF driven Structural Adjustment programmes that failed in the 1990s. Politically very little happened to counter the power and influence of Zanu PF until the Zimbabwe Congress of Trade Unions (ZCTU) sponsored the formation of the Movement of Democratic Change in September 1999.

In the main the political, economic and social landscape of Zimbabwe has faced an upheaval at some point over the last two decades but the staying power of Zanu PF albeit enduring a number of crises has been supreme even against the wishes of the majority of the people of Zimbabwe, internal resistance, international isolation and condemnation. The

use of the war rhetoric, torture of the opposition, manipulation of the laws and some hastily implemented empowerment programmes have anchored what in the main has been central to their survival strategy.

This paper seeks to firstly capture the various crises that have afflicted Zimbabwe and their impact on the government and the people. The paper will go on to evaluate the actions of the government and Zanu PF to avert the crises under the leadership of Robert Mugabe. Ultimately the paper would seek to identify the key to the dynamic positioning for survival over the years. Literature on the notion of positioning will be reviewed. The paper would seek to draw conclusions on the approaches and suggest whether or not such approaches could be generalised.

The study traces a number of key developments about Zimbabwe from materials already published, state publications, academic research, material on the web pages of the government, Zanu PF, MDC, the Reserve Bank of Zimbabwe and any other politically inclined sources.

The paper would seek to demonstrate the observation by Butler and Collins (1996: p27) as stated:

As marketing is increasingly adopted in politics, it will move beyond influencing only tactical matters of communication and presentation, and play a significant role in policy formulation and long-term direction. Ultimately, the "strategic marketing era" will take over from "selling" eras.

The notion of the international product life cycle holds in political development as practices are passing from the developed world to the developing world. The fact that a number of the top brains from the developing world are obtaining their education in the west is having a big effect on both the style and expectations of the populace.

2. The Essence of Political Marketing and Positioning

Yeshin (2004: p21) points out that "Positioning is the creation of an image for the product in order that consumers can clearly understand what the company provides relative to its competitors. ... but the single-minded requirement is to identify a long-term proposition which positions the brand in the minds of consumers." The war credentials that Zanu PF has are strategically manipulated to differentiate the party from other political parties be it with the aid of force and abuse of the state machinery. Any opposition to the order of Zanu PF is labelled as disrespect for the sacrifices those who perished made that Zimbabwe could be free. In the main Zanu PF symbolises freedom through force and that has been made to sink in the minds of the citizens. Upshaw (1995) cited in Yeshin (2004) suggests eight prompts for positioning as; feature driven positioning, problem-solution positioning, target-driven positioning, competitive-driven positioning, emotional or psychological positioning, benefit-driven positioning, aspirational positioning and value positioning. It is clear from the different approaches to positioning that there is a variety of options for positioning a good, service or a political party and it is clear Zanu PF in Zimbabwe has done its part in consolidating its hold on power. It would appear there is an emotional or psychological positioning strategy at play in instilling fear in the minds of voters and competitive-driven positioning like suggesting voting other political parties would be allowing or sanctioning the re-colonisation of Zimbabwe.

Belk(2000: p343) puts a chilling view across which applies to the political landscape of Zimbabwe in stating "As with slavery of old, a few Africans get rich at the expense of their brothers and sisters."

Politics is the business of manoeuvring for strategic national positions which win votes at national or local level of governance. Ultimately the thrust of the argument is that political parties sell ideas or solutions to national or local issues and require to position such ideas or solutions in a manner that appeals to the voters. In the same way as businesses position so that they can win in a competitive situation so should political parties. Political parties are brands and the positioning of the brand must be right in order to win.

Butler and Collins (1996: p 25) state that "Among political scientists, it seems to have been accepted that marketing is an activity which politicians may indulge in at their discretion and which is largely confined to that formal and stylized period called "the campaign". There appears to be little appreciation of marketing theory, especially at the strategic level.If the marketing paradigm is to influence another discipline, it must first be tendered in broad, generic terms, and address matters at the strategic level: progress is limited by picking partial and incomplete concepts from the marketing theory." They further argue that in most western democracies political markets are well developed and manifest characteristics of a mature market in commercial marketing where patterns of behaviour are more stable with little change from the norm. The contrast between the western and developing country political practices is interest as often there are serious counter accusations about veiled neocolonial machinations guised in lessons on democracy and aid. The paradox of the relationships between the West and the developing world is the readiness with which the developing world is prepared to take aid from the West but would not take any criticism on democracy. There is a clear philosophy of unity and solidarity in fighting western dogma on the part of the developing world, some of it very subjective. The case of Zimbabwe is typical in that despite the despicable acts of Robert Mugabe in extending his hegemony the African leadership's criticism has been lukewarm if not less than candid. In terms of the space for political marketing the colonial masters had a monopoly and Zanu PF replaced it with a pseudo free enterprise.

Butler and Collins (1996: p27) point that "In politics, the periodic nature of elections produces surges of strategic and tactical activity. ... Terms such as campaign, battle, attack and defence are common in business; such rhetoric is continually employed in politics also." Traditionally marketing has been a preserve of the commercial world and was not practiced in the non-profit sector. But with the increasing complexity of society and the increasing desire for better service in most spheres of service provision marketing has crept into almost every human exchange process. In the main it is no surprise that military terms are employed in marketing as the competitive agenda is confrontation minus the military carnage but commercial annihilation. However, the case for Mugabe's Zimbabwe embraces elements of the military carnage and the charm of marketing. Zanu PF's war credentials are employed to position that party as a revolutionary party but when losing ground torture is employed to eliminate or silence the opposition leaving a trail of property or human carnage. Butler and Collins (1996) employ the competitive positioning tool used by Kotler in marketing for political marketing. The four categories of competitors put forward by Kotler are leader, challenger, follower and nicher. These categories apply to the political scenario of Zimbabwe with Zanu PF being the leader and has maintained that position since independence in 1980 and continues to hold it.

2.1 Creating a brand

Political marketing necessitates the development of a strong brand that can win a share of the mind. In that respect Davis (1994: p43) states that

A key- brand insurance strategy is a defensive strategy that should be as strong as a company's brand growth strategy. It allows a brand team to go forward with its focus on building a brand market share....share of mind, while at the same time , while, at the same time preventing it from being caught short in internal or external forces threaten their brand's position

While there is no systematic brand management within Zanu PF it is clear that the standing of the party is jealously guarded against attacks by other political parties and often the response is in the form of violence to stifle the growth of such influence. Any descending voices within Zanu PF are silenced through demotion from senior ranks or are simply paid to keep quiet. Even party primary elections are stage-managed to maintain a semblance of unity in the party and whip the membership into line. Factionalism has reared its ugly and strongly fought by the top leadership of the party to give an impression that Zanu PF is a united party.

3. Background to Zimbabwe's political crises

The state of Zimbabwe is cause for concern to the progressive communities the world over. The country is a worsening human carnage by the day and is in a state of paralysis with everything deteriorating and putting the whole population into desperation. The situation is better captured in the statement quoted from the website (<http://english.ohmynews.com/ArticleView/article>, accessed 11.04.07):

International Monetary Fund (IMF) Deputy Director Siddharth Tiwari described the state of the economy in Zimbabwe as "tragic" and "grim." "It has faced three, four, five, six years of continuous output decline, a rise [in] prices at these rates over several years, increase in poverty, a decrease in public services, increasing HIV/AIDS rates. It is a tragic situation, frankly, and prospects are grim; they are not bright," he said Wood (1997: p184) refers to the veteran Zimbabwean nationalist, Ndabaningi Sithole arguing that:

Black capitalists, he asserts, are just as White capitalists. He sees it as a kind cannibalism or "dog eat dog" to which many of the independent states in Africa have been exposed and who now wish to harness the cooperative resources of their own people. This is the big challenge for leadership in Africa, their concern is the control of resources more than creating wealth. In the main the whole political process is geared towards gaining influence and thereby accessing resources and ultimately give way to corrupt practices which have wrecked most economies in Africa not least Zimbabwe. At this point Zimbabwe is grappling with record inflation standing at more than 7 500% in peace time and an exchange rate of 1£UK: ZWD 3,5 million (1USD: ZWD 1,8 million) as of July 2007 on the black market. The official figures are meaningless as no one would use them for transacting.

Turner and Pedgeon (1997) cited in Shalif, Ahmadun and Said (2003: p29) state that "A crisis is an abnormal situation which presents some extraordinary, high risk..... The original meaning of the word "crisis" as a situation in which important decisions have to be made in a short time, rather than a disaster where management problems coped with under conditions of major technical emergency involving threats of injury and loss of life were discussed." Zimbabwe has experienced many situations where the end for the Zanu PF hegemony under Robert Gabriel Mugabe seemed inevitable but all the time they turned it around by coming up with a popular theme for rallying the nation. It would seem that the position taken by Davies and Waters (1998) and also by Darling (1994) as cited in Shalif, Ahmadun and Said (2003: p 29) that a crisis is "a turning point for better or worse", that is a situation that has reached a critical phase is consistent with the experience of Zimbabwe under the leadership of Robert Mugabe and his party, Zanu PF. The most fascinating issue is the ability to turn bad situations for good and survive, that has been typical of Zanu PF and what more is Mugabe's age of eighty-four and still ready to stand an election when he turns eighty-five in 2008. A lot of

analysts would argue that this is a ploy to die in office so that he will not stand trial in case he is ousted from power. The manipulations of the party and the state machinery for survival have been well orchestrated under the leadership of Robert Mugabe. Whether people agree or disagree with him is another issue but he has mastered the art of political positioning for survival from one crisis to another.

A lot of the crises that have afflicted Zimbabwe under Mugabe's rule have called into question not only his integrity but also his judgement but he has seen through it all albeit using some cruel and dirty tactics. Mugabe has won elections by announcing results against all predictions and shocked people, left them angry and then threatened them with all kinds of consequences. The international community has been left mesmerised by the bold declarations of statesmanship. The state machinery has been abused and the party structures have been denied democratic space in order to secure continued leadership. Many have been sidelined in the fight for dominance and Mugabe has always had a docile vice president or vice presidents at national level and in the party so that when they act they have no other thought other than serving the master. It is clear Mugabe is the master of brainwashing and a shrewd tactician.

A number of crises are going to be raised and evaluated in respect of how Zanu PF engineered its way out of the crisis and how it repositioned itself politically. When Zimbabwe gained independence in 1980 it positioned itself as a socialist state where the doctrine of scientific Leninist socialism would take root. This meant that the state would have a domineering hand in the creation and distribution of wealth. This was abandoned in 1990 after what turned out to be a failed experiment. A number of the subsequent problems the country faced were largely centred around the modelling of the governance of the country along a Marxist approach.

In this discussion a number of developments that plunged the country into disaster will be looked at and they will consider ideological blundering, Genocide of the Ndebeles, droughts, SAPs, land invasion, constitutional manipulation, election rigging, the trial of opposition leaders for treason, international isolation, destruction of the squatter structures in cities and the fall of the economy.

3.1 Genocide of the Ndebele people

Zimbabwe's black population is dominated by the Shona and Ndebele tribes with the Shona being in the majority of about one to four. Prior to 1987 there were two dominant political parties split on tribal lines. Zanu PF then was a Shona party with PF Zapu the Ndebele. At the dawn of independence in 1980 Zanu PF on the election of a majority of 57 parliament seats and PF ZAPU 20 and the remaining three seats for elected members of parliament went to UANC led by Bishop Abel Muzorewa. The then prime minister Robert Mugabe brought in the main opposition PF Zapu led by Joshua Nkomo to join the government and form a government of national unity but this lasted only two years.

What followed after the first two years of independence was despicable. A guerrilla warfare ensued after the government claimed they had discovered arms at PF Zapu farms which resulted in PF Zapu walking out of government. PF Zapu were then booted out of the government, but a few of its top officials remained in the government and crossed the line. Zanu PF had managed to divide the party and it is debatable if arms were ever found on the farms.

Some former combatants from PF Zapu in the war of liberation picked up arms in 1982 and started a guerrilla war in the west of the country, and this prompted the government to send a marauding army, namely the fifth brigade trained by Koreans went on a mission to wipe out the dissident movement and its supporters. A dissident movement purportedly backed by PF Zapu prevailed largely in rural areas in the Matebeleland area to the west of Zimbabwe. The government then sent the "dogs of war", ie the fifth brigade a specially trained ruthless army on a mission to kill the dissidents and their supporters. This turned out to be an act of ethnic cleansing veiled as a military operation. The target of the massacre codenamed "*Gukurahundi*" (*clear out the chuff*) were the Ndebele people from where the leader of the main opposition one, Joshua Nkomo hailed from. It is estimated that about 20 000 people perished. Ultimately Joshua Nkomo had to escape disguised as a woman in order to serve his life. That practically weakened the party and provided Zanu PF with a strong ammunition for destroying the party and its leader, the propaganda machinery had a field day with Joshua Nkomo in exile and his party went into disarray.

3.2 ESAP

In 1990 Zimbabwe embarked on the economic structural adjustment programme with disastrous effects (ESAP). The programme demanded that the government adjust to the World Bank and IMF conditionalities which meant that government had to cut subsidies to ailing companies, reduce social service, induce a more capitalist approach where people had to fork out money to access services. This was a painful process and Belk (2000: p341) could not have put it more emphatically in stating:

"The reforms mandated by World Bank imposed SAPs are extremely hard on Africans, but are regarded as a "penance" that must be paid for former "sins" of economic inefficiency and mismanagement if the "salvation" of a debt-free economy with higher growth rates is to be attained. While this "paradise" may seem distant or doubtful, "sinners" suffering from their "moral failings" must have "faith" and rely upon then World Bank and IMF to "forgive them (or at least reschedule) their debts." These monetary "missionaries" seek to "convert" "sinful" Africans to individualism,

industriousness, and the virtues of the free market system so that they might achieve their “redemption.” In order to “expiate” their “sins,” they must “sacrifice” prior affordable prices before the “altar” of the global market if they are to escape the “Hell” of the Southern Hemisphere and achieve a state more like the “Heaven” of the North.”

Chossudovsky (1997) cited in Belk (2000: p341) argued “Structural adjustment is conducive to a form of “economic genocide” which is carried out through the conscious and deliberate manipulation of market forces. When compared to the genocide at various periods of colonial history (e.g. forced labour and slavery), its social impact is devastating”. The pain of the Economic Structural Adjustment Programme in Zimbabwe in the early 1990’s made the government so unpopular that it triggered labour unrest.

The government of Zimbabwe abandoned ESAP in 1995. The misery people suffered and their hatred of the Zanu PF government culminated in the formation of the labour backed political party, the Movement for Democratic Change (MDC) in 1999. At that point despite the Zanu PF government’s unpopularity they still remained a strong force well entrenched in the systems of governance. At the same time the government had perfected the art of intimidation and manipulation of the poor, less educated rural population suffering from the remnants of the scars of the ravages of the war of liberation. Any who dared to ask would be told that Zanu PF can kill and any loss for Zanu PF meant the return of combat which the poor rural people understand to mean death by torture.

3.3 Institutionalised State Robbery

With Robert Mugabe and his party so unpopular and the labour movement dictating the industry activities and calling mass actions that halted economic activity the government’s powerlessness gave way to a new force. The neglected veterans of the war of liberation who had joined the army of the poor found renewed significance in the political space of Zimbabwe. The war veterans put demands before the government and because the government was desperate for support they gave in to those demands. In 1998 Zimbabwe awarded hefty payments to the war veterans who bargained for those huge payments in return for their support to the party and the government. The government forked ZWD 3.5 billion (USD 0.7billion) of unbudgeted money to the war veterans almost a bribe in return for support. This uncalculated move to win the political ground sparked an economic downturn which has seen the rate of exchange fall from a high of USD1: ZWD 5 in 1998 to a dismal USD1: ZWD 180 000 as of June 2007. Besides the economic downturn the country also suffered in other spheres of social and political life. The biggest devastation which has stretched over nearly a decade is the land invasion to displace white farmers.

3.4 The Rule of the mob and Land Invasion

The failed economic programmes, lack of popular support and a restless nation reeling from one crisis to another brought a familiar reaction. There was increasing frustration with the state and the party in the mid 1990’s. Despite the threats people faced from a regime that would claim they earned the right to rule because of the role they played in the war for liberation. The time was up for the regime to go. The state and Zanu PF braced themselves against people power in the mid 1990’s.

The late 1990’s witnessed an unprecedented political collapse of a nation in peace time. The arrival of a labour backed political power in the form of the Movement for Democratic Change and the chaotic disruption of what was once the envy of all Africa saw the economy plummet, the rule of law was replaced by the rule of the mob. The veterans of the war of liberation took over the running of the state with the politicians sidelined as they could not reign in the marauding veterans whom they needed to keep afloat their political mission in Zimbabwe.

The cost of living was rising, the leadership was corrupt and unpopular. The Zimbabwe Congress of Trade Unions led by Morgan Tsvangirai successfully organized disruptive mass actions that for the first time sent clear signals to the state that people were no longer happy with their rule. This prompted Zanu PF to shift their approach to dealing with the people. They first decided to test their popularity by holding a referendum to change the constitution. The government was trounced by the opposition and the National Constitutional Assembly who successfully campaigned for the rejection of the state proposed constitution. This rattled and angered the government into a combative mood. They accused the progressive forces of working for the west. In retrospect this turns out to be the declaration of war by the state on the people. What followed immediately thereafter was an act of vengeance in the most ruthless and ruinous manner.

A well thought out strategy was embarked on to weaken the popular support for the labour movement. Veterans of the war of liberation and supporters from across the country were bused into cities to show support for the government. White farmers whose employees had voted against the government found themselves targeted for displacement from farms and killed. Zimbabwe was certain and solidly in war since 1999. To this day more than 4000 farmers were pushed off farms and Zimbabwe’s agricultural productivity nose dived to less than 20 % of what it was before 1998. Mugabe simply exploited what Anderson J A (1999: p554) pointed out in stating “Land is, of course, significant for rural survival, but land conflicts do not necessarily focus on the productive value of land for land has not only an economic

meaning, but combines multiple meanings. ...land disputes are predominantly political struggles.” Sachikonye (2003: p227) arguing the same notion of land being used as a political weapon argues that:

...while the Zimbabwe Government claims that it has now settled the ‘land question’ once and for all, the country is in the grip of its worst food shortage crisis in decades. Up to half of the country’s population of 13 million is presently vulnerable to hunger, and there has been a notably cynical use of food as a political weapon against the opposition. While the 2001-2002 drought was a contributory factor to famine, so was the disruptive character of the land reform programme. The programme was characterised by considerable violence leading to loss of life by black farm workers and white farmers, and accompanied by chaos in the resettlement process itself.

The war veterans have gone around killing, confiscating property without fear of prosecution or arrest because the government sanctioned those acts as means of silencing the people. The government simply would not tolerate any descent at all. Despite this unpopularity and inhumane acts against humanity Zanu PF remains in power albeit weakened for a long period and fighting the people it would seem their hegemony still holds what is most perplexing is that the eighty-five year old Mugabe remains the leader of both the party and the government. The irony is that the government is bent on destroying the core of the struggle for independence, there is no freedom and preservation of the nation’s heritage has been superseded by the desire to remain in power at any cost and moreover the protection nations crave for from the state has since been replaced by the wanton rule of the untouchable mobs epitomized in the veterans of the war of liberation.

3.5 Constitutional manipulation and Election rigging

Zimbabwe’s constitution was agreed by the belligerents of the war of liberation at the Lancaster House in England. That constitution meant to safeguard the interests of various groups. The whites had twenty seats reserved for them and other interest groups had seats as well. This constitution was supposed to hold for ten years. To this day that constitution has been amended several times to strengthen the power of only one person, the executive president of the Republic of Zimbabwe Robert Mugabe. The role of prime minister was abolished to create a strong executive president with overarching powers and can enact decrees into law. This has been the staying power of the government. Any election pitting Zanu PF and other political parties could have new laws decreed on the day of the election, say on access to materials, counting of votes and announcements. While people have voted in large numbers since the year 2000 in what has always been a resounding protest to rid themselves of this evil it turns out that voting is irrelevant to the outcome of the elections as the Mugabe appointees announce what they are directed to announce and not what the people say.

It should not be surprising that elections are rigged at national level given that even within Zanu PF there is rigging of elections when they hold primary elections for candidates to stand national elections. In a sense it would appear that the whole idea for elections is for propaganda purposes rather than asking power from the people to govern.

Kruger (2005: p13) clearly states the case of constitutional manipulation and violence for dominating the political terrain of Zimbabwe in pointing out that:

The violence against ZAPU/ZIPRA and all Ndebele civilians ended in a Unity Accord in December 1987, merging Zapu and Zanu PF. The merger gave the new united party, still named Zanu (PF) but officially written as Zanu PF won 99 out of 100 parliamentary seats. Days later, having earlier approved a constitutional amendment to create an executive president with unusually wide powers, parliament voted for Mugabe to become president.

While Zimbabwe’s economy was melting Mugabe opted to further entrench himself in power by further constitutional amendment “The proposed composition and functions of the Senate in the Constitutional Amendment (No18) Bill are aimed at extending and further buttressing the government’s power of patronage, legal experts have said.” ([http://www.thezimbabweindependent.com/viewinfo.cfm?linkid=11&](http://www.thezimbabweindependent.com/viewinfo.cfm?linkid=11&id=10965&siteid=1)

[id=10965&siteid=1](http://www.thezimbabweindependent.com/viewinfo.cfm?linkid=11&id=10965&siteid=1), 13.07.07). The change would amend the composition of the House of Assembly and Senate by increasing MPs to 210 and 84 from 150 and 66 respectively and this Senate will comprise 18 chiefs, 10 provincial governors, six presidential appointees and 50 elected members hence the direct influence he would enjoy.

Mugabe engineered the change of powers of the head of state from a ceremonial president to an executive president in 1987 which saw him amass absolute power as he abolished the post of prime minister. The president can issue decrees which become law over night and often the voting law has changed on the election day. From the foregoing it is clear that the constitution is always manipulated to entrench power and stifle voices of dissent through the law. In another bizarre move the government surprised itself by reintroducing the senate where 60 members sit at a time when the economy was performing extremely bad. It would appear the desire of Mugabe and his Zanu PF is absolute power at all costs.

3.6 The trial of opposition leaders for treason

Opposition leadership is an unwelcome curse to the Zanu PF establishment, the late Ndabaningi Sithole former leader of ZANU dethroned by Robert Mugabe’s manipulations and abandoned the liberation struggle in Mozambique. After

independence he was arrested and charged with treason for attempting to assassinate Robert Mugabe. Ndabaningi's crime was that he was the leader of ZANU (Ndonga). By charging Zanu PF weakened him and damaged his political standing by creating fear in his followers and tarnishing his political standing.

Joshua Nkomo Nkomo of PF Zapu was tortured and humiliated despite being the founding father for resistance to white rule. Joshua Nkomo found himself and his PF ZAPU leadership accused of harbouring ambitions to takeover the country by an armed resistance by using arms planted in the many farms owned by his party. Both the arms found and the properties were confiscated by the state.

Morgan Tsvangirai the leader of the opposition Movement for Democratic Change (MDC) was beaten initially as the secretary general of the Zimbabwe Congress of Trade Unions in order to silence him. Unfortunately the beating strengthened his resolve to fight injustice. Just like with the earlier political leaders Morgan Tsvangirai was charged and prosecuted for treason charges this time involving a Canadian political consultant for party and government. But with the courts failing to nail him the government opted to physically lambast him.

Edgar Tekere one of the founding fathers of Zanu PF and a former secretary general was expelled from the party and formed the Zimbabwe Unity Movement (ZUM). While the pundits argued that this was pseudo opposition but the big achievement of ZUM was not its ability to woo voters but its stance against Zanu PF's desire to establish a one party state. Despite all the chaos the country is experiencing it could be worse if there was a one party state. Even though elections are rigged there is nobody who can consolidate themselves without having to go to the country.

Archbishop Pius Ncube of the Roman Catholic Church in Zimbabwe has haunted Mugabe for many years and seemed untouchable but as this paper is being written his whole standing is as clergy, a man of celibacy and a true patriot came down tumbling like a ton of bricks in highly damaging revelations in a story splashed in the government daily newspapers. The reports suggest that "Zimbabwe's state-run media has published what it said were photos of Roman Catholic Archbishop Pius Ncube in bed with a woman, a day after the outspoken critic of President Robert Mugabe was sued for adultery" (<http://www.newzimbabwe.com/pages/roma35.16688.html>, 20.07.07)

The revelations have put him in the same position as the top politicians whose fate was sealed in trumped up charges that often are found to be baseless. Mugabe and Zanu PF's interest is never conviction but political slaughter.

It is clear from the methods used by Mugabe and his Zanu PF party that elimination of the opposition is an art that needs skimming and systematic destruction leaving very little scope to recover reputations. However, there is a very clear signal in all these machinations. There is always scope to repent and join Zanu PF and thereby rise above the law. The party always welcomes what they "term prodigal sons" coming back from the wilderness.

3.7 International isolation

Zimbabwe is now isolated internationally for its democratic failing. Mugabe pulled Zimbabwe out of the Commonwealth and is shunned by the progressive communities the world over. The bullish argument by the Zanu PF regime is that the west is making an effort to re-colonise Zimbabwe and install a puppet government. There are gullible elements within the country who subscribe to this argument and help in giving a semblance of popularity and often as borrowed audiences who are forced or paid to join marauding mobs to show support for the government.

The majority of the government leadership of Zimbabwe have a travel ban to the western world and that has curtailed their diplomatic initiatives and international relations in general. This impasse has contributed to the economic collapse that has devastated the corporate and social lives in the country. To counter the western offensive the country has faced east with Zimbabwe turning into a Chinese province flooded with cheap, unreliable products often imitations. Resources are increasingly falling into the hands of the Chinese and their influence seems to minimise local participation in the economic activities of the country.

3.8 Destruction of the squatter structures in cities

In a bid to weaken the opposition whose stronghold is in the towns the government implemented a displacement programme codenamed "*Operation Murambatsvina*" (Operation Remove Trash). This programme threw out more than 700 000 dwellers of shanty towns and illegal structures in and around the major cities into the wilderness. People were not given time to remove their little belongings from their makeshift structures which the state had tacitly sanctioned by virtue of having tolerated them for long periods. Some people were crushed to death in their dwellings as they were not aware that their homes were being destroyed by the state.

This act sounds cruel but has turned out to be one of the best strategic moves Zanu PF has ever taken to entrench itself in power. In the short-term this move instilled fear across the whole country and by forcing a huge population out of the cities it meant that in the process of delimitation of constituencies more seats would go to the rural areas where Zanu PF enjoys unrivalled support. The support is created by fear and the opposition will still remain in the minority. The urban population had already been reduced by migration of the middle class and some of the rich in search of green pastures across the globe.

3.9 The Collapse of the economy

Zimbabwe's economy is but no more. Several obituaries have been inscribed in the annals of history about an economy that was but is no more. The current state of affairs is symptomatic of a jungle, put simply it is a dog eat dog affair. The invaded farms are lying derelict, the most productive of the nation's labour have sought refuge in the diaspora and the governor is busy printing money facing 80% unemployment. This is a disaster. The defiant Robert Mugabe retains the audacity to point a finger at western sabotage and is not prepared to accept his ruinous policies and the breakdown in the rule of law that has seen massive investment outflows and isolation politically and economically by the international community.

Kirshner (2003: p1) pointed out the critical importance of money in politics in stating:

Money is everything. Money is nothing. Money is what you think it is. Money is power. Money is politics. ... these statements underscore why monetary phenomena have a formative influence on the nature of contemporary politics. ... monetary phenomena are always and everywhere political.

Mugabe's control of the economy and the security is at the core of his hegemony. Money arbitrarily allocated to the security leadership has been used to protect him from any potential uprising. Money and other resources has been extended to chiefs and the former fighters in the war of liberation referred to as the war veterans for support.

It would appear that the overall performance of the economy is not important as long as he remains in power. In what is described in the site of Shortwave Radio Africa as economic theft reference is made to the order to surrender bearer checks at short notice which saw people lose money in August 2006 and the state security directed instant 50% price reduction by retail operators which has been wantonly abused for the benefit of Mugabe's supporters and further wreck an already faltering economy. <http://www.swradioafrica.com/pages/theft170707.htm>, 19.07.07

The exchange rate on the black market which is more effective and functional reached an unimaginable whooping 1£UK: ZWD 5 500 000 (November 2007) with inflation estimated at 15 000%.

3.10 Violence as a Political tool

Reeler (1998) makes a revealing statement about the horror of violence in Zimbabwe in stating that,

And there is no better place to witness this hell than in the field of working with torture survivors, for it is torture that allows us to see the real purposes behind military spending: the use of naked power to maintain position, the impunity to oppress all opponents, the creation of sustained fear to maintain compliance, and the perpetuation of endemic poverty.

The use of violence and subsequent torture of the opposition has been used consistently in Zimbabwe with desired effects since the dawn of independence. People have suffered quietly under Mugabe's rule for fear of torture and subsequent death if their dared to stand up against his rule. Elections are marred by state sanctioned violence. Kriger (2005: p 2) puts across the notion of violence in an emphatic way by arguing that:

Zanu PF continues to engage in political violence against its opponents and in polarizing discourse in which it depicts itself as the democratic and revolutionary force and the MDC as a British-sponsored, anti-democratic, subversive and reactionary. Organised violence and intimidation of the opposition, albeit of varying intensity, has been recurrent strategy for the ruling party before, during and often after elections to punish constituents that dared oppose it. Youth has been an important element of ruling party violence. The perpetrators of election violence have enjoyed impunity, often buttressed by presidential pardons and amnesties.

In virtually all elections held under Robert Mugabe's rule the defacto law has always been the torture, murder and denial of political space for the opposition irrespective of how popular the opposition was. Besides violence Zanu PF would determine the winner irrespective of the voting intentions. It is not surprising that for much of the 1980s Zanu PF sought to establish a one-party to no avail. This was an attempt to monopolise the political space until Robert Mugabe was out of power. A number of high profile people were used and ditched in pursuit of this failed agenda including the creation of the executive presidency that saw the abandonment of the position of prime minister.

4. The positive moves in the positioning of the brand

The founding father of independent Zimbabwe Robert Gabriel Mugabe is a re-knowned orator, demagogue and charismatic personality. In the beginning he epitomised a revolutionary people driven agenda for a progressive Zimbabwe. In a short space of time Zimbabwe had become an envy of the progressive communities the world over. Zimbabwe raised its literacy levels substantially, became the "bread basket" of Africa and had a highly skilled workforce sought after in the developed world. In this regard Zimbabwe emerged as a progressive nation led by a dynamic leader. These developments in the early eighties endeared Robert Mugabe as the godfather of a happy nation.

After independence the government of then prime minister Robert Mugabe proclaimed Reconciliation with the old enemy suggesting that his government was bent on healing the wounds and creating a harmonious nation. He was

showered with accolades for excellent statesmanship across the globe. The first government of the independent Zimbabwe included members of the opposition with Joshua Nkomo the leader of the main opposition assigned the Home Affairs portfolio, that is internal security. That sounded a good move by the then prime minister.

In 1980 the rural people were resettled in more fertile land which had traditionally been the preserve of the minority whites. The farms were purchased from the respective owners by resources availed by the British government. Certainly this was yielding the result that all and sundry had been hoping for at independence. There was limited interest in farming.

Over this early period of independence the agricultural sector of Zimbabwe was boosted by concerted efforts by the government and saw a lot of people fend for themselves with production rising substantially. The nation could feed struggling states in Africa hence Zimbabwe became the “bread basket for Africa”. In 1986 Robert Mugabe received a Freedom from Hunger Campaign Award from the United Nations for boosting agricultural production.

Education was provided for free and so was health. It was a great feeling for the population, be it short lived as it were but it gave people a positive feel about the future of the country and the population felt very secure. However, gradually people started paying and the government would argue it was necessary as free service was unsustainable. The system for paying was selective as it looked at the person’s ability to pay.

Zimbabwe’s reputation as a democratic state remained intact and was a good example of good governance in Africa. Elections have been held every five years for parliament without fail and the international community endorsed. The propaganda machinery was working very well. Any repressive moves by the state were always referred to as skirmishes. Because of its seemingly stable, democratic position and what appeared to be a progressive economy and well educated population the international community continued to put Zimbabwe into very influential roles such as in SADC, the then OAU and now AU, the UN, IMF etc. Some of the people seconded to some of these institutions still remain in those positions to this day.

In 1990 the government of Zimbabwe sought to boost the economy by embarking on the International Monetary Fund prescription for economic growth, that is the Structural Adjustment Programme (SAP) and the result was a disaster which left the country reeling in abject poverty. This experience was not unique to Zimbabwe but many countries that had gone that route especially in the developing world had failed dismally. This left the country economically weak and the government was unpopular but still claimed the programme was meant for bringing prosperity. This programme was abandoned in the mid 1990’s.

5. Lessons for Positioning in Political Marketing Warfare

The Zanu PF government led by one, Robert Gabriel Mugabe has remained in power since gaining independence in 1980 till now (2007). While the glaring blunders have been well documented there has never been a time Zanu PF has been out of power over the period nor has there been any other leader for the country other than Robert Gabriel Mugabe. What is most fascinating about Robert Mugabe’s staying power is that he has managed to shift the political message, methods of repression and the propaganda mechanism by manipulating the state machinery to good effect for nearly three decades. While there is a lot of controversy surrounding the political terrain of Zimbabwe there is no doubt that Robert Mugabe and Zanu PF have mastered the art of positioning for political marketing warfare to consolidate their party brand and mode of governance.

The position taken by Robert Mugabe is consistent with the assertion made by Wu et al (2004: 396)

When business managers take the principles of “The Art of War” into consideration in strategic decision-making, they will create numerous strategies and methods in solving countless problems.

While Wu et al are looking at business in a commercial sense it is important to note that politics is like business and in that respect Mugabe is in the business of political manipulation for survival.

Wu et al (2004: 397) have laid down the principles of war as having the following categories:

- (1) Situation appraisal;
- (2) Formulation of goals and strategies;
- (3) Evaluation of strategies;
- (4) Implementation of strategies; and
- (5) Strategic controls.

The way Zanu PF under the leadership of Robert Gabriel Mugabe has mastered the art of political marketing warfare is symptomatic of the competition one would observe among rival brands or companies in search of market domination. In both cases the focus is on winning the human mind with an appealing brand. The approach fits in with Sun Tzu’s principles of war as illustrated in Figure 1.

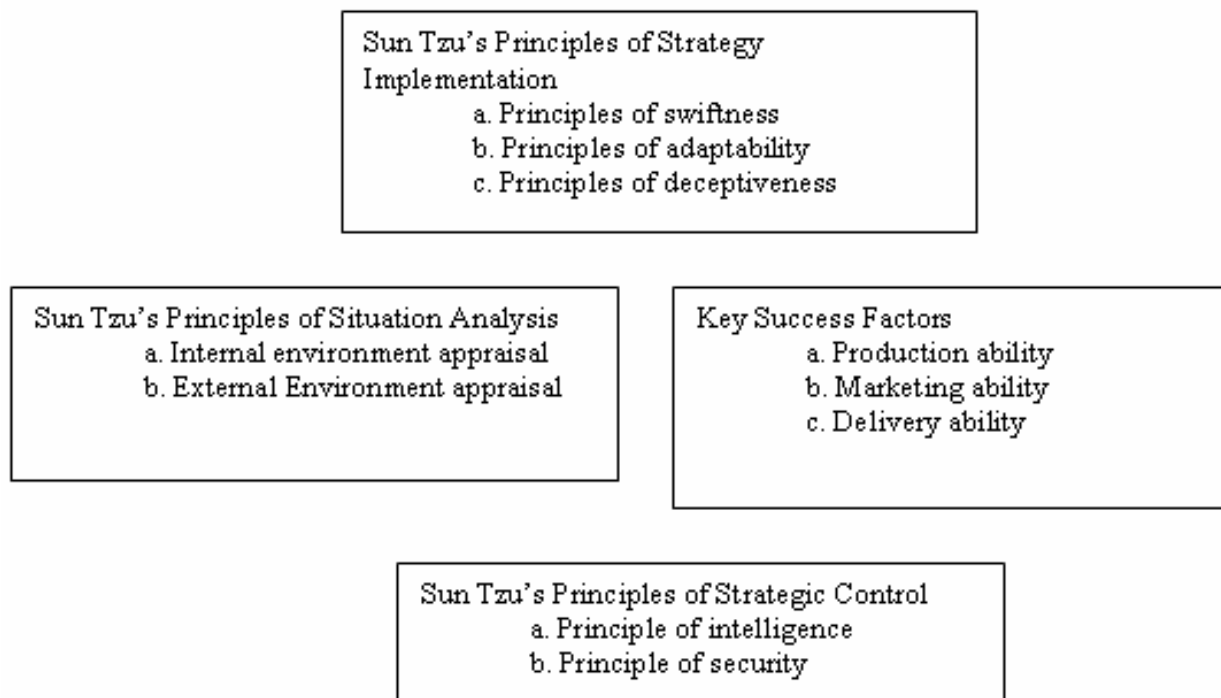


Figure 1. Conceptual model of the principles of war

(Wu et al, 2004: p 397)

The application of the principles of warfare by Zanu PF are consistent with the model suggested by Wu et al (2004):

- a). On the principles of situation analysis Zanu is aware of their popularity on the rural side and hence they increase the number of parliamentary seats there at the expense of the urban where they are not popular and have little scope for manipulating voters. In 2000 they realised that they were losing the battle for farm worker support and invaded farms. Zimbabwe pulled out of the commonwealth as that could put her under heavy scrutiny. However, Zimbabwe remains on the heart of the African Union where Robert Mugabe enjoys a lot of influence. Within the party Robert Mugabe dictates policy and positions of influence and this has helped him consolidate power over the years. It is clear that the party, the government and Robert Mugabe are fully aware of the environment and are well placed to manipulate it.
- b). On the principle of strategy implementation Zanu PF quickly moved to consolidate power in 1980 and turned their unpopularity in the 1990 into a struggle for land. All the time they have always projected a fair institution while systematically crippling the opposition. In all this it is clear that they moved swiftly, always adapt to a changing situation and continually deceive the voters through multitudes of empty promises and rigging elections. In most cases they will not shy away from doing the unthinkable such as spilling blood in a violent land revolution, printing money under conditions of galloping inflation and using the army to force price reduction in July 2007.
- c). In respect of key success factors Zanu PF as the ruling party in Zimbabwe since gaining independence in 1980 are credited with the empowerment of the black majority population, improving the agricultural capacity to the point of winning the award for "Freedom from Hunger" in 1986. Zanu PF has consolidated its credentials as the liberation people's party and branded all opposition as sell-outs. It is that ability albeit aided by the use of force has epitomised the hegemony of Zanu PF in Zimbabwe. It is clear that Zanu PF has shown production abilities in agriculture in the 1980s, its hegemony bears testimony to marketing abilities and the infrastructure which has since started disintegrating clearly demonstrate delivery ability.
- d). As far as the principle of strategic control is concerned there is no mistaking as to the sophistication of the regime. The opposition parties have always been infiltrated and weakened in a relatively short period. Prominent opposition leaders are incriminated to tarnish their images and render them to the political dustbin. Supporters of the opposition have been systematically tortured, killed or simply disappeared and never to be seen on the hands of the intelligence force, the Central Intelligence Organisation (CIO). People fear Mugabe's Zanu PF.

5.1 Liberation credentials and the Threat of War

The tag of a liberator that Robert Mugabe carries and the indelible mark left by the scars of the ravaging war of liberation is a stark reminder of the cost of gaining independence that no one can take away from Robert Mugabe and

Zanu PF. The brand Zanu PF epitomised in the courage and mental strength of Robert Mugabe is symptomatic of Zimbabwe's heritage. Therefore the party Zanu PF like a brand has its unique selling proposition (USP) that nobody can copy. Subsequent to this view is the contrary argument that is, whosoever tries to oppose Zanu PF is neo-colonialist who seek to bring back white rule and this has been consistently used by Zanu PF to good effect.

5.2 Popular Socialist policies

The government of Robertt Gabriel Mugabe embarked on appealing policies at independence which included years of The People's Power, Consolidating the People's Power. Later on the government promulgated reconciliation for the former enemies publicly but on the contrary the opposition supporters were tortured and had properties destroyed. The Leadership Code to deal with corruption appealed to the population and as a result people respected the party as principled but it is at the same time that those in leadership were lining their pockets.

There are a number of moves that endeared the government with the voters to a point that they were persuaded they could introduce a one-party state which only failed because Edgar Tekere a former Zanu PF cadre campaigned against it. In the main the following are moves that made the government popular with the voters:

- a). Free education
- b). Agricultural support
- c). Creation of growth points as rural centres for development
- d). Improved roadwork
- e). Strong economy
- f). Black advancement

These moves saw the party sweep to electoral victories almost unopposed for the years 1985, 1990, 1995 but not in 2000. The glaring shortfalls of Zanu PF came unstuck and power was almost wrestled by the labour backed Movement for Democratic Change. However, Zanu PF would not lose because of violence, voting laws and above all rigging.

5.3 Propaganda and incriminating the opposition leadership

At independence Zanu PF would claim in its campaign message that it was an authentic and most revolutionary party that suffered with the toiling masses of Zimbabwe. That created a feeling of togetherness among the people and a veiled feeling among the Shona people that the country was theirs and that no other party of tribe would get space to dominate politics in the country. This points to the need to communicate and consolidate the unique selling proposition.

While brandishing the opposition as unpatriotic in its propaganda allowed it to create the impression that they were the guards of the country's sovereignty and used this as a pretext to torture the supporters of the opposition. The leadership of the opposition have all been brought before the courts for trial on trumped up charges. Practically this has decimated the prospects of the opposition and allowed Zanu PF to extend its hegemony perpetually since independence in 1980. Leaders of the parties, PF Zapu, Zanu (Ndonga) and the Movement for Democratic Change have been harassed and humiliated by the justice system and saw them lose their political appeal. Essentially this is ruthless treatment of the opposition.

5.4 Land Invasion

Land invasion was a systematic reaction to counter the rising popularity of the young labour backed Movement for Democratic Change. The white farmers were going to tilt votes in favour of the opposition. This is consistent with what happens in commerce where if competition is rising one finds means to counter them. This worked very well as Zanu PF managed to remove the influence of the white farmers from the farm labour by creating chaos and fear thus win back the vote of the farm worker.

5.5 Manipulation of the Law

On 22 December 1987 the state gave the nation a special Christmas present codenamed the "Unity Accord". This development put the last nail on the coffin of then PF Zapu the then main opposition which succumbed to systematic torture of its leadership and an unrelenting genocide of its supporters and turned around and took on bode the old adage "if you can't beat them join them". Immediately after that Joshua Nkomo found himself catapulted to the position of second vice president of the United Zanu PF as a reward for surrendering. Meanwhile Mugabe promoted himself through a ground breaking constitutional amendment that created the position of executive president moving him from the position of prime minister which was only executive to the all powerful executive and ceremonial position. While as prime minister he could not decree laws overnight as president he had the overarching powers to dissolve or enact statutes at will an instrument he would use to haunt, not only the opposition but also his descending members of the party.

Despite losing a referendum to change the constitution in 1999, the government through a very docile parliament has simply changed the constitution seventeen times with the eighteenth amendment meant to create a bigger senate and parliament to consolidate power while disregarding the economic haemorrhage the country is experiencing because of the ruinous policies the regime has pursued over the years.

5.6 Institutionalised Media Repression

Realising their unpopularity the government enacted laws that have made it illegal for people to criticise the glaring failures of the Mugabe regime. What is most disturbing about the Zimbabwean scenario is that the president representing Zanu PF is both player and referee in the political game, practically rendering Zanu PF to the author of the rules, the protagonist in the arena and referee, no wonder rumours are rife that election results are determined before elections. When the independent press created a wave of expectation through exposing the dirty on the hands of the government it came as no surprise the only credible independent newspaper the *Daily News* bombed and to this day nobody has been prosecuted in court nor condemned by the government.

Subsequent to the killer blow of the independent press in Zimbabwe the government moved swiftly to enact laws that have made it practically illegal to criticise the failings of the government.

5.7 Mugabeism

Shaw (1986) in Kriger (2005: p1) quotes Mugabe declaring in the Herald newspaper, the government's mouthpiece saying,

... as clear as day follows night... Zanu PF will rule in Zimbabwe forever. There is no other party besides ours that will rule this country (Prime minister Mugabe, January 1982).

Robert Mugabe's standing in the history of Zimbabwe is paradoxical, a hero who liberated the country and wrecked its once vibrant economy, social structures and governance because he would not want to relinquish power. Zimbabweans worshiped him for a long time till he went astray in pursuit of absolute power, no wonder the pundits have argued that Mugabe's destruction of Zimbabwe is unequalled in history in peace time.

The Mugabe school of politics is epitomised in ruthlessness in dealing with political enemies, never to accept any failure, arresting the leadership of the opposition to weaken them, equating the party to the state, carefully crafting populist themes to keep people focused and surrounding oneself with docile people who have no desire to takeover and relatives wherever possible. Political entrepreneurship as argued by Francois (2003:p154) typifies the spirit of innovation for survival that Mugabe has used effectively who points out that:

Because things change with time, because individual beliefs are necessarily subjective and because decisions are always made with uncertainty, the major problem of the actors is achieving their individual plans. And the major problem facing any social organisation is the coordination of these plans. The existence of stabilising institutions, of discovery processes, of people communicating preferences and of individual expectations all make this coordination possible.

A key feature of Mugabeism is the heavy handed control of party and state machinery to extend Zanu PF's hegemony in government. Mugabe has been dynamic in his approach to the unfolding situation in Zimbabwe. Through time he has changed the political theme, ie position himself and the party as acceptable leadership successfully. The effective control of the state machinery and stability within the echelons of power has meant that often there is no opposition to his leadership within the party and the government.

In the main Mugabe is an elected dictator who determines the outcome of elections in his favour using absolute power and a well orchestrated rigging machinery.

6. Conclusions

Politics carries the same competitive intensity as found in business. Just like with business the desire in politics is to overrun the competition and dominate the market. Political marketing warfare uses similar tools as in business such as branding, positioning and promotion in order to win the political customers, ie, voters with their policies. Political parties have to make promises to the electorate just as businesses advertise and make promises to the customers.

Robert Mugabe has ruled Zimbabwe an eye of a political entrepreneur who projects the qualities of:

"a person who seeks to initiate a political dynamic of change,...via an attempt to gain support for politically new ideas. This includes identifying problems, creating a network for diffusion in political circles, giving form to the terms of the political debate and the building of coalitions" (Mintrom 1997: p 739).

Zimbabwe's political landscape is skewed in favour of Zanu PF the ruling party founded in the 1960s. The party's image connotes a revolution for freedom and is renowned for a fighting spirit that defeated the colonial regime. The party successfully abused its war credentials to stay in power by employing threats, torture, rigging elections and above all demonising the opposition into submission to good effect. In its leader Robert Mugabe, the party has a tried and

tested cadre who has led the country from independence in 1980 to today (July 2007). Robert Mugabe can be credited with political entrepreneurship and charisma and is the main reason for Zanu PF's staying power.

Mugabe and Zanu PF practices are consistent with what Belk (2000: p343) says "As with slavery of old, a few Africans get rich at the expense of their brothers and sisters". The 1980s "Willowgate scandal" was about the political leadership enriching themselves against the promise of a leadership code. The same leadership bathed in the spilling blood of white farmers as they scrambled for land and property in violent land seizures.

Zanu PF has survived many crises and continues to appeal to voters albeit forcing the voters to tow the line using all kinds of threats especially violence and death and has mastered the art of staying in power against adversity.

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The Rising Urban Poverty and Political Resentment in a Transitional China: The Experience of Shanghai

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Abstract

Despite China's economic achievements in the last two decades, the market reforms have also brought about a widening income gap, reduction in social welfare, and rising unemployment. These factors are responsible for the emergence of a large number of urban poor, primarily composed of laid-off workers, unemployment persons, retired labours and urban migrants. As a marginal group, they suffer from economic inadequacy as well as violation of civil rights. Consequently, the urban poor raise a heightened anger with the negative result of the accelerated institutional transition and government's inability to respond to social problems. Thus conceived, this paper will attempt to (1) analyze the changing mechanisms for the new urban poverty stratum in China; (2) examine the effect of urban poverty on political protest and social upheavals; (3) examine the current policies and its deficits.

Keywords: Urban poverty, Social protest, Minimum living standard

1. The Emergence of Urban Poverty

Market reform over the last two decades has witnessed unprecedented economic growth in China. For instance, China's GDP has maintained double-digit growth for four consecutive years since 2002, including 10.7 percent growth in 2006, the fastest in a decade (National Bureau of Statistics China, 2006). Despite this achievement, the reforms have also brought about a widening income gap, reduction in social welfare, and rising unemployment (Hussain, 2003; Li & Piachaud, 2004; Yan, 2006). These factors are responsible for the emergence of a large number of urban poor.

Until the beginning of the 1990s, poverty in China was mainly regarded as a rural phenomenon, and the rural poor were the focus of anti-poverty policies. But in the 1990s, urban poverty emerged as a problem that potentially threatened a substantial percentage of the urban population as the transition towards a market economy moved along (Hussain, 2003). In the year 2001 working report of the State Council, the Chinese government officially acknowledged the existence of urban poverty by referring to "Marginal Groups" (Wu, 2004).

As the dragonhead of China's economy, Shanghai is well famous for its rapid development. Since 1996, Shanghai keeps a double-digit growth rate for 14 years in a row (Shanghai Statistical Bureau, 2006). With the expansion of the economy and industry, the annual per capita disposable income increased from 1075 yuan (US\$ 137) in 1985 to 18,645 yuan (US\$ 2375) in 2005 (Shanghai Statistical Bureau, 2006).

In terms of Hussain's (2003) classification of provincial poverty pattern, Shanghai is ranked towards the bottom of the table with a very low poverty rate compared with other provinces in China (see table 1). However, the increasing consumer price index and the unemployment problem have added to the burden of the poor, especially to those with low income.

Table 1. Provincial poverty pattern with poverty rate

Low 0-2%	Below average 2%-4%	Average 4%-6%	Above average 6%-8%	High to severe >8%
Beijing	Anhui	Guizhou	Gansu	Henan
Jiangsu	Fujian	Chongqing	Hainan	Shaanxi
Zhejiang	Guanxi	Hebei	Heilongjiang	Ningxia

Quangdong	Hunan	Hubei	Liaoning	Tibet
	Jiangxi	Qinghai	Jilin	
	Shanghai	Shangdong	Shanxi	
	Yunnan	Sichuan	Tianjing	
			Xinjiang	

Figure 1 presents a clear picture of the widening income gap between the rich and the poor. The lowest income group (bottom 10%) has a relatively slow income growth and almost 6.7 times slower than the highest income earners in 2003, an increase from 2.72 times in 1985. This depicts lagging life circumstances changing over time. Moreover, the unemployment rate of Shanghai is 4.4 per cent in 2005 (Shanghai Statistical Bureau, 2006), which is higher than the international level of 3.0 per cent (UNDP, 2004) and national level of 4.2 per cent (National Bureau of Statistics China, 2006) (see figure 2).

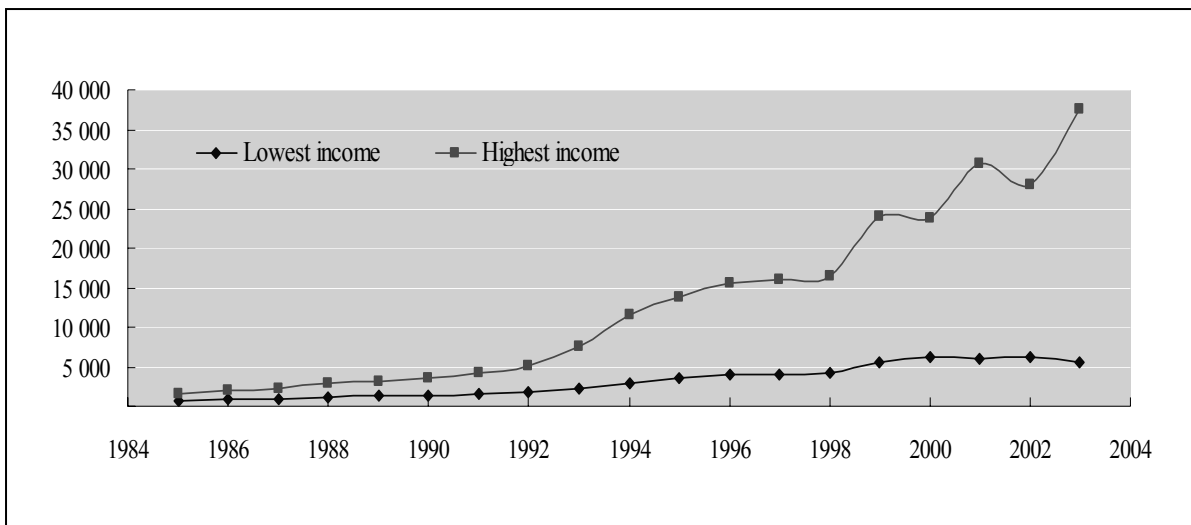


Figure 1. A widening income inequality in Shanghai (yuan)

(Source: Shanghai Statistical Bureau, 2006)

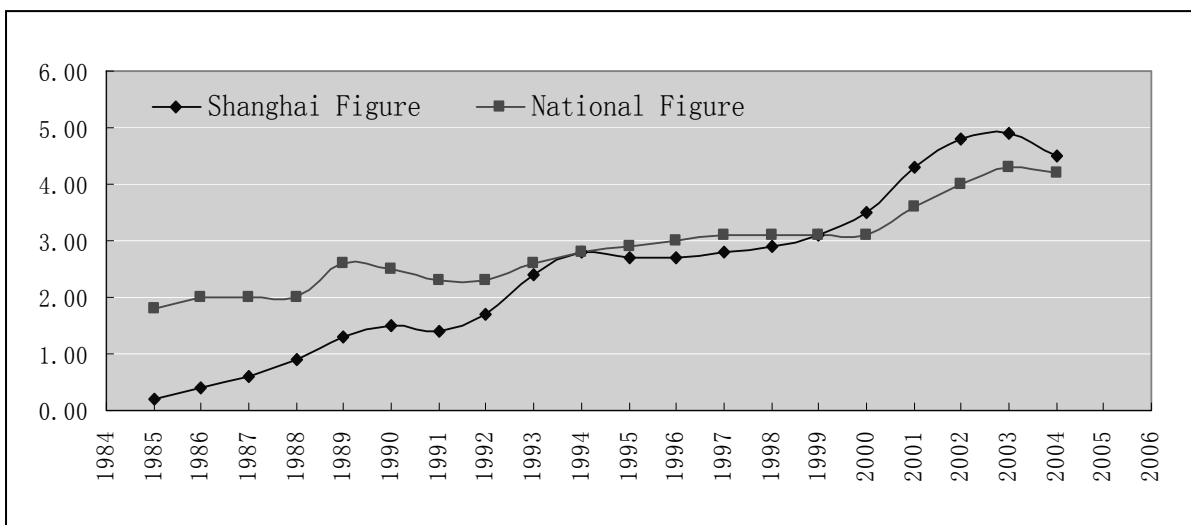


Figure 2. Officially unemployment rate between Shanghai and China

(Source: Shanghai Statistical Bureau, 2006; National Bureau of Statistics China, 2006)

2. Poverty and Poverty Line

The term “poverty” is a highly contested concept. It can be considered to have a cluster of different overlapping meanings depending on what subject area or discourse is being examined (Gordon & Spicker, 1998). For some, poverty is the inability to obtain the essentials of life; for others, a matter of low income; and for others again, a problem of social inequality (Spicker, 2002). As a result, both the measurement of poverty and the setting of a poverty line vary widely depending on the definition.

Approaches used to measure poverty include benefit receipt, income/expenditure levels and indicators of deprivation (e.g., see Baker & Schuler, 2004). One of the most common reasons for setting a poverty line is in order to calculate poverty rates (Baker & Schuler, 2004). These can then be used to monitor change over time. Generally speaking, different countries utilize different methods to set their poverty line. The UK government uses multiple indicators based on deprivation (Spicker, 2002), while the United States adopts a method called “Orshansky Poverty Thresholds (Note 1)”, which uses a set of monetary income thresholds that vary by family size and composition to determine who is in poverty (Proctor & Dalaker, 2003). For China, the poverty line is measured by “the cost-of-basic-needs” approach (Meng, Gregory & Wang, 2005), which is calculated by the weighted sum of food consumption expenditures and non-food consumption expenditures. Food consumption bases on a minimum energy intake requirement of 2,400 kcal per day (1984-1997) and 2,100 kcal per day (1998 to date) (Reddy & Minoiu, 2005). This expenditure is called the food poverty line. The non-food expenditure is estimated by a regression method proposed by Ravallion (Note 2) (1994).

The official poverty line in China is defined by the National Bureau of Statistics (NBS). In terms of the principle of “the minimum expense required to meet people’s basic living needs for necessary goods and services under the specific conditions of time, place and social development” (Tang, 1994), NBS calculated the 1984 poverty line as 200 yuan per person per year, 300 Yuan in 1990, and reached 637 Yuan in 2003 (Note 3) (Wang, 2004). A new poverty line which is meant “to reflect the steadily improving living standards of rural households” (National Bureau of Statistics China, 2006) was set up in 2000 based on a 60 per cent share of food in household consumption. This line is known as the “lower income line” and represented 882 Yuan in 2003 (Note 4) (Reddy & Minoiu, 2005). The poverty headcount rate (Note 5) based on this latter poverty line was 9.1 per cent in 2003, representing 85.2 million rural inhabitants.

However, this poverty threshold applies mainly to the rural poor population and the majority of related studies are concentrated on rural poverty, particularly on the past progress in China’s poverty reduction programs (e.g., see Chen & Wang, 2001; Yao, 2000; Reddy & Minoiu, 2005). Recently, there is an agreement that urban poverty has been on the rise in the 1990s (e.g., see Xue & Zhong, 2003; Khan & Riskin, 2001; Fang *et al* (Note 6), 2002), while the question of how many people have fallen within the criteria of urban poverty is most controversial.

For example, Hussain (2003) estimates that headcount index of national urban poverty is 37 million, or about 11.87 per cent of the urban population in 1998 in terms of an expenditure poverty line; if it is interpreted as an income poverty line, the poverty incidence is 14.8 million, or 4.73 per cent. All-China Federation of Trade Unions puts the urban poverty count at 18.28 million in April 2002, and in January 2003 the Civil Affairs Ministry reports an urban poverty headcount of 19.3 million, or about 6.2 per cent of the urban population (Riskin, 2006).

To date, there is no nationally unified urban poverty line in China due to the different pattern of consumption and average income per capita across localities (Riskin, 2006). Consequently, each city sets its own poverty line (Hussain, 2003). Generally, the higher the status of the city the higher the local poverty line. For instance, the national urban poverty lines currently fall in the range of 1,700 yuan to 2,400 yuan per year per head (Hussain, 2003) and Shanghai ranks far above this level. Based on the National Statistical Bureau Urban Household Income and Expenditure Survey (UHIES) for the whole country and for the period from 1986 to 2000, Meng *et al* (2005) draws three respective poverty lines for Shanghai (table 2). Currently, it is difficult to give the exact figure on how many people in Shanghai are living in poverty. Besides the use of different poverty measurements and lines, mass migration every year is a direct factor (Solomon *et al*, 2004).

In summary, there is no doubt that China has achieved impressive progress in reducing poverty, especially in rural areas, after rapid growth in the last two decades. But, when attention has been paid to rising urban poverty, we are still confronted with problems of imprecise poverty lines and until now, there is no specific research on urban poverty in the individual city. This leads to the justification for studying Shanghai as a case city.

Table 2. Poverty line for Shanghai, 1986-2000 (yuan)

	Food poverty line*	Upper bound of poverty line*	Lower bound of poverty line*
1986	365	536	472
1987	410	591	524

1988	535	708	640
1989	653	899	815
1990	735	1004	911
1991	585	1022	857
1992	968	1331	1190
1993	1250	1773	1570
1994	1778	2494	2211
1995	2101	2929	2614
1996	2280	3278	2876
1997	2369	3563	3079
1998	2339	3587	3058
1999	2294	3607	3033
2000	2414	3771	3142

(Source: Wang *et al.*, 2004)

* food poverty line is calculated by “the cost-of-basic-needs” approach; the lower poverty line is defined as the food poverty line plus the amount of food expenditure a household with total expenditure equal to the food poverty line is willing to forgo to buy non-food item; the upper bound of poverty line is defined as the total expenditure at which a household spends on food.

3. The Changing Mechanisms for Urban Poverty in Shanghai

Shanghai is an old industrial center of China, with a heavy concentration of old State-owned Enterprise (SOE). Since the central government confirmed the objective of developing a socialist market economy in the 1990s, Shanghai underwent a series of institutional transition to follow the new political-economic environment (Liu & Wu, 2006). To put it concretely, the restructuring of the state enterprise system together with the dismantling of “Iron Rice Bowl” policy of guaranteed lifetime employment has produced millions of laid-off workers (Qian & Weingast, 1996; Lin, Cai & Li, 2001), composing the predominant factor correlated with Shanghai’s emerged urban poor (Yan, 2006).

Before the restructuring, the features of the central planned economy were based on its socialist economic system and socialist egalitarian ideology (Guan, 2000; Yao, 2000). People living in Shanghai used to enjoy a high level of social welfare (Nickum & Schak, 1979). Specifically, urban workers in the SOEs enjoyed “welfare services from cradle to grave” (Cook & White, 1998; Hussain, 2003), including housing, medical services, pensions, child care, and jobs for children, while social relief was only needed to help those categorized as the “Three Nos” (no working ability, no income, and no family support) (Khan & Riskin, 2001;). The provision of welfare services at the enterprise level had the unintended consequence of serving as a deterrent against workers quitting and employers firing, even in the absence of official restrictions (Kanbur & Zhang, 2005). Almost all state employees, and many in the larger Collective-owned Enterprise (COE), have thus benefited from an “Iron Rice Bowl” policy and a relatively high wage in the enterprise. Consequently, urban poverty was almost non-existent at that time (Qian & Wong, 2000).

As the reform moved on, SOEs were regarded as highly inefficient because of their declining competitiveness and their increasing financial losses (Cook, 2000). This was exacerbated by the fact that SOEs lacked market incentives and had responsibility for all the social benefits of employees and their families. Recognizing that drastic restructuring was necessary, the planning quota for recruitment by state enterprises was abolished (Cook & White, 1998), and enterprises were allowed to choose their own employees (Guan, 2000). The state no longer took responsibility for matching the supply of and demand for labour (Knight & Song, 2003). Furthermore, the government decided to steer state enterprises into the market, holding them responsible for their losses even to the point of bankruptcy (Qian & Wong, 2000).

As a direct result, the number of SOEs experienced a sharp decline ever since 1992. With the increasing focus on economic efficiency, some unprofitable SOEs are closed and others are transformed into independent economic entities (Qian & Weingast, 1996; Cao, Qian & Weingast, 1999; Lin, Cai & Li, 2001). From table 3, we can tell that in 2003 the state sector in Shanghai only contributed to about 14.6 per cent of the Gross Industrial Output Value, down from 76.0 per cent in 1980.

Table 3. Declining importance of SOEs in Shanghai

	1980	1990	2000	2003
Urban working population (million)	105.25	170.41	231.51	256.39
Proportion of employees in SOE (%)	76.19	60.71	40.00	26.82
Proportion of industrial value of SOE (%)	76.00	54.60	26.10	14.60

(Source: Shanghai Statistical Yearbook, 2006)

In terms of employment, a large number of urban state sector employees were being laid off correspondently. In 2005, there were 0.21 million people working in the state enterprises, 89.8 per cent less than 1992 (Shanghai Statistical Bureau, 2006) (figure 3). In addition, housing subsidies were reduced to a very low level and the majority of households began to buy their own house rather than waiting for the allocation from the government (Gong & Li, 2003). Health coverage was changed from 100 per cent coverage by the government to a coverage range as low as 20 per cent for state sector employees and zero for other urban workers (Li & Piachaud, 2004). School tuition fees at all levels of education were increased significantly (Solomon, Yuan, Fei & Maher, 2004). More importantly, the government provided pension system was changed to an individual account system, which meant decreased pension coverage for a larger segment of the population (Cook & White, 1998; Gong & Li, 2003).

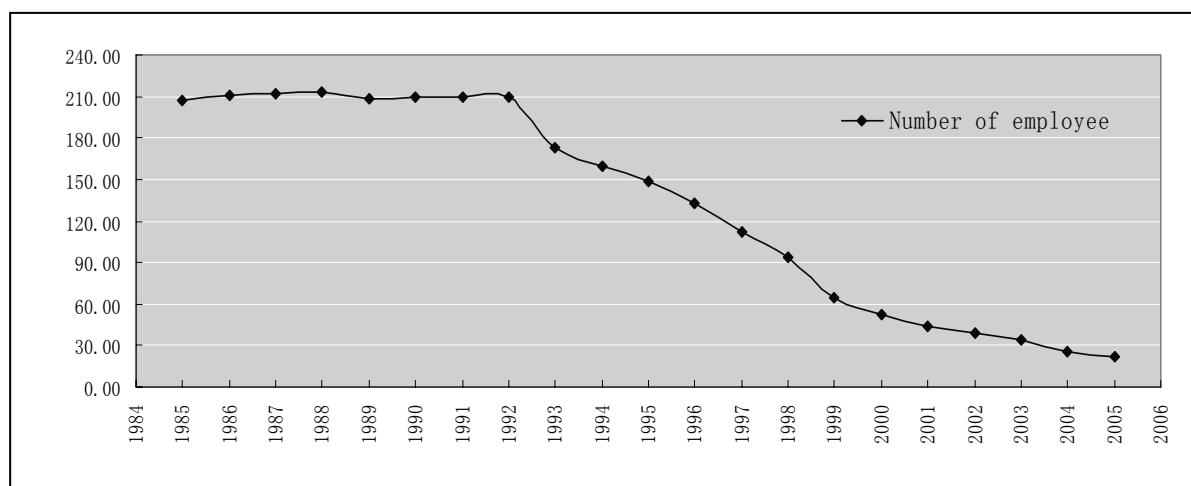


Figure 3. Employees in SOEs in Shanghai (10,000 persons)

(Source: Shanghai Statistical Bureau, 2006)

4. Urban Poverty and Political Resentment

The rising urban poverty might be transitional, but its duration may be persistently long for political tolerance. In Shanghai, unemployment and the rising income inequalities added to growing labour protests and have consequential impacts on its social-economic stability.

In Marshal's foundational book *Citizenship and Social Class*, he demonstrated that "citizenship is a status bestowed on those who are full members of a community. All who possess the status are equal with respect to the rights and duties with which the status is endowed" (Marshall, 1950). Unfortunately, the urban poor in Shanghai suffer from not only economic inadequacy, but also from serious violation of their political, civil and social rights (see table 4). Specifically, laid-off workers bear unfair and unjust treatment (Wang, 2004; Liu & Wu, 2006), unemployment persons receive no legal protection from the labor arbitration committee or the court (Lin, Cai & Li, 2001; Hong, 2005), urban migrants lack of rights to participate in any rule-making process (Guo, 2007), and all the poor people's political rights, such as that to vote and participate in the central organs of governments, is amount to nothing more than empty rhetoric (Hong, 2005). Moreover, the existing institutional structure does not allow any legal representation for unemployed workers (Hong, 2005). In other words, any organized effort outside of the control of the party-state to influence government policy-making is strictly prohibited (Tang, 2001; Guo, 2007).

Consequently, the urban poor raise a heightened anger with the negative result of the accelerated institutional transition and government's inability to respond to social problems. They even generate hostility toward the various power-capital groups and, in a larger sense, a growing power-capital economy (Tang, 2001; Hong, 2005). The conspicuous consumption and rampant corruption of the power-capital groups further ignite the feeling of animosity, which

contribute to unpredictable social upheavals (Hong, 2002). One study revealed that migrant children in Shanghai had no affinity with any power-capital groups and thus embraced a strong sense of resentment against mainstream society (Yan, 2005). When individual rights of those new urban poor are jeopardized, they will engage themselves in political protests to influence the action of government (Kuan & Lau, 2002; Guo, 2007). The increased anti-government activities organized by the disadvantaged groups recorded their crisis of confidence and challenges of the government's legitimacy (Hong, 2002; Hong, 2005) (table 5).

Table 5. Selected reports on protests organized by Shanghai's urban poor, 03-06

Date	Short Descriptions	Source
03/13/2003	The police detained 45 land protesters who were en route to Beijing from Shanghai to petition the central government.	HRIC 03/14/2003
05/01/2003	132 residents upset at being evicted from their homes protested in front of Shanghai municipal government buildings.	HRIC 05/1/2003
06/18/2003	200 protestors gathered outside the Shanghai municipal government to protest unfair treatment in the sale of their housing.	BBC VOA 6/15/2003
10/20/2004	Three plaintiffs alleged that their homes were illegally destroyed by property developer on August 8, 2003. At the October 20, 2004 hearing of the case, the plaintiffs were barred from attending the trial, and the case was subsequently adjourned.	HRIC 10/25/2004
09/27/2006	Pensioners who have received inadequate social security benefits protested in the heart of city.	SCMP 10/05/2006
09/28/2006	30 hemophiliacs and their families who claim they were infected with HIV from a tainted blood product sold by a research institute protested outside Shanghai municipal government buildings.	SCMP 10/05/2006
09/30/2006	Urban residents protested against corruption after the sacking of Shanghai's party secretary, Chen Liangyu, and other officials who have lost their job on charges of corruption.	SCMP 10/05/2006

Note: (1) This table is intended to give a brief description for the type and frequency of protests among urban poor and represents only a small sample reported in the press.

(2) Media Abbreviations: BBC- British Broadcasting Company (UK), HRIC - Human Rights in China (US-based NGO), SCMP - South China Morning Post (HK), VOA-Voice of America (US).

5. The Current Policies and Its Deficits

Since urban poverty is a relatively new problem in Shanghai, understanding of the urban poor is limited. Current policies place a strong emphasis on the economic management and marketization (Wang, 2004). Less effort is given to equal distribution, basic needs, education and health.

However, to minimize large-scale anti-government actions and maintain social stability, Shanghai has taken the lead in introducing three basic guarantees since the 1990s: Minimum Living Standard Scheme (MLSS) for urban residents, Basic Minimum Wage for workers and Basic Unemployment Compensation for laid-off employees, along with a guarantee of salaries being raised gradually in accordance with living standards.

Specifically, the MLSS plays a critical role in alleviating poverty in Shanghai (Guan, 2000). The government defined the basic needs of a person living in Shanghai in terms of the cost of diet, dressing, housing, medicine, education and other social services (Meng, Gregory & Wang, 2005). At the beginning of implementation in 1993, the poverty line was set at 120 yuan (US\$ 15) per capita per month and adjusted every year in response to the changing inflation rate and

price index. In 2006, the poverty line of Shanghai rose to 320 yuan (US\$ 41) (Shanghai Civil Affairs Bureau, 2006), which was ranked highest in China, and more than two times its initial level.

However, as the last defense line against urban poverty, the minimum living condition guarantee promised by the government has proved to be ineffective in fulfilling the designated role (Hussain, 2003; Knight & Song, 2003; Yan, 2006). A threshold of 320 yuan (US\$ 41) means that large numbers of households surviving on incomes near or above this line are not covered. With less than a quarter of the eligible urban poor actually receiving the assistance, the MLSS is too limited to be an effective social safety net (Liu & Wu, 2006). Moreover, the long-term migrants living in Shanghai for more than six months are completely excluded from this social protection schemes (Ravallion & Jalan, 1999), as it is based on the *hukou* system, or urban household registration (Solomon *et al*, 2004; Wang, 2004).

6. Policy Directions for the Solution

Shanghai's rising urban poverty has been created under the transition from state socialism to market socialism and is mainly composed of laid-off workers, unemployment persons, retired labours and urban migrants. Suffering from economic disrespect and political discrimination, they will potentially raise their political opposition and rally toward government.

Therefore, to cope with these difficulties, Shanghai government should lift the level of welfare provision and further take responsibility to ease social turbulences caused by the urban poor.

First and foremost, it is imperative to guarantee equal rights of citizens and ensure social justice. The government should set citizen rights of its people as the highest principle. Specifically, the scheme of minimum living standards should serve as a catch-all to describe what it is that the citizen can expect (Hussain, 2003). A strategy for social inclusion rather than anti-poverty or anti-exclusion should also be built up. One important advantage of this approach is that the result is a social inclusion strategy for everyone, rather than just a means for dealing with citizens who possess the urban *hukou*.

Second, it is imperative to loosen restrictions on free political expression and bottom-up public participation in the political process. The heavy-handed control mixed with negative reactions to labour protests would only lead into more serious political challenges to the current regime (Kuan & Lau, 2002). In this manner, the current village election might be a useful example of trading political rights for social stability (Hong, 2005). Prior to implementing the village self-election system, the government had to cope with seething rural discontent with a hard effort. Having compromised by giving the rights of political self-determination and democratic participation to villagers, the government now has little difficulty regulating and governing its countryside.

Last but not least, it is imperative to require the inclusion of urban residents in the process of decision-making. In deprived areas, people should be consulted, involved and listened to in defining and meeting their needs.

Overall, The purpose of the government should not be to target policies more carefully on the poor, but to ensure that there is a general framework of resources and services which are adequate for people's needs, and can be used by everyone.

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Table 4. Social benefits and rights distribution in Shanghai, pre-reform and post reform

Occupational Class		Civil Rights				Political Rights				Social Benefits and Rights									
		Speech & Religion		Equal Justice in Law		Participation in Voting		Being Elected		Free Education		Child Sickness Benefit		Job Security		State Pension		Minimum Wages	
Cadres	Pre-	Post-	Pre-	Post-	Pre-	Post-	Pre-	Post-	Pre-	Post-	Pre-	Post-	Pre-	Post-	Pre-	Post-	Pre-	Post-	
	-	-	++	++	++	++	++	++	++	++	+	++	++	++	++	++	++	++	
	-	-	++	++	++	++	++	++	++	++	+	++	++	++	++	++	++	++	
Workers	+	+	+	+	++	++	+	+	++	++	+	++	+	++	++	+	++	++	
	+	+	+	+	+	+	-	-	-	-	-	-	-	-	-	-	-	-	
Other residents	+	+	+	+	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
	+	+	+	+	-	-	-	-	-	-	-	-	-	-	-	-	-	-	

Key: ++ full rights; + some or partial rights; - minimum or no rights;

Pre-, pre-reform period, 1949-1978; Post, post-reform period, 1978-present;

SOE, state-owned enterprise; COE, Collective-owned Enterprise

Note: The enjoyment of the rights was judged subjectively and a value of full rights, some rights or no rights was assigned to each group. The assignment is only an indication of the relative situation because most of the benefits or rights are difficult to quantify. They were also taken as an average situation across the group.



Ad Baculum, Islamic State and Malaysian Chinese Politics: A Rhetorical Study of Selected Political Advertisements in the Local Chinese Media during the 11th Malaysian General Election Campaign

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Abstract

This study analyzes the rhetorical strategy of using the emotion of fear as a political tool in the 11th Malaysia General Election campaign. The three-prong objectives of this study are to analyze the main themes and issues used to address this tactic of fear, the general perceptions that non-Moslems in Malaysia have of the concept of Islamic state as a symbol of fear and rhetorical strategies used to provoke this fear. The scope of the study is confined to the conventional communication model of "Source-Message-Channel-Receiver". The "sources" are political advertisements, the "messages" are Islamic state theme and related issues, the "channels" are symbols or rhetorical strategies and the "receivers" are the voters, with special reference to Malaysian Chinese voters. The findings concluded that the National Front party (*Barisan Nasional*, BN) used the fear factor effectively in its campaign. This situation is further enhanced by the strong control of BN over the Malaysian media in addition to the character of Chinese voters who generally prefer not to leave their current comfort zone and are afraid of an Islamic state.

Keywords: *Ad baculum*, Islamic State, Malaysian Chinese, Politic, Malaysian General Election, Political advertisement, Rhetoric and Malaysia

1. Introduction

Bentham was perhaps the first to relate fallacies to politics as can be seen in *The Book of Fallacies; from unfinished papers of Jeremy Bentham* (By a friend. London: J. and H. L. Hunt, 1824). The *Bentham's Handbook of Political Fallacies* was later revised, edited and a Preface by Harold A. Larrabee was added before it was published in 1952 (Baltimore: The Johns Hopkins Press). However, the concept of fallacies discussed in that particular text is not exactly the same as the concept of what informal logicians means. In the context of informal logic, Ralph H. Johnson was the first proponent who discussed the relationship between informal logic and politics. In his paper presented at the Conference on Logic and Politics in Amsterdam, February 19-22, 1990, Johnson discusses the role of informal logic in the analysis of political discourse and some dangers we encounter in applying this logic to politics and its possible remedies. Among the popular fallacies commonly used in politic is *ad baculum*, the fallacy of appeal to fear. Fear is a classic political weapon, used throughout the ages. Its mechanism is simple, making the people afraid and telling them that you are the one who can save them.

This paper will try to analyze one of the political discourses, that is political advertisements and how these advertisements were used as a rhetorical strategy for causing fear. Thus, a few objectives below will be analyzed:

- 1) What are the kinds of main themes and issues used to address this tactic of fear?
- 2) What are the kinds of fear or general perceptions that the non-Moslems in Malaysia have of the concept of Islamic state as a symbol of fear?
- 3) What are the kinds of rhetorical strategies used to provoke this fear?

Meanwhile, the scope of this study focuses on the three above-mentioned objectives and uses the conventional communication model of “Source-Message-Channel-Receiver”. The source of study is the main political parties’ political advertisements in the local Malaysian main Chinese media. In this case, the four main political parties in Malaysia are the National Front (*Barisan Nasional*, BN), Democratic Action Party (DAP), Islamic Party of Malaysia (*Parti Islam Semalaysia*, PAS) and Justice Party (*Parti Keadilan*, PK). BN, the ruling party before the 11th General Election is itself a coalition of a few individual parties, lead by United Malays National Organization (UMNO) while Malaysian Chinese Association (MCA) and Gerakan Rakyat Malaysia Party (PGRM) are the main Chinese community political parties in the BN coalition. Meanwhile, the main local Malaysian Chinese media where data was collected are *Nanyang Siang Pau* 南洋商報, *Sin Chew Jit Poh* or *Sin Chew Daily* 星洲日報, *Oriental Daily News* 東方日報 and *China Press* 中國報. The time frame being covered was from 13th March 2004, the day of nomination to 20th March 2004, one day before the polling day when political campaigning is allowed. The “messages” used in the communication model is the theme and issues. In this case, the idea of Islamic state plays the role as the main theme and its presume implication to the Malaysian Chinese communities is incorporated into various election campaign issues. Those issues are either directly or indirectly linked to the idea of Islamic state and were presented to the Malaysian Chinese voters through various categories of fear-instilling rhetoric also known as *ad baculum*. Meanwhile, the “channels” are symbols or rhetorical strategies and the “receivers” are the voters, with special reference to Malaysian Chinese voters. Thus, the rhetoric strategies play the role of linking issues to the voters, channeling fear from the issues to them within the same theme that is instilling fear amongst the Malaysian Chinese voters toward the idea of Islamic state.

2. Definition of Terms

2.1 Rhetoric

Rhetoric, said to have originated from the Greek language *ῥητωρ*, *rhêtôr*, which means "orator" is one of the early three liberal arts study better known as *trivium*. Today’s definition of rhetoric has become much more complex due to its more than 2,500 years of history and evolution. Its definition has expanded from Greek classic formal oratory to include all types of literature or non-literature, oral or written discourse and even visual. Thus, rhetoric includes non-discursive or nonverbal symbols as well as discursive or verbal ones. Speeches, essays, conversations, poetries, novels, stories, comic books, television programs, films, art, architecture, plays, music, dances, advertisements, furniture, automobiles, and dresses are all forms of rhetoric (Foss, 2004: 5). Aristotle in his *Treatise on Rhetoric* (translated by Theodore Buckley, 1995: 11 & 24), defined rhetoric as a faculty that considers all possible means of persuasion on every subject. Rhetoric could be performed through three kinds of orations: the deliberative, the judicial and the demonstrative. Deliberation rhetoric includes exhortation, dissuasion, advice and harangue. Judicial rhetoric is about accusation and defense, while demonstrative rhetoric is partly about praise or blame.

In science, the truth is of utmost important but in rhetoric the focus is on human and the changes in their environment. Thus, rhetoricians are more interested in how human interprets the truth according to their cultural context, rather than according to the truth itself. Since the human beliefs and culture change according to time and situation, the “truth” in rhetorical argumentation can be considered as temporary reality as they can change. In this context, Foss (2004: 6) explained that “*Reality is not fixed but changes according to the symbols we use to talk about it.*” Rhetoric is merely a way to handle and adapt to the reality of change in human’s every day life. In so doing, rhetoric plays two main roles: interpretation and expression. This paper will study the expression aspect on how human use language to create change in their lives. In this case, it is how political parties used language (text or other visual forms) to change the voting preference. Voters’ preference represents their acceptance to the party’s action (particularly referred to political campaign). Meanwhile, voters’ acceptance depends on them being persuaded as to the rightness of the action and persuasion depends on effective rhetoric (McClurg, 1992).

Even though there is nothing improper or indecorous about using rhetoric in a debate, rhetoric is often characterized pejoratively. A Malaysian political example is the following extract from then Prime Minister of Malaysia, Dr. Mahathir Mohamad (in *Utusan Malaysia*, 1999) regarding the opposition:

Kita perlu menentukan parti-parti pembangkang yang penuh retorik tetapi kosong pada isinya, yang bergantung semata-mata kepada penanaman perasaan kebencian kepada parti kita dan pemimpinnya untuk mendapat sokongan rakyat, tidak berjaya mencapai hasrat mereka.

(We should ensure the oppositions, which are only good at using empty rhetoric, depend on hatred towards our party and leaders to get the peoples’ support, fail to achieve their motives).

Rhetoric is simply a label for the discourse of practical argumentation. To accuse an opponent in an argument of engaging rhetoric is to accuse the opponent of nothing more than trying to persuade the audience that the person's position is the better one. This does not mean that all rhetoric is above reproach, for there are good rhetoric and bad rhetoric. Good rhetoric is grounded in logic and sound reasoning. Bad rhetoric is grounded in fallacy. A fallacy is a type

of incorrect argument. A fallacious argument is one that appears to be correct but proves to be logically invalid upon scrutiny (McBurg 1992, op. cit.) These include the *ad baculum* fallacy that is going to be the main focus of study in this paper. *Ad baculum* is a fallacy that appeals to fear.

2.2 *Ad Baculum* and Fear

The fallacy that appeals to fear is an argument that uses threat of harm to advance one's conclusion. This fallacy according to Engel (1986: 220) is also known as "swinging the big stick", as the Latin word for stick or staff is *baculum*, and this argument is known in Latin as *argumentum ad baculum*. Epstein (2002) explains that "an argument is an appeal to fear or scare tactics if it uses or can be repaired only by putting in a premise that says, roughly: You should believe or do _____ if you are afraid of _____. The appeal to force seems at first to be so obvious a fallacy as it is the use or threat of "strong-arm methods" (Copi & Cohen 1990: 105) to coerce opponents. Thus, literally *ad baculum* also known as "appeal to staff or gun". In a democratic country, any voters are supposed to have the right to make their own choice. Alas, *ad baculum* type of appeal is violating a democratic system because the listeners are not making their own choice or decision freely but like being pointed a gun to their heads to make a choice or decision to the aggressor's will. However, it is certainly idiotic for any politician to threaten voters so obviously. So, there are occasions when arguments *ad baculum* are employed with considerable subtlety as are normally used in the political advertisements that we are going to analyze. However, prior understanding of the fear element and knowing the skill of rhetoric is essential.

Quoted from Aristotle's *Treatise on Rhetoric* (translated by Buckley, 1995: 121 – 127), fear can be defined as a sort of pain or agitation, arising out of an idea that is evil, capable either of destroying or giving pain. However, people only fear those whose effect is either a considerable degree of pain or destruction and these (pain or destruction) are not far removed, but give one the idea of being close at hand, so as to be on the eve of happening. Generally human are emotional beings, thus are subjected to fear. No matter how the rational mind tells us that there is nothing to fear about, the feeling of fear still exists naturally especially if the event of fear seems close by. For example, in the wake of the September 11th terrorists' attack, if you are on an airplane and you see a group of Arab-looking men, would you not be nervous? After getting off the plane hours later, would you not be even a little more willing to support racial profiling in screening passengers for security threat? That is what Luis (2004) claimed as the fundamental for President George Bush administration blatantly using fear as a political weapon against Senator John Kerry in the United States Presidential Election (Year 2004). In an everyday context, one might come across a cosmetic sales person saying that without a particular cream or cosmetic, your face will look pale and awful. An insurance agent might warn you that if you do not have an insurance protection, your family will have to endure all sorts of difficulties in the event you suffer serious injuries or sudden death.

These are types of soft threat but they contain seeds of *ad baculum* fallacy. Politicians did not point a real gun or stick at you but you are forced to feel it is better or safer to follow their 'advice'. The arguer demands acceptance of his proposition not because it is true or proven but because there are consequences for rejecting it. Another example is El Salvador guerrilla's slogan: "Vote in the morning; die in the afternoon" (Harris, 2000). The Nazis had also used the tactic of *ad baculum*. According to Grunberger (1971), the Nazis used to send the following notice to German readers who let their subscriptions lapse: "Our paper certainly deserves the support of every German. We shall continue to forward copies of it to you, and hope that you will not want to expose yourself to unfortunate consequences in the case of cancellation." Another example of using *ad baculum* tactic was during the United States of America 1964 election race between Lyndon Johnson and Barry Goldwater. Despite the fact that during Johnson's congressional career, he supported legislation that contributed to a significant buildup of nuclear weapons, his one simple television advertisement masterfully eliminated Goldwater's claim to the White House. The advertisement tied Goldwater with nuclear holocaust. In the advertisement, an adorable, innocent child sits in a field picking petals off a flower, counting each petal in the process. Interspersed with her counting, images appear of a nuclear missile about to be launched accompanied by the ominous countdown of a mission control facility appeared. As both child and missile reach zero, a mushroom cloud appears with text urging Americans to prevent World War III by re-electing Johnson. The spot terrified most Americans, playing into their fears that nuclear war was imminent. It secured Johnson's re-election (Vincent, 2002: 32 – 33). *Ad baculum* style of campaigning was the trick and its mechanism of success is simple as mentioned earlier: make the people afraid and tell them you are the one who can save them. Dhammananda (2003: 9, 10 & 11) explained that fear is an intense emotional reaction characterized by attempts to flee from the situation, imprison and ensnare the mind and flourishes in the fog of ignorance. Therefore, presenting issues of fear to voters and presenting self as the sole savior at the same time might just easily make the voter flee from the fear elements without rightful rationalization and then, leave them no choice but to pledge their vote to the only "savior" party available. Otherwise, there will be unfavorable or negative consequences.

Closely linked to *ad baculum* strategy is 'transference', which is also known as fallacy of association. It is used to associate the argument with something attractive or unattractive depending of the purpose. For example, politicians published pictures of themselves officiating the opening of new factories, new highway or new community center,

shaking hands with plain folks, planting trees or taking photographs with respected world leaders. On the other hand, politicians often associate their opponents' names with pictures of villains and its symbol, terrorist activities, nuclear mushroom clouds and other elements of fear or political group associated with the elements of fear. Thus, by using transference, one could bring the effect of *ad baculum* to any other party through associating it with the original feared party.

2.3 Islamic State

The concept of Islamic state seems to be rather vague, as it was not properly defined in *Koran*. As such, the vagueness of the term had invited various interpretations. In the Malaysian political context, the interpretation has indeed attracted the interests of two main political parties of the Moslems, namely United Malays National Organization (UMNO) and Party Islam Semalaysia (PAS). According to the Islamic Development Department of Malaysia (*Jabatan Kemajuan Islam Malaysia* or Jakim), the term "Islamic state" is indeed not stated at all in the *Koran* or *al-Sunnah* (Jakim, 2004). The same conclusion is also mentioned by Asghar (n.d). Thus, the definition of "Islamic state" depends on each individual, researcher or *ulama* (Moslem scholars recognized of having specialized knowledge of Islamic sacred law and theology). Some examples are presented below.

According to Jakim (2004), an Islamic state can be defined as follows:

- 1) A country that is controlled and ruled by Islamic followers and Islamic people enjoy peace and comfort in it;
- 2) A country in the ruling power of Islam people, its strength and defense are controlled by Islamic people and thus, a must to be defended by each individual Moslem;
- 3) A country that bows to the power of Islam and the head person in command is an Islamic people;
- 4) A peaceful and free country where the Islamic insignia is established within it;
- 5) Moslems' motherland is to be known as 'Islamic state'.

Asghar (n.d) mentioned that *Koran* did not give much importance to the form of state but greatly emphasizes the nature of society based on values. Thus, he thinks an Islamic state should have following characteristics:

- 1) It should be absolutely non-discriminatory on the basis of race, colour, language and nationality;
- 2) It should guarantee gender equality;
- 3) It should guarantee equal rights to all religious groups and accept pluralities of religion as legitimate;
- 4) It should be democratic in nature whose basic premise will be human dignity.

Only those states which fulfill these criteria can be construed to be Islamic in nature. Thus, an Islamic state is the very epitome of modern democratic pluralistic state (ibid).

Meanwhile, following Mawdudi's (a prominent Pakistani scholar) interpretation, Samuel Shahid (n.d) stated that an Islamic state is essentially an ideological state and is thus radically different from a national state. Mawdudi (1982, in Shahid n.d) summarizes the basic differences between Islamic and secular states as per *Hanifites*, one of the Islamic schools of jurisprudence:

- 1) An Islamic state is ideological. People who reside in it are divided into Moslems, who believe in its ideology and non-Moslems who do not;
- 2) Responsibility for policy and administration of such states should rest primarily with those who believe in the Islamic ideology. Non-Moslems, therefore, cannot be asked to undertake or be entrusted with the responsibility of policymaking;
- 3) An Islamic state is bound to distinguish between Moslems and non-Moslems. However, the Islamic law *Shari'a* guarantees to non-Moslem certain specifically stated rights beyond which they are not permitted to meddle in the affair of the state because they do not subscribe to its ideology. Once the non-Moslems embrace the Islamic faith, they become equal participants in all matters concerning the states and the government.

According to Asghar (n.d), as far as the *Koran* is concerned, there is, at best a concept of a society rather than a state. He noted that the pre-Islamic Arab society had not known any state structure. It was a predominantly tribal society which did not know any distinction between a state and a civil society. There was no written law, much less a constitution. The only law prevalent was that of *qisas* i.e. retaliation and the Islamic movement in Mecca inherited this situation. Madina, the city the Prophet moved to was also basically a tribal city governed by tribal law. The Prophet took a revolutionary step in dissolving tribal bonds and laying more emphasis on ideological boundaries on one hand and territorial boundaries on the other. However, the Prophet's aim was not to build a political community but to build a religious community instead. Thus, Asghar (ibid) stated that the political theory of Islam had to undergo frequent changes to accommodate the empirical reality. It is, therefore, not possible to talk of an "Islamic State" with a sense of finality. He also noted that today, there are several Muslim countries with varied forms of state ranging from

monarchical to dictatorial or semi-dictatorial to democratic. All these states, however, consider themselves as “Islamic State”.

Overall, there is no fixed universal definition for “Islamic state”, not even in the Koran. Thus, the concept of Islamic state depends on how the political parties wish to present it and how the voters as recipients perceive it.

3. Research Background

3.1 Background of Malaysian Chinese Politics

Of the 25.58 million total Malaysian citizens in year 2004, the Chinese comprise of 26.0%, Bumiputera (Note 1) 65.1%, Indians 7.7% (Department of Statistics Malaysia, 2004 & 2006), thus, making Chinese minorities compared to Bumiputera, which mainly comprises of Malays. However, the Chinese are the biggest minority ethnic group. Malaysian Chinese are predominantly non-Moslems in nature and they are basically convenient of their current religious belief. The Malaysian Chinese are generally perceived as a dynamic community and did relatively well in economics affairs compared to the other races. On the other hand, general perception views Islam as a Malay affair and the Malays and Moslems are generally perceived as backward in all aspects. However, there is also general perception viewing the Chinese as “outsiders” whose residential status in Malaysia since the country’s independence is a “courtesy” of the Malay. Furthermore, communities outside Malaysia generally view the Chinese as “Malaysian Chinese” but within Malaysia, they are recognized as “Chinese, then Malaysian.” These views form the fundamentals of the political background in Malaysia where political parties are constructed along ethnic groups. Normally, political parties should be based on ideology but Malaysian political parties based on racial. For example, DAP is not generally perceived through its ideology despite its strong social democrat approach due to the general sentiments of the electorates and their low level of political consciousness. Instead, DAP is perceived by the society as a “Chinese party with few other professional Indians” due to its leadership and members structure which is dominated by ethnic Chinese. Similarly, in spite of its multi-racial political philosophy, PGRM is also perceived as a “Chinese party” even though there were previously and currently few outstanding non-Chinese members in the party. PAS is basically an Islamic party while UMNO is a Malay-bumiputra party. MCA is a Chinese party and MIC is an Indian party.

UMNO and MCA form the PERIKATAN (Alliance) for the Kuala Lumpur Municipal Council’s election in 1952 and won convincingly (Barisan Nasional, 2004). MIC joined the Alliance in 1954 (Malaysian Indian Congress, 2004). The Alliance won 51 out of 52 seats in the first General Election in July 1955. This coalition of various parties was later institutionalized as Barisan Nasional (BN) and was formally registered on the 1st July 1974. Besides UMNO, MCA and MIC, Barisan Nasional is made up of six other parties including PAS (which was later expelled from BN) and PGRM (Barisan Nasional 2004, op. cit). However, since then, the fact that this three main political parties plus PGRM and other coalition parties still remained as individual parties further prove racial politics exist in Malaysia. As they have been cooperating and in coalition for so long, should they not merge themselves into one single multiracial party with its own political ideology rather than a group of individual racially-identified parties in a coalition?

Malaysian politics is dominated by the Malay group. Political power is concentrated in UMNO party and its leaders. MCA, PGRM and MIC are merely supporting their Malay counterparts. Malays hold top and important posts in the Cabinet including the post of Prime Minister, Deputy Prime Minister and other important ministerial positions in Finance, Defense, Education, Foreign Relationship and Trade. The Chinese do not hold top or important positions in almost all government agencies and important organizations, which include the police force, army, Central Bank, Securities Commission, Election Commission, and judicial positions. Under the New Economic Policy (NEP), the Bumiputera group is also entitled to at least 30% quota of participation in equity ownership plus other special treatments allocated to them. Challenging, questioning or even discussing that issue openly is subject to the Internal Security Act (ISA), which allows immediate detention without trial. Thus, the ISA is an element of fear used to control the multi-ethnic communities in Malaysia and could be subjected to misuse politically. Furthermore, given economics liberalization and peaceful daily living, the Chinese are in a “comfort zone”, not wanting to risk their comfort zone life by demanding for changes especially in the political aspect. Thus, the Chinese political thinking is more toward convenience and they are averse to changes.

In this case, changing to Islamic state ideology is something deemed too drastic and unacceptable to the Chinese group. This may due to the perception following many events which happened such as the aggression on ethnic Chinese in Indonesia, the Malaysia 13th May 1969 tragedy and the looming terrorist activities that were linked to Islamic fanatic groups. Set against such a scenario and events, issues of setting up Islamic state were played up to the benefit of the related parties by striking fear into the Chinese group. Issues that are either directly or indirectly linked to the concept of Islamic state were presented to the Malaysian Chinese voters through various categories of fear instilling rhetoric also known as *ad baculum*.

3.2 Media and Politics in Malaysia

As additional information, the major media organizations in Malaysia are Media Prima Limited, New Straits Times Press (M) Limited (NSTP) and Star Publications (M) Limited for the English media, Sin Chew Media Corporation

Limited and Nanyang Press Holding Limited for the Chinese media while Utusan Melayu (M) Limited for the Malay language media. Media Prima Limited owns 43.5% of NSTP and wholly owns TV3 channel, a major television channel. NSTP owns 100% of Berita Harian Private Limited, the publisher of a major Malay language newspaper (JF Apex Securities, 2004). The Barisan Nasional coalition parties' investment arm, the BN ruling government, its agencies, government related organizations or funds hold substantial equity in these major media organizations. Among the government related organizations or funds are the Ministry of Finance, Employees Provident Fund (EPF), Lembaga Tabung Haji, Khazanah Nasional and Valuecap Private Limited while Huaren Holdings Private Limited is the investment arm of MCA. Huaren Holdings, with 42% shareholding is the biggest shareholder of Nanyang Press. Huaren Holdings is also the biggest shareholder of Star Publications. Other major shareholders of Star Publications include EPF, Valuecap Private Limited. Sin Chew Daily is commonly perceived as pro-government. Realmild (M) Private Limited, EPF and Malaysian Resources Corporation Limited (MRCB) are the three biggest shareholders of Media Prima. MRCB is a government related company through EPF shareholding while Realmild (M) Private Limited is MRCB's biggest shareholder. Utusan Melayu has the Ministry of Finance, EPF and Lembaga Tabung Haji as its major shareholders. In NSTP, besides Media Prima's shareholding, EPF and Khazanah Nasional Limited is the second and fourth largest major shareholder respectively. Above all, the government regulates the media industry in Malaysia by imposing operation-licensing requirements, various acts that govern printing and mass media.

4. *Ad baculum* Rhetoric and Tactic of Fear

4.1 Main Theme and Issues Used to Address This Tactic of Fear

The main theme for political advertisements in the local Chinese media during the 11th Malaysian General Election campaign used to address the *ad baculum* tactic of fear was the idea of establishing Islamic state in Malaysia. Different political parties used different set of issues to address the main theme in their respective campaign. Figure 1 in Appendix-I shows the Barisan Nasional's campaigns. Barisan Nasional instilled fear that allowed the opposition (especially PAS) to win will brings changes which are presented as a treat or risk too high for the voters to take. The "changes" are particularly referred to the setting up of Islamic state that is what PAS is campaigning for while the Islamic state idea is packaged to look as a symbol of fear especially to the Chinese community. The cost of change for the voters will be the "comfort zone" they are currently enjoying during the era of the ruling of the Barisan Nasional. Briefly, the comfort zones elements compared to the threats are as below:

1) "Peace" versus "Chaos": (Issue 1)

Related issues include moderate government based on a mix of secular and Islamic concept versus an Islam fanatic opposition. This particularly refers to PAS and its determination to establish an Islamic state. Leaders of Barisan Nasional are portrayed as loving, family oriented persons while having harmonious living among multi ethnics. The opposition party, especially PAS is shown as related to terrorism and not friendly to non-Islam.

2) "Freedom" versus "Restrictions": (Issue 2)

Related issues include freedom to practice religion, celebrate festivals, permission to sell-buy selected non-*halal* products (in particular alcohol and pork), permission for various entertainment businesses including betting, concerts, discos and karaoke lounges and freedom plus equal rights for women groups. These are contradictory to the practice of pure Islamic law, which prohibits most of the mentioned items while maintains inferior status of women compared to that of men.

3) "Development" versus "Backwardness": (Issue 3)

Related issues include presenting the good track record of economic and social developments compared to both the poor development of PAS ruling state (Kelantan and Terengganu) and the inexperience of the opposition parties to develop the nation. Further strengthening this aspect is the portraying of Abdullah Badawi, the top leader of Barisan Nasional as the Chinese legendary character, Justice Pau who is famous for his justice and anti-corruption stand.

4) "BN" versus "PAS-DAP-PK": (Issue 4)

There is also an issue of transference in which DAP and PK are said to be associated with PAS, including helping PAS to minimize BN political strength to the benefit of PAS. DAP, PAS and PK formed the *Barisan Alternatif* (Alternative Front) to ensure a one-to-one fight with BN during the previous 10th General Election. That has become an issue of transference. Thus, fear issues associated to PAS were "associated" with DAP and PK also.

Overall, Barisan Nasional seeks stronger mandate from voters to allow them to strengthen the current peaceful and stable environment. Stability is believed to enhance economic development that benefits the whole nation and its people. In contrast, PAS is campaigning to seek support to establish an Islamic state similar to the state of Kelantan, which is under the PAS ruling prior to the election (Note 2). To counter the fear strategy of BN, PAS promotes that Islamic laws and other matters under an Islamic state structure will be fair to everybody while stressing that non-Islamic practice is not *halal*. *Halal* is the Islamic term for "permissible", thus, it used to describe anything that is permissible under Islamic

law, in contrast to *haram*, that which is forbidden. However, in a narrower context, the term is used to describe Moslem dietary laws, especially where meat and poultry are concerned (refer Wikipedia, 2004). So, religious related elements like sin for not following Islamic practices, types of rules or mandatory procedures do to enable believer to go to heaven and types of religious violations that send believer to hell were used as a fear striking campaigning weapon towards Moslem voters. Meanwhile, DAP issues were against PAS' intention to establish an Islamic state and Mahathir Mohammad's announcement on 29th September 2002 that Malaysia is an Islamic state. Mahathir was then the Prime Ministry of Malaysia and BN Malaysia Chairman. Besides that, DAP's campaign instilled fear that allowed BN to win many Parliamentary seats could bring unhealthy concentration of power in the hands of BN. Thus, they appealed for support to counter BN dominance and increase their voice against the establishment of an Islamic state as declared by BN government and PAS. Other issues involved in their campaigning included the development of Chinese medium school and corruption of the BN government. Keadilan Party (PK) seems to be the only main political party with no clear stand on the Islamic state theme. Its main issue was to bring reformation to the government to ensure justice for all. However, PK cooperated with PAS in terms of distribution of election areas to contest so as to avoid head on battle for candidates from both parties. The issue of fear was the claimed unjust sacking, accusations leveled against and treatment of the former Deputy Prime Minister of Malaysia, Anwar Ibrahim due to the corrupt and over-powerful BN ruling. However, the oppositions' advertisements in major newspapers are very limited, just about one or two types only. This might be due to lack of funds and the control of major newspapers in Malaysia by the BN government. Advertisements by BN make up almost all of the political advertisements in the Chinese media during the 11th Malaysian general election campaign.

All the above-mentioned issues are played and built mainly on the background of Malaysian Chinese politics. The background gave opportunity to political parties to shape various kinds of fear and the general perception that the non-Moslems in Malaysia have of the concept of Islamic state as a symbol of fear. Thus, an analysis of the concept of Islamic state and the background of Malaysian Chinese politics is given below.

4.2 Kinds of Fear about the Concept of Islamic State

The kinds of fear or general perceptions that the non-Moslems in Malaysia have of the concept of Islamic state as a symbol of fear can be categorized according to issues as below. This refers to the Chinese fear of PAS setting up an Islamic state for Malaysia.

1) "Peace" verses "Chaos"

- a. Terrorism activities could emerge in Malaysia or the new government could support global terrorism activities prompting hostility from other countries;
- b. Aggression towards non-Moslem ethnics similar to the situation in Indonesia might happen;
- c. Forcing non-Moslems to adopt Islamic elements.

2) "Freedom" verses "Restrictions"

- a. Restriction to practice religion;
- b. Restriction to celebrate festivals;
- c. Banning pigs rearing;
- d. Banning selling-buying of non-*halal* (Note 3) products (in particular alcohol and pork);
- e. Banning betting and gambling activities;
- f. Restrictions to stage concerts and the establishment of discos and karaoke lounge;
- g. Inferior treatment of women.

3) "Development" verses "Backwardness"

- a. Economics mismanagement causing various social hardship;
- b. International boycott or avoidance in terms of foreign direct investment and international trade that might affect the economics negatively;

5. Results: Some Strategies of Fear as Seen from the Local Media

This study recognizes that the election campaign advertisement portrayed the "us versus them" ideology. "Us" are portrayed as 'good/saint', 'patriotism' and 'supporter' in issues verses the 'bad/evil', 'propaganda' and 'protester' of "them". Rhetoric of fear or *ad baculum* tactics was used to bring out that contrast. Emotional words presented together with visual effects were the most commonly employed tactics. Visual effects used include pictures and caricatures. Other *ad baculum* tactics included rhetoric of number, packaging of images and rhetoric of colours. However, not all were advertised in the local major Chinese newspaper. For example, the play on numbers such as "911" to represent the

terrorist attack that led to the collapse of the twin World Trade Centre towers in America on September 11, 2001 and the number “929” played by DAP to represent the announcement of Malaysia as an Islamic state by Mahathir Mohamad (then, Prime Minister of Malaysia) on 29th September 2002 was not advertised in the newspapers but in other channels of campaign. As green was the colour used to represent PAS and Islam, changing DAP’s symbol from a red rocket to a green one was an effort to link the DAP with PAS and Islam. Despite some types of rhetoric not present within the scope of channels of this paper, combining any of two or more type of rhetoric tactics often found. Combining two issues in one advertisement and presenting it with two rhetoric tactics was very commonly practiced. Findings below were presented according to issues.

5.1 “Peace” verses “Chaos”

In Advertisement 1 (refer Table 1 in Appendix II), the word “Peace” << 和平 >> is displayed as implicating “vote for peace”. Present also is a BN’s logo, urging to vote for BN. The presence of the word and the logo bring out the image of “good/saint” to BN. This is further reinforced by visual effect through a picture of a baby at the mother tender hand just below the word “Peace”. Advertisement 2 is of same style of Advertisement 1 but the “good/saint” image it tried to bring out is “Unity” << 團結 >>. A picture of three friends of different races created the visual effect of unity between various races. In both advertisements, a slogan stating “Past. Now. Future” << 過去. 現在. 將來 >> was found just below both words mentioned. This is seen as a “reminder” to the voters that BN has brings peace and unity in the past and present and only BN is capable to continue bringing it in the future.

The two advertisements’ effects as in Advertisement 1 (Peace) and Advertisement 2 (Unity) were further strengthening strongly by advertisements as in Advertisement 3 and 4. Advertisement 3 showing two contrasting picture on peace issue. On the left side was a scary war wrecked scenario contrast to the picture of Malaysia’s famous Twin Tower in a calm environment on the right. Below the war wrecked picture was stated “act of terrorism and fanaticism rampant” << 恐怖主义和极端主义横行 >> while below the Twin Tower picture, wrote, “Enjoy peace and stability” << 享有和平与稳定 >>. The word “or” << 或 >> is used to contrast the two pictures. A slogan “Please vote BN to strengthen the Chinese’s strength in Government” << 请投国阵一票加强华族在朝力量 >> is stated. Thus, this advertisement is portraying “bad/evil” image to fanatic group at the same time contrasting BN as the “saint savior” to the Chinese over terrorist and fanaticism threats. Below the ‘vote for BN’ logo stated the phrase “to ensure your future” << 保障您的将来 >>, thus, further emphasizing BN’s image as a “saint savior”. Advertisement 4 showed four kids from different races hugging each other. At the top of the advertisement, a statement “47 years of peace, unity and assurance of safety” << 47 年的和平, 團結, 與安全保障 >> is clearly stated. Below the picture are two options to “vote”, one being stated “lost it” << 失去它 >> while another, stated “keep/preserve it” << 保存它 >>. The later option box is crossed as a sign of vote for keeping it. Crossing the box implied an *ad baculum* advised for the voters to follow if they do not want to loss the peace, unity and assurance of safety. It is just like the earlier example of the Nazi sending notice to “advise” German readers not to let their subscription lapse. It simply implied that voting for the other reason (“lost it”) would bring unfortunate consequences.

Peace issues often linked with development. Peace and stability are taken as a prerequisite for economics development. Advertisement 5 shows a picture of a city featuring the Twin Tower, a mosque and the KL Tower with many high raise building representing development status. The advertisement entitled “47 years of stability and progress” << 47 年的穩定與進步 >>. Same style and strategy as in Advertisement 4, below the picture are two options to “vote”, one being stated “damage it” << 摧殘它 >> while another, stated “protect it/strengthen it” << 鞏固它 >>. The later option box is crossed as a sign of vote for protecting the 47 years of stability and progress. Same style and strategy also presented in another BN’s advertisement as in Advertisement 6. It showed a Malaysia flag in the center of the advertisement. Its headline stated “The total resources of our country” << 我們國家共有的資產 >> and the two options to vote are “ruin it” << 糟塌它 >> and “protect it” << 保護它 >>. The later option box is crossed. In this advertisement, the contrast of patriotism verses protester is used. It implied that patriotic voters would vote to protect the country resources while those who vote otherwise are deeming protesters. Crossing the box implied an *ad baculum* advised for the voters to follow. Below the Malaysia flag picture write:

None of the other fronts are capable in protecting our Malaysian most valuable materials. The harmony shares among the different races and religions. The peace. The stability. The progress. This is because the other fronts are not well comprehend in giving the require guidance and leadership.

This writing gives an image that BN is the sole savior and therefore, should certainly deserve the support of every Malaysian voter. Other economic or development issues will be discussed in the later parts.

Advertisements that are more directly contrast against PAS are seen in Advertisement 7 & 8. Advertisement 7 shows many demonstrators with one of them clearly showing off a picture of Osama bin Laden who was accused as the mastermind of ‘September 911’ terrorist attack in the United States of America. The description below the picture portrayed the demonstrator as PAS supporters, which stated, “PAS make used DAP to segregate the Chinese votes” << 回教党利用行动党分散华裔选票 >>. This advertisement link PAS with chaotic and fanatic behavior thus, playing

into the voters' fear that if PAS win, chaos is imminent. The headline for this advertisement is, "Use your voting right wisely. Do not let others to determine your future" << 善用手中选票：别让他人决定您的将来 >> while the 'vote for BN' logo with the phrase "to ensure your future" (just like in Advertisement 3) was positioned at the bottom to emphasize the need for BN to prevent chaotic events happening. Contrasting picture rhetoric incorporated transference issue was also used in advertisement as in Advertisement 8, showing side by side a picture of the Nik Aziz Nik Mat of PAS and Lim Kit Siang of DAP dining together in a ceremony in contrast with a picture of Abdullah Ahmad Badawi (Prime Minister of Malaysia, UMNO president and BN Malaysia Chairman) shaking hand with the President of the Peoples' Republic of China, Hu Jintao. Below the former picture stated "The extreme thinking leaders" << 领袖思想各走极端 >> while below the later picture, stated "The open-minded and progressive leaders" << 领袖思想开明进步 >>. That style of presentation is the same style as in Advertisement 3 and is a common style used for striking fear comparison or contrast. In those two advertisements, the PAS and DAP are portrayed as "bad/devil" by closely linking PAS with terrorism and Islam fanaticism while DAP is linked as PAS' associate. Terrorism and Islam fanaticism images scared away the support of voters for PAS and DAP. Other transference issues will be discussed in the later parts.

5.2 "Freedom" verses "Restrictions"

There are 11 revealing visual rhetoric advertisements found published in the major Chinese newspapers on freedom verses restriction issue. Advertisement 9 to 16 showed eight of those advertisements, presented in the same style to highlight several of restrictions if the oppositions formed the government. Each of the advertisements has four characteristics: the word "Ban?" strip across the center of the picture shown in the advertisements, a header phrase at center top, description below the picture and a 'vote for BN' logo at the bottom. The word "Ban" << 禁止 >> is relatively big in size while below the 'vote for BN' logo is a slogan stating, "to ensure your future." Advertisement 9 shows picture of a female artist singing with the header phrase stated, "Concert" << 演唱会 >>. The singer did not dress scantily. The description below the picture states, "Once the oppositions become the government, concert would be prohibited" << 一旦反对党阵线执政, 演唱会将被禁止 >>. It scares voters to vote for BN to ensure that in future, concert will still be allowed. It is a sister version of El Salvador guerrilla's slogan stating, "Vote in the morning; die in the afternoon" mentioned as example earlier. Thus, that BN slogan's role would be like "Vote for opposition today; freedom lost tomorrow". Other examples with the same strategy are as below.

Advertisement 10 shows two pairs of guys and girls dancing with the header phrase stated, "Dancing" << 跳舞 >>. All the guys and girls in the picture looked properly and neatly dressed with formal attires. The description below states, "Once the oppositions become the government, the dancing among opposite sexes would not be allowed" << 一旦反对党阵线执政, 男女共舞将不被允许 >>. Advertisement 11 shows five guys and two girls wearing a full set of swimming attires, including swimming trunk (men), swimming suit (lady) with head cap and goggles. All of them look muscular, well built sportsmen (sportswomen) like body, standing seem like paying attention to an ongoing instruction. The ladies wear full swimsuit, not bikini type. The header of this advertisement stated, "Swimming costume" << 泳装 >> while the description below, said, "Once the oppositions become the government, the females would not be allowed to wear swimming costume" << 一旦反对党阵线执政, 女性将不被允许穿泳装 >>. Advertisement 12 shows a group of three men and two ladies gathering at a coffee shop with the header stated, "Social activity" << 社交活动 >>. All of them dress properly. The description below states, "Once the oppositions become the government, the social activities among opposite sexes would not be allowed" << 一旦反对党阵线执政, 男女社交活动将不被允许 >>.

The first four Advertisements in this issue category, from Advertisement 9 to 12, reveal one similarity besides the style of presentation. That similarity is that the peoples in each picture are dress properly and in good conduct in general social perspective. These included full set of non-bikini type of swimming attires in Advertisement 11 and the men and ladies seem to dance "politely" not crazily or nastily in Advertisement 10. Those conditions and activities (concert, dancing, swimming in swimsuit and gathering among friends) are acceptable norms in general social term. However, those examples are not acceptable by fanatic Islamic ideology and culture. Thus, the advertisements clearly also wanted to highlight that banning the mentioned social activities is unacceptable. That also implicated the aggressiveness of oppositions in forcing their will of implementing Islamic rules against the societal norms. Since those activities are acceptable norms and part and parcel of current social living, banning them will force the society to change most of their current lifestyle, which deem as nightmare to them, especially the Chinese society, which their religion belief is not Islam. Furthermore, to enhance the fear effect on the Chinese community, all the peoples in Advertisements 10 and 12 clearly look like Chinese, indirectly highlighting that Islamic state or PAS is against the Chinese as it is the Chinese culture or normal acceptance of living that different the most with Islam ideology. All the restrictions strike fear to the Chinese voters.

The same implication applied to the situation portrayed in Advertisement 13 to 16. Furthermore, the Chinese community is clearly the focus in Advertisement 13, 14 and 15. Advertisement 13 shows two looked like Chinese ladies dress neatly in a short sleeve *cheong sam* (Chinese traditional ladies attire) with the header phrase stated, "Short sleeved

garment” << 短袖服饰 >>. The description below states, “Once the oppositions become the government, the females would not be allowed to wear short sleeve garment” << 一旦反对党阵线执政, 女性将不被允许穿短袖服饰 >>. The question is why used *cheong sam* only as example of short sleeve? Why not casual short sleeve T-shirt, which is more commonly seen? Advertisement 14 shows a mature and formally dress looked like working Chinese female. The header stated, “Female employment” << 女性就业 >>. The description below writes, “Once the oppositions become the government, the female would not be allowed to involve in any employment” << 一旦反对党阵线执政, 女性将不被允许就业 >>. Advertisement 15 has a picture of a Chinese opera with “Cultural performance” << 文化表演 >> phrase as header phrase. Below the picture said: “Once the oppositions become the government, the traditional cultural performance would not be allowed” <<一旦反对党阵线执政, 传统文化表演将不被允许>>. A picture of a funfair was showed in Advertisement 16, with the word “Funfair” << 游乐场 >> stated above. Below, it described, “Once the oppositions become the government, the funfair would be prohibited” <<一旦反对党阵线执政, 游乐场将被禁止>>.

Meanwhile, Advertisement 17 has the same style of contrasting picture as in Advertisement 3 and 8. All the three Advertisements also used the same slogan as headline, which stated, “Your choice will determine your future. Which future do you choose?” << 您的抉择决定您的将来. 您选择一个怎样的将来? >>. Advertisement 17 contrast a picture of a Chinese New Year banner being forcefully taken down by the officials of Kota Bharu Municipal Council with the picture of dragon dance performance stating “the MCA of Selangor was participating in the Chinese New Year celebration” << 雪州马华举行新年团拜 >>. Beneath each picture respectively wrote, “Culture was discriminated” << 文化被歧视 >> for the former picture and “Freedom of cultural practice” << 享有文化自由 >> for the later. Just like the Advertisement 3, below both pictures and their descriptions, a slogan “Please vote BN to strengthen the Chinese’s strength in the Government” are stated. At the bottom of the advertisement the ‘vote for BN’ logo also stated the phrase “to ensure your future” (as in Advertisement 3 and 8). Played on the issues of religion freedom, Advertisement 18 contrasted two statues of Buddha, one being destroyed and the other are in well condition and receiving prayer from a devotee. The picture of the destroyed statue was tag with “Afghanistan – the statue of Buddha was destroyed by Talibans” << 阿富汗: 佛像被塔利班炸毁 >>. While the other picture was tag with “Malaysia – BN promises the freedom of religion practice” << 马来西亚: 国阵保障宗教自由 >>. Below the pictures also stated, “religion freedom was violated” << 宗教自由被侵犯 >> for the former picture verses “freedom of religion practice” << 享有宗教自由 >> below the later picture. Issue of restriction of women right was portrayed in Advertisement 19, which contrast a picture of a group of working women and men against a newspaper cutout. The newspaper cutout is about unequal treatment of female in the state of Terengganu (under PAS state government ruling) and below it stated, “Women were discriminated” << 女性被歧视 >>. Below the picture wrote, “equal right to female” << 女性享有平等权益 >>.

Directly against PAS, BN’s advertisement as in Advertisement 20 urged voters not to vote for PAS with the headline stating “The fact has proved that PAS did not respect the Chinese cultural tradition” << 事实证明: 回教党不尊重华人文化传统 >>. The example given is PAS rejected to approve the permission of a Chinese New Year Gathering. Reasons given are clashed with prayer time, involved Muslim celebrities and school cannot be used as an entertainment park. Meanwhile, PAS counters the BN campaigns by simply stating, “We are in one family because we are a family” << 我们是一家人, 因为我们都是一家人 >> as headline in its advertisement as in Advertisement 21. DAP advertisement as in Advertisement 22 urged the voters not to allowed BN to do whatever they want even though they support the BN. Implicating the danger of almost monopoly of BN in seats in the Parliament, the advertisement stated, “The Parliament needs the voice of the oppositions” << 國會需要反對黨的聲音 >>. Besides urging voters to support the candidates of DAP, the advertisement also highlighted DAP’s stand in Islamic state issues by stating, “we do not want Islamic state” << 我們不要回教國 >>.

5.3 “Development” verse “Backwardness”

In issues about economic development and society living standard, BN used informative rhetoric and *ad baculum* rhetoric in such a way to support each other. These, as in Advertisement 5 and 6, included urging voters to protect Malaysia stability, development and resources, not to damage or ruin them. Those were supported by various advertisements asking voters to remember Malaysia’s achievement in 47 years of BN ruling, good relationship with China, development of Chinese education including establishment of University Tunku Abdul Rahman (UTAR) as MCA’s effort and Abdullah Ahmad Badawi as the best leader to fight corruption in Malaysia. Examples included 4 continuous pages of advertisement of Malaysia achievement milestone year by year as in Advertisement 23, three advertisements portraying Abdullah Ahmad Badawi as the modern Justice Pau (Advertisement 24) and successful effort of MCA to improve Chinese community (Advertisement 25). Advertisement 26 urged that mother tongue education should not become political issues talk but must be solved properly soonest possible.

5.4 Transference

Transference issues seem to target DAP by BN. In the BN advertisements, DAP was associated with PAS in order to ‘transfer’ the fear of Islamic state establishment to the DAP. In this case, DAP was portrayed as supporting PAS’ vision to set up an Islamic state and helping them to win the election by weakening BN political forces. Thus, following slogan

is used so frequently in many of the BN advertisement: "If you vote for DAP, you will weaken the force of BN in opposing the PAS. Giving support to DAP means giving support to PAS." That slogan even appeared as a stand-alone plain advertisement like in Advertisement 33. Thus, the advertisement campaign focused on transference issue is like killing 2 birds with one stone – against two parties in one advertisement.

Example of transference issues is as in Advertisement 27, using rhetoric of caricatures and advertisements. Indeed, that type of rhetoric is the most common type in the issue of transference. Advertisement 27 showed a caricature of a DAP member drove by Abdul Hadi Awang (the president of PAS) caricature in a rocket (Note 4) while saying "Control the 'Rocket' feeling is good" << 操控火箭的感觉真棒! >>. Beside the caricature is a newspaper cutting with a headline stated that according to Abdul Hadi Awang, PAS and DAP had worked out together "to ensure a one-to-one fight against National Front (BN)" << 確保一對一迎戰國陣 >> while below was a very big size word saying "Everyone also know" << 明眼人都知道! >>. Advertisement 28 portrayed DAP as merely acting only in the case of asking its party members to resign from being PAS lead Terengganu state Municipal Council officials to prove no relationship between both parties. Caricatures are also used in that Advertisement. Advertisement in Advertisement 29 entitled "Can DAP be trusted?" << 行动党可信赖吗? >> Showed two caricatures of Karpal Singh (Note 5) of DAP in Year 1990 and 1999. In the earlier year, Karpal was quoted as saying "If Malaysia was to become an Islamic state, step over my death body first" but for the later year, he was quoted saying "Sorry, I said wrongly." A picture of Lim Kit Siang (Note 6) of DAP, at PAS' 50th years anniversary on 27 February 2001 is the main highlight of advertisement in Advertisement 30. It carried a headline saying, "Truth always wins over sophistic argument" << 事实胜于雄辩 >> with description questioning that if DAP break up relationship with PAS, why top DAP leader to attend PAS function? Caricature of Karpal Singh giving a speech while Abdul Hadi Awang, the president of PAS at behind the screen as in Advertisement 31 carried a headline stating, "He is actually taking care of whose benefit?" << 他到底在维护谁的利益? >>. In the caricature, Karpal at the main stage was quoted saying, "Support me! I will carry your voice and fight for justice in the Parliament" << 支持我吧! 我会在国会为你们仗义执言 >> while Hadi at the back stage was smiling and quoted saying, "Yes! Support him! Help me to weaken BN and increase PAS power" << 好! 支持他吧! 帮我削弱国阵, 使回教党更壮大! >>. The same issues of highlighting DAP of helping PAS is also the main issue as in Advertisement 32. With a headline saying, "PAS thanks DAP" << 回教党感谢行动党 >>, the description is highlighting that DAP helped PAS to win the state of Terengganu and Kelantan during the General Election in 1999. Trying to instill fear, the advertisement also stated that in the coming election, DAP is actually continuing to help PAS to win in the state of Kedah, Perlis, Pahang and Selangor. Caricature of Lim Kit Siang portrayed as saying, "Support me! I will protect your right" << 支持我吧! 我将全力维护你们的权益 >> in a stage while Hadi seem backing Lim and urging, "Support him is equal to support me" << 支持他就等于支持我! >>.

6. Conclusion

The data collected seem to give us an idea that "might is right" as the appeal to fear was used up to the maximum by the members of the ruling party Barisan Nasional (National Front), especially Malaysian Chinese Association (MCA) through its controlled media. The opposition parties cannot match Barisan Nasional in term of campaign fund and most important, access to media. This is clear as during the 11th Malaysian General Election, Barisan Nasional contested in every Parliament and State seat but the opposition only contest in very few selected seats for both Parliament and State level. As a result, the Barisan Nasional coalition won 199 Parliament seats and 453 State seats. There are total of 219 Parliament seats and 505 State seats for contest in the mentioned elections. Thus, Barisan Nasional won 90.87% of Parliament seats and 89.70% of State seats, DAP won 12 (5.48%) Parliament seats and 15 (2.97%) State seats, PAS won 6 (2.74%) Parliament seats and 36 (7.13%) State seats and PK won one (0.46%) Parliament seat and 0 (0%) State seat. Independent candidates won one (0.46%) Parliament seat and one (0.20%) State seat. (See <http://www.pmo.gov.my/website/webdb.nsf/?Opendatabase> and <http://www.parlimen.gov.my/eng-dR-statistik.htm>).

Barisan Nasional formed the ruling government at national level and for all state except Kelantan state where PAS won marginally. Barisan Nasional continues their 47 years grip on the Malaysian politic since independent, leaving the voters a "convenient" attitude toward political preference. Not only voters, especially the Chinese preferred to maintain the current "comfort zone", both the voters and the oppositions already have pictured in a landslide victory for the Barisan Nasional, thus challenging the Barisan Nasional is merely for the sake of opposing only. That is the psychology reason on why the oppositions are never viewed as a capable ruling party not only by the voters but also by themselves. These reasons hand Barisan Nasional an almost sure win while this situation results in strengthening the Barisan Nasional control on media access and the psychology reason mentioned. That is a two ways causal relationship cycle that will continue to strengthen each other over time in Barisan Nasional favor. So, in conclusion, as a hyperbole, Barisan Nasional is expected to maintain their dominance in politic arena until the end of the world if that cycle didn't break off. It might take a paradigm shift to break it and would be a mammoth task for anyone. However that it should start off with educating the voters to assess political issues rationally, not based on emotion especially fear.

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Notes

Note 1. “Bumiputera” in Malaysia context means “the son of the soil”. In the Department of Statistic Malaysia’s ‘Population and Housing Census Year 2000’ report, “Bumiputera” consists of Malays and other natives in Peninsular Malaysia, the Sabah state and the Sarawak state. Chinese, Indians, citizens of other foreign country origin (i.e. Indonesian, Thai, and Korean) and non-citizens are considered non-bumiputera.

Note 2. Malaysia consists of 13 states (*negeri*) and one federal territory (*wilayah persekutuan*). Kelantan is one of the states. In the context of Malaysian politics, the party that wins the majority number of seats in the State Assembly Hall forms the state government in that particular state. Usually (with the exception Sabah and Sarawak state) and in the 11th General Election, elections at the national level (Parliament seats) and the state level are held concurrently.

Note 3. The word *halal* in a narrower context used to describe Moslem dietary laws, especially where meat and poultry are concerned. Thus, *halal* mean permissible to eat under Islamic law (see Wikipedia, 2004).

Note 4. DAP uses a red rocket as its party symbol.

Note 5. Karpal Singh is DAP Deputy Chairman prior to the 11th Malaysia General Election.

Note 6. Lim Kit Siang is DAP Chairman prior to the 11th Malaysia General Election.

Appendix I. Main Issues of Analysis

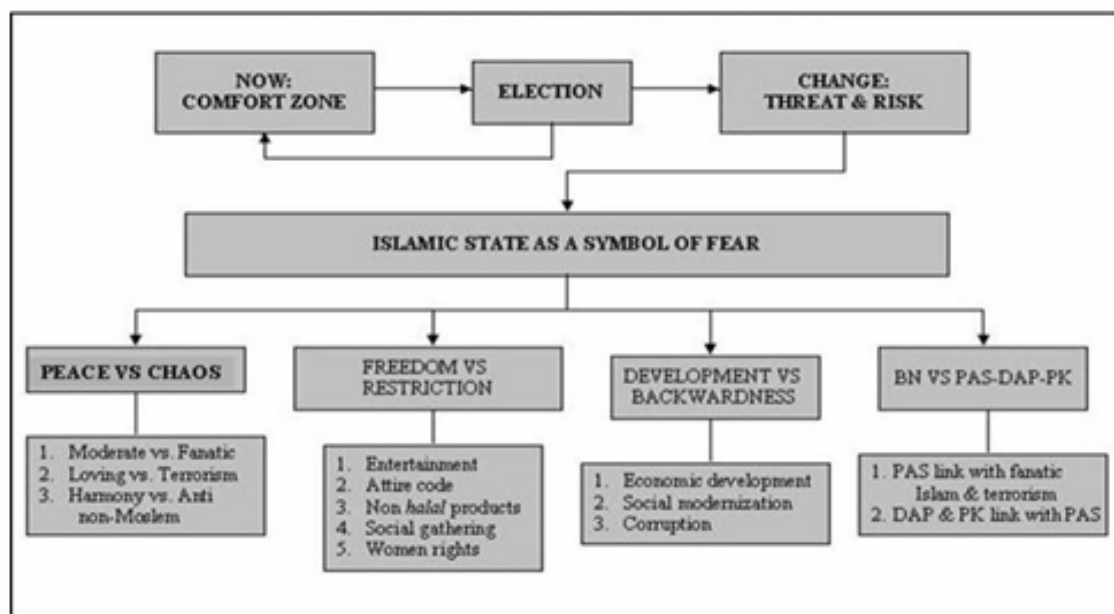


Figure 1. 11th Malaysia General Election Issues Play within the Main Theme of Islamic State

Appendix II. Sample of Advertisements Analyzed

Table 1. Advertisements Summary

Advertisement	Description	Issue
1	Emotive words: Peace. Source: <i>Sin Chew Daily</i> , 14 March 2004, page 10.	1
2	Emotive words: Unity. Source: <i>Nanyang Siang Pau</i> , 15 March 2004, page A18.	1
3	Contrasting picture: War wrecked scenario vs. peaceful Twin Tower. Source: <i>Sin Chew Daily</i> , 19 March 2004, page 25.	1
4	Contrasting choice: Keep peace and harmony living or lost it. Source: <i>Sin Chew Daily</i> , 19 March 2004, page 5.	1
5	Contrasting choice: Protect stability and development or damage it. Source: <i>Sin Chew Daily</i> (Supplement Section), 18 March 2004, page 4.	1,3
6	Contrasting choice: Ruin or protect Malaysia's resources. Source: <i>Oriental Daily News</i> , 20 March 2004, page C6.	1,3
7	PAS demonstrators with photo of Osama bin Laden. Source: <i>Sin Chew Daily</i> , 20 March 2004, page 21.	1
8	Contrasting picture: Extreme thinking vs. open-minded. Source: <i>Sin Chew Daily</i> , 20 March 2004, page 22.	1
9	Ban: Concert. Source: <i>China Press</i> , 16 March 2004, page A21.	2
10	Ban: Dancing. Source: <i>China Press</i> , 16 March 2004, page A20.	2
11	Ban: Swimming costume. Source: <i>China Press</i> , 16 March 2004, page B5.	2
12	Ban: Social activity. Source: <i>China Press</i> , 16 March 2004, page B7.	2
13	Ban: Short sleeved garment. Source: <i>China Press</i> , 16 March 2004, page B6.	2
14	Ban: Female employment. Source: <i>Guang Ming Daily</i> , 16 March 2004, page A4.	2
15	Ban: Cultural performances (picture of Chinese opera). Source: <i>Guang Ming Daily</i> , 16 March 2004, page T2.	2
16	Ban: Fun fair. Source: <i>Guang Ming daily</i> , 16 March 2004, page A6.	2
17	Contrasting picture: Cultural restriction. Source: <i>Sin Chew Daily</i> , 19 March 2004, page 28.	2
18	Contrasting picture: Religion freedom. Source: <i>Sin Chew Daily</i> , 19 March 2004, page 27.	2
19	Contrasting picture: Women rights issues Source: <i>Sin Chew Daily</i> , 19 March 2004, page 26.	2
20	Three main reasons not to vote for PAS Source: <i>Sin Chew Daily</i> , 14 March 2004, page 21.	2

21	PAS advertisement Source: <i>Sin Chew Daily</i> , 19 March 2004, page 8.	2
22	DAP advertisement Source: <i>Oriental Daily News</i> , 19 March 2004, page C3.	2
23	Malaysia's achievement milestone (4 pages) Source: <i>Sin Chew Daily</i> , 18 March 2004, page 5 – 8.	3
24	Abdullah Badawi as Justice Pau (3 advertisements) & good relationship with China (1 advertisement). Source: <i>Guang Ming Daily</i> , 16 March 2004, page A5; <i>China Press</i> , 17 March 2004, page A17; <i>Oriental Daily News</i> , 17 March 2004, page A3; <i>Oriental Daily News</i> , 18 March 2004, page A3.	3
25	Successful effort of MCA to improve Chinese community. Source: <i>Sin Chew Daily</i> , 17 March 2004, page 24 & 25; <i>Nanyang Siang Pau</i> , 17 March 2004, page A18; <i>Sin Chew Daily</i> , 18 March 2004, page 23, 24, 25 & 27; <i>Oriental Daily News</i> , 18 March 2004, page A5.	3
26	Mother tongue education. Source: <i>Sin Chew Daily</i> , 19 March 2004, page 5.	3
27	Caricatures: Control the "Rocket" feeling is good. Source: <i>Sin Chew Daily</i> , 14 March 2004, page 23.	4
28	Caricatures: DAP members to resign from being Terengganu Municipal Council officials. Source: <i>Sin Chew Daily</i> , 14 March 2004, page 25.	4
29	Caricatures: Can DAP be trusted? Source: <i>Nanyang Siang Pau</i> , 15 March 2004, page A12.	4
30	Picture: DAP attended PAS function. Source: <i>Nanyang Siang Pau</i> , 15 March 2004, page A11.	4
31	Caricatures: DAP take care of who's benefit? Source: <i>China Press</i> , 15 March 2004, page C17	4
32	Caricatures: PAS thanks DAP help in 1999 election. Source: <i>Nanyang Siang Pau</i> , 15 March 2004, page A16.	4
33	Plain advertisement: If you vote for DAP, you will weaken the force of BN in opposing the PAS. Giving support to DAP mean giving support to PAS. Source: <i>China Press</i> , 16 March 2004, page B5.	4



Analyzing the Managers' Trusteeship Economically in Sarbanes-Oxley Act

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Abstract

Sarbanes-Oxley Act, which aims at reforming and bettering the managers' trusteeship, gives a great influence on the corporate governance and internal controls of more than thirty listed companies in America. This text applies the client-agent theory to analyze the significance of economics of the Act and shows that the essence of the Act is to reduce the cost of the incentive contract between the investors and the personnel owners and the measurement cost in implementation by strengthening internal control and emphasizing the managers' trusteeship. The purpose of it is to achieve the accuracy and reliability of the corporate information disclosure so as to protect the investors and others objectives. It is of great significance for reference for Chinese businesses to better the corporate governance and deep reform.

Keywords: Sarbanes-Oxley Act, Principal-Agent Theory, Corporate Governance

1. Questions are put forward

In the early new century, people are sorry to see some world-class companies such as Tyco, Global Crossing, WorldCom and Enron in bankruptcy. The event of the world's communication in June 2002 discouraged the investors in American capital markets (Congress report, 2002). In December 20 2002, The People's Daily carried the article of the world's top ten corporate scandals in 2002. Eight of them are about the financial fraud. The rampant fraud of financial reporting and the imprudent management have become a cancer of capital accumulation. They should be cured with all the means of therapy of the modern commercial society (Steven • J • Root, 2004).

In July 2002, the United States Congress and the government quickly passed the Sarbanes-Oakley Act (SOA). President George W. Bush delivered a speech at the news conference for signing the Act. He said, "It will produce a most far-reaching impact on the business sectors since President Roosevelt signed the Securities Act in 1933 and Securities Exchange Act in 1934." One of the main content of the Act prescribes the clear responsibilities of a company's management (such as the task of assessment of internal control and information disclosure), especially the fiduciary duties entitled by the shareholders. Accordingly, the United States Securities and Exchange Commission (SEC) and New York Stock Exchange (NYSE) then shaped the detailed rules and control measures, which would give a great impact on the corporate governance of listed companies and the internal control, changing the traditional client-agent relationship between the corporate investors and managers to some extent. The Act applies to those companies registered in the United States Securities and Exchange Commission. More than thirty China's listed companies in the United States, such as China National Petroleum Corporation, China Petroleum & Chemical Corporation, China Eastern Airlines, China Life Insurance Company, China Mobile and China Netcom etc would inevitably meet the challenge by Sarbanes-Oakley Act. Then what is the significance of economics in the Sarbanes-Oakley Act? What influence would it give to corporate governance and risk control? What lessons would it give to China's companies? Therefore it was worth further exploring.

2. The articles in Sarbanes-Oakley Act concerning the operators' fiduciary duties

Sarbanes-Oxley Act is also named Public Company Accounting Reform and Investor Protection Act. It starts with "abiding by the securities law to improve the accuracy and reliability of the information disclosure by companies and therefore protect investors and other purposes." The 301st article of chapter III, named corporation responsibilities, provides that all the members of the Audit Committee of the companies issuing securities must be made up of members of the independent board of directors. They should, in terms of subordinate committee of the Board, assume the direct responsibility of supervising the employment, remuneration of the registered accounting firm, which aims at establishing the account report. They are also in charge of urging the coordination between the company managers and

the audit departments on the disputable points of the report of financial affairs. The registered accounting firm is asked to report to the Committee. The Board should set up corresponding procedures to deal with the complaints of its accounting, internal controls or auditing methods. If the Board considers it necessary to perform their duties, it has the right to hire independent consultants.

Those companies issuing securities should offer considerable funds (the amount is determined by the Audit Committee subordinate to the company's board) to pay the cost of hiring a registered accounting firm to write audit reports and the cost of hiring consultants. Article 302 of the company's responsibilities of financial reporting, defines the duties of the listed companies in the management of financial reporting and internal controls. Article 404, the management's assessment of internal controls, provides that a quoted company has the responsibility of reporting the effectiveness of its internal control system and it must maintain the effective operation of internal control system. It requires that the management of a quoted entity must give a record, test and evaluation of the basic framework of the company's internal control. The provisions of article 304 and 305 are that if a member of the management commits a crime, all his bonuses, dividends or other remuneration of rights should be confiscated, and he will receive other punishment. Chapter VIII of the Act of corporate fraud and criminal liability, and the relevant provisions of Chapter IX further emphasize the responsibilities of the white-collar workers and the management will be punished more severely if getting out of line.

3. Analyzing the significance of economics of relevant provisions of the trusteeship in SOA of the managers

The followings are the Mirrlees-Holmstrom model in the client-agent theory and the solution (Mirrlees, 1974, 1976. Holmstrom, 1979) to analyze the economic meaning of SOA. Supposed a capital owner entrusts a manager or operator to engage in operation and management of decision-making, they form the relationship of client and agent. The former is client and the latter is the agent. The utility functions of the manager and the capital owner are different. A capital owner aims at maximizing the enterprise value while a manager aims at maximizing the integrated utility of income and rights of controlling. A , standing for the set, includes all the optional action of the manager. $a \in A$, means a specific act of the manager, and stands for a one-dimensional variable denoting the degree to which the manager exerts his ability. $c(\cdot)$, stands for the manager's cost of action. $s(x)$ stands for incentive contract. $x(\cdot)$ and $u(\cdot)-c(\cdot)$ stand for the utility functions of capital owner and the manager. $F(x, a)$ and $f(x, a)$ show the distribution function and distribution density of the enterprise value after the manager chooses act a . IR means the manager's expected utility from the contract should not be less if he does not accept the contract (u_0). IC, the incentive and compatible constraint, means that the capital owner can only depend on the manager to maximize the effectiveness. How capital owners maximize the effectiveness can be expressed as follows:

$$\max \int v(x - s(x))f(x, a)d_x$$

$$\text{s.t. (personal rational constraint)} \quad \int u[s(x)]f(x, a)d_x - c(a) \geq u_0$$

$$\text{(Incentive and compatible constraints)} \quad \int u[s(x)]f(x, a)d_x - c(a) \geq \int u[s(x)]f(x, a')d_x - c(a'), \quad \forall a' \in A$$

Provided $f(x, a)$ is against $f(x, a)$, what is the derivative of a . To get the extremum of the formula above, if the acts of the manager, $a \in A$, are observable, that is, $f(x, a) = 0$, the optimization can be reduced into $\frac{v'[x - s(x)]}{u'[s(x)]} = \lambda$, i.e.

$$v'[x - s(x)] = \lambda * u'[s(x)], \text{ The solution to the formula is } s(x) = \frac{x}{1 + \lambda}$$

Because the specific act of every manager can be observed, the optimal incentive contractual arrangement is only related with the output x , and proportional to x . However, with the fierce competition among enterprises, there appears more uncertainty. The managers will have larger stage. This assumption that "the actions of the managers, $a \in A$, can be fully observed", means more stringent. Or it can be explained that the transaction cost from the assumption will exceed the realized profit. Barone in 1908 applied the general equilibrium theory of neo-classical economics to prove the centralized planned economy can realize the optimal allocation of resources in the absence of friction (i.e. the conditions of zero transaction cost). Although the premise of the theory is rigorous, the optimal solution and the theoretical basis of the incentive contract under the planned economy give me important inspiration. That is, if the actions of the managers, $a \in A$, can be fully observed, the simple incentive contract of the managers can realize the optimality. The observable degree of the incentive program determines the performance of the contract. In studying the incentive contract, an important purpose is to make the practice of the managers more observable. Sarbanes-Oxley Act is one of the acts that give most influences on American businesses. One of its content requires that the manager should assess their economic performance and ask intermediary agencies or authentication department to give an appraisal then

publicize it, aiming at protecting the investors and other related purposes. The improvement of the management and control in defining the value of the businesses can effectively reduce the contracting cost between the owner of capital and the labor force and the measurement cost in the implementation.

The relevant provisions in Sarbanes-Oakley Act have stressed the managers' fiduciary responsibilities. The implementation of the Act has brought some effectiveness as follows: most of the listed companies abandon the single leadership model that CEO and chairman are served as one person; the number of directorate conference increases; members of directors risk more potential litigation, so liability insurance of them and the managers increased to 94.2%; members of the board in the listed company change frequently (Huang Jingjing, 2005). The incentive programs guided by the traditional incentive theory win the managers "fresh flowers and applause". They earned a surprisingly high salary without corresponding responsibilities. Series of financial scandals and failures of management change people's modus operandi that such incentive programs as stock and shares were depended on to spur the managers or operators. People turn to internal controls. Sarbanes-Oakley Act, in a way, strengthens the property rights of the capital owners. In other hand, as for the regulatory bodies and shareholders supervisors concerned, it gives a clear requirement and standard for the managers to protect the corporate value to the minimum extent. In practice, COSO internal control framework has become a criterion of the golden rule and relevant law for the Federal government of United States to appraise whether the managers are duteous.

4. Conclusions and revelation

In terms of significance of economics, the essence of Sarbanes-Oakley Act is to improve the internal controls and emphasize the fiduciary duties to effectively reduce the contracting costs between the owner of financial capital and human capital and the measurement cost in practice. The incentive contract of the business owners and managers does not stress the concept of incentive ownership and corporate governance structure. Incentive problems about managers in client-agent contract should be considered in the round. It is of important guiding significance for China to deepen the reform of state-owned enterprises and improve the incentive and restrictive mechanism concerning managers.

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Revisionism: The Provisional Republican Movement

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Abstract

This article explores the developments within the Provisional Republican Movement (IRA and Sinn Féin), its politicization in the 1980s, and the Sinn Féin strategy of recent years. It discusses the Provisionals' ending of the use of political violence and the movement's drift or determined policy towards entering the political mainstream, the acceptance of democratic norms. The sustained focus of my article is consideration of the revision of core Provisional principles. It analyses the reasons for this revisionism and it considers the reaction to and consequences of this revisionism.

Keywords: Physical Force Tradition, Armed Struggle, Republican Movement, Sinn Féin, Abstentionism, Constitutional Nationalism, Consent Principle

1. Introduction

The origins of Irish republicanism reside in the United Irishman Rising of 1798 which aimed to create a democratic society which would unite Irishmen of all creeds. The physical force tradition seeks legitimacy by trying to trace its origin to the 1798 Rebellion and the insurrections which followed in 1803, 1848, 1867 and 1916. Sinn Féin (We Ourselves) is strongly republican and has links to the IRA. The original Sinn Féin was formed by Arthur Griffith in 1905 and was an umbrella name for nationalists who sought complete separation from Britain, as opposed to Home Rule. The current Sinn Féin party evolved from a split in the republican movement in Ireland in the early 1970s. Gerry Adams has been party leader since 1983, and led Sinn Féin in multi-party peace talks which resulted in the signing of the 1998 Belfast Agreement.

2. Birth of the Provisionals

"The decision to end the resistance campaign has been taken in view of the general situation. Foremost among the factors motivating this course of action has been the attitude of the general public, whose minds have been deliberately distracted from the supreme issue facing the Irish people - the unity and freedom of Ireland". (Note 1)

Thus the IRA's campaign, which had lasted from 1956 to 1962, was officially called off. While an indifferent and often hostile nationalist population in the North watched, the campaign was bound to end in failure and recrimination, the gun would go back on the shelf and for republicans Ireland would remain divided and unfree. Although the IRA had had a political wing, Sinn Féin, it had failed to see the importance of mobilizing this political organization in conjunction with its military push. Political action was neglected for an exclusive concentration on physical force.

Gerry Adams (Note 2) emphasized that the failure of the 1950s campaign had a profound effect on those who remained active during the 1960s. Within the Republican movement there was a review. Republicans were to consider why the movement was not getting support. When the leadership conducted its review, they found that the base of support was vanishing and that the struggle was divorced from the daily lives of the people. In his book *The Politics of Irish Freedom* (1986) Adams was to elaborate on this internal analysis:

"What came most clearly from these discussions was recognition that republicans needed to identify their philosophy as being relevant not to the vision of a future Ireland, but to the actual Ireland of today, and that they needed to enlist mass support...for the republican cause". (Note 3)

Therefore, what emerged in 1960s Ireland was a radical form of republicanism. It had become dominant within the Republican movement because those who were opposed to it had simply no alternative to offer. A socialist republic was adopted as the final goal of the movement, which stressed the need for the movement to become involved in the struggles of 'ordinary people' over housing, rents, fishing rights, and civil rights. However, these changes did not represent a replacement of militarism by political action. Nonetheless, there were those who opposed what they considered to be an alien Marxist ideology which was absorbing Irish republicanism.

It was the events of 1969 which acted as the catalyst for a split within the Republican Movement. A majority of people were to blame the IRA for the failure to defend nationalist areas. The troubles meant that the movement had mushroomed and with these new members came criticism of the leadership over its lack of defense and its policy of de-militarization. All this was to over-shadow the 1970 Ard Fheis (Party conference). Although abstentionism (Note 4) had failed to get the necessary two thirds vote, at the conference, and was thus not passed, the issue had brought Thomas Maguire, the sole surviving member of the Second Dail Eireann of 1921, to condemn the dropping of the abstentionist policy by the 1969 IRA Convention and declare it 'illegal'. He also declared the Provisional Army Council as the 'lawful executive' and the 'legitimate successors' to the Second Dail, thus the First Dail, thus the men of 1916. With the birth of the Provisionals came the return of the Old Guard, with its conservatism and its adherence to republican orthodoxy. (Note 5) True, there were those of a leftist position within the Provisionals; but they were few. For they were to be members of a movement which would once again exorcise politics from its midst.

3. Ballot and Armalite

When the Provisionals were formed, all effort was put behind the military struggle, with Sinn Fein being relegated to the poor relation within the republican family. The Party was developed as essentially a support group for the military wing and Sinn Fein would provide a legal platform for the IRA to operate openly. An IRA re-organization document in 1977, which was believed to have been the work of Gerry Adams among others, stressed that Sinn Fein should have a more active role, should be radicalized and agitate about social and economic issues, but would still be the subordinate to the 'Army' and should come under IRA organizers at all levels. (Note 6)

The general assumption which was prevalent at the time was that 'the war' would be of short duration. As the traditionalists had parted from radical republicanism via the split, there was to be no variant of it in the Provisionals. A do-not-touch approach was firmly adopted towards abstentionsim. As it became increasingly obvious that there was not going to be a 'quick war', new strategies would have to be adopted. The developing of a strong political expression which would be a serious electoral contender would have to be a priority. The Old Guard knew too well, for they had gone down this road before, that soon, too, the 'sacred cow' of republican abstentionism would be placed very much within the centre of that debate. Attempts to build Sinn Fein into a recognizable, political party obviously meant that an electoral strategy would be crucial. The death of the MP for Fermanagh and South Tyrone, in 1981 was to offer a situation to advance such a strategy. At the Ard Fheis prior to the election of Bobby Sands and the Leinster House election victories of Kieran Doherty and Paddy Agnew, the majority view was not to get involved in elections. After these examples of success, the next Ard Fheis was to have a different attitude. At the Sinn Fein Ard Fheis in 1981 Danny Morrison, a leading ally of Adams, was to comment:

"Who here really believes that we can win the war through the ballot box? But will anyone here object if, with a ballot paper in this hand, and an Armalite in this hand, we take power in Ireland?" (Note 7)

The next step was to allow the party executive the decision as to whether to contest elections in the North and South on an abstentionist basis. And in 1983 Gerry Adams was to replace Ruairi O'Bradhaigh as president of Sinn Fein. On his take-over Adams was to declare: 'we are an abstentionist party; it is not my intention to advocate change in this situation'. However, electoralism like all the other policy changes was to face opposition and the May 1985 council elections represented such a challenge. A good result was needed, so as not to serve as an embarrassment for the movement. Adams himself made projections of 35 council seat victories. The actual outcome was near 60 seats.

Side by side with this 'Ballot Box/Armalite' strategy was the view that the South was the key in the successful conclusion of the struggle. Many believed that there was a good chance of gaining seats in Leinster House (The Parliament in the Irish Republic) in several border and inner city constituencies. The Hunger Strike had had a profound effect on the attitude of many in the Republican movement regarding electoralism and attempts to build a political party. It had witnessed an upsurge of popular support for the movement which was translated into votes. The election of Gerry Adams as MP for West Belfast in 1983 and again in 1987, the 11 Sinn Fein councilors elected for Greater Belfast, and the advice centers - many wanted to see this happening in the South.

Breaking out of isolation and becoming politically relevant, together with the need to blend the national struggle with contemporary reality as perceived by the majority of the people in the 26 Counties, was essentially the argument forwarded by those who advocated the dropping of abstentionism. The basic fact was that people in the 26 Counties did not see any point in electing candidates who would not take their seats.

In relation to the 1986 Sinn Fein and Republican Sinn Fein split, divisions between the two groups were to be inherent within the Provisional movement right from its inception. The 'Old Guard', who were tied to republican tradition and orthodoxy, had been thrown together with a younger element whose main concern was the 'defense' of their communities. While the waging of the 'war' was seen in purely militaristic terms, all the divisions and differences could be pushed aside. However, with the re-evaluation process which had started in the late 1970s, but was to really get underway in the early and mid 1980s, all the dissent, disagreement and division was to come out into the open. While

this was going on, some voices within the nationalist family were attempting to wean the Provisionals away from violence.

4. Hume-Adams

“They are the pure master race of Irish. They are the keepers of the holy grail of the nation. That deep-seated attitude, married to their method, has all the hallmarks of undiluted fascism...If I were to lead a civil rights campaign in Northern Ireland today, the major target of that campaign would be the IRA”. (Note 8)

The above quotations are from a speech that John Hume (SDLP leader) made at his party’s 1988 annual conference. The question is why, therefore, did he engage in dialogue, and initiate a peace process, with the Sinn Fein leader? (Note 9) John Hume was to stress that it should not be forgotten that the Provisional IRA was a product of the traditional nationalist philosophy, a philosophy that was associated in essence with the ‘noble act’ of 1916, and that all the major parties in the Republic of Ireland originated from that philosophy. He was firmly of the view that if Ireland was to see lasting peace, the attitude and methods of the Republican movement (IRA/Sinn Fein) would have to be addressed.

In their first joint statement of 1993 Gerry Adams was to agree with John Hume that while the Irish people as a whole had a right to self-determination, they were divided as to how that right to self-determination was to be exercised - thus suggesting that Sinn Fein could foresee an end to British sovereignty in Ireland, but the partition of Ireland would still be a reality. Certainly this represented a radical departure from their anti-partitionist platform. Hume was determined in his talks with Adams to win over the Republican movement to a total cessation of violence, and to establish a dialogue process. This process would in effect involve all parties, including Sinn Fein, who would commit themselves to the promotion of agreement between the different traditions in Ireland, and that it was for the Irish people alone to decide what form this agreement would take. Hume argued that the Anglo-Irish Joint Declaration of December 1993 was the end result of the above process: he stressed that, in the agreement, the British government declared that it no longer had any selfish, strategic or economic interests in Ireland, that it was committed to promoting agreement between the divided people of Ireland, and that any agreement that was to emerge would be legislated for. Hume was to declare that this represented ‘clear self-determination’.

Following the accession of Albert Reynolds (to the office of An Taoiseach and leader of Fianna Fail) in February 1992, the strategy of trying to involve Sinn Fein in the political process became central to government policy. For the previous two decades the central objective of Irish government policy had been to isolate Sinn Fein and support constitutional nationalism through the SDLP. One of the main objectives of the 1985 Anglo-Irish Agreement was to shore up the SDLP against the resurgence of Sinn Fein, following the Hunger Strike. However, government policy underwent a sea-change in the early 1990s. Instead of trying to crush Sinn Fein and keep the Party isolated, the Reynolds government built links with republicans and sought to develop a political approach that would bring an end to the IRA campaign by all-inclusive talks.

Sinn Fein showed a favorable response to the Framework Document of 1995. The party was of the view that the political framework envisaged was an all-Ireland one. In the Framework for Accountable Government in Northern Ireland political institutions were envisaged that would be:

Widely acceptable, in particular in the sense of providing an appropriate and equitable role for both sides of the community, such that both the main parts of the Northern Ireland community should be able to identify with them and feel that their representatives had a meaningful function to perform.

The other document which was part of the Framework package was A New Framework for Agreement which most pleased the Provisionals. It:

Proposed a North/South body, comprising elected representatives from, and accountable to, a Northern Ireland Assembly and the Irish parliament, to deal with matters designated by the two governments in the first instance in agreement with the parties.

For nationalists the Framework proposals offered a genuine democratic Northern Ireland political entity, a strong, effective and executive North/South body and the inter-governmental conference in effect still policing the process. A new dispensation with no resonance whatsoever with the Stormont days, but an agreement that was in essence comparable to what was on offer to the Provisional Republican movement at the Sunningdale Agreement of 1974, i.e. ‘power-sharing’, and a ‘Council of Ireland’.

5. Towards an end to Conflict

The Sinn Fein leadership was to recognize the narrow limits of the Party’s support base in the South and the likelihood of a politically shrinking base in the North, and concluded that conditions would have to be created to enable a broader nationalist coalition to take place, involving Fianna Fail, the SDLP and the mobilization of international opinion against British policy in Ireland. It was apparent to the leadership of the Republican movement that such an alliance would mean an end to the IRA campaign. The 1987 document Scenario for Peace was to concern itself with setting out

demands for a British withdrawal. It was to set out the conditions involved in the withdrawal. The document *Towards a Lasting Peace in Ireland*, published in 1992, indicated a real evolution in the republican analysis. It contains, amongst others, these points:

Sinn Féin would argue that if there is to be peace in Ireland, a Dublin government will have to assume its national responsibility. That responsibility must involve the Dublin government in developing a strategy aimed at persuading the British, the unionists and the international community of the disastrous failure of partition. Launching the document in Belfast, Adams was to say that they might have to accept 'interim phases and interim arrangements' (Note 10) while still clinging to the aspirations of a united Ireland.

The key to the republican analysis and strategy was spelled out in a confidential paper, sometimes referred to as the TUAS Document, which was circulated within the IRA and Sinn Féin in the summer of 1994. TUAS was widely believed at the time to mean 'Totally Unarmed Strategy', whilst acknowledging that the goal of a united 32-county democratic socialist republic had not changed:

"The main strategic objectives to move us towards that goal can be summarized thus: to construct an Irish nationalist consensus with international support on the basis of the dynamic contained in the Irish peace initiative. This should aim for: the strongest possible political consensus between the Dublin government, Sinn Féin and the SDLP..." (Note 11)

On August 12, 1994 Danny Morrison was to declare that the armalite and ballot box strategy was over. Morrison was to state that 'different times require different strategies'. (Note 12) Nineteen days later the Provisional IRA announced a total and complete ceasefire, beginning on September 1, 1994. A joint statement was issued by Albert Reynolds, John Hume and Gerry Adams, which declared:

We are at the beginning of a new era in which we are all totally and absolutely committed to democratic and peaceful methods of resolving our political problems. (Note 13)

Seventeen months later the IRA planted a bomb in London, killing two people and injuring over a 100 more. TUAS now meant 'Tactical Unarmed Strategy'. One is forced to conclude that the IRA cessation had taken place without any process of re-education being undertaken within the Republican movement to convert the militarism of many republicans to an exclusively political, democratic and legal method of pursuing their objective.

6. Traditionalists and Socialist Republicans

Hardliners and purists were of the view that a republican organization making such a fundamental change could no longer call itself republican. Republican Sinn Féin (RSP) believed that to take seats in Leinster House would mean accepting the apparatus of 'collaboration and repression'. For many in RSF that great corrupting nature of politics had indeed corrupted former comrades. Geraldine Taylor, RSF Ard Comhairle (party executive) stated: when RSF broke away from Sinn Féin in 1986, she asserted: 'we took the Republican movement with us because RSF alone has stood by republican principles'. (Note 14) Taylor slammed Sinn Féin as a 'revisionist party' that had 'sold out'.

On being asked whether RSF represent an electoral challenge to Sinn Féin in the republican heartlands of the North, she stated that in regards to local government elections in the Six Counties, the British government refused to accept RSF's nomination papers because the Party refused to sign the mandatory non-violence declaration for all parties and candidates. Therefore, at the local level there is no way of testing their strength. The 2007 Assembly election offered an opportunity for Geraldine Taylor to test the support for RSF in West Belfast when she stood against Gerry Adams in the constituency – she got 427 votes 1.3% of the vote whilst Sinn Féin got 23,631 votes 69.9% of the vote in the West Belfast.

Not surprisingly RSF was to attack the peace strategy of Sinn Féin. It dubbed the Provisional movement as 'the Six-County wing of Fianna Fáil' and 'the SDLP mark 2'. The Party claimed that the ceasefire became inevitable in 1986, when Sinn Féin ended its policy of abstentionism and looked to the Dublin administration for 'assistance'. Ruairi O'Bradaigh (President of RSF) proclaimed the Sinn Féin peace process as a 'betrayal', an abandonment of the republican ideal, "as the loyalist paramilitaries said when announcing their ceasefire, 'the union is safe'" (Note 15). The Provisional leadership, military and political, had, in effect, accepted the unionist veto.

At the time of its inception the Irish Republican Socialist Party (IRSP) argued that it had a valid platform, because the Provisionals at that time were traditional, conservative, occupied with physical force and very much underdeveloped in terms of politics and ideology. Many in the IRSP believed that if it could organize itself it would act as a vehicle for the emergent left in Ireland with its banner and programme of 'socialist republicanism'. However, the IRSP was never to recover from the Hunger Strike, because Sinn Féin was moving gradually towards the left. In its policies Sinn Féin is seemingly a left-wing party. Those who remained in the IRSP felt that the Provisional movement had stolen its clothes in a political and ideological sense.

The critique of the leadership of the IRSP of the Provisional movement is that it is elitist, that is determined to control all within its bounds, that they need to have the hegemony of the 'struggle', that they need to claim that they can speak

with one voice on behalf of the entire community, and that they can deliver the ceasefire, deliver the peace, and that this necessitates the demise of the IRSP or any radical dissenting voice around which any dissident elements can gather in an organized fashion. (Note 16) The IRSP attacked the IRA ceasefire and Sinn Fein strategy. It declared that the republican position had been undermined and that the Irish people were being prepared for the acceptance of a newly revamped Northern state. In other words, a 'revamped Stormont' and a 'copper-fastened partition'. The IRSP is insistent that the very basis of republicanism has been put in jeopardy by the Provisional movement who has accepted the right of unionists to their consent to the unification of Ireland 'a veto for continued partition and an internal settlement'.

The next section moves on from the Provisionals' dominance within Northern nationalist heartlands to their attempt to ensure dominance within mainstream Northern nationalism.

7. Party Rivalry - SDLP and Sinn Fein

"I cannot believe what I am listening to. Tell me, are people here afraid of peace? ... John asked: do you want to keep the party alive or people alive?" (Note 17).

The above statement is from John Hume and it was reliably reported to have been made at a meeting in the South Belfast constituency office of the SDLP on August 18, 1994. Although Hume's leadership was not in question, there were doubts about the wisdom of persevering with a peace process with a political party that was not only the political expression of the Republican movement, which included the IRA, but was also a direct rival for votes.

Prior to the 1994 ceasefire the SDLP's *raison d'être* was clear: it was the non-violent participatory wing of Irish nationalism. This was in marked contrast to the armalite ballot-box strategy of their main political rival. But the ceasefire would mean that points of difference with Sinn Fein were bound to disappear. If the two parties in terms of analysis and strategy appeared similar, i.e. non-violent, representation of the concerns and aspirations of Northern nationalists, then, inevitably, voters would support the party that was most identified with active campaigning on their behalf. Being identified as the only political party with an active profile in working class nationalist areas would provide electoral dividends for Sinn Fein.

A major difference between the SDLP and Sinn Fein is over Sinn Fein's policy of abstentionism. This dates back to Arthur Griffith's (the founder of Sinn Fein in 1905) summation of the Hungarian nationalists' campaign for independence from Austria in the nineteenth century as outlined in *The Resurrection of Hungary: A Parallel for Ireland* (1904). Griffith noted that the Hungarian nationalists adopted a policy of refusing to send their representatives to the Austrian parliament. Griffith argued that Irish nationalists should pursue the same policy. The policy of abstentionism since then became part of the Republican movement theology. Although in 1986, as has been noted, it was dropped for elections to the parliament in the South, and (as will be shown) was later dropped to elections to the Northern Ireland Assembly, it is still in operation for Westminster elections. A senior SDLP figure and first nationalist Lord Mayor of Belfast, Alban Maginness, contended that it was 'surely absurd' of Gerry Adams to seek votes from the long suffering people of West Belfast so that he can abstain from going to Westminster to represent their views to the British government. Maginness rightly asked: 'what is the point in voting for someone who sincerely promises not to represent your views?' (Note 18). The Sinn Fein leadership recognizes that its Party is facing a strong argument from its political rival on this issue. In *The Irish News* it reported that Sinn Fein would adopt 'a slightly more intense approach at Westminster'. Sinn Fein MPs would travel to London to meet with other parties and lobby on issues. The spokesperson added that 'it is not so much that we are getting involved in the parliamentary system, but we intend to use the system to our advantage and to the advantage of those who elect us'. (Note 19)

Sinn Fein and the SDLP have been in electoral competition since 1982, when elections for a Stormont Assembly were called. But the battle became intense a year later at the Westminster election. At this election Sinn Fein won the West Belfast seat, polled 102,701 votes or 13.4% of the vote in Northern Ireland. In terms of the split in the nationalist vote, overall it was 57:43 in favor of the SDLP. Sinn Fein was just 34,000 votes behind the SDLP. (Note 20)

At the 1984 European elections the SDLP got 22.1 per cent of the vote to Sinn Fein's 13.3%. John Hume was elected as an MEP. In Sinn Fein's first district council election in 1985 it had beaten the SDLP in Belfast. They won seven seats on Belfast Council to the SDLP's six. Obviously Sinn Fein was now a real political force in Belfast. However, outside Belfast there was a different picture. There was a clear gap in seats between both parties in this election. The SDLP won 42 seats more than Sinn Fein. The SDLP received 17.8% of the vote to Sinn Fein's 11.8%.

At the 1987 Westminster elections the SDLP got 21% of the vote to Sinn Fein's 11.4%. In terms of the nationalist vote it was 65% to the SDLP and 35% to Sinn Fein, a decline from 1983. Gerry Adams retained his seat in West Belfast. The next election was the 1989 local government election, when the SDLP got 21% of the vote to Sinn Fein's 11.2%. The European elections of the same year saw that percentage gap widen from 25.5% to 9.1% in favor of the SDLP, seemingly a pattern of inexorable decline for Sinn Fein. John Hume was re-elected MEP. At the Westminster election of 1992 the SDLP received 23.5% of the vote to Sinn Fein's 10%. In terms of the nationalist vote it was 70% to 30% in

favor of the SDLP. Gerry Adams lost his seat in West Belfast to Joe Hendron, 184,445 votes and four seats went to the SDLP and 78,291 votes to Sinn Fein. The loss of the West Belfast seat, their only seat, was more than a symbolic blow to the Republican movement.

However, the 1993 district council elections reversed this trend. Sinn Fein polled 12.4% of the vote to the SDLP's 22% - a 64:36 per cent split of the nationalist vote in favor of the SDLP - 1993 may be seen as the year when the Sinn Fein ceased to decline; the party's vote steadied to 80,000 votes compared to the 150,000 for the SDLP. However, the SDLP won 75 more council seats than Sinn Fein, showing that it was still the dominant nationalist party in the North. The 1994 European elections were widely seen as a victory for John Hume, validating his role in attempting to bring Sinn Fein into the political process and his pursuit of peace. John Hume got 161,992 votes and 28.9% of the vote. Ian Paisley's lead over John Hume was slashed to 1,200 votes. Sinn Fein got 55,215 votes, 9% of the overall vote, down considerably from the time it got nearly 100,000 at a previous European election.

The Forum election of May 1996 was to be hailed as a dramatic Sinn Fein come-back. In this election it polled its highest share of the overall vote with 15.4% to the SDLP's 21.4%, a 58:42 split in the nationalist vote in favor of the SDLP, the same level as the 1983 election. The vote for Sinn Fein was 116,377 and 17 seats to the Forum (both parties received an extra two seats from the regional list). The SDLP got 160,786 votes and 21 seats to the forum. The Sinn Fein come-back was most dramatic in West Belfast, where Sinn Fein out-pollled the SDLP: 22,355 votes (53.4% of the total) compared to the SDLP's 11,087 (26.4%), thus suggesting that Gerry Adams would regain the seat at the general election the next year. Sinn Fein also beat the SDLP in North Belfast, Fermanagh and South Tyrone, Mid Ulster, and pushed the SDLP hard in the new constituency of West Tyrone. Sinn Fein had excellent showings in Foyle and Newry and Armagh. Sinn Fein was now back in the business of posing a real threat to the SDLP's position as the dominant voice of Irish nationalism in the North.

The 1997 Westminster election was to show a determined Gerry Adams, anxious to regain his seat. In fact, The Sunday Tribune was to report that for the very first time since he led Sinn Fein into the electoral arena, Adams was to drop any references to Sinn Fein in an appeal to the voters. The Andersonstown News, (a newspaper in West Belfast) which ran the advert, merely asked people to vote for Gerry Adams. Noticeably absent was any reference to Sinn Fein or any depiction of the party's logo. Instead the advert emphasized Adam's personal role in the peace process. The advert was to show him with Nelson Mandela, Mary Robinson, Bill Clinton, Albert Reynolds and John Hume. This must be one of the few occasions in Irish politics, the writer commented, when the leader of one party has employed a positive image of the leader of his main rival to boost his own chances of getting elected. (Note 21)

The election itself was to signal another triumph for Sinn Fein. Its vote rose from 15.4% in the forum elections to 16.1% this time round. Gerry Adams regained his seat in West Belfast and Martin McGuinness (Vice-President of SF) won a seat in Mid Ulster. The SDLP's share of the vote was 24.1% of the vote compared to 21.3% in the Forum election of 1996 and it held three seats in Foyle, South Down and Newry and Armagh. It was a very good vote for Sinn Fein. In winning two seats it achieved its highest share of the vote and as far as Westminster polls went, it was to become the third largest party in Northern Ireland.

In the 1996 Forum Election the SDLP took just over 59% of the combined nationalist vote to Sinn Fein's 41%. In the 1997 General Election the SDLP's share of the combined nationalist vote rose to 60.4%, while Sinn Fein's fell to 39.6%. Despite the success of two seats it was obvious that the moment of truth in relation to the 'armed struggle' of the IRA was at hand, to ditch the armalite-ballot box in favor of the ballot box.

The council elections of the same month heralded additional success for Sinn Fein. Sinn Fein's share of the vote rose from 16.1% in the Westminster election to 16.9% this time round and it obtained 74 council seats, 23 seats more than the 1993 council election. Meanwhile, the SDLP vote fell from 24.1% to 20.7%. It received 120 council seats. The two parties now had less than 4% of a difference between them. For Sinn Fein this best performance ever put pressure on the IRA to call a ceasefire. In Belfast Sinn Fein got 13 seats (nearly becoming the largest party in Belfast) and the SDLP got seven. Sinn Fein got a councilor elected in South Belfast for the first time and a councilor elected for the more prosperous ward of Castle in North Belfast. The Sinn Fein performance saw them becoming the joint largest party in Belfast (along with the Ulster Unionists) and cost the Unionists control of Fermanagh, Strabane and Cookstown councils and lost the SDLP its two-decade long hegemony of Derry City council. The combined nationalist vote indicated the changing demographic map of Northern Ireland. The Unionists had only overall control of 13 of the 26 district councils. As regards the share of the overall nationalist vote, the SDLP had 55% and Sinn Fein 45%. Just five years previously, at the Westminster election of 1992, the SDLP had 70% to the Sinn Fein's 30%. In the intervening period since Adams lost his seat in 1992 the Sinn Fein vote had risen by nearly a staggering 70 per cent.

In the 1998 Assembly election the SDLP got the biggest share of the vote, outpolling the UUP receiving 22% of the vote and 24 out of the 108 seats in the new Northern Ireland Assembly. Sinn Fein got 17.6% of the vote and 18 seats - the party's performance entitled it to two seats in the ten-person Northern Ireland Executive. Whilst the election was

seen as a victory for the SDLP, Sinn Féin had emerged as the largest party in the west of the Bann constituencies of West Tyrone, Fermanagh-South Tyrone and Mid Ulster. However, both the SDLP and Sinn Féin won five seats in Belfast.

The two elections of 2001 were to show that Sinn Féin had won the battle for the Catholic/nationalist vote over its rival. In the 2001 Westminster election Sinn Féin gained two seats to take its total up to 4, whereas, the SDLP was to end up with three seats. In this election Sinn Féin was to get 21.7% of the vote, whilst the SDLP was to get 21%. The Council Elections that same year had Sinn Féin on 20.7% and the SDLP on 19.4%. This was a shattering blow for the more moderate nationalist party.

In the 2003 Elections for the Northern Ireland Assembly Sinn Féin was to make election gains over its main nationalist rival: Sinn Féin got 23.5% of the vote and 24 seats and the SDLP 17% of the vote and 18 seats. In the 2004 European Election Sinn Féin saw their candidate, elected on the first count with 144,541 first preferences (26.31%). The quota was 137,320. With 87,559 first preferences (15.94%), the SDLP candidate conceded early on that he wasn't in the running for the third seat.

In the 2005 general Election Sinn Féin was to retain its position as the largest nationalist party, it increased its overall vote by almost 12,000 from the 2003 Assembly election. Nonetheless, the prediction that it would win the largest number of votes proved groundless. Sinn Féin finished behind the DUP. In the 2001 general election, they jumped four percentage points to 21.7%, and then 1.8 points in the 2003 Assembly Election to 23.5%. The increase this time, to 24.3%, was less than a percentage point. The SDLP lost Newry and Armagh, Seamus Mallon's, the former Deputy First Minister, old seat to Sinn Féin That was party's sole gain in the 2005 General Election (bringing a total of 5 seats for Sinn Féin and 2 for the SDLP). Sinn Féin remains the dominant nationalist party, capturing almost a quarter of the overall vote in this election.

8. The Irish Republic

There has been an uneven development of Sinn Féin. In the South it is not a main electoral contender, and the statistics demonstrate that it is a party far from the political mainstream. In the 1987 general election it got 1.7% of the vote, and no seat. In the 1989 general election it got 1.2% of the vote, and no seat. The local government election of June 1991 was to have Sinn Féin fielding 59 candidates and it won only six seats out of a total of 883 seats at stake. At the Dail election of 1992 Sinn Féin captured just 1.6% of the vote and no seat. In the Urban District/Town Commission election of 1994 it received 4% of the vote. Throughout the entire Republic of Ireland it had only 31 councilors. It was not an electoral force south of the border. Richard Sinnott, attributes this lack of electoral success to the IRA's continuing campaign of violence and Sinn Féin's association with that campaign. (Note 22) Gerry Adams himself admitted: 'obviously the effect of the conflict here does have its effect in the 26 Counties'. (Note 23)

Sinn Féin in the South is viewed as a 'Northern party'. The Sinn Féin leadership hope to gain the support of the long-term unemployed, and those who are politically and socially alienated from the state and the third of the people in the Republic who live below the poverty line. The party's political profile is definitely on the left of the Republic's political spectrum. It supports higher corporation and incomes taxes and a substantial redistributive programme on health, education, housing and welfare. The party's appeal is pitched towards the under-privileged and average income earners. However, the problem for Sinn Féin is that there is still electoral competition for votes, and there are a number of left-of-centre parties fighting for votes, and, of course, independents.

In the 1997 Dail election the Sinn Féin 'peace strategy' was to pay electoral dividends in the South. Caoimhghin O Caolain topped the poll in Cavan-Monaghan for Sinn Féin, receiving 11,000 plus first preference votes. Sinn Féin was to get 2.5% of the vote. O'Caolain was to be the first member of Sinn Féin to take a Dail seat as distinct from winning one. In the 2004 European elections and Local Council Elections in the Republic of Ireland Sinn Féin was to win its first European seat and Sinn Féin and was to more than double its votes and council seats compared to their 1999 results. Sinn Féin seeks political power North and South. It is the second largest party in Northern Ireland and has ambitions to become the largest all-Ireland party in coming years. In the Republic it has held the support of about 10 per cent of voters, according to successive opinion polls.

9. Endgame

In Pádraig O'Malley's *Northern Ireland: Question of Nuance*, Gerry Adams considered the support for the 'armed struggle' in Ireland:

"I don't think there's anyone who could turn around and say that the majority of people do not support the armed struggle. There's a tolerance, there's ambivalence, there's an ambiguity, there's a wink and a nod - these are all the old effects of our colonial past ..." (Note 24)

The same book had Danny Morrison stressing that, in terms of the necessity of a popular mandate for armed struggle, the mandate came from a 'higher power' (presumably God, or the dead generations, or the mandate of history, although

Morrison does not say). He went on to say that there is 'no question' of the people having 'the right to be wrong' on the national question. Looking back through Irish revolutionary history, Morrison concluded that at no point was a popular mandate sought by those waging the struggle.

Although the vast majority of Irish nationalists repudiate the views and sentiments of Adams and Morrison in relation to 'armed struggle', nonetheless, Sinn Féin had sought to exploit any uncertainty, ignorance and confusion that may exist in nationalist Ireland with regard to the relationship between Sinn Féin and the IRA and the contention that Sinn Féin is a genuine political party that is *bona fide* committed to the democratic process. Even Ruairi O'Bradaigh, arguably the person most identified with traditional republicanism, recognizes in relation to democratic methods and the physical force tradition that 'if you try to ride two horses in different directions at the same time, you will be pulled apart'. (Note 25) This yawning gap between the Sinn Féin protestations on one hand, and the actions of the IRA on the other, was to lead to an inexorable and decisive formal split between the political wing and the military wing of the Republican movement.

The dilemma and pressing reality of the situation that Gerry Adams and the others in Sinn Féin faced was that the British government, Irish-American opinion, and, particularly, mainstream Irish nationalism would not be shifted from the position of demanding a genuine commitment to democracy and democratic methods.

On July 20, 1997 the Provisional IRA declared another 'complete cessation of military operations'. On Good Friday, 10 April, 1998 the all-party talks at Stormont finally reached an agreement. It contained amongst other things:

Power-sharing, parallel consent, proportional representation, a Bill of Rights, a Human Rights Commission, the European Convention on Human Rights, an Equality Agenda, a Commission on Policing, the release of prisoners, a review of the criminal justice system, a Civic Forum and cross-border bodies.

On July 1, 1998 Sinn Féin took its seats in a new Northern Ireland Assembly; and on September 1, 1998 Gerry Adams, in a key note statement, was to declare that 'Sinn Féin believe the violence we have seen must be for all of us now a thing of the past, over, done with and gone'. (Note 26)

The IRA has declared two ceasefires without any declaration of intent to withdraw from Northern Ireland by the British government. Sinn Féin has taken its seats in a new Northern Ireland Assembly and has taken part in the governing of Northern Ireland. In signing up to the Good Friday Agreement Sinn Féin has accepted that the constitutional status of Northern Ireland can only be changed by the consent of the majority of the people in Northern Ireland. It accepted the removal of Articles 2 and 3 of the Irish Constitution and it is faced with the reality that cross-border bodies are not 'free standing' but subject to the control of a Northern Ireland Assembly.

The above surely represents the abandonment of fundamental core principles on the part of the Provisional Republican movement. However, for Sinn Féin to be taken seriously as a 'normal' democratic party it had to divest itself of the IRA; and it has to abandon its abstentionist culture. After 35 years of 'armed struggle' the IRA was to end its war. In the July 29, 2005 the IRA were to declare a formal end to its armed campaign. All IRA units were ordered to dump arms; and the IRA vowed to complete its long-running decommissioning process. On the September 26, 2005 the head of the international decommissioning body was to declare that the IRA's entire arsenal of weapons has been destroyed.

Nonetheless, there needed to be a further, final act of transformation from the Provisionals. Sinn Féin had to endorse the new Police Service of Northern Ireland (PSNI), the reformed RUC, which was the main target of IRA attacks during the Troubles. At a special party conference on the January 28, 2007 Sinn Féin was to do this. The Sinn Féin ardheis motion on policing read:

Sinn Féin reiterates our support for An Garda Síochána [Irish Police] and commits fully to:

- Support for the PSNI and the criminal justice system.
- Authorize our elected representatives to participate in local policing structures in the interests of justice, and actively encouraging everyone in the community to co-operate fully with the police services in tackling crime in all areas and actively supporting all the criminal justice institutions. (Note 27)

An overwhelming majority backed a motion giving the leadership the power to participate in Northern Ireland's policing and justice structures. The decision overturned a century of opposition to any British policing presence in Ireland. There were no walkouts by disaffected members. The final vote showed little more than 5% of delegates were opposed to the leadership. (Note 28)

Sinn Féin was to conclude its journey towards endorsing policing in Northern Ireland when its three representatives joined the new Policing Board. (Note 29) The DUP and Sinn Féin were to emerge as the clear winners in the 2007 Assembly elections. Sinn Féin in this election got 28 out of the 108 seats (up 4 on the last Assembly election) and got 26.2% of the vote (up 2.6% on the last Assembly election). The SDLP had 16 seats (minus 2 on the last Assembly Election) and got 15.2% of the vote (minus 1.8% on the last Assembly Election).

10. Conclusion

The DUP and Sinn Féin had signaled their willingness to enter government and form an executive; the DUP by confirming the Rev Ian Paisley was prepared to become First Minister and Sinn Féin by endorsing the criminal justice system and the Police Service of Northern Ireland. After four years of stalling powersharing government resumed in Northern Ireland on May 8, 2007 after an historic agreement between Gerry Adams and Ian Paisley. The DUP, with four ministries, will be in charge of: finance and personnel; enterprise, trade and investment; environment; and culture, arts and leisure. Sinn Féin, with three departments, will have: education; regional development; and agriculture. Ian Paisley became First Minister and Martin McGuinness, former Chief of Staff of the IRA, became Deputy First Minister.

Republican dissidents, have this time, united to end 'armed struggle'. The real IRA, the Republican dissident group that was responsible for the Omagh bombing, was to renounce violence having agreed with the Irish National Liberation Army and the Continuity IRA on a peaceful Northern Ireland strategy. It has been forced to accept that there is a mass of opposition to political violence even among working-class republicans. An INLA source also confirmed that the three groups were united in acknowledging that there was no support for armed struggle. 'It's time we listened to the people and gave them a real political alternative,' the source said. (Note 30)

Leading up to the May 2007 election in the Republic of Ireland. Sinn Féin had five British MPs, five members of the Irish Parliament and two MEPs (one in the North the other in the South). It was regarded as the fastest growing political party on the island of Ireland. Just three weeks after forming an historic coalition with the DUP in Northern Ireland, Sinn Féin was to suffer a demoralizing electoral setback in the Irish Republic. Sinn Féin wanted to double its representation in Ireland's parliament, the Dail, putting it in government on both sides of the Irish border. Some polls had predicted that the party could win up to 15 seats. Indeed, Martin McGuinness had predicted that Sinn Féin would be 'The Story of the Election'. However, it only managed to cling on to four of the five seats it held before polling day. With around 10% support consistently in the opinion polls the party should have done better much better.

Sinn Féin's poor poll results highlight the importance of the economy to voters in the Irish Republic. The electorate in the Republic of Ireland proved to be more interested in domestic economic performance, health, education and transport than constitutional issues in Northern Ireland. Having experienced the benefits of the economic prosperity under the 'Celtic Tiger', voters were unimpressed by Sinn Féin's left-wing approach and uncertain economic principles, which saw policies jettisoned in the search for votes. Typical of this was the dropping of their policy of adding five per cent to the 12.5 per cent rate of corporation tax. Paul Bew, Professor of Irish Politics at Queen's University, Belfast, argued: "The result shows how deeply rooted partitionist attitudes really are. For the people of the Republic, in this election what mattered was the internal politics of the state. The attempt to introduce other issues such as Irish unity by Sinn Féin was a complete failure". (Note 31)

An article in the opinion section of the Irish Times entitled: Election performance in South has damaged SF brand, was to state: "Being the second largest party in a centrist, cross-party, Paisley-led government in Northern Ireland is a long way from achieving the 32-county socialist republic for which the Republican Movement (Sinn Féin/IRA) struggled for". It added that Sinn Féin has had to accept the principle of consent and face up to 'the reality that Ireland is partitioned and will be for the foreseeable future'. In order to exercise power, it has had to enter government in a Northern Ireland within the United Kingdom. It went on to say that Sinn Féin sought to 'assuage discontent among volunteers and supporters' by leading them to believe that the party was on the 'verge of being in government on both sides of the Border', that the party's Westminster MPs would sit and speak in the parliament in the Irish Republic and even that 'Gerry Adams would be president of Ireland by the time the centenary of the 1916 Rising came around'. (Note 32)

By endorsing the police service, the courts and the wider system of justice in Northern Ireland Irish republicanism has, in effect, decommissioned its own ideology. Sinn Féin has made this 'historic' ideological transformation so that it can share power, with the Democratic Unionist Party. In a similar vein, as a consequence of dropping it's the policy of redistribution via increased corporate taxation in the 2007 election in the Irish Republic, in an attempt to facilitate a role in government for the party in the Irish Republic, Sinn Féin has also ditched socialism.

For Sinn Féin the ultimate prize was simultaneously holding power across Ireland in a power-sharing assembly in the north and a coalition government in the south. However, as a consequence of the 2007 general election in the Irish Republic, Sinn Féin's strategy to push for a united Ireland by using ministries in both Belfast and Dublin is now in ruins.

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Notes

Note 1. Bell, J Bowyer. (1979). *The Secret Army: The IRA 1916-79*. p 334.

Note 2. Interview with Gerry Adams taken in 1989.

Note 3. Adams, G. (1986). *The Politics of Irish Freedom*. p 8.

Note 4. This refers to Sinn Fein's policy of abstaining from sitting in, or standing in, elections for Westminster, the Southern parliament and the parliament of Northern Ireland. By pursuing such a policy republicans are challenging the legitimacy of these parliaments. Pre-1986 Sinn Fein only stood in election to harness protest votes. Since partition for republicans was deemed illegitimate and undemocratic they would not grant any partitionist assembly recognition.

Note 5. I refer here to those traditional republicans who had maintained the Republican movement before the New Departure in the 1960s. The republican policy of abstentionism was for these people sacrosanct, an article of faith. For these purists the political option had corrupted Irish republicanism. The use of arms to put the 'British out of Ireland' was for purists the only realistic and trustworthy method available. For an authoritative account of this old guard with its traditionalism and distrust of politics see Bell, J Bowyer, *op. cit.*

Note 6. Clarke, L. (1994). Contemporary Republican Politics. In B. Barton, & P. J. Roche (Eds). *The Northern Ireland Question: Perspectives and Politics*. p84.

Note 7. Clarke, L. (1987). *Broadening the Battlefield - The H-Blocks and the Rise of Sinn Fein*. p208.

Note 8. See Hume, J. (1996). *Personal Views: Politics, Peace and Reconciliation in Ireland*. Dublin: Roberts Rinehart Publishers.

Note 9. Talks between the SDLP and Sinn Fein had begun in 1988 but were to break up over ideological differences. Sinn Fein's had wanted the SDLP and the Irish government to force the British to declare a declaration of intent to

withdraw from Ireland and for the British to persuade the Ulster unionists to accept the inevitable Irish unity. See: Clarke, L, (1994). *Contemporary Republican Politics*. p94.

Note 10. Mallie, E and McKittrick, D. (1996). *The Fight for Peace: The Secret Story Behind the Peace Process*. p145.

Note 11. Mallie, E and McKittrick, D. (1996). *The Fight for Peace: The Secret Story Behind the Peace Process*. (see the Appendix section).

Note 12. The Irish News, August 13, 1994.

Note 13. The Irish Times, September 7, 1994

Note 14. Interview with Geraldine Taylor taken in 1994.

Note 15. Interview for The Belfast Telegraph, October 21, 1994.

Note 16. Interview with the IRSP leadership taken in 1996.

Note 17. Mallie, E and McKittrick, D, (1996). p322.

Note 18. The Belfast Telegraph, April 2, 1997.

Note 19. The Irish News, April 2, 1997.

Note 20. 'Electoral Facts and Strange Fellows', Fortnight Magazine (Irish publication), March 1997. Electoral statistics for electoral results in Northern Ireland and the Republic of Ireland were gathered from Irish Newspapers: The Irish News, The Irish Times, The Belfast Telegraph, and The Sunday Tribune. Opinion polls as to the current state of the parties were also gathered from these sources.

Note 21. The Sunday Tribune, April 20, 1997.

Note 22. Sinnott, R. (1995). *Irish Voters Decide - Voting Behavior in Elections and Referendums Since 1918*. p 61.

Note 23. The Belfast Telegraph, March 18, 1997.

Note 24. O'Malley, P. (1990). *Northern Ireland Questions of Nuance*. p 55.

Note 25. The Belfast Telegraph, October 21, 1994.

Note 26. The Irish Times, September 2, 1998.

Note 27. The Irish Times, January 15, 2007.

Note 28. The Guardian (British Newspaper), January 29, 2007.

Note 29. The Irish Times, June 1, 2007.

Note 30. The Observer (British Newspaper), May 20, 2007.

Note 31. The Observer (British Newspaper), May 27, 2007.

Note 32. The Irish Times, June 30, 2007.



Satisfying Units Selected in Hangzhou Municipal Offices A Great Reform of System of Civil Officials in 21st Century

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Abstract

Hangzhou has launched a new performance evaluation mechanism by selecting satisfying or dissatisfying units with the features of openness and elimination systems. It announces the idea of making the citizens understand, participate and support. It also increases the comparability and impartiality and expands the scope of participation. By classifying the sub-categories, applying coefficient, integrating the elimination and target system, and inoculating the two kinds of evaluation and target systems, the four problems in the system of civil officials in the 20th century has been solved.

Keywords: Satisfying units, System of civil officials, Innovation

In the 21st century, Hangzhou has speeded up the people-oriented process to satisfy the people. Hangzhou city, according to the concept of scientific development, continuously better the performance evaluation mechanism and exalt the service philosophy and standards of the governments. Especially in recent years, Hangzhou has carried out an activity of selecting satisfying or dissatisfying units in the municipal organs and achieved a great success. It adopts the standard that whether Hangzhou citizens are satisfied or not to assess the performance of the civil servants.

Through selecting the dissatisfying or satisfying units, the municipal authorities systematically solve the four difficult problems in the system of civil officials of all the countries in the world in the last century. First, how can the two evaluation modes be conformed to display the principle of people's satisfaction? Second, how can the science-oriented performance appraisal be controlled? Third, how the performance evaluation can be transformed from emphasizing results to emphasizing both process and result? Fourth, how can the evaluation dimensions be of innovation and excellence? This text tries to give further exploration on these problems to throw a sprat to catch a whale.

1. The social evaluation, objective examination and superiors' appraisal are integrated.

Hangzhou's innovation of performance evaluation literally practices the people-oriented concept of scientific development. It has two major operational objectives, open appraisal and elimination through selection. The former is from the interior to exterior circulation of the system, from the close to open evaluation and from the servant-servant evaluation system to master-servant one. The "outside to inside" and "down to up" selection has brought great pressure to the municipal organs to select the best from those better but an enormous motivation for the common civil servants to win the first.

In view of this, in accordance with the specific circumstances, all the participators are divided into candidates, disputable units and units asked for advices. The content refers to the sense of overall situation, the sense of purpose, service quality, efficiency, diligent and honest, and work achievements in six aspects. The overall framework of comprehensive evaluation has three components. Of the total 100 marks, social evaluation is 50 points; the organization appraisal 45 points; and the leaders' vote is five points. Social evaluation continues the previous way of selecting satisfying and dissatisfying units, stressing the qualitative analysis of the masses. It mainly aims at maintaining the dominant position of the people in the examination. The target assessment adopts the methods of the municipal organs to make up for some problems such as information asymmetry etc. The leaders' appraisal refers to the evaluation from the main leaders of the city governments. It is beneficial to enhance the accuracy of the overall examination.

2. Making clear of the performance orientation and adjusting coefficient to enhance the fairness and comparability among the participating units.

The participating coefficient has been adjusted in the recent examination. To some governmental departments and other units with fewer social services, their participating coefficient is changed from 1 to 1.01. Secondly the rating scale is also adjusted from the previous “100 points (most satisfying), 75 points (more satisfying), 50 points (satisfying), 25 points (less satisfying), 0 points (least satisfying)” to present “100 points, 80 points, 60 points, 30 points, 0 points”. Judging from the simulated calculation, the new selection coefficient is conducive to narrowing the gap between the units with more social services and those with fewer services and enhancing the fairness and comparability among the participating units. (Hangzhou starts selecting satisfying units. 2005).

The specific calculation is divided into four steps. Step 1 is figuring out the most satisfaction rate, more satisfaction rate, satisfaction rate, less satisfaction rate and least satisfaction rate at every aspect for each participant. Namely, the satisfaction rate at every aspect = vote of satisfaction/ (ballot – the unpolled). Step 2 is figuring out the average most satisfaction rate, average more satisfaction rate, average satisfaction rate, average less satisfaction rate and average least satisfaction. Namely, average satisfaction rate = Σ (satisfaction rate at every aspect \times WI) \times 100%. Step 3 is figuring out the points every participant gets. Namely, points = $100 \times$ average most satisfaction rate + $80 \times$ average more satisfaction rate + $60 \times$ average satisfaction rate + $30 \times$ average less satisfaction rate + $0 \times$ average least satisfaction rate. Step 4 is figuring out and getting the overall points. Namely, the overall points = (selection points \times coefficient) \times 95% + scores of target assessment + “96666” evaluation scores + “12345” assessment scores.

3. Try to win the people's satisfaction and promote performance evaluation from stressing results to stressing both process and results.

There are objective reasons and subjective reasons for some units to be appraised as dissatisfying units. Dissatisfaction means more space for improvement. As long as the improvement is on the right way, it can be a starting point to become a satisfying unit. The examination also indicates that those units with relatively more social services, such as the offices of the urban construction and management, market supervision, social security, offices of price stabilization, circumstances and environment protection, get more attention and expectation from the masses. So it is easy for them to expose their problems. To solve these problems completely, the competent departments must improve the management and the civil servants must enhance their operational ability. The more important is that they should earn the understanding, participation and support from the masses.

Accordingly, there are five competitions of the evaluation in recent years, the excellent units (most satisfying units), advanced units and target-achieved units, target-failed units and full failed units. The proportion of the excellent units and advanced units is 15% and 20% of all in the comprehensive examination. The recent target point is 82. The units less than 82 belong to those failed their target and the last one is the dissatisfying unit. The dissatisfying units and those failed in the comprehensive examination are publicized to be criticized by Hangzhou municipal government and the staff is fined the year-end bonus. If some units are on the last list for three years on end, their leading group will be changed in accordance with the relevant provisions and the cadre management regulations. (Innovation of performance evaluation by municipal units concluded successfully. 2007)

4. The dimension of innovation should demonstrate innovation and excellence by changing the pressure of performance evaluation to the internal driving force to win the satisfying units.

The selection program has obtained 5 achievements. First, it has expanded the scope. The participating units have doubled since 2000 and include almost all the municipal units. Furthermore, the most favored units have disappeared. The vote is more representative and convincing. Second, two types are changed to three ones. The participants were divided into two types. One was the governmental departments, organs of trial and inspection. The other was departments of the Party and others. But now they are further divided into governmental departments of relatively more social services, governmental departments of relatively fewer social services, and departments of the Party and others. Thirdly, coefficient is adopted to differentiate the weight of the three categories of participating units. Coefficient of 1.05 is designed for the governmental departments with relatively more social services. Fourthly, target line is set up. The pure system of elimination is changed into the integration of systems of target and elimination. Fifthly, examination of the annual target, what is complained on telephone 96666 and what is dealt with on the telephone of 12345 are all put into the selection index. Thus the evaluation of the performance of the units is melted gradually into the selection.

In a word, the innovation of evaluation has changed the external pressure of satisfying the people into the internal driving force, which greatly increases the cadre's consciousness of winning the first. During the process of promoting all the work to be on the top list, the most apparent achievement is that the people have benefited a lot. The extension of the selection has made the government behavior more scientific, righteous and reasonable. To be practical and realistic, to advance with the times, and the idea of people-centered scientific concept of development have deeply occupied the mind of all the people. With the above selection increasingly close to the daily lives of Hangzhou ordinary people, the performance evaluation will get twice the result with half the effort.

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The Influence of Political Parties on the Third Power

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Abstract

It is inevitable that the political parties exert some influence on courts since courts are entrusted with major political functions and it is parties which organize political actions. However, there is much concern about illicit practices in various states. Factors of the political structure and the "institutional design" of the state, the career paths and inner mechanics of the legal institutions and a nation's legal culture shape the degree of party power on the courts and the prosecutorial service.

Keywords: Political Parties, Third Power, Courts, Political Influence, Patronage, Judicial Independence

1. Introduction

The law-giver entrusts the judges with a large part of the political steering of the society (Voigt, 1986, pp. 13-14). Be it the criminalisation of certain behaviour, the distribution of rights for actors on markets or the legal obligations and rights of citizens faced with state authority, courts are "law in action". No wonder that political actors have an interest in courts. In most democracies, the main political actors outside the state are the political parties. Parties can be defined as organisations founded to take part in elections, to offer a political programme and to place their followers in power positions.

Today, the influence of political parties on the judiciary is more topical than ever. As late as in the 1980ies, the number of the states which provided the judicial review of the most important decisions of governments and parliaments was estimated at about sixty. The American political scientist Henry J. Abraham (1987) wrote that this legal provision may have functioned in a dozen of these countries, at best. Today, there are much more. In December 2004, the Ukrainian Constitutional Court annulated the fraudulent presidential election and ordered a new election which saw the victory of the opposition candidate. Before, the Ukraine was part of the Soviet Union, a state in which judges were recipients of orders and a constitutional court did not exist.

But also in other regards, the decisions of the third power have become more important since Abraham's observation. In Italy, investigations of judges and prosecutors have caused the political system to collapse. The judiciary as hammer and the upset public as anvil: the landscape of political parties splintered under the blow (details in Nelken, 1996). Only a statutory limitation saved Italy's later Prime Minister Silvio Berlusconi from a conviction related to the bribing of a judge. He felt so threatened from what he perceived as a justice infiltrated by left-wingers (Polaczek, 2002), that he tried to limit the courts by law. In his distress he did not even shy back from attempting to forbid judges any party membership.

In Germany, the parliamentary opposition has since long developed the habit to counter symbolic decisions of the majority by appealing to constitutional courts. But also the governing forces often leave unpopular decisions happily to the judiciary. Not only on the federal and the province level, but also in local disputes, the courts are often involved (See e.g. Scharpf, 1970; Blankenburg, 1995, pp. 109-113).

Even these few remarks show that the importance of the justice system in the political life can be great. It is therefore not surprising that the political parties try to influence the third power. Kunig (2001, p. 77) holds the "Politisierung" of the selection of judges at supreme courts for system immanent. But the parties' influence should not only be analysed as aimed and reflected. Parties as organisations perform a pivotal social task: they organise the political work (Luhmann, 2000, pp. 266-267). But beyond, they tend to treat every problem which with they come into contact as a political problem. "The parties attract new problems", said Niklas Luhmann (2000, p. 215, my translation). Everything the

parties can get hold of, is dealt with partially under the point of view of the coming into and the keeping of power. Party critics like the former German President Richard von Weizsäcker, a successful politician himself, have attacked this way of parties to expand into all areas of life.

For our topic and for German circumstances, the big “Volksparteien” (catch-all parties) are the most relevant actors. The liberal FDP, the Linkspartei (former Party of Democratic Socialism) and the Green Party have not only less influence on the justice system because of their lower percentage of votes. The two Volksparteien, the Social Democrats and the Christian Democrats, significantly tend to make the decisions on key positions of the justice system between themselves (note 1). This observation also underlines the importance of this topic for politics and political science. (Note 2)

This paper aims to treat the following topics: At first, a systematisation of the opportunities is important, which allow the political parties to exert an influence. In this way, secondly, an assessment of the degree of the political parties’ influence on the German justice system today can be reached.

The influence of parties on the third power makes itself felt over the following channels:

- a. the determination of its organisational structure
- b. the decision programme
- c. the personnel politics
- d. the allocation of material resources for the justice system, especially financing
- e. the provision of information and training
- f. the intervention in individual cases (note 3).

But first, it is important to remember the special function of the third power within the state.

2. Third Power

Montesquieu mentioned the three “powers” of the state (Montesquieu 1748/1974, 11th vol., 6th ch.; Strohmeier 2004). He described a law-giving, an executive and as a third, the judicial “power” of the state. The distribution of state powers should result in a system of mutual control. Montesquieu did not favour a strict separation of powers, because this means each of the powers could do what it wants in its realm. They would be uncontrolled. In Italy for example, the administration and control of the courts falls within their strict autonomy. As a result, there are no threats or incentives coming from outside for judges to work efficiently. Trials and appeals are notoriously delayed and judges can not be confronted with this.

Montesquieu suggested a division of power. Executive und legislative are subject to controls from the other (Schwan, 1991, pp. 218-219). A system of checks and balances emerges. Yet, it has to be said that the third power is less part of this pattern of mutual control. With good reason, a “Rechtsstaat”, a states governed by the rule of law, tries to keep the working of the justice system free from interferences. In this case, it can be somehow at least warranted that the actions of the state are bound by law, that citizens are sheltered against transgressions of state agencies and private actors alike, and that state power is exerted rationally (about the criteria of a “Rechtsstaat”, e.g., Karpen 1985: 15-16). So, a distinction has to be made between illicit interferences into the work of prosecution and courts and a more general influence on them which stops early enough to keep the third power’s necessary discretion to reliably and independently address legal problems.

Parliaments and governments have procedures providing proper legitimation which support them in times of trouble. The democratic legitimation of the third power remains weak. In Germany, it comes very indirect, e.g., from special committees. In the “Richterwahlausschüsse”, representatives of the legislative and executive take part in the selection of judges. In the majority of countries, judges are not elected directly by the people. The most notable exception is formed by the U.S. as will be seen. In Germany and in many other countries, only the lay judges represent an element of direct democratic control. The budget of the third power is another area which highlights its dependence from the other state powers. The parliament’s budget approval may be understood as a source of regular democratic legitimation.

Impressed by the impact of mass media, the notion of fourth power became common. The media should be independent and they should have an eye on the state powers. Similar to the media, the courts and the prosecution are left on their own in their daily operations. Attempts to intervene would quickly be answered by mistrust and resistance. The third power forms a more independently working system of organisations within the society and the state. The organisation of the courts is multiply structured by area specific and territorial competences (jurisdictions). As an additional safeguard for independent judgement in the realm of criminal law, the prosecution is separated from the judges.

Regardless of how much effort is undertaken to secure the independence of the third power, it remains dependent on outputs from other sections of the society (the following is influenced by Luhmann, 1983, 1993 and 1999). The third power consumes resources which have to be produced and which can not be used for other purposes. Their provision is rectified by the infrastructure which courts offer to the society. The apparatus of the third power is kept running for a

legal solution of social conflicts. It safeguards the expectations of those relying on the law (Röhl, 1987, p. 536). Only rarely, the judicial organs can act out of own initiative. A claim has to be forwarded or an offence has to be reported to start it on. The authority of the courts has to be broadly supported throughout the society, only then they can function effectively (for institutions Easton, 1965, for courts Machura, 2003). This also applies to their decisions which have to be obeyed and if it is only reluctantly, which reminds on Max Weber's concept of legitimacy (Weber, 1922/1973, pp. 470 and 1922/1980, pp. 16 and 123).

3. Respect for the independence of courts

The respect for the independence of judges displayed in a Rechtsstaat thus appears as an indispensable legal-cultural remedy for the comparably weak standing of the third power amongst the state institutions. Where this attitude is not taken for granted, the third power remains helpless. To give an example, the former Russian President Boris Yeltsin simply declared the Constitutional Court as "suspended", when he faced with a state crisis in 1993. Since then, the Constitutional Court shies away from confrontations with the Kremlin (Epstein, Night & Shvetsova, 2001). In June 2007, the Ukraine suffered a severe crisis when President Yushchenko dismissed judges of the Constitutional Court after alleged corruption (Juschtschenko, 2007), which the opposing party's government denied (Schuller 2007a). Even worse, the dismissal of the General Prosecutor by the President, the appointment of a presidential candidate and the subsequent storming of the office by special police headed by the Minister of the Interior in person was short to spark a civil war. Police troops loyal to the President and those loyal to the government already lined up (Schuller 2007b). Only later, the parties stroke a compromise. On 9 March 2007, Pakistan's President General Pervez Musharraf dismissed the highest judge of his country, Iftikhar Chaudry. He declared the judge was corrupt, while the judge's supporters said the President aimed to secure his re-election. Also, Chaudry investigated cases of "disappeared" persons (Buchsteiner 2007a). Musharraf accused him to endanger the fight against terrorists. A Protest movement, involving a significant number of lawyers, resulted and Justice Chaudry became a "folk hero" (Ladurner 2007). "Confronting sliding public support, General Musharraf had little option later but to accept a ruling by the Supreme Court that the Chief Justice should be reinstated." (Buncombe & Waraich, 2007, p. 2) In early November, Musharraf sensed that the Court may declare his re-election unconstitutional, so he declared state emergency, placed Chaudry and colleagues under house-arrest, and appointed new judges (Buchsteiner 2007b).

A completely different picture is provided by the Italian state crisis following the 1992 Tangentopoli investigations against illegal party financing. When threatened politicians tried to intervene into the course of justice, the public alarmed by the media – who in turn were informed by prosecutors and investigating magistrates – stood up against them. News pictures showed how an angry crowd of citizens let small money rain on the assembled classe politique. The people in the end also decided the fate of the Kaczynski government in Poland 2007. The opposition won parliamentary elections. But before, the government has used the public prosecution which in Poland receives orders from the Justice Minister to open investigation against opposing politicians and even to arrest people (Frankfurter Allgemeine Zeitung 2007a, 2007c, p. 1; Schuller 2007c). The Polish Supreme Court had to publicly criticise the government for its demand that the courts shall not rule according to law but according to "state reason" (Frankfurter Allgemeine Zeitung 2007b).

Not in vain, all too direct interferences into the third power are surrounded by a taboo. Heavy media criticism would be likely (for an example Rudolph, 1998). Consequentially, a strict silence is most likely observed about political intervention, if it occurs. They are rarely made public. In Germany, an exception is made for the selection of constitutional court judges (Kunig, 2001, p. 77, Schmid, 1975, pp. 123-124). Political struggles are much more public, here. When it comes to the decisions of the Federal Constitutional Court, the information for the public already tends to be much more reluctant. Where the court splits in a vote of 4 to 4 along the lines of political party affiliation, the names of judges are most likely not reported in order to not display the party political dimension (Bryde, 1998, p. 503). Journalistic or scholarly interest into the party politics of courts is sometimes answered with rejection (Note 4). "Do not ask, do not talk."

In the following, an attempt is made to identify the channels which have been used by political parties in Germany and in other countries to influence the third power.

4. Organisational Structure

"Organisation structure is programme structure" tells the organisation theory (Häußermann, 1977, p. 82). The way how organisational units are tailored pre-structures the work to be done, delineates areas of competence and creates responsibility. Even more, the organisational design also touches the relevant social surrounding with all its divergent interests which are connected to an institution.

A good example for the sometimes explosive nature of organisational measures is provided by the "justice war" in the German Province North Rhine-Westphalia about eight years ago. Its former Prime Minister Wolfgang Clement presumably only wanted to demonstrate his readiness to save money and to reform state administration when he stirred up a political hornet's nest. The idea to combine the Ministry of the Interior with the Justice Ministry encountered fierce

protest from the judges. It would be irreconcilable with the idea of a “Rechtsstaat” to place the police and the prosecution – both subject to political orders – as well as the judges who are to remain independent under the rule of one ministry. In their own affairs, the courts in form of the Province Constitutional Court decided against the government plan and stopped it. – Quite recently, English judges protested against the reform idea to grant additional powers to the Justice Ministry to include supervision of the prisons. The BBC showed the judges in a long procession with wigs and gowns.

In Germany, indeed, the judiciary and the prosecution differ in that the hierarchy principle is much more important for the prosecutors (Müller, 1980, p. 202). Prosecutors may receive orders and “wishes” from the Federal or Province Justice Ministry (Rudolph, 1998; Rautenberg, 2000). At this interface of politics and justice system, there are often frictions. In the Nineties, for example, a highly regarded legal scholar who has just been appointed by his party for the post of the General Prosecutor, stepped down under protest. The government of the province had tried to order him to continue investigations into the death of the former Province Prime Minister Uwe Barschel, even after the prosecutors had searched for years and there was no reason left to continue other than to exploit things politically. On the Federal level and in some provinces, German General Prosecutors can be dismissed at any time without having to give a reason (Rautenberg, 2000).

Following their ideas, parties can give priority to certain fields of criminal prosecution. The foundation of specialized prosecutorial units forms an organisational measure which results in increased success of investigations and in more convictions. Independently from the law which goes unchanged the legal practice can thus become different. This also provides an example for the effects of organisational decisions.

Not only the foundation, but also the dissolution of institutions sparks off reasoning as to whose political advantage it is done. On 14 December 2004, the German newspaper *Frankfurter Allgemeine Zeitung* reported a story under the headline “Revenge for the Pilz-Trial” (own translation – S.M.). Suspicion had been voiced that the city of Mühlhausen would have to lose its High Court with the attached prosecutorial office following reorganisation measures. Allegedly, the prosecution had too eagerly inquired the case of the CD-manufacturer Pilz who used to be a protégé of the provincial government. The former affair had resulted in the justice minister having to step down after he tried to sabotage inquiries against Pilz.

The formation of judicial circuits can be not less political as the formation of electoral districts. Conservative Southerners in the U.S. tried in the Sixties to separate South Carolina and Virginia from a federal circuit with more liberal judges. The plan was vigorously opposed by civil rights activists (Jacob, 1984, p. 14).

But the upholding of judicial structures may also be in the interest of parties. In the German province of North Rhine-Westphalia, the office of the lay mediator (“Schiedsperson”) is supported from both big political parties, the Christian Democrats (CDU) and the Social Democrats (SPD). Unpaid lay mediators are dealing with minor offences and small claims, mainly. They are appointed and financed by the local bodies and supervised by the local courts. The institution offers the political parties an opportunity to broaden their influence symbolically (Note 5). Perhaps, this explains why the lawmakers of North Rhine-Westphalia try since years to uphold the institution despite a lack of interest from the public. Few people forward their conflicts to “Schiedspersonen”. However, the lay mediators perform quite well (Machura & Weiß, 2003; Röhl & Weiß, 2004; Röhl & Weiß, 2005).

5. Decision Programme

Up to now the organisation of the third power was dealt with. The following turns to the programme which underlies decisions of courts and prosecutors. Parties influence it via governments and parliaments. They let their ideas flow into laws and decrees. The jurisdiction is bound to the law (“Recht und Gesetz” in Germany by constitution). The dominant legal doctrine of positivism orders the judge to decide according to the written law primarily. Only if this law is not sufficiently detailed, other sources of law are to be used. The strongest binding to the law appears in the realm of criminal law. In Continental European countries like Germany and Italy, the prosecutor has to inquire an offence and has to prosecute it eventually whenever it is heard of. David Nelken argues that this provision shields the Continental European criminal justice much better against the temptation of political opportunism compared to, e.g., the U.S. In the U.S., the prosecutors have more discretion and they are more frequently politically exploited (Nelken, 1996). – To conclude, the binding of the third power to the law opens up more general and abstract opportunities for control by the parliamentary majority and its parties but it restricts attempts to intervene in particular cases.

Sometimes it becomes visible that parties have formed the law to their advantage. From time to time, German commentators criticise that offences against the provision to report donations to parties are “only” punished as an administrative offence by the President of the Federal Parliament. But there is no criminal responsibility.

Some countries openly have privileges in their criminal law for the holders of public offices. The Russian penal code has harsh sanctions for some crimes when they are committed by ordinary citizens, while public servants would have to face more lenient sentences. “Preferential treatment of the rulers through law” this has been termed (Schroeder, 1998,

33). As Vincenzo Ruggiero reports, French law allowed to remove cases of political corruption from investigating judges. They then were transferred to specially assigned higher judges who were selected according to political criteria. According to a later regulation, the French General Prosecutor has the power to remove cases from a *juge d'instruction* if it is seen as in the "best interest" of the administration of justice (Ruggiero, 1996, pp. 119-110 and 127). – This already touches the area of cadre politics.

6. Personnel

The parties' personnel policy in public institutions constitutes almost a taboo, especially when the justice system is at issue. Within reasonable limits every citizen should have an interest in judges and prosecutors fulfilling certain demands. It might be enough to remind the fate of the Weimar Republic. Very early, Social Democrats like Ernst Fraenkel had criticised that only a tiny minority of the judges took the side of the Republic (Fraenkel, 1968). The renunciation to replace judges contributed to the demise of the democratic system. As a consequence, the Federal Republic of Germany demands from its personnel loyalty to the democratic state. This also applies to legal personnel.

It is a task for legal politics to decide on general criteria for the qualification and selection of jurists who serve in the third power. The gender mainstreaming policy, e.g., proved a success in Germany. As a rule, about 50% of all posts are now given to female candidates. In about a generation, there will be as many women as men working in the legal system. The abolishment of a more social scientific lawyer education in the early 1980ies, however, could count as an overhasty decision. No neutral systematic evaluation was undertaken and the conservative's fear could prevail. Still, the education of lawyers is divided into an initial legal-dogmatic part in the law faculties and an apprenticeship within legal institutions. Newcomers are introduced into the routines of the existing system and in many cases they are devoid of any means to critically evaluate and change the practice where necessary.

The German parties play a key role in the selection of judges for the high courts, having their followers in the selection committees. All considered the parties did not only fill posts in proportion to the number of votes received. They also looked at the qualification and personal suitability of the candidates (Note 6). Abuses such as those reported from the U.S. appeared less often. Langbein even notices a structural difference between U.S. and German courts:

"... the decision to isolate important components of constitutional and administrative-law jurisdiction outside the ordinary courts in Germany lowers the political stakes in judicial office, by comparison with our system, in which every federal district judge (and for that matter, every state judge) purports to brandish the Constitution and thus to be able to wreak major social and political change." (Langbein, 1985, p. 853)

The re-election of George W. Bush resulted in fears that he would use the opportunity to shape the political preferences of the U.S. Supreme Court for decades (Gelinski, 2004; Mejias, 2004). Liberals sometimes stated that this is the true significance of the election. Indeed, the U.S.A. is the most important research area for political scientists interested in the selection of judges. In the U.S., judging is no career profession as in Continental Europe where young judges start immediately after their education and in which they climb further on the job ladder. U.S. judges should be experienced lawyers and there are political elections and appointments for all their offices. On the Federal level, the judges are all politically appointed while the U.S. states have varying procedures ranging from direct elections to appointments (Meador, 1991; Nagel, 1975, p. 32). These decisions are often highly political. The office of a prosecutor even forms a major platform for political careers. American scholars report a quality deficit of judges and prosecutors caused by one-sided political selection (prominently Langbein, 1985, pp. 848-855). They say that while in Continental Europe the best young lawyers join the judiciary or the prosecution, facing a foreseeable career ladder, aspiring young lawyers in the U.S. would avoid the state service and enter the big law firms instead.

6.1 Other influences may be worse

But before all the blame is put on the American political parties, it is advisable to have a close look at the state of California which elects judges directly. There, law firms are among those who pay for the judges' campaigns. They care that million-dollar-claims are processed by thankful judges (Note 7). The example may serve as a warning. All criticism to political parties considered, without parties with their internal balancing out of different interest groups, other forces would reach out to influence the courts largely unchecked (about lobbies Gawron & Schäfer, 1976).

The famous (first) Mannesmann-Prozess in the German city Dusseldorf (Legnaro, 2004) shows some of this. "Even business personalities should acknowledge that we are in a Rechtsstaat", a speaker from the courts has been quoted (Meinke, 2003). Before she acquitted high-ranking managers, the presiding judge stated to have been pressured by defence, prosecution, "politicians of all colours", media and the public (Peitsmeier, 2004). The judge later said, only a critique on the colour of her lipstick had resulted in her changing her opinion.

6.2 Assessing the reach of party influence

Not much can be said on whether posts on the lower levels of the justice system are acquired by party membership. Interviews resulted in a mixed picture. There exists one older empirical study from 1972 which touches this question

(Werle, 1975). At this time, the judges held that “the personnel policy influence of parties” did not constitute a threat of their judicial independence (Werle, 1975, p. 152). However, there is a talk that “only the small lower court judge (“Der kleine Amtsrichter”) who does not reflect on a career really is independent”. Because, otherwise the decisions of a judge might easily be influenced by what superior justices write in the judge’s personnel file. But Werle’s (1975, p. 172) remark might still be true: judges tend to use the concept of judicial independence as a tool to articulate problems with how work is organised in the courts. At least in those German provinces which are held by one political party since decades, it is assumed that the intermediate level of managers in legal and administrative authorities act “ahead of obedience” (“vorausseilender Gehorsam”). Neumann (1979, pp. 157-158) wrote that powerful senior judges aspiring a career at the Federal Courts which needs political support may influence judges lower in rank.

In addition to German high courts, the filling of posts in proportion to the number of votes received by parties comes obvious for lay judges. Germany has a lay assessor-system, some of which are selected without the requirement of special qualification. These are the “Schöffren” at criminal court, the honorary administrative court judges and in practice many “Schöffren” at juvenile court, too. In interviews, “Schöffren” repeatedly said, they came into office because “the party” suggested them (interviews for Machura, 2001). It is a long established practice, that the major parties place their followers and members on the lists of possible lay assessors. By this, they reward followers this way. But also, they want to outbalance the influence of other parties on lay and professional judges. Arguably, this works, similar as the jury in the U.S. curbs the powers of judges and public prosecutors.

In 2000, lay assessors at the lower administrative courts of an East and a West German province have been compared: Hesse and Saxony-Anhalt (Machura, 2006 and 2007). The political parties have not yet developed strong roots in the Eastern part of Germany, which before 1989 was governed by the elite of the Communist Party. The one exception is the “Partei des Demokratischen Sozialismus” (PDS, recently renamed “Linkspartei”), the successor of the former Eastern Communist Party. In the West, especially the Christian and the Social Democrats have developed a strong net of support and they command the allegiance of large parts of the society. This constellation allows observing how well established party structures can influence the composition of the lay judges. The party sympathies of lay assessors have been asked for (Table 1). In the Western province of Hesse, 78% indicated their allegiance to either the Christian or the Social Democrats. In the Eastern province of Saxony-Anhalt, both parties only had the sympathies of 41%, roughly half of their share in Hesse. (See Table 1)

Regardless of the filling of posts of professional or lay judges, the parties hope that their candidates will act according to their programme once in office. Yet, this is not sure. A number of empirical studies deal with the decisions of U.S. judges. The results differ. However, after reviewing 84 studies, Pinello summarizes: “Democratic judges indeed are more liberal on the bench than Republican counterparts” (Pinello, 1999, p. 243). Perhaps, in countries with a multi-party system like Germany, things are more complicated. It does not have the allegedly clear distinction of two polar political camps but a lot more of overlap. Hubert Rottleuthner showed regular coalitions between judges from different camps in his analysis of the decision behaviour at the German Federal Constitutional Court (Rottleuthner, 1987, pp. 106-110). This is a consequence from the essence of judicial work: In their decisions, judges answer to a specific case. Finding an opinion can be very personal, involving various aspects of a lifetime’s experience. For judges, the formation through the internal career patterns of the courts is more decisive than “outside” factors like party preferences (Rottleuthner, 1987, p. 110; Machura, 2001, p. 31). Legal scholar Brun-Otto Bryde, himself a Federal Constitutional Court Judge, wrote about the former party politicians among the judges of his court:

“Freed from party discipline and the necessity to take voters into account, they sometimes surprise friends and enemies alike: Benda as well as Herzog went into the court as conservative Ministers of the Interior and developed there into liberal Presidents.” (Bryde, 1998, p. 495, my translation – SM)

Still, the widely accepted finding of interactionist theory applies: As Gerhard Kette has put it: “factors of the person” have to “always to be considered in their interaction with relevant situational factors to explain behaviour” (Kette, 1994, p. 100, my translation – SM).

7. Financing

For their work, organisations need to be provided with appropriate material resources. As a rule, states try to save on the expense of the third power. “The real Code of Court Procedure is the budget legislation”, is a saying in Russia. Before President Wladimir Putin repaired the power organs, a pauperisation of the courts took place. In the 1990ies, courts could not pay their utility bills and were cut off from electricity and gas. Endless procedures and daily malfunctions in the Italian justice are also partially an effect of poor resource allocation.

In Germany, a policy of saving makes itself much less felt. Cases are usually processed fairly quickly. The under-financing of the courts is most visible in the number of cases a judge is expected to bring to a solution (“Fallpensum”, or “Schlagzahl”). The courts are determining the number of posts for judges by calculating, for example, a case load of 1 200 per year for a single judge at the lower criminal court (“Strafeinzelrichter”). – The influence of the

political parties on the resource allocation of courts makes itself felt mainly in a lack of interest.

8. Information, Education, Coordination

Article 21 of the German Federal Constitution gives parties the function to contribute to the formulation of the political will of the people. Influencing political opinion, political education and the coordination of political action are generally regarded as typical for parties. Such influences are also exerted on judges and prosecutors by means of information, education and coordination.

Social Democrats and Christian Democrats have lawyer associations. The Lawyer Working Group of the SPD ("Arbeitsgemeinschaft Sozialdemokratischer Juristen") initiated the journal "Recht und Politik" some forty years ago and they took part in many political debates. The CDU from the early times under Konrad Adenauer up to when Helmut Kohl presided literally lived as party out of its associations. The more astonishing is the shadow existence of its lawyer association ACDJ. Like other CDU-associations, it might have entered now a phase of artificial life extension.

The "Richterbund" forms the main lobby group of German judges and prosecutors. The association sees itself as non-partisan and since years it is no longer clearly conservative. The small group which regularly assembles for a "Richterratsschlag" (judges' council) and which edits the lively insider-journal "Betrifft: Justiz" has little weight compared to the Richterbund. In Spain and France, however, judge associations which are close to political parties play an important role. Critics say the justice is fragmented, even more; the judges would act according to their parties' instructions. Freund (1979, p. 48), e.g., attacked French judges' unions for "turning their profession into an instrument of the opposition against the society" (my translation - S.M.). Similar allegations were made by Italian politicians. But the Tangentopoli-inquiries showed that this danger did not occur (see Nelken, 1996, pp. 106 and 111).

9. Intervention in Individual Cases

Government and party intervention in cases form a challenge for the justice system. In the Soviet Union, there was a term "telephone justice", meaning the intervention of the Communist Party and the secret services into the daily work of judges. Often, the judge first called the local party secretary to ask for instructions (Schroeder, 1995, p. 11). Smith (1996, p. 68) reports a survey of Soviet judges from 1988. Half of the judges had received suggestions by party and government officials during the last year. Another study estimated that party officials intervened in between 10 and 12 percent of all cases. The typical western country with strong party influence would be the U.S.A. But even here, there is less party influence because in the U.S., the political parties and the justice system are in principle separated, while the Communist Party of the Soviet Union claimed a universal power in Soviet society. Thus, involvement in daily legal affairs follows logically. Also, the role of the press and the public differs. To expose scandalous cases forms an objective of many U.S. journalists, scientists, writers and film makers (Note 8).

Interventions in inquiries and court cases prove to be rare in Germany, because they can easily be scandalised and because of strong constitutional provisions for judicial independence. Also, there seems to be a custom not to "interfere in a pending procedure" ("Eingriff in ein schwebendes Verfahren"). However, a few of incidents became public. In Saxony, e.g., the Justice Minister stopped the prosecutorial investigation against a former Minister who stood under suspicion of molesting a youth. The prosecutors later unveiled this incident before an investigatory commission of the Province Parliament (Burger, 2007). Interventions are more likely to affect the prosecution, since prosecutors are usually bound by orders. In the last years, there has been a rise of cases in which suspects publicised criminal inquiries against them. They claimed that "from above" machinations have been set to work to push them as political enemies aside. Some of these allegations even were about in-party disputes. Such accusations will be especially politically dangerous, if the public comes to believe that interventions are frequent.

10. Conclusion

Factors of the political structure and the "institutional design" of the state, the career paths and inner mechanics of the legal institutions and a nation's legal culture influence the degree of party power over the courts and the prosecutorial service. Some of these might be changed quickly by adjusting rules; others can only hardly be challenged by legal reformers. A comparison of different countries reveals a number of provisions which discourage illicit party influence: the separation of ordinary and "political-administrative" work in different branches of the courts, the greater diversity of a multi-party system, independent and watchful media, a career judiciary and prosecution, lay participation when not dominated by one party, are among those.

All in all, there is not much danger in Germany of overwhelming political transgressions into the third power. Ultimately, it is prevented by a legal-cultural fact: that the judicial independence is generally highly valued. This means that parties and other actors are to be kept away from the judge's bench. However, the shelter of prosecutors against questionable orders could be enhanced.

This leads to the core of the problem. Politics is not in vain a shifting concept between the Aristotelian idea of organising a good life on the one side and Weber's definition of a struggle for power on the other side (Weber,

1919/1997). The “court arena” (Rüdiger Voigt) is a field of political action. The law-giver entrusts the judges with a large part of the political steering of the society (Voigt, 1986, pp. 13-14). By necessity the political parties have to also engage in politics on the judicial field. Only it has to be wisely limited.

Thus – and this is the possible explosive charge – the elements of the political system which are the least highly regarded by the public are exerting some influence on the most highly regarded subsystem of the state (Note 9). If the Federal President is set aside, the courts and above all the Federal Constitutional Court are evaluated most favourably in German opinion polls. But all who take part in daily power struggles like also the Federal Parliament, the provincial parliaments, the lobby groups, the unions find themselves on the bottom of the scale (Note 10). The public trust in institutions can be decisive for the survival of democratic systems. The history of the Weimar Republic forms an urgent warning. It can even be felt in daily life whether the citizens are inclined to engage socially, to obey the law, or to invest their resources in their country. The parties’ influence on the third power is kept under surveillance by the public and rightly so.

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Notes

Note 1. For examples see Rüther, 2002; Müller 2007. The speakers of both big parties in the election committee for judges are described as “Königsmacher” (king-makers).

Note 2. Whoever wants to assess the parties’ influence on the third power comes across a problem of classification, which is not always easily solved. Not any initiative of a politician is to be ascribed to his party. Take an example which was told by a judge. The justice minister of a province intervened repeatedly in favour of a special friend, who became a suspect in a criminal investigation. Such a case surely counts as a political influence, because only the public office allowed the exercise of pressure. It would become a case of party-political influence if, for example, the beneficiary would not only be an old friend, but if he facilitated as a member of a political rope team the advancement of the minister in his party and now ostensibly has the right to be protected. – Thus party influence has to deal with the politics of a party or with power struggles in a party to be relevant for our topic.

Note 3. Parties may also possibly turn the courts’ and public prosecution’s legal routines against them. For example, during the Republic of Weimar (1919-1933), extremist parties turned criminal proceedings against their followers into

political spectacles. Henning Grunwald (2003, iv) mentions 15 employees of the German Communist Party who co-ordinated the work of up to 200 lawyers. Their aim was not the classical defence of the accused but the public dramatisation of the trials for propaganda purposes, the showing up of the justice and the Weimar democracy. A corresponding strategy was pursued by the NSDAP. "Extremist lawyers used the alleged non-attainability of justice for fundamental political dissenters to advocate replacing the Republic with a radically different political order", Grunwald (2003, iv) summarised.

Note 4. Some of the author's (SM) interview partners reported quite openly. However, a survey was forbidden on one occasion. Having had already the permit of the Province Minister of Justice to use the addresses held by the courts, the President of the Provincial Administrative Court stopped the project with a letter to the lower courts. In the questionnaire, he had found a question for the party preference of the judges. Perhaps, he speculated on a kind of "preventive effect of not knowing". "Präventivwirkung des Nichtwissens" has been a book title by Popitz (1968) about norm violations.

Note 5. A colleague of the author once returned from a regional gathering of the lay mediators and reported: "There were three city mayors, two members of the Province Parliament, further politicians – but only 43 lay mediators".

Note 6. Similar Langbein, 1985, p. 853. Similar for the German Federal Constitutional Court: Kisker, 1994, p. 64. Earlier, Fromme (1979, p. 118) suggested that the parties restrained themselves after suffering from public criticism. Analysing reasons for the good functioning of the Constitutional Court, Säcker (1989, p. 44) emphasized the requirement of a two-thirds majority for judge elections and the fact that judging is primarily content-orientated.

Note 7. Marder, 2003, p. 911; Parikh, 2003, pp. 2-3; Tobin, 1999, p. VIII. Meador (1991, p. 59) draws a connection to costly but probably decisive TV-election spots.

Note 8. Novels, films and TV broadcasts often depict political pressures on prosecutors and judges. Some of them are written by insiders like the former lawyer John Grisham. As examples for historic interventions which are the basis for movies: "Amistad" (Spielberg, 1997) shows how the interests of the slave economy were protected, "Inherit the Wind" (Kramer, 1960) deals with a debate on opposing world views and the influence of upcoming elections, "Justice of Nuremberg" (Kramer, 1961) shows the growing acceptance for Nazis when the Cold War broke out.

Note 9. Yet, there are countries, where the courts are held in low prestige because of overwhelming political influence, like e.g. Argentina. See Asimow et.al, 2005, p. 415.

Note 10. Derlien & Löwenhaupt, 1997, pp. 458-460 and 470; Niedermayer, 2001, p. 66. The more recent survey reported by Vorländer and Brodacz (2006, p. 262) shows the Federal Constitutional court and the police, followed by the Federal President on top of a scale of public trust and the political parties at the very end.

Table 1. Comparison of Party Preferences of Lay Assessors in East and West Germany

		Sympathy for Party								
		Christian Democrats	Social Democrats	Party of Democratic Socialism	Green Party	Free Voters	Liberal Democrats	Right-wing Extremists	"No Party"	No Answer
Courts	Saxony-Anhalt	26%	15%	7%	2%	-	3%	1%	17%	30%
	Hesse	42%	36%	1%	8%	2%	1%	1%	3%	5%

Lay assessors of administrative courts, Hesse and Saxony-Anhalt, 2 000, n = 299 (of which Hesse: 154). Item "If you feel close to a political party, to which?", Cramer's V = .512, p < .001. Source: Machura 2006, p. 32.



The Thinking Way of Confucianism and the Rule of Law

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Abstract

Confucianism as the old ideology had been criticized for a long time from the official point of view in China; however, its core value is still influencing Chinese society. On the way towards road of the rule of law, Confucianism is considered playing the negative role. It is necessary to study the framework of Confucianism systematically so as to understand why the rule of law shows difference in between China and western world, and why Chinese would rather resolve disputes in Confucianism way than the rule of law. I will discuss the thinking way of Confucianism, analyze its core value and the relation between Confucianism and the rule of law, through which get to the conclusion that Confucianism value has the inclination to avoid the law.

Keywords: Confucianism, The Rule of man, The Rule of Law

Introduction

It seems strange that Confucianism is still influential in China after “May Fourth Movement” (1919), especially after “Cultural Revolution Movement” (1966-1976). Youngsters today know little about Confucius or Mencius, let alone Confucianism. However, the Confucianism textbook “Three Characters Premier” and “Qian Zi Wen” have been taught by parents even during the toughest period. The classical novels written with the Confucian thoughts are very popular in China.

Richard Nixon, the ex-president of U.S.A wrote in his work “Leaders” that Zhou Enlai, the ex-premier of China, answered the question from a foreigner reporter that: “as a member of communist party, are you more a Chinese or more a communist?” Zhou replied: “I am more a Chinese.” He (Zhou Enlai) said that Chinese welcome any Americans to come to China, but it should be reciprocal between each other. There is a saying in China that “it is impolite not to reciprocate.” He stressed that it is said by Confucius who was not a Marxist. It was unusual when it was spoken out by Zhou Enlai, one of the main leaders in Communist Party, at the time that stressed political stand. However, there is no question that the influence of Confucianism exists strongly in China, and Zhou Enlai was regarded as the perfect practitioner of Confucianism with his perfect virtue.

Confucianism as the old ideology had been criticized for a long time from the official point of view in the past. However, Confucianism didn't lose its core value actually. Perfect virtue, the Middle Way, and the authority admiration are still its salient features. The authority with the perfect virtue doing in the middle way is the perfect ideal to Chinese people. Zhou Enlai is just that type of man who is regarded as the person with all these characteristics.

There is confusion when the rule of law tries to come into China and be the fundamental pattern to rule the country. Whether the tradition rooted in Chinese be the obstacle to the rule of law, or the rule of law can replace the traditional value successfully with its distinguishing values?

Confucianism was mainly criticized because it stresses on the submission and ignores the human rights; whereas, the rule of law stresses human rights as the core value. It seems there is no space for them to sit together and have a dialogue. Why is that? Why does Confucianism ignore human rights? Why cannot Confucianism and the rule of law find a connecting point in between each other? And what role the perfect virtue and the Middle Way of Confucianism play to the rule of law?

It is necessary to analyze the fundamental value of Confucianism systematically so as to understand why the rule of law shows difference between China and western world, and why Chinese would rather resolve disputes in Confucianism way than the rule of law.

1. The Fundamental Value of Confucianism

There are three basic elements in Confucianism: “Ren”, “Li” and “Dao”, which show the fundamental value of Confucianism. It is very necessary to analyze these basic elements and find the relationship among them, so as to

picture the thinking way of Confucianism and its difference from the rule of law.

1.1 “Ren” (Benevolence)

There are two answers by Confucius about “Ren” in *Analects*. One is: “to love all man.” (James Legge, 1966, pp. 171) and the other one is: “To subdue oneself and return to propriety (Li)” (James Legge, 1966, pp. 155). Chinese structure of “Ren” is comprised of two parts, the left part means the “person” and the right part means the number “two”. It hints that Ren is about the relationship between people, and the relationship of Ren will be established when the people consider for others. For instance, Confucius said: “Now the man of perfect virtue (“Ren”), wishing to be established himself, seeks also to establish others; wishing to be enlarged himself, he seeks also to enlarge others.” (James Legge, 1966, pp. 77) The explanation for “Ren” by Confucius is not satisfied by its “to love all men”, because, as a persuasive thought, it should have a reasonable explanation about why people should have the virtue of that. The answer “To subdue oneself and return to Li” gives the reason.

Confucius was born in an era that Zhou Li was collapsed. The princes launched wars between each other in order to get more interests, and the people lived in a miserable and unstable situation. Confucius considered Zhou Li as the best system that ruled the state in the way of “Ren”.

“To love all men” shows the basic meaning of “Ren”, which stresses individual way of practicing Ren; and “To subdue oneself and return to Li” stresses Ren on the other side that to restrain oneself and follow the Li. The combination of considering for others and restraining oneself shows the two aspects of practicing Ren. Neither can practice Ren sufficiently with itself. The smooth interrelationship is not just established with love, but also with the rules of love. Li is the rule of love to guide the correct way of establishing the relationship. Therefore, consider for others cannot work without Li.

It is started from Confucius that he recognized that “Ren” as a perfect virtue can be practiced and reached by ordinary people. He said: “Is virtue a thing remote? I wish to be virtuous, and lo, virtue is at hand.” (James Legge, 1966, pp. 91) “Is the practice of Ren from man itself, or is it from others?” (James Legge, 1966, pp. 157) Confucius thought that the virtue of Ren was indispensable to establish a harmonic society. However, it won’t work if Ren can only reached by Kings; therefore he said that the Ren can be owned by anyone, if he wants to practice it.

Confucius used the concept “Xiao Ren”, “Jun Zi”, and “Sheng Ren” to tell the difference of the virtue among the people. He said: “The Superior man (Jun Zi) thinks of virtue; the small men (Xiao Ren) thinks of comfort. Superior man thinks of sanctions of law, the small man thinks of favors which he may receive.” (James Legge, pp. 42)

It is understandable from the words of Confucius that Jun Zhi is the kind of person who can practice Ren, and Xiao Ren is the kind of person who consider for himself. Xun Zi, a famous Confucian after Mencius distinguished Jun Zi from Xiao Ren with the following criteria: Xiao Ren is the person who can be Jun Zi, but doesn’t want to be; and Jun Zi is the person who can be the Xiao Ren but doesn’t want to be. Sheng Ren means the sage. Confucius didn’t explain what Sheng Ren is. He said: “A sage (Shen Ren) it is not mine to see, could I see a man of real talent and virtue, that would satisfy me.” (James Legge, 1966, pp. 89) Confucius set a Xiao Ren-Jun Zi-Sheng Ren pattern, whoever wants to pursue Ren may realize the goal in the end.

In order to achieve Ren, learning and self-cultivation are the ways to get to it. People should learn in a humble manner. Confucius said: “When I walk along with two others, they may serve me as my teachers. I will select their good qualities and follow them, their bad qualities and avoid them.” (James Legge, 1966, pp.87) Zeng Zi said: “I daily examine myself on three points: whether in transacting business for others, I have been not faithful; whether in the intercourse with friends, I may have been not sincere; whether I have not mastered and practiced the instructions of my teacher.” (James Legge, 1966, pp. 4)

Confucianism stresses that kings should rule the state with Ren instead of laws, he said: “If the people be led by laws, and if uniformity be sought to be given them by punishments, they will try to avoid punishment, but have no sense of shame” (James Legge, 1966, pp. 13) There is a conversation between Ji Kangzi and Confucius. Ji Kangzi asked: “What do you say about killing the unprincipled for the good of principled?” Confucius replied: “Sir, in carrying on your government, why should you use killing at all? Let you evinced desire be for what is good, and the people will be good. The relation between Jun Zi and Xiao Ren is like that between the wind and the grass; the grass must bend, when the wind blows across it.” (James Legge, 1966, pp. 168) To rule people with virtue of Ren is the perfect way according to Confucianism. The world would be in the great harmony, when both people and rulers have the virtue of Ren.

1.2 Li

There are many words that can be translated into Li in English. For example, Li can refer to rites, rules of propriety etc. But anyway it means the rules of Confucianism. There is an interactive relationship between Li and Ren. Firstly, Li is made with the principles of Ren. Confucius said: “If a man be without the virtue (Ren) proper to humanity, what has he to do with the rites of propriety (Li)?” (James Legge, 1966, pp. 25) and the second, Ren is the core value of Li, Li

cannot exist without Ren. As an exterior form of Ren, Li functions as the rule that both regulate people and fosters the virtue of people.

There is a conversation between Confucius and Duke Jing of Qi. Duke Jing of Qi asked about government, Confucius replied: "There is government, when the prince is prince, the minister is minister, the father is father, and the son is son." (James Legge, 1966, pp. 165) Confucius thought that the government should follow a fixed Li so that it can build a harmonic society. There should be an order sequence up from son to the prince or king, which is the Li in order.

Duke Ding asked Confucius how a prince should employ his ministers, and how his ministers should serve their prince. Confucius said: "A prince should employ his minister according to Li; ministers should serve their prince with faithfulness." (James Legge, 1966, pp. 33) It is said: "As a sovereign, he rested in benevolence. As a minister, he rested in reverence. As a son, he rested in filial piety. As a father, he rested in kindness." (James Legge, 1966, pp. 318)

Just as Li cannot do without Ren, Ren cannot do without Li, either. Anyone who wants to be Ren has to follow something, because he doesn't know what Ren is yet. Li is the rules created according to Ren, which can be the guidance to be followed and to reach Ren. Therefore, Confucius said: "Look not at what is contrary to propriety; listen not to what is contrary to propriety; speak not what is contrary to propriety; make no movement which is contrary to propriety." (James Legge, 1966, pp. 156)

Confucianism stresses that the key point of Li is in the family. If the family, especially the family of king's can follow Li and be Ren, the state will be in a harmony. "From the loving example of one family, a whole State becomes loving; and from its courtesies the whole State becomes courteous while, from the ambition and perverseness of the One man, the whole State may be led to rebellious disorder;-- such is the nature of the influence. This verifies the saying, 'Affairs may be ruined by a single sentence; a kingdom may be settled by its One man'." (James Legge, 1966, pp. 330) Li sets the order, not only to the ordinary people, but also to the king, the realization of the harmony needs the contribution from all the persons under the order of Li.

1.3 Dao

"What Heaven has conferred is called nature; an accordance with this nature is called the path of duty (Dao); the regulation of this path is called instruction.", "The path (Dao) may not be left for an instant. If it could be left, it would not be the path." (James Legge, 1966, pp. 349-350) "While there are no stirrings of pleasure, anger, sorrow, or joy, the mind may be said to be in the state of equilibrium. When those feelings have been stirred, and they act in their due degree, there ensues what may be called the state of harmony. This equilibrium is the great root from which grow all the human actions in the world. And this harmony is the universal path which they all should pursue." (James Legge, 1966, pp. 351) Confucianism call this the Dao of Mean (Doctrine of Mean).

Confucianism defines Dao in two sorts: the Dao of heaven and the Dao of men. The main difference between Dao of heaven and Dao of men is that Dao of heaven do with sincerity itself, while Dao of men do for both itself and others. However, men has to learn Dao, and when he has learnt Dao, he reach the Dao of heaven. But no one had ever achieved that; even Confucius didn't achieve that either. He said: "If men in the morning hear the right way (Dao), he may die in the evening without regret." (James Legge, 1966, pp. 41)

There is a difference between Ren and Dao, too. Ren stresses self-education and pursues Ren for oneself with the way of considering for others. However, the person with Dao, is not who is just the person with Ren, he should practice Ren and help others to be Ren, instead of just considering for others. When Dao of men reaches Dao of heaven, there will be the Great harmony.

Confucianism built a system that comprises of Ren, Li and Dao, which constructed an ideal that the people pursue Ren and further the Dao in the inner while ruling the state with the perfect virtue outside. However, it is worthy of reconsidering this system and see what happens really inside, in order to find the reasons especially when the rule of law meets difficulties.

2. Rule of Ren and the Lost of Individual

"In ancient times, men learn with a view to their own improvement. Nowadays men learn with a view to the approbation of others." (James Legge, 1966, pp. 207) Confucius raised an important point that men should learn for themselves, which is the starting point to be Ren. Self-cultivation is the way to reach Ren, and Ren is the embodiment of self-cultivation.

It seems that there is a contradiction when it is said that the meaning of Ren is "for all men", while saying that learning is for oneself. But, there is not a contradiction at all. The men who want to consider for others should improve his virtue first through self-cultivation, because "for others" is the emotion that anyone can have at the specific moment. However, "for others" said by Confucius is not the emotion in short time but the virtue as the belief in heart. For example, a man may practice Ren today, but give it up tomorrow. Ren cannot be genuine in this way. Therefore, Confucius worried about "Leaving virtue without proper cultivation; not thoroughly discussing what is learned; not being able to move

towards righteousness of which knowledge is gained; and not being able to change what is good.” (James Legge, 1966, pp. 79)

Family is a very important concept in Confucianism. Confucius said: “‘A youth, when at home, should be filial, and, abroad, respectful to his elders. He should be earnest and truthful. He should overflow in love to all, and cultivate the friendship of the good. When he has time and opportunity after the performance of these things, he should employ them in polite studies.” (James Legge, 1966, pp. 5) “The superior man (Jun Zi) bends his attention to what is radical. That being established, all practical courses naturally grow up. Filial piety and fraternal submission! -- are they not the root of all benevolent actions?” Family is the place where parents, brothers and sisters live, and it is also the place where a person is given birth to. When a person wants to be Ren, family should be the first place where he practices Ren. It is incredible to talk about Ren without being Ren to his parents, brothers and sisters.

However, to reconsider the second meaning of Ren, it is clear that the purpose of Ren is to return to Li, or the harmonic order. Confucian thinks “there are few who, being filial and fraternal, are fond of offending against their superiors.” (James Legge, 1966, pp. 2) Filial piety and fraternal submission are the Ren of the family, but also they take persons away further from self-consideration. The person will consider for other numbers first in the family, and then consider for others outsider the family too.

Richard Nisbett said that “Chinese social life was interdependent and it was not liberty but harmony that was the watchword- the harmony of humans and nature for the Taoists and the harmony of humans with other humans for the Confucians.” “The world was complicated and the events were interrelated, and objects were connected ‘not as a piece of pie, but as ropes in a net.” (James Legge, 1966, pp. 37)

Nisbett sees the basic pattern that Confucianism weaves the world in the “net” with its systematic thoughts. However, Nisbette’s picture seems that it is the knots that connect ropes. The interrelationship should be between the individuals according to this explanation. However, there is not the concept of individuals at all in Confucianism, because individual value is buried in the family.

Law as a tool to rule isn’t the first choice for Confucianism. Confucius thought that the people ruled by law won’t have the sense of shame, because it isn’t a civilized way to rule the people but the supplementary of moral. Therefore Confucius stressed the self-cultivation, which restrains oneself and considers for others in order to be a Jun Zi. It is quite different from liberalism, which stresses on individual rights for the purpose of oneself. There are two distinguishing pictures between Confucianism and liberalism. The former stresses the restraining of oneself and practice Ren for the aim of Great Harmony, while the latter stresses the restraining of ruler’s power and the aim at the realization of individual rights.

When we talk of the rule of law, we cannot put rights and obligations aside, especially rights. However, rights are something that needs to ask for, or even fight for originally, and they cannot be given by the ruler. Because it will mean that the ruler can give rights according to his own will, and the people don’t have the rights to choose. Rights just concerns with the person who owns them, and there is nothing about others. Therefore rights absolutely belong to who owns them. On the contrary, it is significant for Confucianism put others in the first consideration.

It is easy to understand that family is the first rope to restrain the person from challenging the power of the ruler, or fight for rights, because the individual cannot be an independent one from the family, and he has to be filial with submission. Individual value is showed in filial piety, and filial piety and fraternal submission mean that individual should follow the rule of Li and restrain oneself in the family, which may understand as the first “rope” away from individual rights. Self-restraint is the main characteristic of Confucianism; it keeps one away from gaining, in order to complete the goal of Ren. However, self-restraint also keeps one away from law, because one doesn’t consider for himself, which means he values less about his rights. The harmony is of more importance than individual rights when the disputes happen, because the harmony is built with Ren and Li, This leads to the result that people don’t have the awareness of individual rights in mind at all.

3. The Rule of Li

The motive of Confucianism is to return to Li, which can create the harmonic world. Confucius wrote down the events that princes rebelled against Zhou Dynasty in his famous work “Spring and Autumn”, which feared the rebellious princes. Li forms the order, and the order makes the harmony possible. “The Three Cardinal Guides”, which set an order that the ruler guides his subject, father guides son, and husband guides wife” constructs the core contents of Li. It draws a clear picture about the relationship between the ruler and subjects; father and son; husband and wife.

There is contradiction between Li and Ren, according to “The Three Cardinal Guides”. It can be explained that father is the authority of son; husband is the authority of wife, and the ruler is the authority of subjects; whereas Ren is about how much the men have the virtue. The more the virtue he has, the closer he nears Ren. Ren is reached by the way of self-cultivation and consideration for others. It is about virtue. However, the titles of ruler, father and husband don’t necessarily mean the good virtue or Ren. Why should subjects, son and wife follow them? How if they don’t have the

virtue of Ren while subjects, son and wife are following them? If so, how can Ren be practiced and can the harmony be realized?

Neither Confucius nor Confucians discussed about the questions above. On the contrary, Confucius thought that Li should be obeyed, even though the ruler is bad. Confucius said: "Shao is perfectly beautiful and also perfectly good; Wu is perfectly beautiful but not perfectly good." (James Legge, 1966, pp. 273) Shao was the music of Yu who ruled the people with virtue and the Li of comity, whereas Wu is the music of King Wu who overthrown Shang Dynasty. Confucius said that the music of Wu was not perfectly good, because what King Wu had done was not in accordance with the principle of Li.

Confucius raised three examples to show who people should follow. He said: "The viscount of Wei withdraws from court. The viscount of Qi became a slave of Zou. Bi Gan remonstrated with him and died." "The Yin Dynasty possessed three men of Ren." (James Legge, 1966, pp. 72)

King Zou was a very atrocious man, but Wei Zi, Qi Zi and Bi Gan was very loyal to him and expostulated with King Zou for ruling the state in the proper way. Confucianism stresses on Li, but it doesn't give a resolution of how if the authority doesn't obey Li. Therefore, Li put the obligation and obedience on the shoulder of subjects, son and wife, and didn't give the persuasive reasons for why they should follow it when ruler, father and husband don't follow the principles of Ren.

Dao is the way what Jun Zi should pursue according to Confucianism. Confucius said: "Let the will be set on the path of duty (Dao). Let everything attainment in what is good be firmly grasped. Let perfect virtue (Ren) be accorded with, and let relaxation and enjoyment be found in the polite arts." (James Legge, 1966, pp. 222) Dao was put in the important place in Confucianism. However, just as I mentioned above, Confucianism didn't give a resolution on what if the ruler doesn't have Dao or the ruler rules in a way against Dao. Confucius chose to keep silence under such circumstances. He said: "a superior man (Jun Zi) indeed is Chu Po Yu! When good government prevails in his state, he is to be found in office. When bad government prevails, he can roll his principles up, and keep them in his breast." (Richard E. Nisbett, 2005, pp. 19)

Confucianism stresses that Ren should be pursued through self-cultivation, and to practice Ren should follow Li, which leads to a tendency in thought to avoid conflicts as much as possible. There are two parallel ways for people to be Ren. It is sure that Ren will be realized if people really consider for others and restrain themselves; however, Ren, or the perfect virtue is not based on the precondition that people have individual Rights, with which they can resort to law when their rights are violated, or he may endure the violation of rights if he like. Therefore, self-cultivation is a way to give up the desire to fight or to make efforts to get self-interests actually. Li is another way to pursue Ren, because Ren is the perfect virtue invisible. Li as the guidance plays the role of guiding how to be Ren. Therefore, Li is the exterior form of Ren, while self-cultivation is the inner way of pursuing Ren. Combining the two together is the way of pursuing Ren. To study Li, it is clear that Li is the rules of obeying instead of the rules of claiming.

The final goal of Confucianism, the Great Harmony, in fact is the matter of Li. It is natural for those who are well self-cultivated will follow Li, and when all the people can follow Li naturally, the Great Harmony will be realized. Harmony is the concept not about right or wrong, but about whether Li is well followed. Therefore, when disputes happen, the key to solve it lies in Li.

4. The Rule of Man

Confucius called King Wen, the son of heaven, which means King Wen was legitimated by the authority from heaven. From then on, the Emperors were called the Son of Heaven by Confucius; rulers were given the legitimate authority in the theory without confirming what the heaven is and what standards the Son of Heaven should meet. There is a dilemma here whether the Son of Heaven can reach heaven as Emperor Yao or King Wen did? If he can, what if he is a bad ruler? Would the bad Son of Heaven rule people with justice? Would the heaven exist with justice, while the son of heaven doesn't have the sense of justice?

In fact, Confucianism after Han Dynasty compromised with the government, and named the emperor as the Son of Heaven; in return, the emperor set Confucianism as the authoritative thought in the state. The emperor was educated with Confucianism too. However, whether the emperor would follow Li depends on himself; there is no coercion to be imposed on the emperor, because he is legitimated by heaven instead of the people. Therefore, the people can do nothing but expect that there is the sage-king as Emperor Yao or King Wen. The ruler or the emperor is in fact the absolute authority on the earth, and the subjects must follow him.

The five relationships such as the relationship between the rule and subjects; father and son; husband and wife; elder brother and younger brother; friends created by Confucianism stressed Li in them. However, there is clearly the authority sequence from the top to the bottom. Each pair of relations has an authority legitimated by Li. Rule of Li, or rule with the principles of Ren, means rule of the man with the perfect virtue. But the ideology of Confucianism can just be the utopia, because Confucianism is so weak on the restraint of the ruler.

On the one hand, Confucianism constructs a stable foundation of the order for the ruler, which weakens the challenges from the subjects; on the other hand, it places itself under the order that it has to follow Li. Therefore, Confucianism is not the philosophy or the thought set from the sight over the human world, because it doesn't cover all humans with its Li. The ruler is the exception. Neither is Confucianism a theory that the starting point is for the happiness of the individual, even though it stresses on ruling with perfect virtue.

Returning to the harmony, in other words, the perfect order is the starting point of Confucianism. The whole thought system is constructed with the steps on how to rebuild the harmony. Confucianism indeed contributed a great deal to the stability of the order, while it fostered the thought that following Li is a natural obligation. Thus, the rule of man doesn't seem an improper way.

Under the rule of man, law is just as the sword in man's hand, whereas, under the rule of law, law is the sword suspending over man's head. Man is restrained under the rule of law, even though man can take advantages of legislature and make bad laws. The man would be punished by laws, too, when he violates the laws. This is the fundamental difference between the rule of law and the rule of man.

Confucianism constructed an hierarchical system that guarantees the ruler has the absolute power in hand with its theoretical support; in which the rule of law just like an alien, far away and incomprehensible. Law is just the tool for the rule of Li according to Confucianism. Law can do nothing when everything is in smoothly proceeding with Li. However, Li is the order for the rule of man; therefore, law becomes the guard of man, instead of the restraint of man.

Just as the importance of natural law to the rule of law, Confucianism functions as the same role to the rule of man. The difference is that the former stressed that the natural law and its justice is above all people on the earth and should be obeyed by all people. There are plenty of reasons for restraining the ruler when he abuses his power according to natural law. Natural law permits people to pursuit equality and liberty and the rule of law, furthermore the individual rights. However, Confucianism works in an opposite direction in the consideration of return to Li, the perfect order that Zhou Dynasty had had, and it constructs a moral system in order to theoretically set up a stable order. Therefore, Confucianism is not the theory starting its point from individual, but from the purpose of setting the order in society. Its Ren, Li and Dao, all follow the motive of rebuilding of the perfect Li, individual is just one of the "knot" on the net; and how to make the knot suitable for the net is in the first consideration. Ren, Li and Dao all are the very efficient means to make the suitable knots in society.

Indeed, Confucianism didn't say that it is for the rule of man. However its theoretical system persuade people restrained oneself and for others in order to achieve Ren on the one hand, and then restrain Ren with Li that construct a hierarchical system on the other hand. Therefore, Confucianism sowed the seeds for the rule of man in people's mind, which formed the foundation of Chinese thoughts. Also, individual was valued little in Confucianism. It would be confused when one fight for his own rights, because there is nothing about individual rights in Confucianism. Individual should only do "self-cultivation", "self-restraint" etc. and serve or help others in following Li. The examples in the Chinese tradition are those who devoted life to the ruler or the state instead of fighting for individual rights. Individual rights are just shame in Confucianism; which is, on the contrary, the foundation of the rule of law.

Under the rule of law, justice casts its care to individuals with restraining the power of ruler. This embodies the humanness specifically. Individual is equal when they are given to birth. Therefore, there should not be pre-authorized person who can be above others with the absolute power. Rule of law is the way that individual can be treated equally as much as possible. The protection of individual rights is the highest goal.

Still, when we see deeply the Confucianism and its blueprint of Li, isn't it a feeling of the building under the construction proceeding with brick one by one? While Westerners question why individuals should be ruled by someone that they don't know, Chinese think how to remember the code of Confucianism and be a Jun Zi, or how to achieve the dream in the way towards to the official by passing the examination designed with Confucianism. Therefore, what Chinese thought is about how to be a nice part of the pre-designed building, whereas westerners thought why should the building designed in that way.

Ren is the essence of Confucianism; however, when it defines the rule of Li, the submission from lower to the upper becomes the part of Li. Unfortunately, Ren can be the principle of Li, but it cannot be the formal rule that can be carried out. However, the Li of submission can be carried out; therefore, individual must follow the ruler. Ren cannot be carried out in form; therefore, the ruler can be either Ren or not. The democracy under this condition would just be the rhetoric without real value.

Formal Legality and Independent Judiciary become the luxuries under the rule of man. The Generality, Equality and Certainty won't be guaranteed when there is a ruler with unlimited authority. Law is but a tool in his hand, and he can use it to do anything. Confucians expected there may be a sage-king born someday. However, in fact, in Chinese history, there were not too many sage-king except Emperor Yao, Sun, Yu and King Wen; instead, there were many tyrants and mediocre rulers. There weren't an equal Ren from the ruler, but only the favor or grace from the ruler to those who

show loyalty. The uncertainty instead of the certainty is the characteristic of the rule of man. Formal Legality and Independent Judiciary don't have a real foundation under such a condition.

We can find that there is not anything can be found in Confucianism relating to the rule of law. Law is just the second consideration of it, which is a tool for the rule of man. The consideration in this way in fact set a wall in between the rule of man and the rule of law. The people don't have the knowledge about law, and the law was not considered as an independent part to be developed. It is quite clear to westerners to go to the judge when there is a conflict. However, there is not a concept of Judge in Chinese mind. Chinese regards the governor as the judge. There are not clear concepts to tell the governor from the judge, they seem the same. It is taken for granted that the government is the place for lawsuits, and the governor is the judge. With the explanation of Confucianism that the emperor is the Son of Heaven, that governor is the representative of the Son of Heaven. Therefore the judge by the governor has the legalization. Guan, the governor, is called the "Fu Mu Guan", which means the parents. On the one hand, Chinese see governor as the parents and subjected to him; on the other hand, Chinese leave their fate to the governor. This is not because they believe the governor would help them; it is because the procedure to the governor is the last chance Chinese to see the justice. The story of Bao Gong, a governor in Song Dynasty who sentenced his niece to death for justice, is passed from generation to generation. Chinese hopes that all the governors treat people like Bao Gong.

There is not a resolution in Confucianism on what if the emperor or the governor doesn't act as he should be. Li as the rules is a very efficient tool of ruling the people, and there is law behind it when Li in the law is violated. However, there isn't a law behind the Li of the emperor, thus, when the emperor violate Li, there is no more than the expostulation from the ministers, those who may risk the punishment from the emperor. The action challenging the authority from the emperor is not in accordance with Li, let alone the rebellions. The story about the national hero, Yue Fei, is so popular that Chinese admire him; whereas the ex-minister, Qin Hui who did the persecution, to a death penalty of Yue Fei have been cursing by Chinese. However, the emperor who sanctioned penalty isn't blamed too much. Chinese admire Yue Fei, because he was so loyal to the emperor that he would rather be sentenced to death than betray the emperor. "Loyalty" is the reason that why Chinese admire him; however, there was not an answer on how to avoid that case. Confucianism set the principles of Ren, to consider for others, to be loyal to the emperor, which leads to an inclination in Chinese personality that they seldom asked "why". The self-cultivation is the road to Ren through the consideration for all the others in society. However, the contradiction is that how if the others don't consider for you, how if the governors don't consider for you, and how if the emperor doesn't consider for you. Since people have the inclination that consider for others as the good virtue, the word "individual interests" is equal to egoism, a taboo in Confucianism. However the basic concept of the rule of law is "rights", the rights handed in individual's hand. To fight for the right given by law has nothing to do with the shame and the badness in virtue in westerner's eyes.

The ideology of Confucianism just likes a dream, far and charming. It is worthy of sacrificing individual interests for the Great Harmony in the eyes of those who pursue Dao. The steps of Self-cultivation, harmonizing the family, contributing to the country and harmonize the world shows a brilliant road to the people. However, Ren is limited by Li. When Ren is explained to "for others", "for the great harmony", there is a precondition that, people must follow Li. In the family, son should be loyal to father, and wife follow husband, younger brother follow elder brother. But son should be filial to his father even if his father doesn't consider for others, or even does an illegal thing. In this sense Ren is subject to Li.

Therefore the Great Harmony cannot be the harmony that people live with an equal status and rights. Also, it is Li that set the authority in various aspects. There is not a guarantee that the authority will definitely consider for others, let alone "love my parent and love other parents". And further, the ideology of Great Harmony was set based on the self-realized Ren.

The sequence for the ideology is just upset down in between Confucianism and individualism. Instead of pursuing the ideology with sacrificing individual interests, westerner pursues ideology based on the realization of individual interests. Taking the individual rights in hand first, and then pursues more rights and interests. The realization of individual rights requires the restraint of the power from the above and the rights from the same level. The more restraint of the power from the above, the more rights the people can have.

Conclusion

Confucianism created a system that people pursue perfect virtue in order to realize the great harmony society. However, its values led to the trend to be away from the rule of law. In addition, Confucianism loses its consistency in thought when it cannot restrain the authority effectively with Li, which lead to the regret that the humanness it stressed on may be in danger. Westerners criticize China on its human rights, but ignore tradition that rooted in Chinese blood. Nowadays, the rule of law has been written in Chinese constitution, but Chinese still think in Confucianism way subconsciously, law still is not a favorable way to solve the disputes. Chinese is trying to combine Confucianism value with the rule of law, in order to construct a harmonic society, the study on Confucius thinking way will contribute a lot on the way to the rule of law.

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Risk Management Assessment for Partnering Projects in the Malaysian Construction Industry

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Abstract

The Partnering concept is not a new way of doing business. The partnering process establishes the working relationship among the parties (stakeholders) through a mutually-developed, formal strategy of commitment and communication. It attempts to create an environment where trust and teamwork prevent disputes, co-operative bonds are fostered for everyone's benefit and the completion of successful project is facilitated. The Construction industry in Malaysia is suffering constraints in the processes of construction procurement. Thus, partnering is used as an approach in procurement that could lead toward improving performance of the construction industry in Malaysia. Organizations which have used partnering for construction projects are now reporting favourable results, which include the decreased costs, quality improvement and delivery of project to programme. Partnering has reached many benefits in terms of project cost, time quality, build ability and etc. Despite the benefits in applying the partnering procurement method, there remains risks associated with this mode of construction.

From the literature review it was found that the risk management process and partnering are critical to the success of the project. A questionnaire survey was conducted on the sample in order to examine the criticality of risk factors and to identify the effectiveness of risk mitigation measures applied in partnering. The opinions and techniques of risk mitigation were gathered through.

It was found that the most critical construction partnering risk is the partner's financial resources, clients' problems and economic conditions and financial problems among one of the partner. It is hope that the risk management programme will help to reduce the risks in the construction project in Malaysia.

Keywords: Risk management, Partnering, Malaysian construction

1. Introduction

Partnering is an arrangement where the participants are encouraged to work more efficiently together. It involves the parties of a construction project working together in an environment of trust and openness to ensure viability of the project efficiently without conflict. Partnering is increasingly used as a procurement method since the Latham report "*Construction the Team*" was published (Latham, 1994). The report recommended partnering as a means of improving inter-firm relations. Partnering is one of several strategies being proposed by practitioners, academics and managers (Cook and Hancher, 1990) and draws heavily upon lessons from Japanese manufacturing. It is defined by the Reading Construction Forum (1995) as a management approach used by two or more organisations to achieve specific business objectives by maximising the effectiveness of both parties. The approach is based upon mutual objectives, an agreed method of problem resolution and active search for continuous measurable improvements".

A partnering relationship is only recommended where the management teams of all parties involved display a fundamental commitment to partnering and where companies share a common culture (Smircich, 1985). The partnering process involves allocating time to agreed objectives, establishing an open style of communication, developing a

mechanism for problem resolution and identifying measures designed to monitor and help improve performance (CIB, 1997). The driving force behind the adoption of project partnering stems from the recognition that a win-lose conflict is expensive, and that no one gains from it. This kind of lose-lose situation and keeping at arm's length relationships among the parties in the supply chain are pervasive in the construction industry worldwide. It calls for cultural changes among the different parties, from adversarial to cooperative relationships. Bennet and Jayes (1995) defined "Partnering is a management approach used by two or more organisations to achieve specific business objectives by maximising the effectiveness of each participant's by resources. The approach is based on mutual objectives, an agreed method of problem resolution and an active search for continuous measurable improvements."

The construction industry is plagued by risk (Flanagan and Norman 1993), but often this risk is not dealt with adequately, resulting in poor performance with increased cost and time delays (Thompson and Perry 1992). Construction projects are becoming increasingly complex and dynamic in their nature and the introduction of new procurement methods means that many contractors have to rethink their approach to the way risks are treated within their projects and organizations. Risk is a function of the interaction of uncertainty and the magnitude of potential loss or gain. Risk is also increased simply by hiring a contractor to undertake work due to the inevitable loss of employee loyalty and loss of control over sub-contractor activities (Bova, 1995). Construction work involves risk due to the complex nature and uncertainties inherent in the construction process (Al-Bahar and Crandall, 1990). Procurement now represents a significant risk, possibly the most significant, faced by most organizations (Griffiths, 1992). Consequently, the construction industry faces several problems, which act as barriers of a partnering approach to procurement.

Lamming (1993) is of the opinion that the intensity of the partnership relationship and the central philosophy of commitment can lead to a high level of pressure to perform whereby partners under pressure may be encouraged to take unnecessary risks to prove their worth. Saunders (1994) and Ramsay (1996) recognize that the information of a partnership with a supplier involves considerable risk. They assert that the risk of the transfer of power from buyer to the supplier is significant in a single source relationship. They argued further, that very large buyers will be in a position to overcome this risk by being able to dedicate resources to developing new sources of supply in the event of the original supplier flexing its new power, while smaller companies will not be in a position to insure them against this type of risk. With respect to construction, Baxendale and Greaves (1997) believe that the construction firms entering partnering with sub-contractors may limit competition resulting in the remaining firms forming cartels. Harback et al. (1994) have identified five pitfalls of partnering: unfulfilled expectations, unfinished business in which some elements or process of the partnering are still in dispute, assumption that all parties involved in the partnering are willing to share personal beliefs and thoughts, one-size-fits-all approach rather than seeing partnering as being a specific to a project and conflict between internal (relationship between various departments in a company) and external (relationship with other parties) partnering. There are however some features of the construction industry which make the introduction of partnering more difficult than in other industries.

Several attempts have been made to assess the risk factors in partnering. One common method in considering the most frequent and severe risk factors is to classify them according to their sources and to use a hierarchical structure (Saaty 1980). Such classification will make it easier for the risk manager to visualize risks clearly and to deal with them in logical, systematic way. It also seems to be more practical as it represents the actual parts of the system or the organization. It is proposed that the risks factors be categorized into three main groups: (1) Internal; (2) Project-specific; and (3) External. The internal risk group represents the risks that are unique in a partnering because different organizations are involved. The risks are developed from the nature of the operation that causes conflicts within the partnering organization. The project-specific risk group refers to unexpected developments during the construction period that lead to time and cost overruns or in shortfalls in performance parameters of the completed project. A high capital outlay and a relatively long construction period would make project costs particularly susceptible to delays and cost overruns. The external risk group represents the risks that emanate from the competitive macro environment that the partnering operates in.

The objective of this paper is therefore to identify the effective risk management measures applied to mitigate the risks faced by the construction industry from the used of the partnering procurement method in Malaysian construction industry.

2. Methodology

A questionnaire survey was conducted based on the risks associated within partnering project and the effective risk management measures used to mitigate the risks. The objectives of the questionnaires survey were to investigate the critical factors in the partnering system in Malaysia and the most common and effective measures that industrial participants adopted for risk management. Questionnaires survey was sent to forty (40) organizations (comprising consultants, contractors and clients) involved in construction works with a cover letter explaining the aims of the research. Twenty (25) copies were duly answered and returned. A Likert scale of 1-5 was used in the questionnaire. The

questionnaire was divided into three groups. Respondents were asked to respond to three sections, described in detail below:

2.1 Analysis of Questionnaire

The analysis of data presented in the subsequent section will show the questions put forth to the respondents via as the headings or sub-headings, with the analysis of the responses clearly indicated.

Part A: General information about partnering

Question in Part A: attempt to obtain information and to identify respondents' experience on the implementation of partnering systems. For this part, the authors only analyzed and explained the important questions regarding partnering in general.

1) Experience and participation in partnering

There were 25 respondents where 17 of them were Main Contractors, 4 Quantity Surveyors, 2 Clients, which were 68%, 20%, 10% in percentage respectively. This was followed closely by Project Managers and Architects, with 4% each respectively. Respondents were asked on their involvement in the partnering project. Forty-seven percent (47%) of the respondents claimed that the client determined the concept of partnering, while 43% of them claimed the contractors determined the concept and 10% respondents claimed that it was the design team. Clients were the leader of the project, in which, he had to formulate his own concept. The other parties were tools used to fulfill the client requirement.

2) Were there a partnering charter and how many objectives were there?

Partnering charter is a part of partnering process where all parties used it as their mission on the projects. It was found that 16 out of 25 respondents had partnering charter on their projects. About 44% of respondents had 10 -15 objectives in their charter, while the lowest was 31% with 2 – 5 objectives.

3) Was there a partnering workshop?

Thirteen (13) of the 25 respondents had attended partnering workshop, which was the most important element of the partnering process. The balance of 5 respondents did not answer the question. All parties and stakeholders must attend the Partnering Workshop where the objectives of the project would be aligned and the ground rules for the Partnering arrangement would be established.

4) How many stakeholders were involved in the project?

From the survey, 48% of the respondents claimed that they had 4 – 6 stakeholders in their partnering project, while 33% and 19% of the respondents claimed that they had less than 4 stakeholders and 7 – 12 stakeholders in their project respectively. The number of stakeholders depended on the size of project. "Stakeholders" here refer to the parties who participated in the projects such as design team and main contractor who signed up for the partnering Charter.

5) What size of project is suitable for partnering?

Sixty-eight (68%) of the respondents claimed projects that were worth more than Ringgit Malaysia (RM 40 Million) were the most suitable for the implementation of partnering. However, 32% claimed the suitable size was 20.0 million to 40.0 million.

6) Who should own the partnering charter?

From the survey, 56% of the respondents claimed that the main contractor should own the Partnering Charter and other 36% agreed that clients should also own the Partnering Charter. However, the partnering project practiced by the Malaysian Public Works Department required all the parties to be involved and own the charter in order to ensure the mission was achieved.

7) Who stands to benefit financially from partnering?

Forty-eight (48%) of the respondents claimed that the main contractor stood to benefit financially from partnering while 32% said that the client should own it, in situations when the project was completed on time and there were less variation orders or extensions of time.

Part B: Risk factors associated with partnering in particular and the construction industry generally

Questions in Part B attempted to identify the risk factors that were mostly involved in partnering. The risks factors were based on the frequency of respondents who answered the questionnaire. It was analyze on group basis. The ranking of each of the risk groups was as following:

1) Partner's Financial Resources and Managerial Competence

Financial problem of a partner's parent company. It received a mean of 4.12, far higher than the rest. Another risk factor related to a partner, its lack of management competence and resourcefulness, which was ranked 5th. Thus, the

credit-worthiness of a prospective partnering parties' parent company should be scrutinized and its current management competence and resources must be ascertained.

2) Disagreement on Profit/Loss, Accounts and Work Allocation

Another critical risk factor was the disagreement on accounting profits and losses. It was ranked as second. Other disagreements such as the allocation of the staff position and the allocation of work received a less critical score, ranking 7th and 8th, respectively. Dispute over work allocation often happened when designs were changed and the changes were unfavorable to one of the partners.

3) Policy of Parent Companies toward Partnering

The policy of parent companies toward the partnering was very critical and this risk factor was ranked 4th. The parent companies could influence a Partnering performance by limiting its autonomy, contributing under-qualified staff and delaying the required funds. A Partnering agreement was composed of "the terms, resources, shares and management policies". Once the policies of a parent company changed, support for the partnering be reduced and it was difficult to keep the partnering running smoothly.

4) Distrust

Distrust among Partnering staff from different partners was also a critical risk factor in Partnering. It ranked third. In a typical Partnering, both general managers and functional managers would be drawn from their parent company to balance the influences from each parent company. Each manager was given mandate to both manage the partner and look after the parent company's interests. Thus, it was not surprisingly that the working relationship between the two managers tended to be strained, cumbersome and inefficient.

5) Technology Transfer Dispute

Technology transfer dispute was the least critical factor in this group. Technology transfer was usually carried out in limited areas, through training to local staff during the design and construction phases. The companies existed mainly for commercial gain and their main objectives were more concerned with completing the project on time and budget rather than successful technology transfer.

6) Client's Problems

Client's problems in this research consisted of two main elements: (1) Its cash flow problem; and (2) Its excessive demands and variation during the project's execution. A client's cash flow problem is regarded as the most critical risk factor to Partnering. It received a value of 4.20 and was ranked first in this group among all factors considered in this research. This financial risk to the Partnering contractor included whether the owner had sufficient funds to complete the project or had the availability of funds for progress payment. Thus, a client's cash flow problem did influence the cash flow of the contractor. Excessive demands and variation ranked fifth in this group. The risk to the Partnering lay in the potential significant change of work allocation within partners, the disruption of work and associated claims.

7) Managers Unwilling to Relinquish Control

This risk was also considered the most significant which supported the view held by Gattorna and Walters (1996). If senior management refused to allow a project team to act in accordance with project goals, then this would obviously impede a successful Partnering relationship. Partnering involved TQM principles which including involvement in decision-making at all levels. If management refused to support such a culture, then benefits were likely to be reduced.

8) Project Relationship

The other most critical factor was poor project relationship which received a critical value at 3.16 and ranked the 3rd place in the Project-specific risk group. A lack of communication and poor relationships could occur within the parties in a project. Relationship could become strained when the partner were directly to the client without informing his counterpart first.

9) Sub-contractor and Suppliers

Currently, in the construction industry, many project activities are being sub-contracted by the main contractor. These risks were uncertainties related to the sub-contractor's or suppliers technical qualifications, punctuality, reliability and financial stability (Akinci and Fisher 1998). These risks could result in time loss and increased costs during construction. This risk is rated 4th as a critical risk factor in the group.

10) Contractual Risk

Compared with other risks, disagreement on some conditions in the contract was considered to be less critical. It was ranked last in this group. The average index was 1.68 and still quite critical. Building contracts dealt with the relationships between parties in the contract and the allocation of risks. Contractual risks were usually caused by

disagreements arising from flawed contract documents, inappropriate types of contract, improper tendering procedure or improper contractual clauses.

11) Economic Risk

Macroeconomic conditions, which determined the overall performance of the construction industry, were critical to the performance of a Partnering. Risks of economic fluctuation and inflation were ranked 1st and 2nd respectively. These factors could have a substantial impact on the profit or loss of each participant in a partnership. Economic slowdown caused the construction market to shrink. The industry became more competitive and the contractor's profit margin was significantly reduced.

12) Environmental Risks

The environment has certain critical influences on a Partnering. The environmental force majeure risk could cause destruction of facilities, equipment, material and labour death. It was ranked 3rd in this group. The pollution effect on a Partnering is considered least critical by the respondents, as it obtained a value of 1.48.

13) Social Risk

Social risk factors include security problems, language barriers and different cultural and religions backgrounds. The survey showed that these risks were not so critical for a Partnering. The three factors are ranked 6th, 7th and 8th, respectively. These factors were considered less critical compared with other factors. This was due to the technically oriented construction professionals who used keywords and drawings common among partnering participants from different cultural and linguistic backgrounds. Thus, it was regarded as less critical.

Part C: Identification on the effective risk management measures in Partnering

A total of 28 risk management measures were listed in the questionnaire. They were assessed from a scale of 1 – 5. All 28 management measures are categorized into eight (8) main groups, namely: agreement, partner selection, sub-contract, engineering contract, employment, good relationship, control and others. Each group will be discussed in detail in the following sections.

The choice of the partner is critical for completion of the particular assignments. It is found that selecting a partner that is credit-worthy and financially strong are effective measures to mitigate risks in operating Partnering. These two individual measures share a similar effectiveness, which received an average index of 4.24 each. It is essential to ascertain that a prospective partner can provide sufficient financial resources to maintain the partner's effort. For example, during initial stage, a substantial infusion of cash will be needed for mobilization costs associated with the work force, including camp construction and the assembly of plant and equipment. This cash should be deposited in a Partnering bank account with an agreement that the partner can draw on the interest until the funds are actually required.

An engineering contract is the legal linkage between the client and contractor who are bound together through the allocation of risk and profit in the contract. From the survey, it is clear that the partnered contractor should negotiate for an adjustment clause in the contract, particularly a reimbursement clause to mitigate the loss from inflation or a client's demand variation during the construction period. It should request an extension of time when force majeure risks occur during the construction period; an index of 2.64. The partners should reach an agreement on staff position and ensure that an initial disagreement would no re-appear during project operation. An effective measure is to distribute positions in different work packages according to a participant companies' expertise; this measure received an index of 4.20. One effective measure to counter staff problems and to ensure a smooth daily operation is to recruit local staff with bilingual ability. It received an index of 3.60. Bilingual ability can offer better communication between partners.

The problem of distrust could exist all the way from the top management down to the operational level. The directors should ensure staff commitment, co-ordination and trust to remove this obstacle. This is done by enhancing communication quality and conflict resolution technique (Mohr and Spekman, 1994). Carefully selecting staff for the project and employing unbiased and experienced staff are effective measures to remove distrust within the Partnering staff: they both received an average index of respectively. The effective measures that can mitigate sub-contracting risk include using experienced and familiar sub-contractors and suppliers, engaging local security at the site and sub-contracting to local pollution control specialist. Approximately 80 – 90% of the work on a construction project is performed by sub-contractors (Millman, 1990). Therefore, it is not surprising that research showed that using experienced familiar sub-contractors and suppliers is critical. The measure received a value of ranking in 1st place in the sub-contract measures. It is imperative for the local contracting firm to use keen judgment when selecting sub-contractors for the project (Kwok and Hampson, 1997). In rural areas, it is necessary to employ efficient security guards at the site. Using security firms is considered to be an effective policy with an index of 3.08.

Pollution at the site received greater attention this days and sub-contracting pollution control to a local specialist is seen to be an effective measure. It received an index of 3.00. The other effective measure related to sub-contracting is to

select efficient sub-contractors who can complement the shortcoming of partner and it received an index of 2.48. Conducting detailed feasibility study of the project, insuring insurable risks policies and appointing an independent account auditor which received an index of 3.32, 3.16 and 2.60 respectively, must be adopted by Partnering. One of the cardinal operating features of a construction Partnering is that the work must go on irrespective of the conflict. If the partner is unable to agree, there should be a summary procedure for permitting the work to continue. This can be accomplished by designating a person, not necessarily an arbitrator, to whom the dispute will be referred. It can be an outsider, a respected individual or a senior management person from one of the partners who can make the decision. Nevertheless, renegotiation is very important to all the partners, even though it received an index of just 2.08.

3. Conclusion

In order to minimize the chances of failure or underperformance of a partnering, risk management techniques must be introduced into the construction industry. The critical risk factors must be identified before making any meaningful Partnering agreement. The critical risk factors can be systematically studied based on Internal, Project-specific and External risk groups.

Among all of the risk factors, those associated with financial, project relationships, economic conditions and sub-contractors are considered the most critical in Partnering. To mitigate the risk factors in Partnering, one must develop appropriate strategies. These include agreement of contract, partner selection, engineering contract, employment, good relationship, control, sub-contracting and others.

Managing a successful partnering is not easy. Risk analysis and risk management measures must be considered to improve the performance of Partnering. Nevertheless, Partnering offers a greater opportunity for improvement. As a result, most of those who have experienced Partnering are willing to get involved again because of the positive effects of Partnering. Partnering in a wide sense has been regarded to have the capability of improving the procurement approach of the industry.

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Africa and the Multilateral Trading Regime: Re-examining the “Market Access” Mantra

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Abstract

Much has been written about sub-Saharan Africa and its inability to achieve economic development – a state of affairs often articulated by legal scholars in terms of its inability to realize the core elements of economic and social rights such as healthcare, food, housing, and basic education. Commentators and policy-makers are almost unanimous in blaming factors such as “inadequate” foreign aid, the debt burden, “unfair” multilateral trade rules and protectionism in Western markets. Although some are beginning to challenge the aid/debt hypothesis, the last two suppositions remain an article of faith – the overwhelming opinion being that existing multilateral trade rules and protectionism in Western markets represent *the* impediment to the region's ability to “trade its way out of poverty.” This paper aims to add to the dissenting voices by arguing that the problem of protectionism has become so overemphasized that its proponents have, quite paradoxically, become the obstacle to the region's prospects of ever achieving the aim of economic development as proclaimed under the Agreement Establishing the World Trade Organization and indeed, under the main international human rights instruments such as the Covenant on Economic and Cultural Rights – not least because this thesis invariably deflects critical attention from the real impediments to the region's ability to trade.

Keywords: Sub-Saharan Africa, GATT/WTO regime, Economic development, Governance, Economic and social rights

1. Introduction

Very little remains to be written or said about Africa's (Note 1) inability to achieve economic development – a state of affairs often articulated by legal scholars in terms of its inability to realize the core elements of economic and social rights such as healthcare, food, housing, and basic education (Note 2). The prevailing opinion (actively promoted by a combination of influential voices including the global media, the academic fraternity, non-governmental organizations, policy makers, rock stars, and indeed, the region's rulers) attributes this to certain familiar factors: “inadequate” foreign aid, the debt burden, “unfair” multilateral trade rules and protectionism in Western markets. Some dissenting voices, to be sure, are beginning to challenge the aid/debt hypothesis (Note 3). However, the last two suppositions remain largely uncontested – the overwhelming opinion being that existing multilateral trade rules and protectionism in Western markets represent *the* impediment to Africa's ability to “trade its way out of poverty.” (Note 4) This paper aims to add to the dissenting voices by arguing that the problem of protectionism has become so overemphasized that its proponents have, quite paradoxically, become the obstacle to the region's prospects of ever achieving economic development as envisaged under the Agreement Establishing the World Trade Organization (Note 5) (and by extension, of realizing economic and social rights) – not least because this thesis invariably deflects critical attention from the real impediments to the region's ability to trade.

It naturally begins with a brief contextual overview of the multilateral trading regime, with a view to determining the extent to which they affect the region. It then goes on to acknowledge the reality of protectionism in Western markets, but also highlights the fact that Africa trades effectively on bilateral and preferential terms – outside of the multilateral trading regime. It further assesses the two main preferential regimes, and argues that although these are not without inherent imperfections, they represent the best that can be expected in a global economic regime not built on altruism. The last section attempts to explain the principal reasons why the region has been unable to become integrated within the multilateral trading system.

2. The Multilateral Trading Regime: A Brief Overview

The multilateral trading regime is made up of the General Agreement on Tariffs and Trade (GATT), (Note 6) and the various other Agreements that resulted from the Uruguay Round negotiations (about 60 in all). (Note 7) These cover various aspects of economic activity, such as agriculture (through the Agreement on Agriculture), services (through the General Agreement on Trade in Services), intellectual property (through the Agreement on Trade-Related Aspects of Intellectual Property Rights), and foreign direct investment (through the Agreement on Trade-Related Investment Measures). Subsequent negotiations have produced additional legal texts such as the Information Technology Agreement, and the Protocols on Services and Accession. (Note 8) The various agreements are supplemented by a number of Ministerial Decisions and Declarations. Recent last-ditch efforts in the German city of Potsdam to save the Doha Round of negotiations (which was launched in 2001), however, failed to reconcile the interests of developed countries (i.e., lower import tariffs on industrial goods in developing country markets) with the latter's demand for cuts in farming subsidies in the developed economies. (Note 9)

2.1 *The Basic Rules of the GATT*

Although the laws that govern interstate trade relations are notoriously complicated, detailed and multi-faceted, it is possible to reduce them, even at the risk of oversimplification, to a number of basic principles which are enshrined in the Preamble to the GATT, which commits Members of the World Trade Organization (WTO) to "reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce" (Note 10) To this end, Article I proclaims the most-favoured-nation (MFN) principle, according to which "...any advantage, favour, privilege, or immunity granted by any member to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other members." Also, Article III recognizes the national treatment principle, by virtue of which "[t]he products of the territory of any member state imported into the territory of any other member state shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution, or use..." Article X recognizes the principle of transparency which, in broad terms, is aimed at making each WTO Member's trade policies and practices open and predictable, while Article XI prohibits (subject to exceptions) the imposition of quantitative restrictions (e.g., quotas or licences) on imports and exports.

2.2 *Some Relevant Exceptions*

As would be expected, the GATT, like many other multilateral treaties, allows for derogations which apply to all WTO Members. Many of these, however, apply specifically to developing countries, including the least-developed ones (LDCs) amongst them. Given Africa's synonymity with economic underdevelopment, (Note 11) most of these derogations naturally apply to the region. For example, Article XVIII (titled "Governmental Assistance to Economic Development") allows WTO Members whose economies "can only support low standards of living and are in the early stages of development" to adopt certain measures outlined under Sections A-C for purposes relating to economic development: Under Section A, such a Member may withdraw or modify a concession granted under the GATT/WTO framework to another Member, if the aim is to promote a particular industry and to raise its people's living standard. Under Section B, it may impose quotas for balance of payments reasons. Section C permits the granting of governmental assistance for the purpose of supporting an infant industry, with a view to raising living standards, while Part IV (i.e., Articles XXXVI-XXXVIII) calls upon developed countries to grant market access to products originating, particularly from LDCs, on the basis of non-reciprocity.

The GATT/WTO regime has also introduced various measures aimed specifically at addressing the needs of LDCs. To begin with, the Preamble to the WTO Agreement acknowledges "a need for positive efforts designed to ensure that developing countries, and especially the least-developed among them, secure a share in the growth of international trade commensurate with the needs of their economic development." (Note 12) To this end, many of the Uruguay Round Agreements (including those mentioned earlier) contain special provisions aimed at addressing their needs. Moreover, the Ministerial Decisions and Declarations agreed at the Uruguay Round effectively exempt LDCs from all the agreements, including the ones they might have ratified, (Note 13) while the Doha Ministerial Conference reaffirmed the participants' commitment to the needs of LDCs, in such areas as market access and preferential treatment. (Note 14)

A number of other initiatives were also agreed during the Uruguay Round negotiations, such as: the Decision on Measures in Favour of Least Developed Countries, and the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least Developed and Net Food-Importing Developing Countries (WTO 1998, 238-241). Other measures include the follow-up Programme on the High-Level Meeting on LDCs (first held in October of 1997) and its Integrated Plan of Action, the central aim of which is the alleviation of poverty among the LDCs. These include the "Integrated Framework" scheme which aims to increase the benefits that LDCs derive from trade-related technical assistance from multilateral agencies, (Note 15) and the "Mainstreaming" initiative which "involves the

process and methods of identifying and integrating trade priority areas of action into the overall framework of country development plans and poverty reduction strategies.” (Note 16) Add to these the numerous other programmes and initiatives, and it becomes easy to understand why the WTO itself has described them as a “universe of special and differential treatment.” (Note 17) What these demonstrate is that although the effectiveness of these measures is not beyond debate, it is not the case that the GATT/WTO regime (which, after all, came into existence through multilateral negotiations involving rich and poor countries alike) is indifferent to the needs of the latter.

3. Acknowledging the Reality of Protectionism

The above measures notwithstanding, there is a need to acknowledge the fact that protectionism in Western markets remains a major obstacle to international trade, as well as exposing the fallacy behind a supposed “liberalized global economic order.” Indeed, although the European Union (EU) and the United States have become the chief culprits in this regard because of their generous domestic farm subsidies, both merely represent a fraction (albeit a significant one) of an overall OECD total of US\$311 billion (as of the year 2001). (Note 18) Moreover, according to a study undertaken for the United Nations Conference on Trade and Development (UNCTAD), the EU, the United States and Japan accounted for 94 percent of agricultural subsidies as of 1997 to the tune of \$264 billion, with the EU alone accounting for 40 percent or \$110 billion. The United States followed closely with \$72.4 billion, and Japan with \$67.3 billion. By 1999, the total amount of agricultural support in OECD countries had risen from \$267 billion to \$361 billion, or 1.4 percent of their collective GDPs. (Supper 2001, 20-22). Yet, even these might not represent the full picture. As noted in a more recent report by the same UN agency, reductions in tariff barriers have in recent years been accompanied by an increase in the adoption of so-called non-tariff measures (NTMs) (e.g., technical regulations and standards), ostensibly aimed at promoting laudable objectives such as human safety, health and environmental protection – a problem compounded by the difficulty involved in quantifying their impact on trade (UNCTAD 2006, 80-81). These include the use of sanitary and phytosanitary (SPS) measures which have been the subject of notifications to the WTO since 1995 (UNCTAD 2006, 81).

In questioning the “market access” mantra, therefore, it is necessary to concede that it is not entirely without foundation. To begin with, these protectionist measures are often adopted in relation to products in which developing countries (including the LDCs) might be said to have a comparative advantage – namely, agricultural produce. Indeed, even if there was no protectionism of the traditional kind in developed-country markets, the use of NTMs, on their own, would still place the LDCs (if not the generality of developing countries) at a distinct disadvantage not least because by their very nature, these countries are those least able to comply with any complicated technical standards. However, to deduce from these, the generalized supposition that Africa is a casualty of protectionism is to ignore certain basic incontestable realities in regard to not just the region’s relationship with the multilateral trading regime (including the various measures offered by the WTO aimed at providing technical assistance to it, (Note 18) but also about its inability to utilize existing preferential trading regimes – which, although not beyond criticism, represent the best that can be expected in a global economic order traditionally defined (rightly or wrongly) by each nation’s self-interest. An examination of the main preferential trading regimes is considered necessary at this stage.

4. Trading on the Margins

In its fairly recent *World Trade Report*, the WTO notes that although Africa’s non-oil exports increased by about 6 percent in 2002 (this being the result of a “rebound” from previous years’ decline, by countries such as Morocco, Egypt, the Ivory Coast and Ghana) (WTO 2003, 18), (Note 19) only six of its 53 countries, “achieved a sustained expansion of their exports over the 1999-2002 period.” (WTO 2003, 18). (Note 20) Even in the narrower context of intra-developing country trade, the report noted: “Africa has the smallest share...In 2001, the value of African exports...was estimated to be in the order of \$36 billion, which accounts for slightly less than 6 per cent...” (WTO 2003, 26). And, although the global share of the continent’s merchandise exports increased in 2003, at 2.3 percent, it remained below the level recorded within the previous decade (WTO 2004, 11).

To be sure, much has been written of late about the region’s general economic growth, which was expected to accelerate to 6.6 percent by 2006 (UNCTAD 2006, 2-3), only missing the UN’s Millennium Development Goals (which are based on a 7 percent growth rate) by less than one percent. Indeed, some observers will understandably point to the so-called “strategic partnership” that has apparently developed between the region and China (allowing the latter access to the region’s natural resources in return for much-needed investment) as evidence of progress (Anderlini 2007). (Note 21) However, it is also necessary to note, firstly, that this growth figure represents an aggregate of countries, including the oil exporters and South Africa – the region’s economic powerhouse. Secondly, some of the individual economies (e.g. Mozambique, Angola and Rwanda) have started from a very low base, having been rendered effectively bankrupt either by war, misrule, or both. It is also the case that much of the region’s exports to China are merely in the form of primary produce (White and Alves 2006) – which, to begin with, are not indicative of any meaningful level of policy-driven economic activity capable of sustaining this trend in the long term. Moreover, such an asymmetrical relationship is already beginning to revive claims of neo-colonialism of the kind that informed the economic

dependency theory which itself defined the region's immediate post-independence trade relations with its former colonizers. (Note 22) At any rate, given that Africa is widely believed to be a casualty of protectionism in Western markets and effectively trades on bilateral and preferential terms with developed countries, the central task in this section is to assess the extent to which it has successfully utilized these preferential arrangements.

5. Africa and the Main Preferential Trading Regimes

Africa's marginalization from the global trading system means that it effectively trades on preferential terms with developed countries under the latter's generalized system of preferences (GSP). The GSP came into effect by virtue of a special derogation from the multilateral trading regime. Its legal basis is the so-called "Enabling Clause" which was adopted as part of the Tokyo Round negotiations in 1979, allowing developed countries to trade on preferential terms with developing countries of their choice on the basis of non-reciprocity. (Note 23) Of these, the EU's and the United States' preferential regimes have emerged as the most wide-ranging, at least in relation to Africa. (Note 24)

5.1 Trading under the European Union's GSP

The EU scheme, which is widely accepted as the most comprehensive preferential regime, is primarily based on Article 133 of the Treaty Establishing the European Community (as amended) which states: "The common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements..." (Note 25) It operates at several levels: the normal GSP (including the so-called the Everything But Arms (EBA) initiative), and the soon-to-expire African, Caribbean and Pacific-Lome/Cotonou scheme (aimed at certain ex-colonial African, Caribbean and Pacific countries). (Note 26) The first *generalized* EU scheme was implemented in 1971, since when it has undergone numerous revisions (UNCTAD 2002a). A key priority of the current regime is to enable developing countries to benefit from globalization, in particular by linking trade and sustainable development, in line with the Doha Development Agenda. (Note 27)

5.1.1 The General Arrangement

Under the current legal framework, the EU's normal GSP regime is divided into three broad sections: a general arrangement, a special incentive arrangement for sustainable development and good governance, and a special arrangement for LDCs. (Note 28) The general arrangement sets out the general rules for the application of the scheme. Under this arrangement, duties for non-sensitive products are suspended in their entirety, except for agricultural components. (Note 29) For sensitive products, however, duties are reduced by 3.5 percent. This reduction is limited to 20 percent for textiles and clothing. However, a tariff reduction of more than 3.5 percent laid down under the previous GSP regime (i.e. the period preceding 2002 to 2005) still applies, though duties are reduced by 30 percent. (Note 30)

5.1.2 The Special Incentive Arrangement for Sustainable Development and Good Governance

Under the special incentive arrangement for sustainable development and good governance, duties on products listed in Annex II are in principle suspended. Specific duties are also suspended, unless there is also an *ad valorem* duty. By contrast, specific duties on certain types of chewing gum are limited to 16 percent of the customs value. (Note 31) The beneficiary countries under this arrangement are those that are considered to be vulnerable due to their lack of diversification and insufficient integration into the global trading regime. This applies to countries not classified by the World Bank as high income countries for three consecutive years. These are also countries where the five largest sections of GSP-covered imports to the Community represent more than 75 percent in value of their total GSP-covered imports, and where GSP-covered imports to the Community represent less than one percent in value of total GSP-covered imports to the Community. (Note 32) Eligibility is also conditional on beneficiaries complying with certain obligations relating to the ratification and implementation of core human rights treaties, as well as those pertaining to the environment and governance principles – both outlined under Parts A and B of Annex III to the Regulation. (Note 33)

5.1.3 The Special Arrangement for LDCs

Under the special arrangement for LDCs, duties are entirely suspended for all products - except arms and ammunition - for countries listed Annex I (Column D) to the Regulation, in line with the EBA initiative. (Note 34) Certain products (namely, rice, banana and sugar) are however subject to a phased reduction, with a view to achieving total suspension by 1 September 2009. (Note 35) Of the various EU schemes, the EBA regime is widely acknowledged as being the most wide-ranging in terms of its product coverage (UNCTAD 2002a, xix).

5.1.4 The Lome/Cotonou Scheme

Although the current EU GSP regime began in 1971, its trade relations with (sub-Saharan) African, Caribbean and Pacific (ACP) States date back to the adoption of the original Treaty of Rome in 1957, when many of the latter group of countries were still European colonies. (Note 36) Relations under this scheme have been the subject of various amendments, beginning with the Yaounde I and II Conventions (signed in 1963 and 1969 respectively between the Association of African and Malagasy States) and Lome Conventions which became effective in 1975. (Note 37) The

latter instruments together established what the EU itself describes as “a far-reaching and complex partnership” covering economic and commercial cooperation, as well as development cooperation. (Note 38) A key element of economic and commercial cooperation established under the first Lome Convention was the system of trade preferences, the aim of which was to ensure that products from beneficiary countries were exempt from customs duties and quantitative restrictions, provided they were not in direct competition with products covered by the EU’s Common Agricultural Policy. (Note 39) The Lome regime is not based on reciprocity, but beneficiaries are obliged to apply the MFN principle in their dealings with EU member States. (Note 40) The fourth Lome regime (which expired in 2000) introduced a number of requirements on the beneficiaries such as respect for human rights, (including women’s rights), democratic governance, and environmental protection. (Note 40)

Following the expiry of the fourth Lome regime, a new agreement was signed in the Benin Republic capital of Cotonou on 23 June 2000, and entered into force on 1 April 2003. (Note 41) While retaining the main features of the previous regime, the new agreement adopts a comprehensive approach which “aims to strengthen the political dimension, provide more flexibility and entrust the ACP States with greater responsibilities.” (Note 42) It has three main dimensions, namely politics, trade and development, supported by five “pillars” namely: reinforcement of the political dimension of relations between ACP countries and the EU; promotion of participatory approaches, involvement of civil society, the private sector and other non-State actors; development strategies and priority for the objective of poverty reduction, and a special focus on the Millennium Development Goals; the establishment of a new framework for economic and trade cooperation; and reform of financial cooperation. (Note 43) Of particular interest is the fourth pillar of the agreement which seeks to enable the beneficiaries to play a full part in the multilateral trading system. (Note 44)

5.2 Africa and the United States’ GSP

The legal basis of US trade relations with Africa is the African Growth and Opportunity Act 2000 (AGOA), introduced by the Clinton Administration to cater specifically for the interests of the region by introducing a new trade and investment policy. (Note 45) The Act gives wide-ranging powers to the President to designate any country in the region as a beneficiary under the scheme, subject to a number of eligibility requirements. Specifically, the President must be satisfied that the beneficiary country has established, or is in the process of establishing: a market-based economy which guarantees property rights, and eliminates interventionist policies such as subsidies and State ownership of economic assets; the rule of law, political pluralism, and the right to due process, a fair trial, and equal protection under the law. They must also:

- 1) eliminate barriers to US trade and investment, including by: (i) the provision of national treatment and measures to create an environment conducive to domestic and foreign investment; (ii) the protection of intellectual property; and (iii) the resolution of bilateral trade and investment disputes;
- 2) promote economic policies to reduce poverty, increase the availability of health care and educational opportunities, expand physical infrastructure, promote the development of private enterprise, and encourage the formation of capital markets through micro-credit or other programs;
- 3) establish a system to combat corruption and bribery, such as signing and implementing the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; and
- 4) observe internationally recognized worker rights, including the right of association, the right to organize and bargain collectively, a prohibition on the use of any form of forced or compulsory labour, a minimum age for the employment of children, and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

Moreover, they must not engage in activities that undermine US national security or foreign policy interests; or engage in gross violations of internationally recognized human rights or provide support for acts of international terrorism. They must support international efforts to eliminate human rights violations and terrorist activities. (Note 46) The Act further empowers the President to terminate the designation of any beneficiary country that “is not making continual progress” in meeting the requirements described above. (Note 47)

In addition to country eligibility, the AGOA has detailed rules on product eligibility. The Act authorizes the President, acting on the advice of the US International Trade Commission, to provide duty-free access for certain products from beneficiary countries, provided the goods are not considered “import sensitive.” (Note 48) Some 1,800 items benefit from the AGOA scheme, and these include about 214 products such as footwear, luggage and handbags, which were excluded under the broader GSP, as are wine, fruits and juices. (Note 49) Moreover, even those non-LDC African countries that enjoyed fewer benefits under the broader GSP now enjoy duty-free treatment on all GSP-eligible products (UNCTAD 2001, 33).

The AGOA also extends duty/quota-free treatment to certain categories of textiles and clothing to the tune of about 17.5 percent (in terms of duty advantage on imports of similar products into the US market), subject, however, to the illegal trans-shipment clause. (Note 50) It further exempts beneficiary countries from the so-called “competitive need

limitations” imposed on other GSP-eligible countries, and extends GSP treatment to eligible countries until 30 September 2008 – seven years longer than the rest of the world (UNCTAD/Commonwealth Secretariat 2001, 29).

The AGOA, like its equivalent EU regime, has undergone a number of amendments since its enactment. On 6 August 2002, President Bush signed the Trade Act of 2002 into law. AGOA II, as it is called “substantially expands preferential access for imports from beneficiary...countries.”(Note 51) It also “clarifies and narrowly expands the trade opportunities for Sub-Saharan African countries under AGOA and encourages more investment in the region. (Note 52)

AGOA II was followed by the AGOA Acceleration Act of 2004 (AGOA III), which was signed by President Bush on 12 July, 2004 and, amongst other things, extends the overall programme from 2008 until 30 September 2015. (Note 53) It also broadens current eligibility to allow non-AGOA produced garment-related imports such as collars, cuffs, and elbow patches, as well as increasing the *de minimis* threshold on fibre and yarn inputs from 7 to 10 percent. (Note 56) It encourages the development of infrastructure projects, and directs the President to assign personnel for the purpose of providing technical assistance to certain countries, and to offer advice on improvements to their SPS standards with a view to enabling them to comply with US import requirements. (Note 57)

The latest amendment, titled the Africa Investment Incentive Act of 2006 (AGOA IV) was signed by President Bush on 20 December 2006. Amongst its key features is the extension of the textile and apparel provisions of the AGOA program until 2015, as well as expanding duty-free treatment for textiles or textile articles originating entirely in one or more lesser-developed beneficiary country. (Note 58)

6. An Evaluation of Both Preferential Regimes

6.1 Some General Concerns

Any attempt to evaluate the usefulness of the above preferential regimes for Africa must begin by noting that quite aside from being a special derogation from the core GATT principles, they are, in essence, instruments of bilateral relations between the granting countries and the beneficiaries – the fact that the EU scheme involves significant multilateral features notwithstanding. And, because they are largely discretionary, some commentators have suggested that they are subject to arbitrary withdrawal (Trebilcock and Howse 2000, 373). Indeed, as with the AGOA, the EU’s GSP Regulations allow for the withdrawal of preferential arrangements, though under certain defined conditions, thus highlighting the inherent precariousness of trading outside the rules-based multilateral trading regime. (Note 59) Nor should it be forgotten that preferential regimes are subject to so-called “safeguard clauses,” the essence of which is that the importing country reserves the right to impose normal MFN tariffs on imports from a beneficiary country where the latter’s products are deemed to present a threat to similar products made within the former’s economy. (Note 60) Indeed, two eminent commentators once questioned the very desirability of preferential trading regimes, based on the fact that each successive GATT Round has generally resulted in reductions in global tariff levels (Greenway and Milner 1996, 35). Nevertheless, one study conducted (though before the latest preferential regimes) by both UNCTAD and the WTO maintains that the GSP “remains a valuable tool for promoting developing country exports” (UNCTAD/WTO 1997, 9).

6.2 The Non-trade-related Requirements

Criticisms are also often levelled at the eligibility criteria imposed under these preferential regimes. For example, an UNCTAD study alludes to the “several non-trade” criteria under the AGOA (UNCTAD 2001, 33), some of which, it has to be acknowledged, are not dissimilar to the much-criticized policies of “structural adjustment” imposed on many developing countries by the international financial institutions – particularly those requiring wide-ranging market-driven economic reforms. (Note 61) However, not all eligibility criteria are so susceptible to criticism. For example, the requirement that beneficiary countries implement internationally recognized labour rights, or that they take steps to tackle corruption can only be to the benefit of the poor in the countries concerned – and are therefore in consonance with core principles of international human rights law. Indeed, those familiar with international instruments such as the United Nations Charter and the Economic and Social Rights Covenant will recognize the legal exhortation to countries to act both individually and through international cooperation to address the problems associated with underdevelopment and poverty. (Note 62) At any rate, there is a need to keep in mind the fact that by their very nature, preferential trading regimes are voluntary arrangements, and therefore cannot possibly amount to an imposition of these criteria (whether desirable or not) on the beneficiary countries.

6.3 Rules of Origin: The EU Regime

Some of the most trenchant criticisms of preferential trading regimes relate to their notoriously detailed and complicated rules on the origin of imports. For example, according to a recent inter-agency report compiled for the United Nations, “...restrictive conditions – including rules on origins of products and other administrative obstacles – often make these preferences difficult to take advantage of” (United Nations 2007, 30). In their simplest terms, these rules exist for the purpose of identifying the goods produced in the beneficiary country as well as ensuring that the benefits provided through the preferential regime are confined to those products originating in the beneficiary country (UNCTAD 2002, xxxi).

Although the rules remain as detailed as ever, both the EU and US schemes have been subject to modifications in favour of preference-receiving countries. For example, according to the European Commission, “the need for change is widely recognised: in form (simplification), in substance (amendment of the origin criteria and cumulation rules) and in procedures (formalities and controls). (Note 63) Hence, the relaxation of the EU regime to allow for inputs from other countries to be considered as originating in the beneficiary country, subject to certain conditions. Upon request, this arrangement extends to members of regional organizations – although the list of beneficiaries does not currently include any of Africa’s regional groupings. (Note 64) Under this arrangement, all imports under the GSP are entitled to entry based on the “bilateral cumulation of origin” principle (also known as “donor country content”) – an arrangement which allows for the incorporation of inputs from the EU itself in the manufacturing process. (Note 65)

6.4 Rules of Origin: The AGOA Regime

Beneficiaries under the AGOA must meet the broader United States GSP rules of origin initially outlined under §503(a) (2) of the Trade Act of 1974. Under the AGOA, these have been amended to allow: (a) the cost or value of materials produced in the customs territory of the United States to be counted towards the 35 percent requirement (up to a maximum amount not to exceed 15 percent of the article’s appraised value); and (b) the cost or value of the materials used that are produced in one or more AGOA-designated sub-Saharan African countries to be counted towards the 35 percent requirement. (Note 66) The AGOA also removes the so-called “competitive need limitation,” (Note 67) which aims to prevent the extension of preferential treatment to countries that are already competitive in the production of the item in question. The obvious implication of these is therefore that although the impact of complicated rules of origin on potential exports from African countries cannot be discounted, it is also the case that the major preference-giving countries have made some effort towards alleviating it.

7. Explaining Africa’s Inability to Trade

7.1 The Capacity Problem

By overemphasizing the issue of protectionism in Western markets, commentators on Africa often ignore one of the region’s defining problems: its lack of basic infrastructural and institutional capacity. To be sure, the World Bank did highlight this in a major and comprehensive report published in 1997, which noted: “Many countries in Sub-Saharan Africa are suffering from a crisis of statehood – a crisis of capability. An urgent priority is to rebuild state effectiveness through an overhaul of public institutions...” (World Bank 1997, 14). The report cited Nigeria, Tanzania, and Guinea as examples of countries where there is an inability to make budget forecasts based on sound and realistic assumptions, and where no system exists for costing out policy proposals or subjecting them to scrutiny (World Bank 1997, 83-84). The region’s lack of infrastructure was recently highlighted in another World Bank report (World Bank 2006, 36).

In a sense, it could be argued that the region’s inability to create the necessary institutions and infrastructure is a direct function of resource constraints. Yet, this would ignore the fact that in many cases, resources are either stolen by the ruling elite, or diverted into inappropriate projects, (Note 68) while public institutions are constantly undermined by what media commentators sometimes describe as “bad politics.” Or as (South African) President Mbeki’s brother is reported to have once asserted, “Africa is not badly governed because it is poor. It is poor because it is badly governed” (La Guardia, 2005). Moreover, the tendency on the part of the region’s rulers to instinctively search for supranational solutions to problems that are inherently domestic makes it impossible to assume that the capacity problem is being tackled with the degree of seriousness it deserves. One result of this obsession with supranationalism is the so-called New Partnership for African Development – one of the countless initiatives supposedly aimed at encouraging good governance in the region; (Note 69) the second is the recent proposal for a United States for Africa. (Note 70) While few would criticize any attempt at bringing about development through such coordinated efforts, fewer still would expect them to succeed without the domestic capacity to translate them into concrete results.

7.2 The Underutilization of Preferences

Closely related to Africa’s capacity problem is its inability to utilize the preferential regimes offered by developed countries. Indeed, the relationship between both might be articulated in terms of cause and effect, at least insofar as this capacity problem naturally frustrates any effort aimed at taking advantage of available preferential schemes in the same way that certain former LDCs (such as Singapore, Hong Kong and Taiwan) not only benefited from the various OECD GSP regimes, but in fact graduated from them (Ng and Yeats 1996, 16).

At any rate, a snapshot of the two main regimes reveals the extent of this underutilization: According to the latest available figures for the region’s utilization of the EU’s GSP, only Lesotho has managed to attain a rate of 67.3 percent, with the overwhelming majority only able to reach below 16 percent. (Note 71) The latest available figures for the AGOA regime are no less instructive: Quite aside from the fact that petroleum products accounted for the largest proportion of imports with a 93 percent share (itself a clear indication of a lack of policy-driven or sustainable economic activity), it is also noticeable that “[t]rade between the United States and the region is highly concentrated, with a small number of countries accounting for an overwhelming share of the total...” (US Department of Commerce 2007, 1-2).

These figures, it is necessary to note, are consistent with earlier studies. Indeed, an UNCTAD report published in 2002 suggests that the underutilization of these schemes by African countries might explain why Asian firms had relocated to such countries as Senegal, Mauritius, South Africa, Malawi, and Tanzania, to take advantage of the temporary benefits (UNCTAD 2002b, 54-55 and 199). Again, what these demonstrate is the need to abandon the “market access” mantra, if only because it constitutes a hindrance to any attempt to focus on the real causes of Africa’s marginalization from the global trading regime.

8. Conclusions

This short critique was an attempt at challenging the supposition that protectionism in Western markets and global trade rules are the twin causes of Africa’s inability to “trade its way” out of its state of economic underdevelopment. It was therefore necessary to offer a brief overview of the global trade rules, as a result of which it became evident that the rules themselves are littered with derogations and measures aimed at assisting poor countries generally. Although it was noted that protectionism is a living reality and represents an indictment of a supposed liberalized global trading order, it also became clear that the region effectively trades outside the multilateral trading regime. It was further noted that even within the context of the preferential regimes, there was a largely unacknowledged problem of gross underutilization. While one might be prepared to accept that the inordinate focus on supposed external causes is driven merely by understandable ideological concerns about the liberal economic policies promoted by Western nations (through the agency of multilateral institutions such as the WTO), there can be little doubt that an ideological conviction which ignores rational, scientific counterarguments is, by its very nature, a very dangerous one, especially if the impact is the consignment of a whole mass of long-suffering people to a life of eternal misery.

What these mean is that the “market access” thesis needs an urgent re-evaluation, for several important reasons. To begin with, its continued proclamation invariably reinforces the stereotypical image of Africa as a region (and indeed, of Africans, as a people) either predestined to depend eternally on Western altruism or inherently incapable of self-governance – the same visceral racist mindset that not only informed, but underpinned the colonization of the region. Moreover (and at a more practical level), those who seek to perpetuate this thesis have not only succeeded in deflecting critical attention from the main impediment to the region’s ability to trade, but have – quite paradoxically – become that impediment themselves. And whether this is deliberate or not is not of much relevance, given the level of human suffering that invariably flows from it.

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Notes

- Note 1. In this paper, the word "Africa" refers to sub-Saharan Africa, except as otherwise indicated.
- Note 2. These have been identified as the core elements of the International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976, G.A. Res. 2200A (XXI) UN Doc.A/6316 (1966), 993 UNTS 3, reprinted in 6 ILM 360 [hereinafter, the ICESCR].
- Note 3. E.g., Calderisi, R (2006) *The Trouble With Africa: Why Foreign Aid Isn't Working*, New Haven: Yale University Press.
- Note 4. The most influential voice in this regard is probably that of the NGO Oxfam, particularly its "Make Trade Fair" campaign, which receives the support of 13 other organizations (information available at: <http://www.oxfam.org/en/programs/campaigns/maketrade4fair> (September 10, 2007).
- Note 5. See World Trade Organization, *Legal Texts: Agreement Establishing the World Trade Organization*, at Preamble, available at: http://www.wto.org/english/docs_e/legal_e/legal_e.htm#wtoagreement (September 10, 2007).
- Note 6. See World Trade Organization, *Legal Texts: The General Agreement on Tariffs and Trade 1947* (as amended), available via: http://www.wto.org/english/docs_e/legal_e/gatt47_e.doc (August 15, 2006).
- Note 7. See WTO, *Legal Texts*, at: http://www.wto.org/english/docs_e/legal_e/legal_e.htm (August 15, 2006).
- Note 8. *ibid.*
- Note 9. See C. Mortished, "Talks to Rescue Trade Deal Fail Amid Recriminations" *The Times*, June 22, 2007, available at <http://business.timesonline.co.uk/tol/business/economics/article1969093.ece> (July 20, 2007).
- Note 10. See General Agreement on Tariffs and Trade, above, n.6, at Preamble.
- Note 11. An analysis of latest UN figures reveals that 68% of all LDCs (34 out of a total of 50) are in sub-Saharan Africa (See UNCTAD (2005), *Statistical Profiles of the Least Developed Countries*, New York: United Nations, p.5.
- Note 12. See *Agreement Establishing the WTO*, above, n.5.
- Note 13. See Uruguay Round Agreement: Decision on Measures in Favour of Least-Developed Countries, at http://www.wto.org/english/docs_e/legal_e/31-dlldc_e.htm (September 9, 2007), s.1 of which provides that "...if not already provided for in the instruments negotiated in the course of the Uruguay Round, notwithstanding their acceptance of these instruments, the least-developed countries...will only be required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs, or their administrative and institutional capabilities..."
- Note 14. See WTO, Ministerial Conference, Fourth Session, Doha, 9-14 November 2001 (WT/MIN(01)/DEC/1, 20 November 2001), Ministerial Declaration, adopted on 14 November 2001, para.32, paras.42-44, at http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm (May 15, 2003).
- Note 15. See WTO, *Integrated Framework for Trade-Related Technical Assistance to Support Least Developed Countries in their Trade-Related Activities* (Doc. WT/LDC/SWG/1F/1) of 29 June 2000, at 10. The agencies involved include the IMF, World Bank, ITC, WTO, UNCTAD, and UNDP.
- Note 16. See WTO, Integrated Framework (IF) Seminar, 'The Policy Relevance of Mainstreaming Trade into Development Strategies: Perspectives of Least-Developed Countries' (Doc.WT/LDC/SWG/IF/9/Rev.1), 29-30 January 2001. The IF was redefined at the Doha Ministerial Conference to 'mainstream' international trade policy and priorities in the overall sustainable development and poverty reduction goals of LDCs. (See WTO, *A New Strategy for WTO*

Technical Cooperation: Technical Cooperation for Capacity Building, Growth and Integration WT/COMTD/W/90, September 21, 2001, Note by the Secretariat).

Note 17. These consist of 145 provisions spread across the different Multilateral Agreements. Of these, it is further noted, 22 apply to LDC Members. See WTO Secretariat, *Note on Implementation of Special and Differential Treatment Provisions in WTO Agreements and Decisions*, Doc.WT/COMDT/W/77, of 25 October 2000, at 3.

Note 18. See WTO Trade Policy Review Body, *Overview of Developments in the International Trading Environment: Annual Report by the Director-General* (WT/TPR/OV/8), 15 November 2002, 2.

Note 19. For which, see: *WTO Assistance for Developing Countries*, available at http://www.wto.org/english/tratop_e/devel_e/teccop_e/tct_e.htm (10 June 2006).

Note 20. Morocco and Egypt, it will be noted, are not sub-Saharan African countries, while the “rebound” in the performance of the Ivory Coast and Ghana was due to increases in the global prices of gold and cocoa.

Note 21. The six countries are: Equatorial Guinea, Lesotho, Mozambique, Seychelles, Sierra Leone and Tanzania.

Note 22. Incidentally, the Chinese government is reported to have adopted the much-discredited policy of “tied aid” under which its \$5billion China-Africa Development Fund will be invested exclusively in Chinese enterprises and projects on the continent (See J. Anderlini, “China Insists on ‘Tied Aid’ in Africa,” *Financial Times*, June 25, 2007, available at: <http://www.ft.com/cms/s/908c24f2-2343-11dc-9e7e-000b5df10621.html>) (August 20, 2007).

Note 23. See, e.g., Council on Foreign Relations, “Is Chinese Investment Good for Africa”? Online Debate, February 20, 2007, available at <http://www.cfr.org/> (September 13, 2007).

Note 24. See Agreement on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, Decision of 28 November 1979, (L/4903), available at http://www.wto.org/english/docs_e/legal_e/tokyo_enabling_e.doc

Note 25. Many developed countries administer their own independent schemes. The focus on the US and EU schemes is merely a recognition of the dominance of the global trading regime by these countries. Information regarding other GSP schemes is available at: <http://www.unctad.org/Templates/Page.asp?intItemID=2309&lang=1>

Note 26. See European Union, Consolidated Versions of the treaty on European Union and of the Treaty Establishing the European Community, *Official Journal of the European Union*, C 321 E/2 EN, 29.12.2006, available at: <http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/ce321/ce32120061229en00010331.pdf>

Note 27. Its Expiry, by the end of the year 2007, follows the WTO Appellate Body’s ruling in: *European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries*, Report of the Appellate Body (WT/DS246/AB/R), 7 April 2004, declaring it discriminatory.

Note 28. See EC Regulation 980/2005, *Official Journal of the European Union*, L 169 of 30/06/2005. See also Commission of the European Communities, *Developing Countries, International Trade and Sustainable Development: The Function of the Community’s [GSP] for the Ten-year Period from 2006 to 2015*, Brussels, 7.7.2004, COM(2004) 461, at 3.

Note 29. See Art.2, Council Regulation 980/2005, *ibid*.

Note 30. See *ibid*, Art.7 (1).

Note 31. *ibid*, paras.2-4.

Note 32. See *ibid*, Art. 8 (1) and (2). This section also draws heavily on an official summary of this Regulation, available at: <http://europa.eu/scadplus/leg/en/lvb/r11020.htm> (September 10, 2007).

Note 33. See Council Regulation 980/2005, *ibid*, Art. 9(1)-(3).

Note 34. *ibid*, para.1 (a)-(e).

Note 35. See Regulation (EC) 416/2001, as subsequently incorporated into Council Regulation (EC) No 2501/2001, *Official Journal of the European Communities* L 346/1, 31/12/2001 of 10 December 2001.

Note 36. See Council Regulation 980/2005, above, n.34, Art.12 (1)-(4).

Note 37. See Europa, *Summaries of Legislation: African, Caribbean and Pacific states (ACP): Introduction*, available at: <http://europa.eu/scadplus/leg/en/lvb/r12100.htm> (September 10, 2007).

Note 38. *ibid*.

Note 39. *ibid*.

Note 40. *ibid*.

Note 41. *ibid.*

Note 42. *ibid.*

Note 43. See Agreement Amending the Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, *Official Journal of the European Union* L 209/27, 11. 8. 2005.

Note 44. See Europa, *Summaries of Legislation: Cotonou Agreement*, at <http://europa.eu/scadplus/leg/en/lvb/r12101.htm> (September 14, 2007).

Note 45. *ibid.*

Note 46. *ibid.*, though as already noted, the ACP scheme will expire in 2007 following the above decision (n.27) by the WTO Appellate Body.

Note 47. The AGOA is a constituent part of the Trade and Development Act 2000 and was signed into law on May 18, 2000. Of particular interest is Title I (Extension of Certain Benefits to Sub-Saharan Africa). The full text of the Act is available at http://www.agoa.gov/agoa_legislation/agoatext.pdf (September 10, 2007).

Note 48. See §104(a), *ibid.*

Note 49. See §104(b), *ibid.*

Note 50. Per §111(a)(1) of the 2000 Act.

Note 51. Per §112(a) and (b) of the 2000 Act, although subsection (c) imposes detailed rules on beneficiary countries aimed at preventing unlawful trans-shipments.

Note 52. *ibid.*, at 35.

Note 53. African Growth and Opportunity Act, *Summary of Amendments to AGOA*, at http://www.agoa.gov/agoa_legislation/AGOII_summary.pdf (September 20, 2007).

Note 54. *ibid.*

Note 55. See African Growth and Opportunity Act, *Summary of AGOA Acceleration Act of 2004*, at http://www.agoa.gov/agoa_legislation/agoa_legislation3.html (September 20, 2007).

Note 56. *ibid.*

Note 57. *ibid.*

Note 58. See African Growth and Opportunity Act, *Summary of Africa Investment Incentive Act of 2006*, at http://www.agoa.gov/agoa_legislation/agoa_legislation4.html (September 20, 2007).

Note 59. See Chapter III of Council Regulation 980/2005, above, n.36.

Note 60. See e.g., Art.21, *ibid.*, for the EU's Safeguard Clause.

Note 61. For a critique of which, see J.E. Stiglitz (2002), *Globalization and its Discontents*, London: Penguin.

Note 62. See: Arts.55 and 56 of the Charter of the United Nations, adopted 26 June 1945, entered into force 24 October 1945, as amended (892 UNTS 119), and Art.2(1) of the ICESCR, above, n.2.

Note 63. See Commission of the European Communities, *Developing Countries, International Trade and Sustainable development: The Function of the Community's Generalised System of Preferences (GSP) for the Ten-year Period from 2006 to 2015*, at 10.

Note 64. See Art.72, Commission Regulation (EC) No 1602/2000 of 24 July 2000 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, *Official Journal of the European Communities*, L 188, 26.7.2000, p.1.

Note 65. See Art.67(2) *ibid.*

Note 66. See §111(a) of the AGOA, n.50, above.

Note 67. See *ibid.*, paragraph (b).

Note 68. One example of this is the decision by the Nigerian government to embark on its own space project, while unable to provide its long-suffering people with basic amenities such as electricity and pipe-borne water (See "Nigeria Enters Space Age" BBC News 24, September 27, 2003, available at <http://news.bbc.co.uk/1/hi/world/africa/3141690.stm>) (October 9, 2003).

Note 69. For an excellent critique of which, see I. Taylor (2005), *NEPAD: Towards Africa's Development or Another False Start?* Boulder, CO & London: Lynne Rienner.

Note 70. For a critique of which, see: R. Richter, "For the US of Africa, Read Cloud Cuckoo Land" *The Times*, July 9, 2007, at http://www.timesonline.co.uk/tol/comment/columnists/rosemary_righter/article2045509.ece (October 2, 2007).

Note 71. Information deduced from figures supplied via email communication by M. Mortier of the Trade Department of the European Commission, for which the author is most grateful.

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