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Address: 176 Splaiul Unirii, Bucharest
Phone: 021.330.79.00, 021.330.79.11,
021.330.79.14
Fax: 021.330.87.74
E-mail: cogito.ucdc@yahoo.com

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GOOD GOVERNANCE - A SINE QUA NON TO ACHIEVING THE RIGHT TO HAPPINESS

Corina Adriana Dumitrescu*

rectorucdc@yahoo.com

*“Elite fight boredom; people fight poverty.
What a happy middle class!”¹
Ah. Schopenhauer*

Abstract: *Happiness is a concept human being was concerned with from the very beginning of its culture. Regardless such position as poets, playwrights, philosophers and even politicians, theirs was a common state of certain “anxiety”. On social plan, “solving the matter” meant “relying” the concept to good – governance. To what extent the right to happiness has been achieved is ultimately reflected by the entire development of the history of mankind.*

Keywords: *happiness, daimon, nous, doxa, virtue, episteme*

The human rights philosophical background.

The doctrine, the public debates or any kind of speech on human rights would quite often underline a formal aspect, focusing mainly on the founding, systematic documents, starting with the Bill of Man’s and Citizen’s rights, at the end of the 18-th century. Approaching the matter in a similar way is nevertheless doubtable from many points of view; the major criticism being that its acceptance would mean a denial of the very human being nature.

The man’s fundamental feature – that of being the holder of the reasoning faculty, a distinctive quality among all beings -, is the premises of his rights substance. Inside his *raison d’être*, isolated from what he belongs to, and even more overwhelmed with a solitude from the whole universe, Man, the *homo sapiens*, was the “keeper” of his own rights from his very beginnings.

Given his incredibly unique condition to cohabit - firstly with himself – and to relate to his own “daimon” to self evaluate, *homo sapiens* was bound and could define the whole “stock” of his transience through the world. His right to life, to the conscious and ultimately assumed life took

* Prof. PhD., President of “Dimitrie Cantemir” Christian University Senate, Bucharest, Romania.

¹ Schopenhauer, Arthur, *The Art of Being Happy*, Antet Publishing House, 2010.

part of that “stock”. A life owned and identified by his soul but “watched” by the intellect, the “*nous*” in the Greek philosophy², the father of science.

Man’s intellect, “the provider” of self consciousness, determines the human being to first imagine and then exercise a whole set of rights and obligations in relation to His peers and the society He belongs to.

The same intellect became “guilty” of the “fundamental leap” Man made from what the old Greeks called “*doxa*”, the primary, sense perception knowledge, to *epistemes*, the profound, absolute knowledge, which is “*real and scientific*”.³

Knowledge - the ground of the rational human being “fabric”, the scientific knowledge so suggestively described by Plato in his “*Allegory of the Cave*”⁴, has always been the high state to be reached by the individual in his way to his formation. The compulsory process of individual evolution is the way on which the human being, thoroughly watching his own performance of his personal spirit, “opens” towards the divinity that brought him into life. There, in that “meeting point” of the created spirit which relatively belongs to the individual, and the Creative Spirit, the first comes to be somehow aware of his own nobleness and superiority. And a high and noble, elevated spirit is the one which, among others, assumes an appropriate destiny, a fate in the world, involving firstly a set of obligations and rights, accordingly. There should be a right reference to that assumed fate when searching the reason for the Man into the World, and one should consider that human type, whenever it is agreed that the philosophical grounds of his rights are solidly connected to his obligations.

It was the intelligent Man, entitled for the so called “*nous*”, the home of his wit of which Plato stated it might be “doubled” by a cosmic “*nous*”, related to a so called individual, ultimately imagined in the Gods’ vicinity.

The Olympian model which could be here referred to, excelled in generating happiness wellness. The model inspired all those who represented the western culture, poets, dramatists, sculptors, philosophers and lawgivers. With centuries, a whole culture of a fulfilled life arose, altogether with a transformation of the Man- being approach. If, at the beginning, the Man- being was considered in a simple, almost strange way, the same Man-being became later the “possessor” of a whole series of sciences dedicated to Him, with a special mention to “Metaphysics”.⁵

² Aristotle considers *nous* to be the most elevated side of a person, the being itself, in *Nicomachean Ethics*, Bucharest, The Scientific and Encyclopedic Publishing House, 1983.

³ Plato, *The Dialogues*, Bucharest, The Scientific and Encyclopedic Publishing House,

⁴ *Ibidem*: Plato distinguishes between *doxa* and *episteme* in the Dialogue *The Republic*, Book VII, The Allegory of the Cave.

⁵ Aristotle was the first philosopher from the cultural history who made a classification of sciences – before all sciences was philosophy, the supreme science of “the

The several-century long evolution with regard to the analysis, evaluation, oneness, but also solitude of the human being was the occasion to continuously add new qualities and aspirations meant to draw Man ever nearer to divinity, which, during the pre-Christian epoch was more perceived as a unique certainty in the universe, and less as an unreachable entity. The constant humanization of the Olympian Gods and of their lives influenced, nevertheless, what was to become later the philosophy of the human rights. Hence, Athens' wisdom became slowly but certainly the first virtue, while the means to reach it through learning and education became, slowly but certainly, the "garment" of Man's first rights.

The humanized wise individual, the Man endowed with Gods' genuine quality, became both the "given" and the "bidden" human ideal of all individuals, first in the Hellenic and later in the Roman culture.

The wise man has always been first "offered" a set of fundamental rights which, once he "lived" with them, drew him nearer from the similar actual existence of the Olympus lodgers.

Could the western culture be "briefly forced" in several centuries, from Homer to Aristotle, and later to Cicero, and to the stoic philosophers, it would be manifest that it "transferred" models and qualities from the Gods to the individuals, while sometimes, the transfer went the other way round, from the humans to the field of the divine.

"The trip", a boundless "trip" of Man inside and outside himself, seem to be only of a mechanical nature at a superficial inspection, but it actually is the "trip" of a vivid, sensitive, intelligent, complex and complicated being, the "possessor" of a "conflict" between the heart and the reason, meant to come to fulfillment in the end.

Pythagoras was among the first, and even the first in the western philosophy who cleared up the "fundamental disquiet" inside the human being, by "opposing" HARMONY, the state of concord. He postulated:

"What means happiness? It means to be in harmony with yourself.

An attuned lute is harmonious; a well-set soul is happy"⁶.

The solution, at the individual scale of the fulfilled human destiny was given by harmony, a synonym of happiness, in Pythagoras' view.

At the social scale of the fulfilled human destiny, the solution was identified in the following assumption of the same brilliant philosopher:

"If you are asked: <Which of all harmonies is the perfect one?>

Say: <The harmony of law!>"⁷.

first motor", hence the term of "metaphysics", which was created by Andronicus, the philosopher who published a new edition of Aristotle's books.

⁶ Pythagoras, *On Justice and Law*, Antet XX Press Publishing House, Filipeștii de Târg, Prahova, 2000, p. 18.

⁷ *Ibidem*, p. 18.

The correlation between good-governance and the right to happiness

No doubt, there is a relation of causality between the good-governance and the right to happiness. The latter has always been- and still is- the richest of all human rights in its meanings and contents, and at the same time, is the field with a very precious literature; there is not practically any creation of the human spirit not to have ever been concerned with the substance of that right which is the state of happiness.

Antiquity liked to state that in a “golden epoch” of humanity, in its “golden age”, there were - or better said - there coexisted both virtue and happiness. There obviously was a supreme characterization, an identification of happiness with the most brilliant and precious metal of that time, meant to underline its oneness in the social environment.

Plato, a more practice-oriented and more profound philosopher than Pythagoras, “placed” happiness at the hand of the philosopher, to the one loving wisdom, to the virtuous one, and it became clear that only a virtuous existence could “meet” happiness.

“The message” in his “Republic”⁸, the book of a state lead by wise people, is that such leaders, happy leaders themselves, could generate the good-governance, and could determine the supreme good, which gives happiness to the common people, too.

“The reign of law” also stated by Plato in his work “The Laws”⁹ indicates the rule of justice at the basis of the state, as it became itself a ground of the political organization of society on behalf of which and by means of which the right to happiness was to be accomplished.

In his turn, and in his “Politics”¹⁰, Aristotle underlined good-governance and education, by asking the citadel rulers to provide happiness to the common people. In this masterpiece, Aristotle, the man of Stagira, stated that the oligarchy dominated by the rich showed their limits, that democracies in which the poor ruled were agonizing and that a mixed system would be the best way, as a result of the two, in which power should belong to the middle class. The latter, as an extremely important sociological category, was thus pointed out with five hundred years B.C; it was a social class that was focused on labour, education, patriotism, wishing a social existence based on authentic values; Aristotle wrote about such a social progress generator middle class and it “devoted” it adequate technologies for its members to have the consciousness of as moral and educated existence.

⁸ Plato, *op.cit.*

⁹ Plato, *The Laws*, IRI Publishing House, Bucharest, 1995.

¹⁰ Aristotle, *Politics*, Bucharest, Paideia Publishing House, 2001.

Related to this middle class, 24 centuries later, Schopenhauer, another great philosopher, expressed his belief in happiness, even if a relative one, at its level; happiness means neither wealth nor poverty, it rather means – in the illustrious German philosopher’s “Art of Being Happy”¹¹– the position in a middle class which simply allows the access to culture, to learning, to information, that is to education through which someone can become a wise individual in the end. The spirit needs to be cultivated in a first, critical stage, on the way of Man’s formation, on the way to a happy fulfillment.

His 50 rules in his book seem to provide, altogether, a possible “recipe” to a happy life, and even if the full of self- pride author stated that it was the first book to give the “technology of happiness”, the doctrine of happiness contradicts him; later on he contradicts himself in the book, when a lot of rules he reproduces from other authors are part of the “recipe” for a happy life, a relatively original one to the end.

The frequent references to Plato, Aristotle, Seneca, Diogenes, Horace, Goethe and Kant only underline the “rules” which need to be observed to accomplish happiness.

The concept, as such, is, in its turn, taken from the ancient philosophy but, at the same time, it became relativist with Schopenhauer, being divided into a stoic and a Machiavellian one; the subsequent more details about the man who wishes to be happy need behavioral own rules as well as rules to the others, totally separated rules, which should almost not at all diminish the quite strange approach of the concept of happiness and of the ways to achieve it.

Among the fifty rules composing the “art of being happy”, no one was expressed for the first time, and their order may be also liable to criticism. Praiseworthy yet, is “restoring the matter” into the public debate, at the beginning of the 19-th century. The world used to “nourished” itself spiritually from the Enlightenment, and Schopenhauer might have wanted to underline that the final goal of the Epoch of the Lights should be regaining the Golden Age, a time when the world was happy.

In his turn, Cicero in his huge work “On the Supreme Good and the Supreme Evil”, stated:” ...the supreme aim of philosophy is the happy life, and there were many that dealt with philosophy for only that...”¹² The remarkable man of law and philosopher places in his work all the necessary data for a good governance to encourage accomplishing the right to happiness.

¹¹ Schopenhauer, Arthur, *op.cit.*

¹² Cicero, *On the Ends of Good and Evil*, Paideia Publishing House, 2001, p. 18.

Cicero used to state: “The public good is the supreme law”, thus wishing to determine the Roman Empire rulers to be first concerned with setting up a system of laws to ensure the achievement of the social good; in its centre, the happiness of the common people had to be achieved. Cicero was also a model for his citizens regarding his intellectual completion, able to assimilate the whole eastern and western culture in the patrimony of humanity of the epoch he lived in. He practically succeeded to clear up and thus to “present” it to the Romans, whose glory, up to him, referred more to an outstanding organization, administration and military force; the Roman culture practically begins with Cicero, the founder of both stoicism and Roman philosophy vocabulary.

A perfect, peerless orator to date, about whom Cornelius Severus wrote in his poem that “Latin eloquence sadly paused” when he passed away, a senator, a state man and a state philosopher, Cicero wrote a work on state rule entitled “De Re Publica”, in other words “On the State”. Of course, the analogy with Plato’s work can be valid up to a point; both genius of the world culture lay virtue at the good-governance ground. Moreover, with both Plato and Cicero, good governance should consider LAW as a fundamental right, the supreme, non opposable law.

An outstanding jurist, Cicero proclaims equality in front of law as a basic principle of the good governance in the sense that regardless the social position, law is the same for all. The Roman senator’s quotation from “The State”¹³ stays as vivid as can be to date, ever so long: “As the steersman’s mission is to voyage on the sea in best conditions, the physician’s is to save the sick, and the commander’s is to reach the victory, the same the state ruler’ mission is to make his citizens’ life happy, to consolidate it politically, to enrich it with goods, grandiose through glory, honest through virtue; I’d like him to accomplish that work, the best and the most brilliant in the entire world”¹⁴.

Saint Thomas Aquinas, an advocate of Aristotle, was in a considerable way concerned with the concept of happiness, with its accomplishment in close relation with the good governance. Thus, it goes without saying, that is the expected reward of the virtue, meaning that man must be happy. If virtue works to do good, the king’s role is to rule well over his subjects, and then his reward is what makes him happy”¹⁵. In that work, St. Thomas explains the concept of “ultimate happiness” of the believer, which he gets in the other world, as a reward for his virtuous destiny in our world, and that is how the Christian is double motivated to live a life in full purity and in virtue.

¹³ Idem, *On the State*, Paideia Publishing House, 2001

¹⁴ Idem, *On the Ends of Good and Evil*, *op.cit.*, p. 18.

¹⁵ Thomas Aquinas, *On Government*, Polirom Publishing House, Iași, 2005, p. 59.

The philosophical, and at the same time, political doctrine which was ever centrally concerned with the concepts of happiness and good-governance consented to at least two theses: the existence of an indestructible connection between realities generated by the two concepts, and the actual state, the perennial verses of Pythagoras's "Sacred Hymns"¹⁶.

"Do not perform anything that you don't know; but learn
Everything you ought to know and your life will be happy".

Placing the right to happiness with the human rights

Even if in general the authors concerned with the human rights list the "Right to life" first among all rights, they agree on the need of reconsidering its wording.

Life as a supreme value of our existence, transcends the human being; it does not embrace a commune existence to protect that God-given "gift". The Man, a created-being, "in His likeness", made of the earth in which He will return, cannot claim the attribute of his conceiving as being His by origin.

Ontogenesis, specific to anyone, implies the full evolution of Man, along his way through this world. From time to time, the vivid being lives a telluric destiny, even though permanently relied to divinity. During that "sequence" of his existence, it makes associations, by forming political communities called states. The determinations which influenced the human being towards these forms of social existence are multisided, and among them there also are those related to the two major feelings: fear and hope.

The fear of nature and of its completely vague secrets, the fear of self and of other people convinced the Man to live in community, on grounds of several rules.

The hope that "fears" will disappear, or at least, the source that generated them will decrease in intensity, and it will find a more sure, more serene life, and his goods will be protected, and his rights will be guaranteed, represented the second subjective issue that "convinced" the man to become a social being.

Socializing the human being is a long-lasting process, a non-linear one, often marked by dramatic discontinuity.

And yet, regardless of so many obstacles of a subjective and an objective nature, socializing the human being ultimately wins, close to the humanization of the same human-being.

¹⁶ Pythagoras, *The Sacred Hymns*, Herald Publishing House, Bucharest, 2006.

Inside this extraordinary process, the human being becomes aware of his “gift” and he works ever more cleverly, to his “formation”. More concretely, He wishes, and more often He achieves to put into an outstanding value the qualities He was “endowed” with life, reasoning, the whole superiority of the species he belongs to. Maximizing the values that identify him also involves the right to happiness, that should be reformulated in the doctrine.

Life, as already stated above, is God’s gift to the human being; it is that extraordinary “something” that the human being “masters” and “shares” only with His Creator. At an external level, the same human being or human beings, all “gifted” with life, would meet and would “protect” by their own forces, that “gift”. They firstly create a “Happy living” to their life, and then they build the social warranty of keeping a “happy life” by achieving good governance.

Then, there is the “supreme gift” which belongs to each individual and to everybody called LIFE, around which we, people, thought to build a kind of “protective circle” made of all the human rights, which, ultimately, analyzed individually, contribute to achieving the right to a happy life.

This is what Bertrand Russel stated in his book “The Conquest of Happiness “It is in such a profound, instinctive union with the flux of life that there resides Man’s supreme happiness.”¹⁷

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WHY FINLAND IS THE HAPPIEST COUNTRY IN THE WORLD?

Marja-Liisa Tenhunen*

marja-liisa.tenhunen@anvianet.fi

Abstract: *The United Nations is responsible for country-specific reporting of happiness. The first evaluation was carried out in 2012, and afterwards they were published annually. Happiness Report 2019 is the eighth World Happiness Report. The World Happiness Report tends to use six factors as predictors of life evaluation: GDP per capita, Social support, Healthy life expectancy, Freedom to make life choices, Generosity, and Corruption. According to the 2019 Happiness Report, Finland is the happiest country in the world, with Denmark, Norway, Iceland, and the Netherlands holding the next top positions. What exactly makes the Nordic citizens so exceptionally satisfied with their lives? Through reviewing the existing studies, theories, and data behind the World Happiness Report, the authors find that the most prominent explanations include factors related to the quality of institutions, such as reliable and extensive welfare benefits, low corruption, and well-functioning democracy and state institutions.*

Keywords: *happiness, United Nations, Nordic countries*

What is happiness?

Happiness has become a surface theme of the scientific and social statistics debate in recent years. In economics, there are launched other values, such as happiness, which reveals other values instead of dividend requirements. The idea is that people and nations seek to maximise their happiness. The economists' attention has been drawn to the fact that the increase in income does not explain the amount of happiness measured in the surveys.

At the moment, the economic crisis and COVID-19 have prevailed over the concept of happiness. In solving the recovery from the crisis and the employment problems, the role of happiness is, to the very least, secondary. However, it is appraisable that social policy has elements to define the happiness objectives beyond traditional economic terms. At the same time, however, there are major measurement problems. The concept of happiness is a typical example of how difficult it is to measure issues related to subjective well-being. The state of happiness can vary: it can be social, emotional or even physical, its persistence being limited, and different for everyone.

* Vice President of the Senate, "Dimitrie Cantemir" Christian University.

The Finnish professor Markku Ojanen¹ describes individual happiness as a very holistic space, with other emotions: joy, satisfaction, love, gratitude and hope. Equally, people seek meaning, inner peace, security, love and self-worth in their life. The objective existence of happiness is also rather vague. The value of happiness is not permanent. What is happiness today can be downright repulsive tomorrow. Or the other way around: it is only afterwards that we realize how happy we were once. Would human happiness be the result of bad memory? Happiness cannot be borrowed. Thus, happiness differs from the management of financial resources. Economic benefits bring friends, success and influence, in other words personal benefits and multiplier effects. For instance, the causal relationship of happiness with economic activities is very complex.

Individual happiness by authors Richard M. Ryan and Edward L. Deci

Happiness has been studied quite a lot recently. American researchers Richard M. Ryan and Edward L. Deci² considered happiness as part of their broader research, especially from an individual psychological point of view. Self-determination theory is a theory of human motivation, well-being and basic psychological needs, created by Ryan and Deci. The core of the theory is the idea of a person as an active player who strives to implement himself/herself and the goals of his/her own choice. The theory is built around the dichotomy of internal and external motivation.

According to the theory of self-direction, i.e. self-determination, a person has three basic psychological needs of outstanding importance for optimal development and well-being. They are therefore essential prerequisites for well-being, and studies show that together they explain much of persons' satisfaction and positive feelings, including happiness. The three basic needs of the theory are as follows: 1. Voluntarism, meaning that everybody is free to decide his/her own actions and their motivation, with no external sanctions. 2. Prowess. This means a person's ability able to do his or her job copes with his challenges, and makes things happen and 3. Communality, referring to a person's fundamental need to communicate with other people. People care about each other and they want to do that.

Happiness at country-level

The happiness of a country is not a foregone conclusion nor is it a matter of self-evidence that an individual is happy in his own country.

¹ Ojanen, Markku, *Positiivinen psykologia*. Edita. Helsinki. Finland, 2014.

² Ryan, Richard M. and Deci Edward L., *On Happiness and Human Potentials*.

A Review of Research on Hedonic and Eudaimonic Well-Being. *Annual Reviews. Psychol.* 2001. 52: 141–66. Department of Clinical and Social Sciences in Psychology, University of Rochester, Rochester, NY 14627; e-mail: ryan@psych.rochester.edu, deci@psych.rochester.edu.

Therefore, a comparison of happiness between countries has been undertaken. The United Nations is responsible for country-specific reporting of happiness. Since 2012 there have been published annual evaluations. World Happiness Report 2019 (WHR)³ is the eighth World Happiness Report. WHR tends to use six factors as predictors of life evaluation: GDP per capita, Social support, Healthy life expectancy, Freedom to make life choices, Generosity, and Corruption.

According to the 2019 World Happiness Report, Finland is the happiest country in the world, with Denmark, Norway, Iceland, and The Netherlands holding the next top positions. The World Happiness Report ranked 156 countries by their happiness level, and 117 countries by the happiness of their immigrants. The result of the survey is as follows in the table below.

Table 1: The World Happiest Countries in 2019⁴

Overall rank	Country	Score	GDP per capita	Social support	Healthy life expectancy	Freedom to make life choices	Generosity	Perceptions of corruption
1	Finland	7.769	1.340	1.587	0.986	0.596	0.153	0.393
2	Denmark	7.600	1.383	1.573	0.996	0.592	0.252	0.410
3	Norway	7.554	1.488	1.582	1.028	0.603	0.271	0.341
4	Iceland	7.494	1.380	1.624	1.026	0.591	0.354	0.118
5	Netherlands	7.488	1.396	1.522	0.999	0.557	0.322	0.298
6	Switzerland	7.480	1.452	1.526	1.052	0.572	0.263	0.343
7	Sweden	7.343	1.387	1.487	1.009	0.574	0.267	0.373
8	New Zealand	7.307	1.303	1.557	1.026	0.585	0.330	0.380
9	Canada	7.278	1.365	1.505	1.039	0.584	0.285	0.308
10	Austria	7.246	1.376	1.475	1.016	0.532	0.244	0.226
11	Australia	7.228	1.372	1.548	1.036	0.557	0.332	0.290
12	Costa Rica	7.167	1.034	1.441	0.963	0.558	0.144	0.093
13	Israel	7.139	1.276	1.455	1.029	0.371	0.261	0.082
14	Luxemburg	7.090	1.609	1.479	1.012	0.526	0.194	0.316
15	United Kingdom	7.054	1.333	1.538	0.996	0.450	0.348	0.278
16	Ireland	7.021	1.499	1.553	0.999	0.516	0.298	0.310
17	Germany	6.985	1.373	1.454	0.987	0.495	0.261	0.265
18	Belgium	6.923	1.356	1.504	0.986	0.473	0.160	0.210
19	United States	6.892	1.433	1.457	0.874	0.454	0.280	0.128
20	Czech Republic	6.852	1.269	1.487	0.920	0.457	0.046	0.036
48	Romania	6.070	1.162	1.232	0.825	0.462	0.083	0.005

³ United Nations, *World Happiness report 2020*, Editors: John F. Helliwell, Richard Layard, Jeffrey D. Sachs, and Jan-Emmanuel De Neve. Associate Editors: Lara B. Akinin, Haifang Huang, and Shun Wang. The World Happiness Report was written by a group of independent experts acting in their personal capacities. United Nations. New York. USA. March 20th, 2020.

⁴ United Nations (2020): *World Happiness report 2020*, Editors: John F. Helliwell, Richard Layard, Jeffrey D. Sachs, and Jan-Emmanuel De Neve Associate. Associate Editors: Lara B. Akinin, Haifang Huang, and Shun Wang. The World Happiness Report was written by a group of independent experts acting in their personal capacities. United Nations. New York. USA. March 20th, 2020.

The survey and the method

In line with the methodology of the *World Happiness Reports*, the main outcome is the current *life evaluation*, obtained from the so-called *Cantril ladder*, a survey asking respondents to imagine themselves on a ten steps ladder, where zero represents the worst possible and ten the best possible life. While life evaluation is the primary measure of subjective well-being, researchers also take into account well-being measures of how people experience their lives on a day-to-day basis. The rankings of national happiness are based on a Cantril ladder survey.

The Cantril Ladder, also known as Cantril's Self-Anchoring Ladder of Life Satisfaction, or the Cantril Ladder of Life, measures life satisfaction by first asking the respondents to imagine their life in the best possible light and to describe their hopes and wishes for the future. Nationally representative samples of respondents are asked to think of a ladder, with the best possible life for them being a 10, and the worst possible life being a 0. They are then asked to rate their own current lives on that 0 to 10 scale. The report correlates the results with various life factors.

World Happiness Report includes several reports: 1. Environments for happiness; 2. Social Environments for World Happiness; 3. Cities and Happiness: A global Ranking and Analysis; 3. Urban-Rural Happiness Differentials Across the World; 4. How Environmental Quality Affects Our Happiness; 5. Sustainable Development and Human Well-being and 6. The Nordic Exceptionalism: What Explains Why the Nordic countries are Constantly Among the Happiest in the world.

In addition to ranking countries happiness and well-being levels, each report has contributing authors and most focus on a subject. The data used to rank countries in each report is drawn from the Gallup World Poll, as well as other sources such as the World Values Survey, in some of the reports.

The Gallup World Poll questionnaire measures 14 areas within its core questions: (1) business & economic, (2) citizen engagement, (3) communications & technology, (4) diversity (social issues), (5) education & families, (6) emotions (well-being), (7) environment & energy, (8) food & shelter, (9) government and politics, (10) law & order (safety), (11) health, (12) religion & ethics, (13) transportation, and (14) work.

In the reports, experts in fields including economics, psychology, survey analysis and national statistics, describe how measurements of well-being can be used effectively to assess the progress of nations and other topics. Each report is organized by chapters that delve deeper into issues relating to happiness, including mental illness, the objective happiness benefits, the ethics importance, policy implications and links with the Organization for Economic Co-operation and Development's

(OECD) approach to measuring subjective well-being and other international and national efforts.

Some argue that questioning on overall life status leads humans to overweight income concerns, rather than happiness. For instance Colombia came 37th in the 2018 World Happiness Index but 1st by daily emotional experience. In 2012 "A Gallup survey on happiest countries had a completely different list with Panama first, followed by Paraguay, El Salvador, and Venezuela". Others point out that the ranking results are counter intuitive when it comes to some dimensions, for "instance if rate of suicide is used as a metric for measuring unhappiness, (the opposite of happiness), then some of the countries which are ranked among the top 20 happiest countries in the world will also feature among the top 20 with the highest suicide rates in the world."

The Five Nordic Countries⁵

Ever since 2013, the World Happiness Report has published its annual ranking of countries, the five Nordic countries – Finland, Denmark, Norway, Sweden, and Iceland – have all been in the top ten, with Nordic countries occupying the top three spots in 2017, 2018, and 2019. Clearly, when it comes to the level of average life evaluations, the Nordic states are doing something right, but Nordic exceptionalism is not confined to citizen's happiness. No matter whether authors assess the state of democracy and political rights, lack of corruption, trust between citizens, felt safety, social cohesion, gender equality, equal distribution of incomes, Human Development Index, or many other global comparisons, one tends to find the Nordic countries in the global top spots.

What exactly makes Nordic citizens so exceptionally satisfied with their lives? Through reviewing the existing studies, theories, and data behind the World Happiness Report, the authors find that the most prominent explanations include factors related to the quality of institutions, such as reliable and extensive welfare benefits, low corruption, and well-functioning democracy and state institutions. Furthermore, Nordic citizens experience a high sense of autonomy and freedom playing an important role in determining life satisfaction as well as high levels of social trust towards each other. On the other hand, authors show that a few popular explanations for Nordic happiness such as the small population and homogeneity of the

⁵ United Nations, *World Happiness report 2020: The Nordic Exceptionalism: What Explains Why the Nordic countries are Constantly Among the Happiest in the world*. Editors: John F. Helliwell, Richard Layard, Jeffrey D. Sachs, and Jan-Emmanuel De Neve Associate. Associate Editors: Lara B. Aknin, Haifang Huang, and Shun Wang. The World Happiness Report was written by a group of independent experts acting in their personal capacities. United Nations. New York. USA. March 20th, 2020.

Nordic countries, and a few counter arguments against Nordic happiness such as the cold weather and the suicide rates, actually don't seem to have much to do with Nordic happiness.

Most of the potential explanatory factors for Nordic happiness are highly correlated with each other and often also mutually reinforcing, making it hard to disentangle cause from effect. Therefore, focusing on just a single explanation may result in distorted interpretations. For example, does the trust in institutions and other citizens create a fertile ground for building a welfare state model with extensive social benefits? Or does the welfare state model contribute to low crime and corruption, which leads citizens to trust each other more? Most likely, both directions of influence play a role, leading to a self-reinforcing feedback loop that produces high levels of trust in the Nordic region, and a high-functioning state and society model. The authors seek insight on this by taking a brief look at the history of the Nordic countries, which helps us to identify some practical takeaways about what other countries could learn from the Nordic region to ignite a positive feedback loop and enhance the happiness of their citizens.

To examine this issue, authors take a look at the Gallup World Poll data as regards these factors. Given that the Nordic countries are all relatively rich (Nordic countries occupy a range from 6 (Norway) to 21 (Finland) in the 149-country ranking of GDP per capita), the authors were especially interested what factors beyond GDP per capita make the Nordic countries stand out. In this respect, they compared the ten richest non-Nordic countries – Luxembourg, Singapore, United Arab Emirates, Kuwait, Ireland, Switzerland, Hong Kong, United States, and the Netherlands – with the five Nordic countries as regards the six predictors. This allows to consider how the Nordic countries are able to produce more happiness than countries that have higher GDP.

The Nordic countries are characterized by a virtuous cycle in which various key institutional and cultural indicators of good society feed into each other including well-functioning democracy, generous and effective social welfare benefits, low levels of crime and corruption, and satisfied citizens who feel free and trust each other and governmental institutions. A quick glance at the other countries regularly found at the top of international comparisons of life satisfaction – Switzerland, the Netherlands, New Zealand, Canada, and Australia – reveals that they also have most of the same elements in place. Thus, there seems to be no secret ingredient specific to Nordic happiness that is unavailable to others. There is rather a more general recipe for creating highly satisfied citizens: Ensure that state institutions are of high quality, non-corrupt, able to deliver what they promise, and generous in taking care of citizens in various adversities.

There is a granted gap between knowing what a happiness-producing society looks like and transforming a certain society to follow that model. Low-trust societies easily get trapped into a vicious cycle where low levels of trust in corrupt institutions lead to low willingness to pay taxes and low support for reforms that would allow the state to take better care of its citizens. Thus, there is no easy path from the vicious cycle into a virtuous cycle. However, we shall give a few ideas for constructing what we see as helpful pathways.

Firstly, the quality of institutions plays a key role in ensuring citizen happiness. Thus, minimizing corruption and maximizing citizen participation and representation in various decisions can help to ensure that institutions serve citizens and maintain their trust. Democratic quality and factors such as freedom of the speech, informed and educated citizens, and strong civic society play an important role in keeping the government accountable and citizen-oriented.

On a cultural level, arguably the most important factor is to generate a sense of community, trust, and social cohesion among citizens. A divided society has a hard time providing the kind of public goods that would universally support each citizen's ability to live a happier life. In a divided society, people also tend to be less supportive of various welfare benefits because worry they would benefit the "other" groups, as well. When people care about each other and trust each other, this provides a much more stable base on which to build public support for various public goods and welfare benefit programs. Here is the connection with the theory of Ryan and Deci.

When people care about each other and trust each other, this provides a much more stable base on which to build public support for various public goods and welfare benefit programs. Here is the connection with the theory of Ryan and Deci.⁶

Thus, institutionally, building a government that is trustworthy and functions well, and culturally, building a sense of community and unity among the citizens are the most crucial steps towards a society where people are happy. While the Nordic countries took their own particular paths to their current welfare state model, each country must follow its own path. If citizen well-being and happiness are truly the goals of government, then taking seriously research on institutional and cultural

⁶ Ryan, Richard M. and Deci Edward L. (2001), *On Happiness and Human Potentials*. A Review of Research on Hedonic and Eudaimonic Well-Being. Annual Reviews. Psychol. 2001. 52: 141–66. Department of Clinical and Social Sciences in Psychology, University of Rochester, Rochester, NY 14627; e-mail: ryan@psych.rochester.edu, deci@psych.rochester.edu.

determinants of citizen happiness is the first step in starting an evidence-based journey towards fulfilling that goal.

Why Finland is the happiest country?

Finland has good governance, equality, excellent educational attainment and very little corruption on a global scale. Finns trust each other. Although trust does not arise by itself and in an instant, according to professor Ojasen's studies, the confidence of the Finns is at a higher level than in other countries. "It is extraordinary that we trust each other perhaps more than any other people in the world. It is even astonishing where this mutual trust comes from. We even trust strangers."⁷ My happiness also develops other people's happiness. Even if a person is happy with his own life, the happiness and life situation of fellow lives should not be forgotten.

During the Covid-19 pandemic, it has been stressed that it is the task of all Finns to take care of general well-being. This is not just a matter for those who are doing well. People must always remember that shared happiness is a task for all of all. As people promote their own happiness, they also develop common happiness. Finns have a mythical image of themselves. Although the results are at the forefront of positivity, Finns may easily raise the flip sides of happiness. Finns may describe themselves as a melancholic, jealous and self-esteeming people. Apparently, the Finnish image of themselves is a bit mythical. However, happy and satisfied people should also trust themselves. It is hoped that the results of happiness will affect Finland's attractiveness, for example, in order to attract migrants from work-related immigrants to Finland and thus to improve the development of the economy. Happiness consists of small things, but the solutions and services provided by the state are of great importance to the happiness of the people of the country.⁸

These are probably also arguments for Finnish happiness. To solve reverse issues as a North, you can turn on a bright light bulb in the darkness, and the cold is powered by layering, with rubber boots that help. With these arguments, Finland attracts top experts in the global labour market to enter Finland.

In the Finnish language is the term "sisu". Finnish people have sisu. Sisu is a term which dates back hundreds of years and is described as being integral to understanding Finnish culture. It is a term for going beyond one's mental or physical capacity, and is a central part of the country's culture and collective discourse. However, hardly any empirical research

⁷ Ojanen, Markku, *Positiivinen psykologia*. Edita. Helsinki. Finland, 2014.

⁸ Ubaud, Anu, *Huippusaaja, tässä suomalainen unelma*. Helsingin Sanomat, September 13th, 2020, pp. A5. www.hesa.fi.

has been done to explore the meaning of this construct as a possible psychological strength resource, and it has long seemed to have a somewhat elusive nature. It has been usually studied as a cultural component among Finns.

The American dream is known to the whole world, but Finns may not know the Finnish dream themselves. Finns have many obvious things that are considered miraculous internationally. These include safe and peaceful cities and the fact that children go to school and hobbies themselves. Equality, nature, high-level public primary school, day care system, family leave system, on the basis of which there is no need to make a choice between a career and a family, a work culture in which the office starts in time after an efficient day rather than sitting at the office for round-round days. These are trump cards in global competition.

Methodology and Criticism

From an econometric perspective, some statisticians argue the statistical methodology mentioned in the first world happiness report using nine domains is unreliable. Others argue that the World Happiness Report model uses a limited subset of indicators used by other models and does not use an Index function like peer econometric models such as Gross National Well-being Index 2005⁹, Sustainable Society Index of 2008¹⁰, OECD Better Life Index of 2011¹¹, and Bhutan Gross National Happiness Index of 2012¹², and Social Progress Index of 2013¹³. Other critics point out that Happiness Surveys are contradictory in Ranking because of the varying methodologies. They also argue that the surveys are inherently flawed. "No matter how carefully parsed the data may be, a survey based on unreliable answers is not worth a lot."

Connection between happiness and innovations

As globalization fosters interconnectivity and interdependence, a nation's welfare is influenced and shaped by events outside its boundaries. As other regions in the world increase their investment in research and development, innovative and talented individuals are lured to places where their talent is recognized, appreciated, and deployed. Those societies which lag behind other nations in attracting talent and cultivating innovation not only endanger their own national security but also the state

⁹ Gross National Well-being. https://en.wikipedia.org/wiki/Gross_National_Well-being/

¹⁰ Sustainable Society Index – your compass to sustainability/www.ssfindex.com

¹¹ www.oecdbetterlifeindex.org

¹² <https://ophi.org.uk/policy/national-policy/gross-national-happiness-index/>

¹³ <https://www.socialprogress.org>

of societal optimism and economic progress. This makes it imperative that innovation should not be treated as a mere technological issue but as a social and economic factor that is characteristically linked to the welfare of the people and to that of generations to come.

International Day of Happiness aims to focus attention on the importance of happiness and well-being at the heart of international development and goal-oriented societies. Individual countries have already made happiness an attribute of state well-being, for example, when, in the 1970s, the Bhutan State brought past it a more traditional GDP-centred assessment base.

When designing the Sustainable Development Goals, it was also estimated that, from the point of view of economic, social and environmentally-oriented well-being, development should be approached from a new angle of entry. As people and nations help each other, striving for sustainable economic growth and involving all people and peoples in this work, prosperity can grow and remain the main goal. On The Day of Happiness, the United Nations invites Member States, international and national organisations, as well as all people as individuals, to celebrate happiness on 20 November.

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A Review of Research on Hedonic and Eudaimonic Well-Being. Annual Reviews. Psychol. 2001. 52: 141–66 .Department of Clinical and Social Sciences in Psychology, University of Rochester, Rochester, NY 14627; e-mail: ryan@psych.rochester.edu, deci@psych.rochester.edu

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THE CONCEPT OF HAPPINESS – INDIVIDUAL RIGHT OR DIVINE GIFT¹

Alexandru Gabriel Negoită*

alexgabrielnegoita@yahoo.com

Abstract: *In this research, I will try to outline a definition of the concept of Happiness by answering a few questions that have been the subject of research by philosophers, theologians and jurists. Can happiness be considered a civil freedom or a subjective right? Is the right to happiness one and the same as the right to the pursuit of happiness? Can we reduce Happiness to material aspects or do we have to transcend them?*

I will also try to show that happiness should not be understood in a restrictive way as updating a virtue, even if that virtue might be considered the most important of all other virtues. Happiness should not be equated in an exclusive manner with the activity of contemplation or reduced to a legal concept.

Keywords: *Happiness, individual law, freedom, eternal life.*

Happiness as already due condition and reward

It is not possible to state with complete conviction what happiness is, although there are several definitions. And the concept of "right" has had several explanations over the ages, none complete and satisfactory. As familiar and cultivated in the works of political philosophy, the idea of happiness remains an enigma.² Despite this, there is currently a current of opinion that calls for "happiness" to become an objective of government political agendas.³ The adoption of public policies should take into account the happiness index and as we know, public policies usually materialise through laws. That's how we get to the relationship between happiness and law.

¹ **This text was presented at the International Conference *The European Human Rights – the Right to Happiness*, 7th Edition, Bucharest, 12-14 December 2019.**

* **PhD. Student, Political Sciences Faculty, Bucharest University.**

² John C. Ford, *The Natural Law and the Right to Pursue Happiness*, Natural Law Institute Proceedings, nr. 4/1951, pag. 104.

³ Kurt Bayertz and Thomas Gutmann, *Happiness and Law*, Ratio Juris, No. 2/2012, pp. 236. A British economist, Richard Layard, calls for "a revolution in government. Happiness should become the goals of our policies" (Richard Layard – *Happiness. Lessons from a New Science*, ed. Penguin, London, 2005, p. 145, apud Kurt Bayertz and Thomas Gutmann, *op.cit.*, p. 236).

According to the Explanatory Dictionary of the Romanian Language,⁴ happiness is defined as the state of full soul, intense and full contentment. In a presentation of "The Most Beautiful History of Happiness"⁵ the author appreciated that "The history of happiness is in fact the history of thought, which is actually the history of life, both of life in general and of one's own life. No one has ever come up with a clear answer on a question about happiness, but many have come up with attractive and noteworthy theories or ideas and to integrate into their own lives." Just as stated in the literature, "... for Epicurus happiness lies not so much in the large number of pleasures as in the absence of suffering. All we have to do is follow the urge of the maxim: settle for a little! The adherent of the doctrine will find supreme happiness in the most modest living conditions, the only ones that can ensure his happiness in the form of a peace of mind (ataraxia gr. - "absence of disturbances")⁶

Forming a definition of happiness,⁷ Aristotle analyzes in *Nicomahic Ethics*, on the one hand, the concept of good, and on the other - human realities.⁸ Happiness is the supreme good and the supreme pleasure, both elements being inextricable.⁹ Its essence lies in the activity of the soul conforming to reason or not without reason, it must condone with virtue, with the most perfect virtue, throughout a perfect life. So the happy man is the one who always acts according to perfect virtue, endowed with sufficient external goods to enable him to apply virtue throughout his life and not in syncope.¹⁰ Aristotle suggests a "duty to be happy".¹¹ For him, eudaimony ("happiness" or "prosperity") is a basic concept in defining human perfection and a purpose of the community.¹²

⁴ Romanian Academy, *Explanatory Dictionary of the Romanian Language*, Encyclopedic Universe Publishing House, Bucharest 1998, p. 374.

⁵ Ion-Valentin Ceaușescu Publish Date: April 23, 2014 in: *Book Chronicle The Most Beautiful History of Happiness* André Comte-Sponville, Jean Delumeau, Arlette Farge published in May 2007 by ART Bucharest, French translation by Marina Muresanu Ionescu (André Comte-Sponville, Jean Delumeau, Arlette Farge – *The Most Beautiful History of Happiness* – Good Signs <https://semnebune.ro/2014/andre-comte-sponville-jean-delumeau-arlette-farge-cea-mai-frumoasa-istorie-a-fericirii/#ixz z4S8sWaF7T>)

⁶ <http://socioumane.ro/blog/ionelcioara/files/2012/10/teorii-etice-standard2.pdf>

⁷ Tudor Panțîru, Judge of the Constitutional Court of the Republic of Moldova, Right to Seek Happiness, Public Law Magazine. No. 1/2015, p. 26-35.

⁸ Aristotle, *Nicomahic Ethics*, ed. II, Scientific and Encyclopedic Publishing House Bucharest, 1998, p. 8. Translation Stella Petecel.

⁹ Aristotle, *Nicomahic Ethics*, ed. II, Scientific and Encyclopedic Publishing House Bucharest, 1998, p. 40.

¹⁰ Aristotle, *Nicomahic Ethics*, ed. II, Scientific and Encyclopedic Publishing House Bucharest, 1998, p. 11.

¹¹ *Idem*.

¹² Fred D. Miller, Jr., *Nature, Justice and Rights in Aristotle's Politics*, Clarendon Press, Oxford, 1995, pag. 18-19, apud Joseph R. Grodin, *Rediscovering the State*

In a study on the universal valences of the concept of "Human Rights" referring to John Locke's conception of the natural right to happiness, it "... claims that natural law legitimizes everything a person does about his or her life. God created free and equal people, in the natural state a natural equality is imposed, there is even a law of nature that a person does not care about the life, health, freedom or possessions of others.¹³

Some contemporary philosophers¹⁴ appreciate that "the major difficulty with him the concept of happiness is that everyone imagines that he knows better than others what it is. The fact that we are all experts in happiness was one of the causes that undermined the prestige of this concept. Today you risk being ridiculed if you dare to upplay the political ideal of happiness, as Aristotle did. For most, however, the word "happiness" is not at all appropriate for quantitative research of a psycho-sociological or economic nature, it must be replaced by others: "standard of living", "quality of life", etc.

Absolute happiness, reward of life in harmony with divinity

In the theologians' view, human nature bears in its essence longing for the paradisiacal state, the nostalgia of Eden and perfection. Followers of the Adamic sin, people have always felt the Creator's call, though the alienation from It amplifies longing, to oblivion. Thus, we tend as creatures, to taste every day of what for the moment can translate into a joy. These fused joys can generate happiness, and this cycle keeps repeating itself and cannot be exhausted because the spring and the unbroken nature of man is inexhaustible.¹⁵

The steadfastness in a philosophy of earthly things, the attachment to the material ones and especially the sorrow tried to obtain an unacquired happiness, erodes the aspirations to resemble our Spring and acquire a non-material Happiness. We cannot be fooled that we will have the same state of happiness by acquiring material pleasures, in contrast to pleasures that we cannot achieve but are much deeper. All these premises lead us to

Constitutional Right to Happiness and Safety, 25 Hastings Constitutional Law Quarterly nr. 1/1997, 11.

¹³ Isabela Stancea, *Human Rights – a concept with universal valences*, University "Constantin Brâncoveanu" Pitești, Faculty of Legal, Administrative and Communication Science

http://www.strategiimanageriale.ro/images/images_site/articole/article_18666off8046cd9b994464d2f35d869f.pdf.

¹⁴ Gabriel Sopunaru, Catalin Stancu and Irina Oana Baba, *Happiness versus GDP*, material presented at the International Conference "Right to Happiness", under the aegis of the Christian University "Dimitrie Cantemir", from 13 to 15 December 2012.

¹⁵ William Keith, *A History of Greek Philosophy, The Earlier Presocratics and the Pythagoreans*, Cambridge University Press, 1962, vol. 1, p. 113.

think of a preliminary conclusion, The Fear is about being and not about having.

Contemporary man is increasingly immersed in pleasures that overshadow his true Happiness. It creates the illusion of a pseudo-happiness, here on Earth, the thought of an Eternal, unrepentant Happiness, being atrophied by a hedonistic conception that teaches that everything is now and here. We have forgotten that we are strangers on this earth and our root is in heaven, not on earth.¹⁶

Happiness is for contemporary man a way of living limited to having, to do, to consume, without realizing that the human being itself is consumed and lost. It is much easier to have a palpable, empirical Happiness on the horizon than an unattainable ideal, often unattainable. We would risk a failure that would send us to pleasure and we would find in this our temporary happiness.

What for many philosophers, the concept of happiness can be defined in different aspects, in Christianity represents a paradoxical notion. God-oriented man is bipolar. On the one hand, he patiently receives the hardships of everyday life and, on the other hand, finds the happiness to come closer. Thus appears the so-called happy sorrow.¹⁷ The troubles of everyday life do not despair of the joy of being, and the problems of love for Christ become new reasons for joy. Christ Himself rejoices those who are persecuted and suffer for His name.¹⁸ The longing for Christ is a source of happiness that erases any sorrow.

This paradoxical logic becomes for some beings a way of life, in which happiness is not regarded as a momentary joy, but a continuous completion. As soon as a man acquires self-awareness he wonders what really makes him happy, and by the answer he gives, he determines his position towards each of the everyday problems. If man gives himself an answer that he considers satisfactory for the moment, it creates the maturity necessary to approach the problem of happiness. Otherwise, it becomes confused, causing incoherence and disorder, finding a deviant way to correctly relate to the appearance that makes him happy. The continuous distortions of moral and social opinions, the consciousness that urges self-improvement, shed light on the lack of a concrete answer to the question that plagues him in order to be happy and thus creates the desire for deep state of happiness, as a sense of life.

¹⁶ Saint Ignatius Briancianinov, *Ascetic Experiences*, vol. 1, Sophia Publishing House, Bucharest, 2000, p. 98.

¹⁷ Saint Gregory of Nyssa, *About the Purpose after God*, ed. W. Jaeger, vol. 8.1, p. 86.

¹⁸ Holy Scripture, *Matthew*, Chapter 5, verse 11, Bucharest, Publishing House of the Biblical and Missionary Institution of the Romanian Orthodox Church, 2006, p. 612.

Absolute happiness cannot be experienced in a limited space, because all that is material is in a relatively perfect state. Man, who is made of nothing, cannot find the meaning of life or happiness if he seeks it within the borders of the world, which also comes from nothing. As long as we dwell on the created world, we become slaves to natural needs, and happiness also becomes a temporary necessity towards a goal we do not know enough.¹⁹ Therefore, the man who approaches immanent life no longer manages to see the substantial purpose, the best example being given by the atheist existentialism that denies any meaning of life and limits the concept of happiness to ephemeral things in the world of contemporary consumption.

Happiness seen as unity in diversity

Influenced by Aristotle, Locke, and Beccaria, the Founding Fathers of the United States transposed a political-moral vision of happiness for the first time into a constitutional act. Most of the constitutions of American states also provide for the right to seek happiness. Given that this value is a current concern for most human beings, the courts of these States have inevitably ended up with cases in which everyone's right to seek happiness has been invoked. The courts weighed whether the private interest in achieving happiness was not contrary to society's interests. Since seeking happiness means doing whatever you want, respecting the limits imposed by the constitution and laws (to the extent that these normative acts meet the rigors of *lato sensu* proportionality), happiness and freedom become equivalent terms. After all, the "rule of law" is nothing more than the translation of the word *Rechtsstaat*. "The state and the right do not exist for the safety of happiness, but rather for other values (e.g., safety)."²⁰ Guaranteeing happiness is not a mission of the state and the law. Their mission is to ensure the pursuit of happiness, through simple routes that, if fair, must be respected: laws and the constitution.

Constantin Dissescu stressed that "Freedom is the conscious exercise of will, it is the will in competition with life, it is the right of the intelligent being to develop in its order according to reason. The right derives from freedom... Right and freedom are confused, which is why freedom is a right, as a right is a freedom... Man has the right to happiness and life, destinations that cannot be achieved without freedom, for where there is

¹⁹ Richard Kraut, *Two Conceptions of Happiness*, Philosophical Review, North Carolina, Duke University Press, 1979, p.167–197.

²⁰ Kurt Bayertz and Thomas Gutmann, *Happiness and Law*, Ratio Juris, No. 2/2012, pp. 236. A British economist, Richard Layard, calls for "a revolution in government. Happiness should become the goals of our policies" (Richard Layard – *Happiness. Lessons from a New Science*, ed. Penguin, London, 2005, p. 14.

no freedom there can be happiness."²¹ Montesquieu defined freedom as "the possibility of doing what the laws allow; if a citizen could do what they forbid, he would no longer have freedom, for others could do the same."²²

When asked about the differences between law and freedom, Frédéric Sudre stated: "Apart from the fact that the distinction between civil and political rights, on the one hand, and economic, social and cultural rights, on the other, and between 'rights of...,' which imply an abstention on the part of the State, and 'rights to ...,' which claim benefits from it, comes from extremely simplified terminology, whereby several individual freedoms appear as "rights to...," in relevant international conventions: the right to freedom and security, the right to a fair trial, the right to freedom of expression, etc. Thus, it should be noted that there is no trenchant opposition between the two categories of rights."²³

From the above, we can appreciate that happiness is also a civil freedom, in the sense that its holder, the man, the individual, the person, can do whatever he wants to be happy, to seek happiness, of course, respecting the rights and freedoms of others, only that freedom is not expressly regulated, such as freedom of thought, freedom of conscience, etc. Of course, this freedom of the person to seek happiness is not and cannot be an absolute one, it must be exercised within the limits of law and morality.

The French doctrine emphasized that "The natural state of man is to be free, with society having an obligation to respect and protect his freedom. The exercise of individual freedom is for the man who lives in society the first of all goods, the one whose preservation is most of his happiness. The governors and the law must therefore protect it and defend it with religious attention against any arbitrary act on the part of ministers and their agents."²⁴

Conclusions

Based on the above, we can say that from a legal point of view the concept of happiness or the 'right to happiness' is a civil freedom which can be located well alongside freedom of thought, freedom of expression, freedom of conscience, etc., and which together with other human rights and freedoms, they come together in the rights of personality. In this

²¹ C. Dissescu, *Constitutional Law*, Ed. SOCEC-Co Library, Anonymous Society, Bucharest, 1915, pp. 440-441.

²² Montesquieu, *About the Spirit of Laws*, Vol. I, Scientific Publishing House, Bucharest, 1957, pp. 82-83.

²³ Frédéric Sudre, *European and International Human Rights Law*, Polirom Publishing House, Iasi, 2006, p. 185.

²⁴ Th. Garé, *Le droit des personnes*, 2e édition, Dalloz Publishing House, Paris 2003, p. 4.

respect we will try a definition of the legal concept of happiness, stating that this is a faculty, which any person has, to create all the material and spiritual conditions necessary to reach the state of full soul, intense and full contentment, within the limits of law and morality. To the extent that the State, through public policies, will be bound by a constitutional provision before its citizens to contribute to the creation of the conditions necessary for the material and spiritual well-being of these, then the freedom to be happy may be expressly enshrined, as a fundamental freedom, together with the other freedoms, already expressly regulated.

Although happiness is not a concept that will become absolutely through simple legislative regulation, I am convinced that it will not be long before happiness, as civil freedom, finds an express legislative consequence in European law (as a result of the increasingly insistent demands of public opinion) and then, implicitly, in our legislation. The spirit of rationalism and enlightenment has provoked the constant search for metaphysical solutions to find the meaning of modern man's life. A strange malanj of Western rationalism and Oriental mysticism was thus created, which found expression in the New Age movement that promotes the concept of happiness through sensual satisfaction, the multitude of products, the variety of offers, the abundance of possibilities, the systematic promotion of superfluous needs. The main unifying factor of mankind is not a certain common aspiration in finding collective happiness, but promotes the slogan live your life! That is why the happiness that man can find in today's world is summed up in what can be promoted: the intense life viewed as a finality, excluding another life, outside the senses, in which happiness would acquire absolute, eternal valences. Man experiences the decomposition of society in his personal life, seeking self-confirmation and fulfillment by himself, seeks happiness at different points of the earth, in order to fill the void that lies in his soul.²⁵

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²⁵ Saint Gregory of Nyssa, *Ascetical Works*, translated by Virginia W. Callahan, Washington, Catholic University Press, vol. 58., 1967, p. 134.

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WHY IS THERE EVIL IN THIS WORLD, *THE BEST OF ALL POSSIBLE WORLDS*?!

Gabriela Pohoăță*

gabriela_pohoata@yahoo.com

"It seems to me, sometimes, that we are not genuine people. We are a kind of sketch, a trial for the humanity that should be or will be one day, maybe.

*The one who created us thought of another humanity and put, even in our hearts, the nostalgia of other forms of life, more successful than today's ones. It is good to remember that we are just the way towards something else."*¹

"Such as we know is false yet dread in sooth,

*Because the worst is ever nearest truth"*²

Abstract: *The current research is not a mere meditation on evil, but rather on the current world, in which we are witnessing an exacerbation of evil, due to a deficit of morality which is unprecedented in history. Philosophical research cannot remain indifferent to what is happening today, all over the world: a health crisis triggered by a pandemic that seems to have come out of nowhere, followed by an economic crisis that has engulfed the entire planet. It is only natural to ask ourselves: what is the current man's direction, what is the direction of the world he belongs to?! It is a great turning point in human evolution, which could be overcome by an awakening of human consciousness. Can evil be a test for our freedom? The issue of evil brings into analysis the issue of freedom and theodicy. The interrogation which is the starting point of our research has as philosophical reference, for argumentation and explanation, G.W. Leibniz's conception from Theodicy. Leibniz approaches the problem in the light of the following thesis: actually, we often realize that what we call evil (le mal) is the prerequisite of a great good. Evil is necessary. It is a cause of good. How can we avoid the evil today in a desecrated world in agony?! The answer*

* **Prof. PhD. Hab., Dimitrie Cantemir Christian University, Bucharest.**

* **Translated by Lecturer PhD. Mihaela Mocanu, Dimitrie Cantemir Christian University.**

¹ C. Noica, *Matehesis or the Simple Joys*, Bucharest, Humanitas Publishing House, 1992, p. 84.

² Byron, Lara, Ch. 1[28,31], apud. Ah. Schopenhauer, *The World as Will and Representation*, the 2nd book, Ch.19, p.236, translated from German by Radu Gabriel Pârnu, Bucharest, Humanitas Publishing House, 2012.

could be G. Lipovetsky's reflection from *The Twilight of Debt*, "The 21st century will be ethical or it will not be at all."³

Keywords: *evil, world, freedom, theodicy, reason, ethics, God.*

It is no secret that evil exists in our world. It has always existed ever since man came into being. Paradoxically, today we are witnessing a refinement of evil, in the sense that its ways of manifestation are more sophisticated, perverse and are meant to create confusion, to generate fear, anxiety, helplessness. Moral refinement is despised and good is ridiculed. Somehow, the exacerbation of evil occurs on a background of deficit of morality, of rationality, which, in our opinion, is the expression of the weakness of human will, in general. It is difficult to accept, today, in a knowledge society, the fact that ignorance, incomprehension, is the main cause of evil. But the scientific and technological progress is not similar to the moral one, as long as the modern man has lost his spiritual values turning the material ones into the very sense of his existence. Somehow, today's man confuses the purpose with the means, living in error, unable to accede to the Truth. In the pursuit of material accumulation, in a pervasively mercantiled society, no one would have thought that the Planet would stop at some point. But a virus that came from "nowhere" has caused and continues to cause hundreds of thousands of deaths, finding a world which is unprepared and unable to annihilate it, despite the progress of current scientific knowledge. So far, the international body of specialists has not been able to discover the antidote against Coronavirus (COVID 19). On the contrary, the WHO launches ideas on the possibility of a second wave, which maintains insecurity and fear, lack of confidence; therefore, many speculations that only amplify the confusion and suppress the existential freedom of each of us have appeared against this background. The nature of our wonder that underlies this text obviously stems from the misery and evil we see in the world. It is difficult to accept the proliferation of evil, when we look at the order and perfection of the physical world, because we believe that what had the power to create something like that should have been able to avoid the misery and evil.⁴ The outbreak of the pandemic on the entire Planet took place with the advent of spring, the season of rebirth and hope. Nature followed its course unhindered, and we have been, somehow, suspended, phenomenologically speaking, our lives being placed between brackets. I would have never thought that I would live to see Paris, Milan, Madrid, Rome deserted, truly apocalyptic images!

³ P. Singer, *Treatise on Ethics*, Iași, Polirom Publishing House, 2006.

⁴ Ah. Schopenhauer, *The World as Will and Representation*, cited works.

“Evil, misfortune and death are what trigger and increase our philosophical astonishment; not only the fact that the world exists, but rather the fact that it is so dejected, represents *a punctum puriens* (irritating point) of metaphysics, a problem that turmoils humanity to such an extent that neither skepticism nor criticism can calm it”.⁵ The issue of evil has existed in the philosophical debate since Socrates, but its theorization has been a steady concern for philosophers such as Augustine, Thomas Aquinas, Descartes, Spinoza, Leibniz, Berdiaev and others. Generally speaking, the research of human nature, of its freedom, inevitably brings into discussion this topic which is of utmost relevance nowadays.

Ontological approach: Creation and freedom

Lucidly analysing the situation that our world is facing today and trying to identify the reasons that underlie the human behaviour and man’s reactions, in a borderline situation, I think of a text that belongs to Constantin Noica and which, in our opinion, is, somehow, in accordance with what we see and live today. "People are usually not responsible for anything. Everything that happens in the world is without their participation. If the world flows, if the world sings, if the world dies, they flow, they sing, they all die together. But it shouldn't be like that. He who does not put his ideas into things, he who does not think them up is not responsible for them. I want to put ideas into things and that is why I am responsible for their order, their decency, their efficiency. I want responsibility, which means I want freedom. Because freedom is reduced to calculation, freedom is logical, here is something that has not been accepted so far. The deliberate act is free".⁶ I fully agree with Noica's position, arguing that authentic freedom involves reason, and responsibility is the consciousness of freedom. Constantin Noica somehow warns us about the essential freedom that exists in each of us and that should lead us to self-improvement. Man has this privilege of choice, of self-construction and of self-perfection. Undoubtedly, freedom and conscience define man as a spirit.⁷ Freedom is the most beautiful gift that man has received from God, but through original sin man ruined his freedom and built his own ignorance. We appreciate that, as long as he lives, man struggles with this ignorance. Everything we live today shows that, despite the advancement of human knowledge, the progress of science, man, in extreme situations, is powerless and vulnerable because

⁵ Ibidem.

⁶ C. Noica, cited works, p.48.

⁷ G. Pohoată, *Lectures on Philosophy*, Bucharest, Pro Universitaria Publishing House, 2017, p. 197.

“our knowledge is finite, and ignorance is infinite.”⁸ What happens with our freedom nowadays?! Today's man has exceeded his limits, in the sense of misusing his reason, and against this background evil has proliferated, man no longer distinguishing between good and evil, in other words, misusing free will! Misunderstood freedom is the cause of evil, from original sin to the present day. The whole history proves this fact. I do not share the idea that the modern man's freedom of conscience was greater than that of the ancient man or that the current man's freedom exceeds that of modern man. Human nature is the same regardless of the era or political regime. *I rely on the argument of morality because, in my opinion, only the moral man is truly free, only the moral conscience is, somehow, the seat of authentic freedom.* We feel it necessary to make a distinction between freedom and liberties here. In this respect, we believe that political freedom does not solve the problem of freedom. We live in a world of simulacra, we have the impression that we are free, when, in fact, our rights and freedoms are violated all the time. Can we speak about freedom when there is no responsibility, respect for the other, when there is no truth, justice, correctness, love?! Freedom is about a certain communication that is increasingly diminished, although the means of communication are multiple, diverse and sophisticated. Today's man is lonelier than ever, he has lost his inner landmarks and his values are overturned, he is not on the path of good. The educational ideal in ancient Greece was *kalokagathia*: a handsome (*kalos*) and good (*agathos*) man. Today, the "ideal man" is the one who has power and money. Paradoxically, we live in a world in which not "science owns the power" but money, and money depersonalizes, even dehumanizes! Where is our freedom? Righteously, we make a difference between freedom and liberties. These, defined by the *Universal Declaration of Human Rights*, have been denied everywhere, violated, ridiculed, before being claimed today by the youth all over the world as a right they deserve and should ensure them a certain future. We are not talking about "freedoms" here, but about "freedom", that is the power that man has, or does not have, to act without being constrained to do what he does.⁹ This freedom exists. It does not consist in doing what we want, but also in what we do not want, out of wisdom, out of respect for others and, more often than not, out of love, the first principle of everything that is, was and will continue to be".¹⁰ Inevitably, there is a connection between our will and our freedom.

⁸ K. Popper, *Knowledge and the Body-Mind Problem*, Bucharest, Trei Publishing House, 1997.

⁹ A. Frossard, *Questions about God*, Bucharest, Humanitas Publishing House, 1992, p. 131.

¹⁰ *Ibidem*.

Deepening the problem of freedom and will, Augustine realized that the source of evil can be only in free will, which consciously deviates from what is lofty, good and true, to what is vile, evil and false. If darkness is the lack of light, then evil, says the theologian philosopher, is the lack of good. Evil has its roots only in evil nature, which is why it does not have a real nature; evil is the loss of good, its absence.¹¹ Evil is corruption (*corruptio*) and therefore nature can be called evil only if it is corrupted; uncorrupted, it is good. In other words, evil does not have an *efficiens* cause, but a *deficiens* one. Evil is not something real, a substance, but only the lack of good, a flaw and not an entity. Only the good will is God's work, the bad will is a fall of the will from God and its return to sin.¹² The evil exists in the world, it is involved in this organic whole, but it manifests itself as a disorder of harmony throughout the world. However, its role can be converted into a positive one because it serves to complete the harmony in the universe. For Augustine, the beauty of the world is seen precisely in contradictions. The historical process also takes place in contrasts. The evil does not have the last word, but finds its punishment at the final judgment, thus revealing God's justice and goodness. The punishment of the sin is good, because it is righteous and contributes to improving the world.¹³ Through punishment, sin comes to be in accordance with the universal order, which means that, at the level of divine Providence, evil is in the service of good. (Opinion shared by Goethe in *Faust*, who states about the devil that he always wants the evil, but ends up doing the good.) Evil exists, but in the universe only the divine will triumphs, which wants good and only allows evil to manifest itself. Thus, evil has another source than God's will, but He allows it, precisely so that *man can learn and understand moral freedom. Divine pedagogy is accessible only to the man of good will.* "God's transcendence means this: God is the condition of the possibility of good. In order to be willing to do good or to feel bad that I am doing evil (and, thus, to repent), I have to bear in myself a super-consciousness evaluating my behavior. God exists insofar as he exists as a moral being. (As the devil exists as a higher degree of my immorality).¹⁴ We are "divine" only insofar as we choose and do the good. "Man's capacity accomplish the Good on his own according to the laws of freedom can be called the *nature*, as opposed to the *grace*, by which we understand the capacity that can be bestowed on him only with supernatural support. [...] We know at least the laws (virtue) and, starting from this as if it were

¹¹ St. Augustin, *De civ.Dei*, XI,9, apud Gh.I. Serban, in *Introductory Study to Confessions*, Bucharest, Humanitas, Publishing House, p.33.

¹² Idem, *De libero arbitrio*, II, 19, 52, apud. Ibidem.

¹³ Idem, *De civ.Dei*, XII, 3, apud. Gh.I. Serban, *cited works*, p. 34.

¹⁴ G. Liiceanu, *My Jesus*, Bucharest, Humanitas Publishing House, 2020, p. 215.

something analogous to nature, reason has an obvious guiding and easy to understand thread; however, the answer to the questions if or when and in what way or how much grace will act in us remains completely hidden for us, and here — as in the case of the supernatural in general, to which morality as *holiness* is kindred — reason is abandoned by any knowledge of the laws according to which this fact can occur.¹⁵ In doing good, it is natural to guide oneself by the laws of freedom, by one's own moral conscience (constantly examined according to the natural rules of practical reason).¹⁶ R. Descartes was right when writing that *natural reason teaches us that in this life we experience more good things than bad ones*.¹⁷ It is not a minor thing to be satisfied with God and the universe; not to be afraid of what it is meant for us, nor to complain about what is happening to us. Knowing the true principles gives us this advantage, quite different from the one which the Stoics and Epicureans extracted from their philosophy. The difference between true morale and their morale is similar to the difference between joy and patience; for their peace was based on necessity; ours must be based on the beauty and perfection of things, on our own happiness.¹⁸ Even if the human race were to do more harm than good, it is enough that, in relation to God, there is incomparably more good than evil in the universe. The idea is that among men evil surpasses good, and the superiority of evil over the human race shows the smallness of man in relation to the universe. Thus, the examination of people's wickedness, the one that attracts all their misfortunes, shows us at least that they have no right to complain. There is no justice that has to concern about the origin of a wrong-doer's wickedness, when it is only a matter of punishing him: things are different when he must be prevented from acting. It is common knowledge that nature, education, entourage and often even chance have their role; but is that the only reason why man is less punishable?¹⁹ Another moral dilemma pointed out by Leibniz, self-evident in context, is concentrated in the following text: if God does not have to account for the wickedness of the villains, it seems that he owes himself and those who honor and love him the justification of his procedure regarding the indulgence of vice and crime. But God has already done it, as much as is necessary here, on earth: by bestowing the light of reason on us, He has provided us with the tool with which we can solve all

¹⁵ Imm. Kant, *Religion within the Limits of Pure Reason*, translated by Radu Gabriel Pirvu, Bucharest, Humanitas, Publishing House, 2004, p. 269-270.

¹⁶ G. Liiceanu, cited works, p.217.

¹⁷ R. Descartes, *1st vol.*, *Letter 9*, apud. Leibniz, *Theodicy*, cited works, p. 228.

¹⁸ G.W. Leibniz, *Theodicy*, cited works, p. 229.

¹⁹ *Ibidem*, p. 235.

difficulties."²⁰ When Leibniz formulated the thesis: "God has created this world, the best of all possible worlds" he did not elude the evil, on the contrary, he considered it a cause of good. The meaning of his statement is not a moral one, but an ontological one. The German thinker analyses the physical, moral and metaphysical evil in his well-known work *Theodicy*. In the Leibnizian analysis of the presence of "*evil in the world*", the following can be said: "*The best of all possible worlds cannot be a world that contains only perfection*"; *if God has chosen a world as the best possible one ... his choice in this foreknowledge does not restrict human freedom but, on the contrary: this world will not be the best, if God would retain his freedom for himself.* Leibniz believes that from an infinity of many possible worlds, God has chosen the best and materialized it. Nor could it be otherwise, for **wisdom** and **perfection**, which belong to his nature, require this: "Or cette supreme sagesse jointe à une bonté qui n'est pas moins infini qu'elle n'a pas manqué de choisir le meilleur..." Et comme dans les Mathématiques, quand il n'y a point de **maximum** ni de **minimum**, rien enfin de distinguer, tout se fait également; ou quand cela ne se peut, il ne se fait rien de tout: on peut dire de même en matière de parfaite sagesse, qui n'est pas moins réglées que les Mathématiques, que s'il n'y avait pas le meilleur (optimum) parmi tous **les Mondes possibles** (s.s.), Dieu n'en aurait produit aucun". In the same context, according to the definition of the 'world' as "toute la suite et tante la collection des tantes les choses existentes", specified: "Et quand on remplirait tous les temps et tous les lieux, il demeure toujours vrai qu'on les aurait eu rempli d'une infinité des manières **et qu'il ya une infinité des Monades possibles, dont il faut que Dieu ait choisi le meilleur**, puis-qu'il ne fait rien sans agir suivant la supreme Raison."²¹ In other words, based on the idea that **possible tends towards existence** and thus requires the activity of the Creator proportional to its intrinsic perfection - for **perfection is the reason for being** – the Leibnizian theory of creation implies a radical optimism; not in a moral sense, but as a consequence of the **ontological conception of perfection**, of the conception of a perfect God.²² **The ontological horizon** is open here - **due to the harmony between the kingdom of nature and that of grace**, between God as an "architect of the machine of the Universe and as a "monarch of the divine city of the spirit," Leibniz stated "the course of things leads, by the very paths of nature, to grace and this globe, for

²⁰ Ibidem.

²¹ Leibniz, *Essais de Théodicée sur la Bonté de Dieu, la Liberté de l'homme et l'Origine de Mal*, Amsterdam, David Mortier, 1720 (2nd ed), p. 75.

²² G. Pohoatǎ, *Metaphysics and Science* in G.W. Leibniz's work, Bucharest, Pro Universitaria Publishing House, 2017, p. 149.

example, must be destroyed and repaired, in natural ways, in the moments when the government of the spirits demands it, for the punishment of some and the reward of others".²³ Moreover, the emphasis always lies on better in the sense of perfection (the Leibnizian sense) - "under this perfect rule there would be no good action without reward, no evil without punishment, everything must be good (s.n.) for the good ones - that is, for those who in this great state ("the city of God", nn) are not dissatisfied, but put their trust in Providence, after they have done their duty, and love and imitate properly the author of all good, delighting themselves in the contemplation of his perfections".²⁴ Therefore, "wise and virtuous persons work to accomplish all that seems to be in accordance with the divine will, presumed or antecedent, and, at the same time, are satisfied with what God decides to actually happen, by virtue of his secret, consistent and decisive will".²⁵ In essence, we are dealing with the conception of absolute perfection, of a God who "does nothing but follow the supreme Reason", and of a Universe which cannot "be better than it is." The question which arises is - how is He (God) perfect, if He can be satisfied with imperfect things? This supreme wisdom, Leibniz wrote, associated with a kindness that is not less infinite, could not fail to choose what is optimal (**le meilleur**). For just as what is a lesser (**moindre**) evil is a species of good, so a lesser good is a species of evil, if it constitutes an obstacle to a greater good; and there would be something that needs correction here in God's actions, if the best way to do it would exist."²⁶ **The problem of evil** arises especially in response to Bayle's reflections and Leibniz treats it from the point of view of "*pre-established harmony*" and, in general, of the "*primordial harmony*" pre-established between two radically different worlds: that of effective causes and that of final causes. God is the creator of all things, "the architect and the efficient cause", but also "our master and the final cause". The question is: **is creation free or necessary?** Both human freedom (and free action) and the reward for the deeds committed depend on the answer to this question. According to Leibniz, in the revelation of the created world, the spirits are not only live mirrors or images of the Universe of creatures", like souls, but they "are above all, images of the Divinity itself, that is, of the author of nature himself, able to

²³ Idem, *The Monadology*, (88), in *Philosophical Writings*, I, p. 56.

²⁴ Idem, (90), p. 527.

²⁵ Ibidem, It can be asserted that "God as an architect gives complete satisfaction to God as a legislator", and thus "sins must bear their punishment, by the very order of nature and by the very virtue of the mechanical structure of things" (**Monadology**, 89). According to the clear rule (in **Correspondence with Arnauld**, p. 192): all the possibilities regarding what is individual and contingent truths include in their notion the possibility of their causes, namely of the free decrees of God "

²⁶ G.W. Leibniz, *Essais de Théodicée*, p. 72-73.

know the system of the Universe and to imitate, through architectural evidence, something of himself; each spirit being a small divinity in its own department”²⁷. Freedom of will was invented in order to remove evil, but this is only a hidden way of doing something out of nothing.

Si Deus este, unde malum. Theodicy and Morale

We ask ourselves: how can this optimistic conception be maintained, in a world facing so many disorders and imperfections, which have reached paroxysmal heights today!? Who has lost control, God or man?! If the world is the work of a powerful and good God, where does the evil in the world come from? *Si Deus est, unde malum?* Leibniz approaches this problem (in Theodicy, but also in *Metaphysical Dissertation* and others) in the light of the following thesis: in fact, we often find out that what we call evil (le mal) is the condition of a great good. Actually, we know, Leibniz follows his reasoning, "that often an evil is the cause of a good, which would not have been possible without this evil." Often, even two evils have done a great good: "*Et, si fata volunt, bina venena juvan*"²⁸ *Consistent with his ontology (with the doctrine of the "best world"), Leibniz did not confer evil an own being: "But if we say that evil things are greater, and greater in number than the good ones, then we are wrong. For only a failure of attention diminishes them, this attention being given to us by a mixture of evils. If we were ill in the ordinary sense and seldom in good health, then we would miraculously feel this great good and feel less our evils. Therefore, we replace by reflection what is missing from our perception, before becoming more sensitive to the good of our health"*.²⁹ Further motivations can be added, out of which we choose only one: "when the fragility of the human body is taken into account, we admire the wisdom and goodness of the Author of nature, who made it so enduring and his condition so tolerable. It's what has often made me say that I'm not surprised that people are sometimes ill, but I'm surprised that they are to a small extent, and not always."³⁰ Without following the whole argumentation, let's follow the answers regarding the "cause of evil": The question sounds, first: *where does evil come from?* "*Si Deus est, unde malum? Si non est, unde bonum?*" The ancients assigned the cause of evil to matter "which they believed to be uncreated and independent of God; what about us, who derive any being from God, where we will find the source of evil?! The answer, Leibniz said, is "that he must be searched in the ideal nature of the creature, although

²⁷ Idem, *The Monadology*, 83, p.525.

²⁸ Idem, *Essais de Théodicée, cited works*, p.75-76

²⁹ Ibidem, p.76.

³⁰ Ibidem, p.78.

this nature is locked in the eternal truths, which are in the intellect of God, independent of his will. "For we must take into consideration that there is an original imperfection in the creature before sin, because the creature is essentially limited: hence, it follows that it could not know everything and that it can be wrong and make mistakes". It can be interpreted that evil comes from our creature status, from the original imperfection. In fact, Leibniz distinguished three forms of evil: **malum metaphysicum, physicum, morale**: "Le *mal métaphysique* consiste dans la simple imperfection, le *mal physique* dans la souffrance, et le *mal moral* dans le péché". In Leibniz's vision there is a distinction between good and evil, as essential moral values and as ontological dimensions (structures).³¹ This is in fact the spirit of monadological metaphysics and in this sense the emphasis is laid more on *theodicy* than on *theology* (in relation to metaphysics). And this is, as several commentators have observed, the most difficult task of finalizing his metaphysical thinking. "Limit", a concept with major explanatory value, comes here as a limitation of the world of finite things and beings. Of course, the ontological-metaphysical motivation of optimism is superior to those that came in the realm of modern ethics, as well as the motivation of freedom. This can be a solution, indeed, for "wise and virtuous people" in a "Universe" which "surpasses all the desires of the wisest," and "cannot be made better than it is."³² But, the problem remains open! For the most part, the finality concerns more what Leibniz called „*la question préliminaire de la Conformité de la Foi avec la Raison*” that is, "*the use of philosophy in theology*."³³

Instead of conclusions

Why is there evil in the best of all possible worlds?

The evil has always existed, because the world we belong to is imperfect, full of irreconcilable contradictions. What we want to point out as a concerning fact is that the evil we are facing today is not so much the prerogative of our creature status, but it rather springs from a weakness of will that has lost its landmarks, that has moved away from the Absolute, from God. Today's world is in agony, the evil proliferates all over it, despite the fact that man has evolved intellectually reaching an unimaginable level of scientific and technological development. Morally, today's man is in decline, he no longer has inner landmarks. In his pursuit of material

³¹ G. Pohoată, *cited works*, p.154.

³² G.W. Leibniz, *The Monadology*, Bucharest, Humanitas Publishing House, 90, 1990.

³³ Idem, *Discours de la Conformité de la Foi avec la Raison*, in: *Essais de Théodicée*, p.1.

accumulation, man lives in the "forgetfulness of being"³⁴; for him, God does not exist. We consider that this is the "greatest evil" the current world is facing, which is no longer "the best of all possible worlds," because man has proved incapable of understanding and participating in the universal order. Instead of glorifying the divine grace and participating in the Demiurge act by beautifying the created world, man has chosen to use his reason for destructive purposes, exceeding the measure, thus causing serious harm to the Planet. The idea we uphold is that the evil emerges from the misuse of free will. *Everything that has happened throughout the history of humanity confirms this thesis. But, it must be specified that, although evil exists, the universe in which we live is not dominated by evil. There is a universal order, and evil means only a deviation from the universal order. "The freedom to behave as if order did not exist is not given to anyone".³⁵ If evil were prevalent, it would cancel out human rationality, because "man, by his rational nature, wants good."³⁶ When Nietzsche wrote, "We must prove to ourselves that we are destined to independence and command"³⁷, he let us understand that the true resources of the will to power are in each of us, we just need to access them through meditation, through self-knowledge. How to save ourselves from this world, in which fear, insecurity, confusion, absurdity are ingredients of the evil we "feed" on every day?! We cannot hope that we will be able to drive evil out of this world without a minimum effort of self-knowledge, without finding an appropriate balance between faith and reason. Thus, all what we can do is to be aware of the situation we are in, unprecedented in history. Let's realize that each of us has a "duty in relation to himself", but also "in relation to the others", in order to create a better humanity. Beyond national interests, otherwise weighing heavily on the moral position of states, above all cultural differences among states, under the circumstances of heavy clouds of threats gathering in the sky under which the whole world lives, it is necessary to have a universal ethic that should contain a number of consensual values, values agreed by the whole mankind, respectively by the community of states.³⁸ Not coincidentally, Imm. Kant who, despite believing in the perfection of mankind, stated: "In a piece of wood as crooked as the one*

³⁴ Heidegger, *Letter on Humanism*, in *The Origin of the Work of Art*, Univers Publishing House, 1998.

³⁵ A. Pleșu, *Minima moralia*, Bucharest, Humanitas Publishin House, 1992.

³⁶ Socrate, apud Platon, *Socrate's Apology*, Bucharest, Iri Publishing House, 1998.

³⁷ Fr. Nietzsche, *Beyond Good and Evil*, Bucharest, Humanitas Publishing House, 2016.

³⁸ G. Pohoăță, *The Decline of Contemporary World between Economy and Morality in Studies of Moral Philosophy*, Bucharest, Pro Universitaria Publishing House, 2015, p. 27-39.

man is made of, nothing absolutely right can be carved. All that nature urges us is to embrace this idea".³⁹

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³⁹ Imm. Kant, *The Metaphysics of Morals*, Bucharest, Antet Revolution Publishing House, 2013.

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ION DUR'S HERMENEUTICS AND THE CRITICAL SPIRIT - BOOKS, IDEAS AND RECEPTION -

Gabriel Hasmațuchi*

gabriel.hasmatuchi@ulbsibiu.ro

Abstract: *Ion Dur is an authentic scholar. His working methods, his interest and freshness of his discourse are placing him among the active contemporary Romanian philosophers and critics. Among the constant coordinates of his work are the attempt to guide readers "towards the North point of value". Ion Dur distinguishes himself by depth of his analysis on culture, criticism and journalism. The aim of this study is to offer, to young researchers and others as well, an Ariadne's Thread to the hermeneut's work. In preparation of this article, extensive documentation was made and most diverse sources have been used in order to illustrate the author's ideas and to highlight the warm reception of his writings. Among others, in 1995, the essayist has re-established Sæculum, a journal founded by Lucian Blaga, in 1943, coordinated by Ion Dur for 20 years. We are writing this article in honorem to a scholar and an university Professor who this year climbed onto the seventieth step of his life.*

Keywords: *Ion Dur; philosophy; critic; media, forewords; update; idea; reception; Eminescu; Noica; Cioran;*

Introduction

Ever since his debut (1981) and up to this year's fresh books¹, Ion Dur distinguishes himself by rigorousness, by the depth of his analyses and by his incessant interrogation on *yesterday's* and *today's* philosophy, culture, journalism and criticism. However, he has also dedicated long time to the study of the interwar philosophy and journalism. Andrei Terian observes that Ion Dur's affinities with Noica and Cioran were decisive in influencing the critic's construction of hermeneutic discourse. He identifies three aspects that define Mr. Dur's essay writing, whether speaking of his monographic studies, or of his other volumes. The exegete's interpretive construction is characterised by "the programmatic oscillation between

* Lecturer, "Lucian Blaga" University of Sibiu.

¹ See *Horia Stamatu – the publicist. Post-restant*, Lambert Academic Publishing, 2020; *Lancea lui Dorifor [Dorifor's Spear]*, Bucharest, Eikon Publishing House, 2020; *Post-restant. „Cazul” gînditorului Vasile Băncilă [Poste restante. „The Case” of Thinker Vasile Băncilă]*, Bucharest, Romanian Literature Museum Publishing House, 2020.

literature, journalism and philosophy”² and is “embodied in a bipolar *écriture*, in which the aulic and sapiencial register (via Noica) intersects with its polemic and sarcastic counterpart (via Cioran)”³, to which the “fragmentarism of the approach” should be added. On broadening the framework of these considerations, we will add another trait emerged from the best symbiosis of history, criticism and philosophy.

Along with these interpretive, structural and stylistic peculiarities, the books of philosopher Ion Dur are jolting the readers out of the cosiness of prejudice, and placing them onto a trajectory of objective judgements, leaving them the possibility to feel and live “the authenticity of their own reading”⁴. His high-level essayist profile was beginning to take contour even before his publishing debut, when he attempted at critically deconstructing *the being of culture*, by means of texts published in the specialized journals from all over the country. Thus, the variety of themes and perspectives of interpretation shed light from very early on over his hermeneutic itinerary and the complexity of his approaches. Referring to this period of creation, critic Ilie Guțan said that “Ion Dur proves an increased propensity for confrontations of opinion, for debates, reflection, essay writing, and the published texts were recommending him, even before they became bundled in a book, as an analytical, dissociative, rather meticulous spirit, nimble and knowledgeable, a careful judge of arguments and counter-arguments to prove of the Other’s ideational system works”⁵.

For these reasons, it should not surprise us that Ion Dur frequently returns to authors to whom he earlier dedicated lengthy studying. His grounding principle is that of *updating*, which is a particularity to a philosopher, and, also, to one who is a specialist in communication. Those who have interpreted the work of Ion Dur have noted the fact that the hermeneut is permanently aspiring to achieve completeness. His returns to certain authors or ideas are accompanied by critical re-evaluations. Therefore, his philosophical construction is in a continuous process of development. Andrei Terian notes that fragments and chapters “often migrate from one book to another, leaving the impression of an incessant *work in progress*”.

² Andrei Terian, in *Dicționarul general al literaturii române [General Dictionary of Romanian Literature]* / vol. III, letters D-G, general coordinator: Eugen Simion; coordination and revision Gabriela Drăgoi, Teodora Dumitru, Victor Durnea, Laurențiu Hanganu, Mihai Iovănel, Remus Zăstroiu, 2-nd edition revised, completed and updated, Museum of Romanian Literature Publishing House 2017, pp. 405-407.

³ *Idibem*.

⁴ Ion Dur, *Exerciții de recunoaștere [Exercises of Recognition]*, Craiova, Romanian Writing Publishing House, 1992, p. 8.

⁵ Ilie Guțan, *Funcția perenității [Function of Perenniality]*, Sibiu, Imago Publishing House, 2019, p. 145.

“Exercises of recognition”. Noica – the journalist philosopher

Ion Dur is the author of research acclaimed by critics and public ever since its beginning. In the following lines we will highlight a few aspects that critics have discovered in the philosopher’s books along time. Dan-Silviu Boerescu identifies at the author of *Exerciții de recunoaștere* [*Exercises of Recognition*] the quality and consistency of documentation⁶, in a foucaultian spirit: “Foucault is very dear to Ion Dur and... not in vain. [...] He yearns to establish an archive of bookish signs, axiologically and often even eulogistically delineated”⁷.

Although, it generally focuses on the analysis of Romanian philosophy, the research of Ion Dur is the fruit of beautiful hermeneutic autochthonous and universal connections. Sălăvăstru notes that “the invocation of names of reference of the Romanian culture” is doubled by “references to the European critical and philosophical literature”⁸. With this essayist, his technique of *re-reading* the work of renowned Romanian thinkers is also to be appreciated. The truly in-depth probing of the Romanian culture begins with the work of “the most complete man of Romanian culture” – Mihai Eminescu. In the reading and interpretation of Ion Dur, Eminescu’s thinking unveils new meanings, and a whole different version of Eminescu is being presented to the reader. C. Cubleşan was ascertaining that the essayist feels “always the need for broadening in height and profundity of our philosophical understanding of the most remarkable innovative spirit in our national culture”⁹, which trait is also to be found in his subsequent writings.

From the intense research on Eminescu’s thinking, Ion Dur switched to the similarly intense study of Noica’s thinking, that he had been focusing on ever since 1985, on the occasion of reviewing the book *Trei introduceri la Devenirea întru ființă* [*Three Introductions to the Becoming into Being*], of which he said it was “the inroad to the core of his work, it is the author’s coming back, with the intent of revealing us the entrances. Yet, the study can ultimately be a false introduction as well, since all three texts are speaking independently about being”¹⁰. To Noica, whose discreet disciple he was, Ion Dur has grown to become culturally

⁶ Dan-Silviu Boerescu, „Cum să re(-)cunoaștem lucruri cu cuvinte” [“How to (Re-) Know Things by Help of Words”], *Luceafărul*, 24 Febr., 1993.

⁷ *Ibidem*.

⁸ Constantin Sălăvăstru, „Exerciții de recunoaștere – Identitate și valoare în cultura românească de azi” [“*Exercises of Recognition* – Identity and Value in Today’s Romanian Culture”], *Revista de filosofie*, no. 3, 1994, p. 328.

⁹ Constantin Cubleşan, „Exerciții de recunoaștere” [“*Exercises of Recognition*”], *Steaua*, nr. 1-2, 1994, p. 4.

¹⁰ See Ion Dur, „*Trei introduceri la Devenirea întru ființă*” [“*Three Introductions to the Becoming into Being*”], *Revista de filosofie*, no. 5, 1985, pp. 478-479.

connected, ultimately coming to dedicate considerable studies to this author.

In 1994, the essayist published a book¹¹ with a new perspective, about the thinker from Paltinis (Noica). Ilie Guțan states that *Noica – între dandysm și mitul școlii* [*Noica between Dandyism and the Myth of School*] “is a book born from a double impulse, of admiration for the author *man* and of support for his *work*”¹². Dan C. Mihăilescu characterises the essay as being “A serious, didactic work, crafted without pathos and grandiloquence, and with skills of a philosopher who is not downplaying the history of literature”¹³.

By reading Noica’s early works *from inside*, one is being revealed “the coordinates of his livresque and existential adventure”¹⁴. This study was bringing additional knowledge and revealed Noica’s breaking free from the captivity of narrow interpretations, by displaying one first impression of the interwar *journalist* and in part also of the thinker. The author does not wish to “close” the case, but rather to offer new data and clues to be used for further research. Our exegete, as Vasile Avram was pointing out, “reads Noica through himself, or more precisely through the self that had grown inside him, from his long-time hovering over the man and the work that he had chosen as a model for his own spiritual adventure”¹⁵.

Ion Dur is keeping Noica’s life and writings in the permanent focus of his attention. The second book appeared in 1999, with the title *Noica – Portretul gazetarului la tinerete* [*Portrait of the Gazetteer in his Youth*], as part of “a broader process of research of the Romanian interwar thinking – and the re-signification of its value – a process both necessary and difficult [...] by removing the interference of ideology with the syllogisms of interpretation”¹⁶, a successful enterprise from a “political and philosophical”¹⁷ perspective, that in deciphering of Heidegger’s political ontology has applied the grid test developed by Pierre Bourdieu.

The third book dedicated to the thinker from Paltinis, *Noica. Vămile gazetăriei – între dandysm și mitul școlii* [*Noica. Customs of the Press –*

¹¹ Ion Dur, *Noica – între dandysm și mitul școlii* [*Noica – Between Dandyism and the Myth of School*], Bucharest, Eminescu Publishing House, 1994.

¹² Ilie Guțan, *cited work*, p. 145.

¹³ Dan C. Mihăilescu, „Noica – între dandysm și mitul școlii” [“Noica – Between Dandyism and the Myth of School”], *Litere, arte, idei*, nr. 27(161), 18 July 1994.

¹⁴ Titu Popescu, „O structură de rezistență: «literatura de mijloc»” [“A Structure of Resistance: «The Middle Line Literature»”], *Observator*, München, no. 2-3, 1994.

¹⁵ Vasile Avram, „Drum deschis spre o exegeză Noica” [“An Open Way towards an Exegesis on Noica”], *Opinia publică*, nr. 175, 25-31 May 1994.

¹⁶ Ion Dur, *Noica – Portretul gazetarului la tinerete* [*Noica – A Portrait of the Journalist as a Young Man*], Sibiu, Sæculum Publishing House, 1999, p. 9.

¹⁷ Adrian Niță, „Gazetarul Noica” [“Noica the Journalist”], *Contemporanul. Ideea europeană*, no. 25, 2000, p. 6.

between *Dandyism and the Myth of School*] (2009) “synthetises and re-writes the two prior books, adding two sections on the Romanian thinker’s reference to Aristotle and Kant”¹⁸, as Andrei Terian notices in the *Dicționarul general al literaturii române* [*General Dictionary of Romanian Literature*]. This merger of prior works is performed by its author effortlessly, since it is a spin-off of the natural conjunction of those dimensions that speak not only of the philosopher, but also the man Constantin Noica.

About Nae Ionescu and his *rebellious disciple*

Once again, Ion Dur is behind one remarkable addition to the general efforts of revisiting ideas of a few interwar philosophers, this time with a book in which the “heroes” are Nae Ionescu, mentor of the generation of the 30's, and Emil Cioran, the *rebellious disciple*. Our essayist analyses the philosophic doctrine of Nae Ionescu, who has accomplished a “socratic mission in understanding the essence of the Romanian soul from an ontological angle”¹⁹, and samples the factors determining his philosophical construction, strongly sustained by the theological factor, that will “vertebrate his metaphysical vision”²⁰. By judging Nae Ionescu’s contribution with much sense of balance, the essayist Ion Dur, as Dan C. Mihăilescu states, belongs to the few exegetes that have an “interpretive common sense”²¹.

Concerning Emil Cioran, the hermeneut Dur defines the philosopher as “a dionisiac with the voluptuousness of doubt”²², “which changes quite much the interpretation”²³ of his writings. In the same book, the exegete offers the readers an extensive chapter containing “the first writing trials of the young man of 17-18 years”²⁴, and later of the student and the graduate in philosophy Emil Cioran.

On commenting *Hîrtia de turnesol* [*The Litmus Paper*] Mihaela-Gențiana Stănișor noted that the author was imposing his research perspective, packed with an ethical system of its own: “Ion Dur has succeeded in meandering skilfully through the prior demonstrations of so many other researchers of Cioran’s work, sometimes distancing himself from these and imposing his own research perspective, by avoiding the

¹⁸ Andrei Terian, *cited work*.

¹⁹ Ion Dur, *Hîrtia de turnesol. Cioran inedit. Teme pentru acasă* [*The Litmus Paper. Cioran Anew. Homework*], Sibiu, Saeculum Publishing House, 2000, p. 32.

²⁰ Ion Dur, *cited work*, p. 37.

²¹ Dan C. Mihăilescu, „Omul care aduce cartea” [“Book Man”], *ProTv*, 1 May 2001.

²² Ion Dur, *cited work*, p. 125.

²³ Dan C. Mihăilescu, „Omul care aduce cartea” [“Book Man”].

²⁴ Ion Dur, *cited work*, p. 18.

malevolent illusion of the existence of a double for the Cioranian style, that could emerge inside a meta-text. The author is proving that being faithful towards another author's text (whether this other may be Nae Ionescu or Emil Cioran) is, in fact, being faithful towards oneself"²⁵.

Marin Diaconu was noting that Ion Dur is one of the most serious interpreters of Nae Ionescu's school of thought. Even more, the researcher stated that the author "is at the height of his philosophical virtues", and the work about Nae Ionescu and Emil Cioran "remains a work of reference in the history of Romanian philosophy"²⁶. In the same vein, Gheorghe Grigurcu sustains that *Hirtia de turnesol [The Litmus Paper]* is "a book that is interesting, inciting to the intellect, I would say through its very common sense, that sometimes takes a taste of polemic"²⁷.

Later, Ion Dur "will separate" Cioran from Nae Ionescu, and dedicate an entire book to the first, with the title *Cioran. Conform cu originalul [Cioran. According to the Original]* (2016), which was translated into English and will be published at Vernon Press (2019) under the title *Cioran – A Dionysiac with the Voluptuousness of Doubt*; this edition closes with a chapter from *Schimbarea la față a României*, "Colectivism național" [*Romania's Transfiguration. National Collectivism*], that Cioran had taken out from the edition published by Humanitas in 1990, yet Ion Dur is putting it back in circulation, "against the author's will", yet "just like the original"²⁸, that is, painstakingly confronted with the version from the book's manuscript, that was miraculously found in the archive of Aurel Cioran.

Between caryatides and contemporaries

The register of Ion Dur's work is manifold. On reading his writings, one can distinguish such postures as critic, essayist, philosopher, professor and journalist. Being intensely active, and always present in cultural debates, "in-forming" generations of high-school and university students for decades, Ion Dur emerged as a critic that has reinstated order where there was hermeneutic chaos, he has kept alive the spirit of reasoning and became involved in opening new horizons in the knowledge of the human spirit's workings. Ion Dur has broadened his research by help of a prolific

²⁵ Mihaela-Gențiana Stănișor, „Eseu de alchimie comparată” [“Essay on Compared Alchemy”], *Transilvania*, no. 4, 2001, pp. 64-66.

²⁶ Marin Diaconu, „Pe calea către școala filosofică a lui Nae Ionescu” [“Towards Nae Ionescu's School of Philosophy”], *Viața Românească*, 2001, no. 3-4.

²⁷ Gheorghe Grigurcu, „Despre Nae Ionescu și Cioran” [“About Nae Ionescu and Cioran”], *România literară*, 2004, nr. 38,

https://arhiva.romlit.ro/index.pl/despre_nae_ionescu_i_cioran_i

²⁸ Ion Dur, *Cioran. Conform cu originalul [Cioran. According to the Original]*, Bucharest, Tritonic Publishing House, 2016, p. 176.

pendulation between philosophy, criticism, history, literature, journalism and communication.

After his exercises of “re-knowing” (hyphen placed on purpose), and along with his ample work *De la Eminescu la Cioran [From Eminescu to Cioran]*, still within the framework of *Romanianism* that “is not discussed”, but “affirmed”, Ion Dur proposes a renewed debate on the salvaging the idea of Romanian “identity, or cultural and spiritual individuality”²⁹ from a trivial destiny. On focusing around certain «synapses» of the Romanian culture, simply called Eminescu or Maiorescu, Motru or Camil Petrescu, Noica or Cioran”³⁰ and around the coordinates of the Romanian spirit, the exegete passes the national treasure of philosophic thinking, excruciatingly crafted amidst confrontations between the old and the new schools of thought, through the crucible of his own scientific thinking.

The freshness and “the interpreter’s participative enthusiasm”³¹, not only in this book “are not estranging the reader, on the contrary, they are stirring and keeping them alert”³². His theorisations are emerged in discursive vitality, allowing shelter in the book’s cradle solely to the long-distance readers. The authors analysed by Ion Dur possess at least one double vocation, “they have practised both the literary and the philosophic discourse”³³. In his ideas, the essayist is not anchored in the past only, but also in contemporary realms. Daniel Deleanu promoted the idea that Ion Dur, “by the minuteness of observation and his analytic rafinesse” of the last section of *De la Eminescu la Cioran [From Eminescu to Cioran]*, “is overtaking H.R. Patapieviçi in *Politice*”³⁴. Remarkable as well is the book’s last essay, “De la perfectul simplu la perfectul (des)compus” [From Simple Perfect to (De)Composed Perfect Tense], of which Ion Militaru says “It is perhaps, the most beautiful and true thing ever written about Oltenians [population living in the south of Romania, whose speaking mannerisms contain the preference for the simple perfect tense]”³⁵.

From one book to the next, research becomes more and more enticing, and the critic takes his role more seriously, as he is doing in the book

²⁹ Ion Dur, *De la Eminescu la Cioran [From Eminescu to Cioran]*, Craiova, Romanian Writing Publishing House, 1996, p. 5.

³⁰ *Ibidem*.

³¹ Ilie Gușan, *cited work*, p. 151.

³² *Ibidem*.

³³ Ioan Mariș, „De la Eminescu la Cioran” [“From Eminescu to Cioran”], *Tribuna*, 20 June 1997.

³⁴ Daniel Deleanu, „De la Eminescu la Cioran” [“From Eminescu to Cioran”], *Rostirea Românească*, no. 3-4, 1997.

³⁵ Ion Militaru, „Problema specificului românesc” [“The Problem of Romanian Specific”], *Ramuri*, nr. 2, 1998.

Cariatide of which we have written some time ago³⁶. We will revisit certain ideas below. The book opens forcefully, warning about “the dangers of a revue stage culture” in a time when the press and criticism seemed to be in free fall. In Ion Dur’s opinion, journalists were becoming more and more “deprived of a prolific cultural horizon”³⁷, while critics were stalled within the issue of “canonisation”, which led to a “surrogate culture and a decayed journalism”³⁸. Due to universities being swamped by utilitarianism and subdued to the realm of economy, and also to residual communist mentalities, the professor notes with sadness that in Romania, philosophy is being downplayed by the very institutions that ought to defend it: “I feel that in today’s state of philosophy in Romanian language, one backlash can be attributed to a hostile context coming from the very institutions. I do not know precisely how much the prejudices towards philosophy, that the Romanian high-school has cultivated with persistence, have been overcome, but the backlog of Marxist judgement filters concerning the role of philosophy still persist in many academic environments. Ideologization or politization have led to straightforward attitudes of rejection towards this discipline, that many have mistaken – and are still mistaking – for the [Communist] party’s instruction ordeal. This resistance to philosophy is at the same time often embodied in manifestations of lazy thinking, used to “precooked” treats, worshipping instant reading experiences, and to which culture comes from the revue stage, or is like chewing gum and *fast food*”³⁹.

The critic was also noticing other deviations, manifested through various forms of “resistance”: against essay, against academic activity of excellence, against culture and against authentic journalism. He is in literal combat, fighting like a soldier. By using his spear of critical judgement, Ion Dur is resetting the hermeneutics of writings of some prime size authors of the Romanian culture and of phenomena that have determined the progress of Romanian thinking, in the contexts of the critical spirit of Maiorescu, the “new spirituality” and interwar Europeanisation. Among the analysed authors are Maiorescu, Iorga, Caragiale, Eminescu, Goga, Eliade, Vulcănescu, Cioran, S. Tudor, Lucian Blaga and Noica. In the section “Lancea lui Dorifor” [*Dorifor’s Spear*], the critic welcomes debutants like Lucian Grozea (analysed in the first part), Răzvan Enache, Minodora Sălcudean, Mihaela-Gențiana Stănișor, Mihai Barbu (Posada) and Victoria Murărescu. Several pages of critique are dedicated to consecrated authors, mostly from Sibiu, such as: Rodica Braga, Adrian Niță, Ileana Marinescu,

³⁶ See Gabriel Hasmațuchi, „«Cariatide» sau împotriva veleitarismului cultural” [*Caryatides or Against Cultural Vanity*], *Sæculum*, no. 2, 2008, pp. 104-105.

³⁷ Ion Dur, *Cariatide [Caryatides]*, Sibiu, Psihomedica Publishing House, 2007, p. 8.

³⁸ *Ibidem*, p. 13.

³⁹ *Ibidem*, p. 203.

Dumitru Chioaru, Ion Radu Văcărescu, Andrei Ileni and the painter Mugur Pascu. The final part, titled *Jurnal de in-formator* [*The Notes of an In-Form-er*] deliberately offers the readers an occasion to delve into the author's universe of ideas.

On commenting upon the book, Răzvan Enache appreciates “the well-controlled pendulation between irony and sarcasm”⁴⁰, and Sorin Lavric emphasizes the commentator's sense of balance: “the author has neither bouts of liking, nor outbursts of disliking towards the authors he comments upon. His writing bears the same colour as its author's temperament: balanced, sanguine and moderate”⁴¹.

In the same register of discursive harmonisation are placed the views of Andrei Terian: “[...] the author's ideological astrogram presupposes a rare conjunction, materialised in the alliance between the critical spirit proper to Maiorescu-Lovinescu, and the constructive *pathos* of Eliade & Co., but also of the followers of the Gandirea-movement. In other words, Ion Dur is still enthusiastic enough to avoid the scepticism of the former, yet sober enough in order not to fall into the latter's mystic delirium.”⁴²

Maculatorul cu spirală [*The Spiral Notebook*] (2010) continues in the same interpretive pattern and is, like *Cariatide* [*Caryatides*], structured in three parts, with the final one containing again diary pages. Along with some new studies, Ion Dur also includes in his book a few texts written before 1989, yet “equal in aesthetic rights”⁴³. On authentic pages, his investigations are focused on literary and philosophic contributions of a few representative figures of the Romanian culture, like Eminescu, Blaga, Rebreanu, Noica, Fundoianu, R. Braga, C. Antoniadă, I. Vultur, Rădulescu-Motru, M. Sorescu, L. Raicu, A. Codoban, A. Ileni, Doina Graur and Adam Müller-Guttenbrunn. In the second chapter, Ion Dur makes theoretical stints on issues within conceptual, ideational, political and academic convergences and divergences, like: identity / alterity, new speakers / new babblers, Noica between the West, the East and Păltiniș, nationalism viewed as symbolic violence and, with ironical accents, the specific difference between philosophy and ... tinkering.

⁴⁰ Răzvan Enache, „La critique – entre fleuret et marteau” [“Criticism – Between Rapier and Hammer”], *Alkemie*, nr. 2, Novembre 2008. Available at: [http://www.revue-alkemie.com/pdf/Revue_de_litterature_et_philosophie_Alkemie_n2_\(Le_fragmentair\).pdf](http://www.revue-alkemie.com/pdf/Revue_de_litterature_et_philosophie_Alkemie_n2_(Le_fragmentair).pdf)

⁴¹ Sorin Lavric, „În contra preseii de estradă” [“Against a Revue Stage Press”], *România literară*, no. 23, 13 June 2008. Available at:

https://arhiva.romlit.ro/index.pl/n_contra_presei_de_estrad

⁴² Andrei Terian, „În contra culturii de estradă” [“Against a Revue Stage Culture”], *Ziarul de Duminică*, 14 octombrie 2008.

⁴³ Ion Dur, *Maculatorul cu spirală* [*The Spiral Notebook*], Sibiu, “Lucian Blaga” University Publishing House, 2010, p. 7.

Silviu Guga was discovering a unique trait of this work, in the fact that, even more than in the previous ones, Ion Dur reveals himself as a narrator as well, particularly in the personal diary fragments: “Prose, as we suspect, might be his second calling, perhaps to the surprise of some. The fictional dimension of his book is quite evident, particularly in the last section, in which Ion Dur proves to be a very subtle diarist, sometimes nostalgic, sometimes ironic, always preoccupied to «glorify or rehabilitate the trivia, the simple joys, things that come second»”⁴⁴.

In 2012, Ion Dur published *Ciorne și zile [Drafts and Days]*, an anthology of 16 texts, all having been published before in the last two decades, all essays that he “arranged in a chronological order of publication”⁴⁵. Along with these, the author added in the end, in form of a “cyclopic afterword”, all forewords of his books, together with a few pages from a file of critical references. In this book, the author proposes his selection of texts, analysing works of writers such as: L. Blaga, C. Noica, M. Eminescu, N. Ionescu, E. Cioran, T. Maiorescu, I.L. Caragiale, O. Goga and M. Vulcănescu, Dan C. Mihăilescu.

This collection, described by Sorin Lavric as being a possible “interior anthology”⁴⁶ of the philosopher Ion Dur, has created a frame for discussions, leading commentators to highlighting qualities of his spirit of criticism. Răzvan Enache stated the following: “Perhaps this publishing event could be one good occasion for the author to occupy a well-established position. And we confess of having often thought, which this position could be, or what position it aspires to occupy among the other writers. From one book to another, we have been waiting for clues, yet only now can be seen that, in opposition with other commentators who employ a very naive approach to the encounters within the space of culture, pretending to be either friends or adversaries of the great minds, Ion Dur prefers to soar above it all. He sees everything, without being radar detectable, like a stealth plane; he limits himself to making observations, although he could very well bomb the targets; he likes to perform loops in the air, and does not yearn for applause.”⁴⁷.

Concerning the discursive vitality of Ion Dur the critic, Constantin M. Popa stated that, from the 1992 debut and up to *Ciorne și zile [Drafts and Days]*, the exegete “has in no way lowered the enthusiasm of his writing,

⁴⁴ Silviu Guga, *Maculatorul cu spirală [The Spiral Notebook]*, *Vatra Veche*, an IV, no. 1 (37), Jan. 2012.

⁴⁵ Ion Dur, *Drafts and Days*, Sibiu, “Lucian Blaga” University Publishing House, 2012, p. 8.

⁴⁶ Sorin Lavric, „Antologie interioară” [“An Interior Anthology”], *România literară*, nr. 23, 7-13. 06, 2013. Available at: https://arhiva.romlit.ro/index.pl/antologie_interioar

⁴⁷ Răzvan Enache, „Terapii critice nonconvenționale. Ortosofia” [“Non-Conventional Critical Therapies. Ortosofy”], *Sæculum*, nr. 1-2, 2013, p. 215.

or the wingspan of his ideas, on the contrary, he has amplified that pathos of distance that the author is invoking, on following”⁴⁸.

The space of media: impenetrable to culture

The repositioning in its due rights of criticism and culture in its own vital frames has become for Ion Dur a true *credo*, although the frequent warnings about the crisis of criticism and that of culture, occupy significant spaces in his books. On a deeper judgement of things, this appears as a natural reaction, even if by its deliberate repetition, it grows into obsession, just like in *Cel de-al treilea sens [The Third Meaning]* (2014): “I have lately meditated, more than a few times on the so controversial usefulness of critical exercise (that can not be conceived without an organic philosophical background), and on its proportion within the (re)construction of the act of culture and in the authority with which it constitutes, in agreement with a certain *sæculum*, the table of values (and of re-evaluations) of a specific field (in a physical Meaning) of the spirit”⁴⁹.

The critic deplores the fact that for over two decades the space of media has been impenetrable to culture, and the consequences on the public are truly disastrous. With a reference to the cultural offer coming from the media, and also to the redoubtable study of Giovanni Sartori⁵⁰, the critic notes that a favourable medium is being created, leading to an undeniable stultification through television, which gives birth to a “surrogate culture”.

Therefore, Ion Dur insists on stating that: “For great many, culture is unfortunately very much limited to a surrogate of media culture, which makes out of *homo (s)zapiens* a hybrid concoction, with a precarious vocabulary and random grammar, mostly predisposed to analogic forms of communication. Criticism is one among the reasons for this undesirable evolution, a field otherwise bearing recognized authority before the Revolution, yet having for some good time been abandoned to undeserved chaos”⁵¹.

In the same vein, the “*hocus-pocus*” of critical stint turns criticism into a magic trick, and the only solution for it to regain its prestige stands in its aesthetic re-establishment by those who are true critics: “More than ever do we need the critic, and not some kind of cabaret impersonator, we need

⁴⁸ Constantin M. Popa, „Templierii” [“Templars”], *Mozaicul*, 1, 2014.

⁴⁹ Ion Dur, *Cel de-al treilea sens [Third sens]*, Jassy, European Institut Publishing House, 2014, p. 11.

⁵⁰ See Giovanni Sartori, *Homo videns. Imbecilizarea prin televiziune și post-gândirea [Homo videns. Idiotizing through Television and Post-reasoning]*, translation by Mihai Elin, Bucharest, Humanitas Publishing House, 2008.

⁵¹ Ion Dur, *Third sens*, p. 12.

the one who can irrevocably shoo away the virus of value promiscuity and who, standing somewhere on the high ledger of aesthetic evaluation, and owning unique knowledge, can reach to what we could call *the The Third Meaning*⁵².

The essay *Cel de-al treilea sens [The Third Meaning]* bring into the forefront the discourse of a few creators that our exegete does not cease to (re)-read: Eminescu, Blaga, Vulcănescu, Noica and Cioran. In the other writings, the essayist extends his reflections on Romanianism, scholars, politics (generously evoking here the contribution of Viorella Manolache⁵³) and the press, while in the final section – “Varia (Racursiuri)” [Miscellanea – Raccourcies] is mentioned Romul Munteanu. Also present there are commentaries on books by Mihaela Andreescu or Princess Margareta of Romania; here again, discreetly, a few pages of diary are inserted, giving insights on some of his personality traits.

The book (that earned the “Mircea Florian” Prize for philosophy of the Romanian Academy) was received as a “multiple-faceted perspective on the Romanian cultural phenomenon”⁵⁴; upon the deciphering of its message, we must retain the following, just like Adrian Niță did: “This *The Third Meaning*, added to the second meaning, that of the reader, and to the prime meaning, belonging to the author himself, is the very one that strengthens culture and, along with it, the entire society”⁵⁵.

The Kantian sense of the judgement of taste

We were once saying that “since his debut (1981) up to this day, Ion Dur has been among those who have permanently taken the pulse of culture and have imposed the yardstick values”⁵⁶ with much perseverance. In a similar line of thought lies *Critica judecării de gust [Criticism of Taste Judgement]* (2018), a work focusing on “two complementary ways to approach a work of art: the judgement of value (soft) and the judgement of taste (hard)”⁵⁷. Structured in three parts – “Publicistica unui zorbagiu balcanic” [*Journalistic Writings of a Balkan Troublemaker*], “Lecturi și

⁵² *Ibidem*, p. 13.

⁵³ See Viorella Manolache, *Repere teoretice în biopolitică [Theoretical Landmarks in Biopolitics]*, Bucharest, Publishing House of the Institute of Political Sciences and International Relations, 2013.

⁵⁴ Teodor Vidam, „Der dritte Sinn” [“Third sens”], *Sæculum*, nr. 1-2, 2015, p. 111.

⁵⁵ Adrian Niță, „Nordul axiologic” [“The Axiologic North Point”], *Luceafărul de dimineață*, no. 7, July 2014.

⁵⁶ Gabriel Hasmațuchi, *Alternative culturale [Cultural Alternatives]*, Sibiu, Techno Media Publishing House, 2018, p. 183.

⁵⁷ Ion Dur, *Critica judecării de gust. Filosofie, literatură, comunicare [Criticism of Taste Judgement. Philosophy, Literature, Communication]*, Bucharest, Eikon Publishing House, 2017, p. 11.

interpretări” [*Readings and Interpretations*] and “*Ciorne de jurnal domestic. Zilele după Iov*” [*Drafts of a Domestic Diary. Days after Job*]–, the book “ratifies axiologically various texts through a set of readings and interpretations”⁵⁸.

The pages on Petre Pandrea reveal the encyclopaedic profile of this personality; Pandrea excelled in culture, philosophy, law, criminology, judicial psychoanalysis, in the study of the “Oltenian person”, a.o. As Ion Dur states, P. Pandrea “had a truly interesting biography of a Valachian mandarin, just to use one of his favourite terms, in which the common periods alternate with those doused with serendipity, frustration, penance and, why not, rebelliousness”⁵⁹.

In the middle part of his work, Ion Dur as a “guide critic”, analyses books of both consecrated authors and of debutants, like: Al. Surdu, I. Hotico, M. Nencescu, G. Hasmațuchi, L. Grozea, T.A. Vidam, C. Necula, I. D. Sîrbu, L. Mânzat, M.– G. Stănișor, R. Stănese, R. Enache and M. Aiftincă. Along these exegeses, the critic is also adding an essay about media and a few reflections on the confrontation with the original manuscript of *Amurgul gândurilor* [*The Twilight of Thoughts*] by Emil Cioran.

In the end of his book, the diarist is giving testimony of one of the most tragic events in his life: “27 April 2016. It is Wednesday, The Holy Week. My wife’s heart has ceased to beat. Doina – or Zgrăbunță [Small mole], as I was nicknaming her, died after about five days of unbearable ordeal, as it usually goes with any incurable disease”⁶⁰. The diary goes on with illustrations of other events relevant to a period in which Ion Dur had to go through a partially possible experience of resignation and through feelings that brought him closer to Job, a model of spiritual re-establishment.

Critica judecății de gust [*Critique of the Judgement of Taste*] is undoubtedly “a joy-book”⁶¹.

“Ion Dur always carries his «self» with him”

16 years have passed since the publishing date of the first diary fragments until its appearance as a complete work⁶², yet the time span covered by

⁵⁸ *Ibidem*, p. 12.

⁵⁹ *Ibidem*, p. 16.

⁶⁰ Ion Dur, *Critica judecății de gust* [*Criticism of Taste Judgement*], p. 305.

⁶¹ Constantin Necula, „O carte-bucurie. Remontarea axiologică a gustului rafinat al Filosofiei, Literaturii și Comunicării” [“A Joy-Book. Axiologic Re-Assembly of Refined Taste of Philosophy, Literature and Communication”], *Tribuna*, nr. 8075, 16 January 2018.

⁶² See Ion Dur, *Jurnal domestic: 1971-2017. Însemnările unui in-formator* [*Domestic Diary: 1971-2017. Notes of an In-Form-er*], Bucharest, Romanian Book Publishing House, 2018.

Jurnal(ul) domestic: 1971-2017: Însemnările unui in-formator [Domestic Diary. The Notes of an In-Form-er] extends beyond 45 years. The book starts with a “Propedeutic”: “If opened with a desire to find into literature, literarised life or sensationalism, this diary ought better to be closed back again. [...] For this is a diary in which *autobiography* meddles parsimoniously with my personal life and with its extimacy, as much as my pen or my mouse was ready to pin down, and it is at the same time a *journal of ideas*, which is, I think, *its most resilient* part and, why not, probably the most interesting one, because it is trying the hardest to evade the weight of time and to be *reactive* in the face of a mental and cultural eon”⁶³.

Ion Dur is inviting his readers into the maze of his life, through three main entrances: “Isarlîc fără sîc (*Între perfectul simplu și perfectul (des)compus*) [*Isarlik without Sik - Between the Simple Perfect and the (de)Composed Perfect Tense*]”, “Vărsătorul de lumină (*Mai mult și mai puțin ca perfectul*) [*The Bearer of Light – The More and Less Perfect Tense*], and “Zilele după Iov” [*Days After Job*]. The book meets the rigours of authenticity and warns its readers that such reading should not exclude the perspective of becoming: “I did not emerge like Minerva from Jupiter’s head. I became. The oak tree comes first in the shape of an acorn”. Ion Dur maintains that he “was extremely careful with formulations and with faithful transcription”⁶⁴, yet without affecting “the text’s authenticity”. As for the prejudice associated with “publishing of diaries [solely] *posthumously*”, the diary writer believes it is “both ridiculous and counterproductive”⁶⁵.

The becoming of the man Ion Dur, with all his “ups and downs” implied by his life’s itinerary, is thus summarized: “There are life slices that are extremely important to me, with their precariousness (from *precarius*) and fulfilments, with their ups and downs. My years of high-school, college, love at first sight and marriage, the Oltenian entre-act and, infuriatingly late, my coming to Sibiu, then the tribulations that accompanied my contact with the press, particularly the culture papers; not to overlook my activity as a high-school teacher and then in Sibiu, as a professor, in the academic environment, this one a very favourable river lock, until in the end I became an uncomfortable bloke, to avoid a more aggressive euphemism”⁶⁶.

Jurnalul domestic [Domestic Diary] has been extensively commented⁶⁷. Adrian Buzdugan says that this book is a “genuinely personal combination of

⁶³ *Ibidem*, p. 7.

⁶⁴ *Ibidem*, p. 15.

⁶⁵ *Ibidem*, p. 16.

⁶⁶ *Ibidem*, p. 12.

⁶⁷ Philosopher Ion Dur was invited by Constantin Aslam to the show “Wells of Philosophy”, edition of 6 July 2018, on the topic “From the Own Self to the Broad Self. Critical Reflections on Philosophic Diaries”. <https://radioromaniacultural.ro/azi-la-radio>

the inner and outer self”⁶⁸ and Constantin Necula considers it “a fabulous lesson. Of a live culture, crafted and thought about. And of love. In a Paulinic way, he is telling us how he learned that love never fails. And I believe him. Deeply. Sensibly”⁶⁹. Further, he comments that Ion Dur’s becoming happened between “two poles of recollection: “Doina (Zgrăbunță), his loving, discreet and luminous Lady. And Constantin Noica, his cultural trainer, his rope ladder by which he sealed his cultural Heaven”⁷⁰. And Andrei Ileni particularly noted the fact that “Ion Dur’s domestic diary is not «domesticated» (in the Diary)”⁷¹. While Sorin Lavric analysed the diary from the assumption that Ion Dur is an “adiabatic man”, “in whose mind along time there was enough place for two obsessions only: his passion for philosophy and his love for a woman”⁷².

To Radu Vancu, “[Ion Dur’s] Diary is the exercise of a man who structurally *is unable of confession; there is in him a sense of shame, a reticence in showing himself, that simply stops him from including the impure matters of everyday life in the diary*”⁷³, yet beyond this objection, the commentator considers “the diary truly remarkable”. R. Vancu emphasizes other aspects as well, that make the book an interesting read, such as the way in which Ion Dur places himself face to face with alterity, a relation that generates the confessions of his own self; where the philosopher, by help of a “*crooked confessionism*”, writes about his wife “with highest emotional participation”, or where he talks about others, in fact “he unawaresly talks about himself”.

romania-cultural-izvoare-de-filosofie-de-la-eul-propriu-la-sinele-largit-reflectii-critice-pe-marginea-jurnalelor-filosofice/

⁶⁸ Adrian Buzdugan, “Domestic Journal. The Notes of an In-form-er”, *Annals of Ștefan cel Mare*” University of Suceava. Philosophy, Social and Human Disciplines Series, vol. II, 2019, p. 79. Available at:

http://www.apshus.usv.ro/arhiva/2019II/APSHUSDec2019_79_82.pdf

⁶⁹ Constantin Necula, „Metafizica lui «Dragostea nu cade niciodată»” [“Metaphysics of «Love never fails»”], *Tribuna*, 6 July 2018. Available at:

<http://www.tribuna.ro/stiri/eveniment/metafizica-lui-dragostea-nu-cade-niciodata-136447.html>

⁷⁰ *Ibidem*.

⁷¹ Andrei Ileni, „Destăinuirii despre o existență pură” [Testimonies of a Pure Existence], *Tribuna*, 9 July 2018. Available at:

<https://www.tribuna.ro/stiri/eveniment/scribul-de-marti-destainuirii-dure-despre-o-existenta-pura-136527.html>

⁷² Sorin Lavric, „Insul adiabatic” [“The Adiabatic Man”], *România literară*, Year L, no. 29, 29 June, 2018. Available at: <https://www.tribuna.ro/stiri/eveniment/scribul-de-marti-destainuirii-dure-despre-o-existenta-pura-136527.html>

⁷³ Radu Vancu, „Exigența pudorii și exigența adevărului” [“Exigency of Shame and Exigency of Truth”], *Transilvania*, no. 2 (2018). Available at:

<https://revistatransilvania.ro/wp-content/uploads/2018/12/04.Radu-Vancu-.pdf>

Horia Vicențiu Pătrașcu writes enthusiastically about the book, especially because it is “a philosopher’s diary”⁷⁴. The essayist interprets the diary, eliminating any suspicion about a possible meddling with and distortion of the related facts by the author himself: “Ion Dur always carries his «self» with him, and this is why his diary is, as I strongly think, an authentic diary”⁷⁵. Unlike other similar trials, *Jurnalul domestic [The Domestic Diary]* does not only offer the occasion for meditations on the theme of love, but is in itself “the narration of a beautiful love story, whose sole character is Doina, *alias* «Zgrăbunță»”. By comparing him to the philosopher from Păltiniș [Noica], a spirit with such a decisive role on Dur’s philosophic destiny, H. V. Pătrașcu states that “Ion Dur assimilates Noica, yet keeping a certain distance to him, which gives him freedom to elaborate his sober and context-based comments”⁷⁶.

It has also been said about Ion Dur that he performed “an act of great courage”⁷⁷ by publishing the *Jurnalul domestic [Domestic Diary]* during his lifetime, because he assumed “the enormous ever-present risk of exposing oneself as prey to the whimsical receptions and interpretations of others”⁷⁸. However, M. Sălcudean doubts the discursive authenticity and maintains that with Ion Dur “autobiographical writing displays a tone of re-remembrance rather than of a proper diary [...] Practically, the older notes, «egographies in nuce», as the author calls them, have been revisited and corrected, in view of publication”⁷⁹. Somehow in the same vein of interpretation, Victoria Murărescu-Guțan considers the diary to be “a retrieving book of an embellished sincerity”⁸⁰.

Whether these statements, casting doubt over the diary writer’s sincerity are right or not, is not the time and place here and now to debate. Still, the philosopher can be granted a right to defend himself, just as he does it in “Propedeutică”: “And then I turn back and ask all those purists: why and for what reason should we refuse to our spirit to salvage from oblivion (for it is oblivion, not amnesia, which is pathological), while transcribing the diary, certain emotion-images that have survived, why

⁷⁴ Horia Vicențiu Pătrașcu, „Ion Dur, Jurnalul domestic. Însemnările unui in-formator 1971–2017, Cartea Românească, 2018” [“Ion Dur, *Domestic Diary: 1971-2017. Notes of an in-form-er*”], Romanian Book, 2018”, *Revista de filosofie*, LXIV, 3, 2018, p. 303.

⁷⁵ *Ibidem*, p. 305.

⁷⁶ *Ibidem*, p. 304.

⁷⁷ Minodora Sălcudean, „Iluzie, seducție și autenticitate în scrierea confesivă” [“Illusion, Seduction and Authenticity in Confession Writing”], *Transilvania*, no. 2, 2018. Available at: <https://revistatransilvania.ro/iluzie-seducție-si-autenticitate-in-scrierea-confesiva/>

⁷⁸ *Ibidem*.

⁷⁹ *Ibidem*.

⁸⁰ See Victoria Murărescu Guțan, [“A retrieving book of an embellished sincerity”], *Sæculum*, 46, no. 2, 2018, pp. 161-165.

and for what reason must we resist this *natural* right of our mind to a truth as complete and completing as possible?! Only so, I believe, by re-knowledge, can we recover as much and as faithful as possible our *past*, and we can, by writing, *take possession* of it”⁸¹.

Conclusions

Ion Dur’s writings have conquered a significant place from the very beginning, yet the essayist’s success did not come out of the blue, but rather after a long-time collaboration with prestigious journals from all over the country. From 1981 until his publishing debut in 1992, the philosopher has published dozens of articles. Aside from the good organisation of ideas and the pertinent nature of his judgements, the chroniclers of his books have praised the amplitude of his documentation. Being permanently guided by aesthetic criteria and by methods that enabled him to reach right into the essence of cultural and political phenomena, but also in the “insides” of some philosophers’ thinking, he has very often succeeded in providing insights into the core of their conceptions. By removing the interference of ideologies from the syllogisms of interpretation, the hermeneut has not only re-signified, but also broadened the exegetic field of many philosophic works or journalistic corpus. It will suffice to mention the minutely performed analyses of texts by M. Eminescu, I.L. Caragiale, O. Goga, M. Vulcănescu, C. Noica, E. Cioran and many others. And in this year’s appearing books, the critic is recovering theorist Vasile Băncilă and journalist Horia Stamatu from the “poste restante”, the latter being an opener of an essential chapter for the Romanian exile journalism.

Having permanently been anchored in the act of critique and in the world of ideas, Ion Dur has also stood out as a true “guide critic”. As a subtle observer of cultural tendencies, often signalling deviations, he has repeatedly proposed to harmonize the three factors that determine cultural progress: the author, the critic and the reader. The hermeneut has built bridges between generations and ages, has come forth to meet the hopeful young generation, giving them hints on their value and revealing to them the creative possibilities coiled inside their spiritual structure.

Ion Dur’s writings are undeniable illustrations of cultural openings that equally include Romanian and universal values as well.

⁸¹ Ion Dur, *Domestic Diary*, p. 17.

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TOWARDS A GENUINE NATIONAL DEVELOPMENT: A CASE FOR KANT'S EPISTEMIC CO-OPERATIVISM IN NIGERIA

Maduka Enyimba,*

enyimbamauka@gmail.com

Ephraim Ahamefula Ikegbu**

mr_kleen2003@yahoo.com

Abstract: *Genuine and lasting development in Nigerian State and in Africa at large has been a mirage over the years. Despite the numerous efforts by governments, individuals and cooperate bodies, many aspects of the nation's and indeed the continent's economy is in need of development. It is in light of the above that this paper addresses the development crisis in Nigeria and by extension Africa using Kant's epistemic co-operativism as a yardstick. By Kant's epistemic co-operativism the paper refers to Kant's reconciliatory approach to the empiricist's-rationalist's crisis which to a large extent laid to rest the epistemic imbroglio of the 17th and 18th century BC. It is believed that following this approach, not only will Nigeria experience national growth, but also lasting peace and genuine development will become a reality in African continent.*

Keywords: *Genuine, National Development, Kant, Epistemic Co-operativism*

Introduction

Few years ago, Nigeria witnessed yet another transition to a new government which is headed by Rtd. Gen. Mohammadu Buhari. Not too long ago he was re-elected for a second tenure and was sworn in on 29 May, 2019. Considering the state of Nigerian nation at the moment, one begins to wonder what line of action or what kind of policy would the new government take to tackle the ever teeming problems in the different facets of the economy? What philosophical principle or idea will form the driving force of the new administration that will guide her in solving the various crisis-laden issues in the country?

As a matter of fact, Nigeria's economy is battered. Internationally, we are standing at zero level in terms of international trade, consequent upon the decline of oil in the international market and of course the

* Department of Philosophy, University of Calabar, Calabar, Nigeria.

** Department of Philosophy, University of Calabar, Calabar, Nigeria.

degeneration of the Nigeria currency. The Boko Haram insurgency has not been laid to rest completely, the herdsmen remains a dangerous phenomenon threatening and vigorously challenging the sovereignty of the Nigerian State, the militants in Niger Delta are still threatening fire and brimstone for any new administration. Unemployment has become a *sine-quanon* with the ever increasing Nigerian graduates. Insecurity of lives and properties is on the rise, poor standard of living as a result of inadequate social amenities is almost becoming the Nigeria trade mark. The question is what must be done?

This paper is of the opinion that if Nigeria must experience peace, stability and development in the right direction, then these problems must be nipped in the bud or at least be reduced to the barest minimum. To achieve this, the paper proposes that the government of the day corporate bodies, individuals and elder statesmen/women must embrace Kant's epistemic co-operativism in handling crisis laden issues in the nation. The paper believes that the application of Kant's epistemic co-operativism in the governance of the country will not only move the nation a step forward but will eventually bring Nigeria to the much desired peace and stability that is required for national development in a pragmatic and realistic form. The paper proceeds with the clarification of the notion of genuine or authentic national development, an exposition of the idea of Kant's epistemic-co-operativism, and finally an application of same in ensuring genuine development in Nigeria.

Genuine or Authentic National Development

The word development is derived from the verb "develop" which means to grow larger. Development therefore refers to a state of growing larger, further or more matured and organized, such that one's essence or a thing's essence is realized or unfolded. Development here refers to the progression, movement or growth towards a relatively stable state or position in which it can only get better and not worse. It is a significant improvement from what a thing was at a particular period in time to what its present condition is. "A nation-state is said to be developed when there are significant changes in all the state of its existence. In this case, the length and breadth of the said state have experienced significant change".¹ For instance, a nation state that depends solely on importation of products for the internal use cannot be said to have developed. Also, a nation that is noted internationally for election rigging contract inflation, ethnic

¹ Ikegbu and Enyimba, "Unity and National Development in Nigeria" *African Journal of Religion, Culture and Society*. Vol. 2, No. 2, 2010, p. 21.

militancy, kidnapping and trafficking in persons cannot claim development.

However, a positive pragmatic shift from the previous negative practices to a more modest, accommodating and tension free society would accede the state to have developed in the moral perspective. Also, in the area of economy, improvements in exportation of manufactured product for foreign earnings, mark a considerable level of development in a similar sense, development has been defined as a progressive change which produces a condition that is better than the existing one². In any discussion about development an implication is made to the fact that earlier there were some conditions or state of affairs that were not very good but which have undergone some improvements. Development therefore is simply a progressive change.

It is important to recognize from the onset the fact that “the concept and idea of development is multifaceted cutting across every sphere of human society”³. Nevertheless, this paper focuses on two dimensions of development which it considers very essential in nation building and national reconstruction. These are individual and societal dimensions. When development takes place in an institution or structures in the society or nation, structural or intuitional development is said to have taken place. Moreover, when this development or progressive change is found on individual member of a state, then it is said to be human or individual development. On a larger scale when there is a development in each of these areas at a time in a given society. It is said that national development has occurred. Hence, genuine or authentic national development is a combination of the progressive change in the state of the structures or institutions, individual, machineries and other resources or component parts of a nation. This is what Ikeji alludes to when he quotes Edward Widner as saying that “national development is the means of selecting and accomplishing progressive political, economic and social objectives that are authoritatively determined in one or another”⁴.

Therefore, it follows that a planned change which is derived from a purposeful decision to effect improvements, in a social system is genuine national development. Authentic national development refers essentially

² Obi, R., *Ideology and National Development: A Philosophical Perspective: An Unpublished B.A. Thesis submitted to the Department of Philosophy, University of Calabar. 1985, p. 30.*

³ Enyimba, M., “*Moral Education and Development in Nigeria*”. *International Journal of Research in Arts and Social Sciences. 8(1) 2015, p. 4.*

Enyimba, M., “Sustainable Inclusive Development through Conversational Thinking: the Case for African-Relations” *Filosofia Theoretica: Journal of African Philosophy, Culture and Religions, 8(1), 2019, p. 1.*

⁴ Ikeji, C.C., *Development Administration*. Calabar: Unical Press, 1997, p. 57.

to the standard and organizational behavior necessary for the implementation of schemes of socio-economic and political changes undertaken by the government, groups and individuals in the society. Thus “genuine” or “authentic” national development consist in a steady and gradual growth or change from not so good a state to a remarkably stable and better socio-economic, political, religious and mental state. In this sense, authentic development encompasses every aspect of a nation’s life both human and non-human aspects.⁵

Kant’s Epistemic Co-operativism

Co-operativism connotes a philosophical attitude or idea that encourages two or more different parts or aspects of a system to work together in order to achieve a common goal. Co-operativism reveals the give and take potentials of different units, theories or component parts of a system. Philosophical co-operativism recognizes the relevance of each of the different parts, or units of a system and encourages them to contribute their parts to the common good of the entire system to which they belong. A careful analysis of the philosophical idea of co-operativism shows a symbiotic type of relationship existing between or among different component parts, units or aspect of a whole for the benefit of all.

Kant employed this philosophical idea in his attempt to bridge the gap between the empiricists and the rationalists in order to show the relevance of each in the pursuit after authentic human knowledge. Accordingly, he states that though all our knowledge begins with experience, it does not arise from experience⁶. By this, Kant means that even though there has been no knowledge prior to experience, yet our understanding is not confined to experience, because it does not give us universal necessary truth which reason is insistently after. This implies that “Kant is of the view that wherever experience stops, reason continues (begins), reason cannot attain truth independent of experience vice-versa”.⁷

In his Critique of Pure Reason under the section transcendental aesthetics, Kant discusses the dynamics involved in the processes which the sense and the mind pass through before knowledge is produced. For Kant, “the science of all principles of a prior sensibility is transcendental

⁵ Enyimba, M., “Ethics and Development in Nigeria” *Introducing Ethics: Trends, Problems and Perspectives*, (Ed). Uduigwomen, A.F. Calabar: Jochrisam Publishers, 2006, p. 237.

⁶ Kant, Immanuel, *Critique of Pure Reason*. Translated by Johann, F.H., New York: Achors Books, 1987, p. 41.

⁷ Ojong, K. A. and Enyimba, Maduka, “Epistemological Implication of Kant’s Notion of Space and Time” *European Scientific Journal*, 8(24), 2012, p. 187.

aesthetics”⁸. By this Kant means the examination of the processes involved in discerning, apprehending and understanding the intricate connection that yields knowledge through the operation of the senses and the mind.

An understanding of Kant’s epistemic co-operation demands a thorough examination of the debate of the modern philosophers concerning the nature, origin, extent and certainty of human knowledge. Attempts were made by these philosophers to answer the question of the basic foundation of our knowledge such as, what is the source of knowledge? How can we be sure that we really know the things we claim to know? While the rationalists held that reason is the ultimate source of knowledge, the empiricists insisted on sense experience.

In his *Meditations* Descartes by means of his methodic doubt held that whatever that is clearly and distinctly perceived in the light of reason constitutes knowledge⁹. This for him is the criterion of certainty, for our senses are deceptive and cannot give us certainty. Thus, he arrived at this indubitable truth upon which all other truth or knowledge is built, namely, “I think therefore I am” (*Cogito Ego Sum*). In his book, *Ethics*, Spinoza distinguished three levels of knowledge namely sensory knowledge, scientific knowledge and intuitive knowledge. According to him, the highest degree of knowledge is the intuitive knowledge. It is derived from an adequate idea of God’s attributes to the knowledge of the essences of things as existing in God¹⁰. This view stems from the pantheistic position that all things are modification or manifestations of the attributes of God. The scientific knowledge is that kind of knowledge that is derived from logical deduction. The lowest of the degrees of knowledge is the sensory knowledge which is derived from the sense-perception. Here things are known in isolation and separation from the totality. When things are separated or isolated from the totality, our knowledge of them becomes inadequate and confused.

Attempting to explain the nature of human knowledge, Leibniz in his *Monadology* identified two kinds of propositions each of which corresponds with two kinds of truth. Thus, he held that necessary propositions state and correspond to truth of reason while contingent propositions state and correspond to truth of fact. Accordingly, a necessary proposition is necessarily true and cannot be denied without self-contradiction. But a contingent proposition is not necessarily true it may

⁸ Kant, Immanuel, *Critique of Pure Reason*. Translated by Johann, F.H., New York: Achors Books, 1987, p. 66.

⁹ Descartes, Rene, “Meditation on First Philosophy”. *Philosophic Classics* volume II, Bacon to Kant edited by Kaufman, Walter, New Jersey: Prentice Hall, 1968, p. 40.

¹⁰ Spinoza, B., *Ethics*. Trans. Samuel Shirley. Indianapolis: Hackett, 1991, p. 45.

be true or false and hence can be denied without self-contradiction¹¹. The British empiricists were not left out in the effort to examine and explicate the nature of human knowledge. Though all empiricists are of the view that all knowledge of reality is derived from sense-experience, they are of varying emphasis and degrees, John Locke for instance, dismisses the idea of innate knowledge as baseless and held that experience is the source of our ideas and therefore of knowledge. He distinguished two forms of experience namely sensation and reflection. By sensation he means the experience of external objects which provides us with primary qualities or ideas as yellow, white, heat etc, while “reflection refers to the notice the mind takes of its own operations which gives us the capacity to generate new ideas”¹². In his *Treatise Concerning the Principles of Human Knowledge*, Berkeley came up with his view that, to exist is to be perceived “*esse est percipi*” meaning that whatever exists, exists as ideas in the mind and ideas have no independent existent outside the mind that perceives them¹³. Berkeley believes that all our knowledge is about ideas, but unlike Locke, they are not copies of representations of things in our minds, they are things themselves. Things are not different from ideas; they are one and the same and are ideas in our minds.

David Hume is not left out in the attempt to show the experiential nature of human knowledge, according to him, all our knowledge derive from the impression which physical objects make on us during sense-perception. It is through “this impression which are lively and clear that ideas which are less lively are formed”¹⁴. Following this, Hume posited that any idea without impression is nothing but sophism and illusion. For him, sense impressions are the only original source of human knowledge. Thus, he dismissed Lockean and Berkelyian physical and spiritual substances respectively as meaningless, as it has no empirical impressions. This explained why he is referred to as the most consistent of all the empiricists meaning that he pursued the empirical doctrine to “a more disastrous and shocking conclusion”¹⁵. It is worthy of note that despite the laudable and ambitious systems of knowledge built by both rationalists and empiricists, the problem still remains, what is the reliable source of human knowledge? Is it reason or sensation?

¹¹ Leibniz, G.W.F., “Monadology” *Philosophic Classic: Vol. II, Bacon to Kant* edited by Walter Kaulmann. New Jersey: Prentice Hall, 1968, p. 69.

¹² Locke, John, *Essay Concerning Human Understanding*. New York: Dover Publications, 1894, p. 105.

¹³ Berkeley, George, *The Principles of Human Knowledge*. Indianapolis: Hackett Publishing, 1982, p. 123.

¹⁴ Hume, David, *A Treaties of Human Nature*, Oxford: Clarendon Press, 1973, p. 132.

¹⁵ Popkin, R.H. and Stroll, A., *Philosophy Made Simple*. London: Unwin Books, 1956, p. 208.

When Kant came he showed the important roles of empiricism and rationalism in the acquisition of true knowledge. This is his epistemic co-operativism. Therefore human knowledge according to Kant derives from the joint operation of “sensibility” and “understanding”. For him, the capacity of the human mind to passively receive the contents of sense-perception is sensitivity, whereas the active power of thinking about the object of sense-perception is understanding. Thus, sensibility and understanding join together to give us knowledge. Without sensibility no object will be given to us and without understanding no object will be thought. This is what we refer to and describe as Kant’s “epistemic co-operativism”. This explains why Kant himself avers that thought without content is empty and intuition without concepts is blind”¹⁶. Similarly, Ozumba and Ukah in an attempt to clarify the position of Kant, held that “it is only through the co-operative union of understanding and the sense (mental and outer senses) that knowledge is possible, understanding can intuit nothing and the sense can think nothing”¹⁷

National Development in Nigeria and Kant’s Epistemic Co-operativism

No matter what the differences may be in our nation Nigeria, it is only in the atmosphere of co-operation that genuine development can be realized, and this co-operation is the secret of the good performance of many countries of the world. There is a need for a symbiotic relationship between the government, its institution and machineries on one hand and the individual citizens and cooperate bodies on the other hand. The reason for this is that none of these aspects of the state on its one can successfully orchestrate or engender genuine development without the co-operation of the other.

No government can exist and operate successfully without the contribution of its individual citizens and co-operate bodies, and no individual citizen or cooperate bodies can successfully exist and function without some contributions from the government and its institutions and structures. Simply put no state without the individuals and no individuals without the state. This explains one of the reasons Plato in his celebrated *Republic* aptly described the state as “individual writ large”¹⁸.

Hence, like Kant, the present administration may need to bring the different aspects of the Nigerian nation to a point where self interest is

¹⁶ Kant, Immanuel. *Critique of Pure Reason*. Translated by Johann, F.H., New York: Achors Books, 1987, p. 93.

¹⁷ Ozumba, G.O. and Ukah, M.E., *History of Modern Philosophy*. Calabar: Nobert Publishers, 2012, p. 170.

¹⁸ Plato, *The Republic*, Trans. Desmond, L. England: Penguin Books, 1994, p. 49.

grossly downplayed while mutual interest is brought to the fore. This will create a conducive and harmonious atmosphere that will not only ensure a speedy development but most importantly a genuine or authentic national development that is durable. What Kant did in the epistemic world is very instructive here. Seeing the great gulf between empiricism and rationalism and of course, between reason and sensation Kant thought that, there was a need to create an atmosphere of conviviality that will cause both to dissolve into each other in a state of mutual co-operation. This led to his famous *synthetic a priori* knowledge. Thus for him, authentic or genuine human knowledge results from a co-operative effort of both sensibility (empiricism) and understanding (rationalism).

It is not within the scope of this work to begin to examine critically the challenges that most philosophers believed that Kant faced while trying to do this. Our point of emphasis is that by a conscious creation of an atmosphere of co-operativism between rationalism and empiricism, Kant was able to escape the deadly horns of these two epistemic giants, which enabled him to build a sophisticated epistemic edifice that is still relevant till today. It is therefore, the conviction of this paper that a conscious and determined cultivation of the philosophical attitude of co-operativism in crisis laden situations in any sphere of Nigeria's economy by the present administration will bring about the much desired development in the right direction. This appears to be the point Eyo Ita attempted to make in his work "*Crusade or Freedom*". According to him:

Genuine national unity and co-operation can be achieved not by any artificial federation or regionalization, but by those naturally socially-cementing forces that have always operated to weld up homogeneous peoples, common experience, common life, common education, serving the purpose of producing a community of culture, free and open intercourse through the instrumentality of communication and transportation, free interchange of ideas and other goods and mutual service and goodwill, these are the natural cohesive forces that have always produced genuine nationality and oneness among peoples of all lands¹⁹.

Eyo Ita is indeed advocating for a co-operative unity among diverse units of the Nigeria society in order for there to be genuine national development. To buttress the point being made here, it will not be out of place to recall Plato's division of the state into three parts, the rulers, the auxiliaries and the labourers. According to him, the state develops or prospers in the right direction if each of these parts functions well, that is,

¹⁹ Eyo, Ita. *Crusade for Freedom*. Calabar: WAPL, 1949.

if each carries out its responsibilities well. It is our opinion that the division conforms analogically to the need to function well for there to be genuine national development. This, we maintain can be achieved by a mutual and co-operative understanding by both parts which must see each other as incomplete and irrelevant without the other.

This position as expressed by Eyo does not contrast sharply with Ikegbu's view that the pursuit of self interest by leaders has affected the growth of the Nigerian State. He argued thus:

It is a country that has experienced all forms of political leadership ranging from colonial, military, civil and interim leadership all in an attempt to fashion out safe leadership engineering and structuring for the good of its citizenry. It is equally blessed with abundant human and material resources. The natural deposits are so enormous to adequately ensure a robust economy for the benefit of the members of the society. This phenomenon is altered by the leaders' psychology of self-esteem and interest and philosophy of it is my turn syndrome.

The ruler-ruled contract has evidently collapsed consequent of the inability of the ruler to see his leadership position as that of a trust ...²⁰

A careful scrutiny of the philosophical attitude of co-operativism being presented here, as a tool for progressive and genuinely developed governance and society in Nigeria shows that it is deeply rooted in African communalism as against western individualism. Like Nyerere's socialism, philosophical co-operativism presents a socio-economic framework that avoids the conflicting antagonism between and among parties, groups and classes. Accordingly, the "idea of socialism has its foundation in the principle of human equality, which equality has to be applied to the different sectors of the society, namely: economic, social and political - it is an equality of benefits"²¹. As stated earlier co-operativism like Nyerere's socialism presupposes equality of different sections of the society in not only contributing towards the development of the society, but also enjoying the benefits that accrue from their co-operative unity. Thus, "the equality of all members is fundamental to any social grouping to which an

²⁰ Ikegbu, Ephraim. A., "The Poverty of Leadership and Science of Prodigalism: A Philosophical Inquest". *European Scientific Journal*, Vol. 11 No. 29, 2015, pp. 243-260.

²¹ Nyerere, Julius. *Ujamaa: Essays on Socialism*. New York: Oxford University Press, 1968, p. 79.

individual freely belong... the ideal society is based on human equality and on a combination of the freedom and unity of its members”²².

Aligning in this stream of thought, Ikegbu, Duru and Ndem in their article contend that:

With the process of time and the quest for industrialization and scrambling of Africa by the “heavy weights”, Africa’s cherished values that were evident in her customs and tradition; religious, native political democracy e.t.c. became eroded by those that felt the unity of Africa would constitute a major political bloc that may threaten global peace. This logic of selfism and the need to maintain a strong hegemonic bloc by the West resulted in collapsing a formidable African structure that led to the ‘death’ of socialism and humanism which were Africa’s Key philosophy of existence. This paper strongly believe that a positive radical draw back to the original position of accentuating the African spirit of socialism and communalism will re-launch the entire Africa to the exalted peak of political freedom and economic prosperity. The paper is of the opinion that the application of foreign logic to address local circumstance is indeed, a logical error which is currently the bane of African socio-political and economic development Realignment with traditional African socialism entirely developed to suit the African circumstance is the therapy to purge Africans of poverty, leadership problem, economic dependence and all other forms of social vices. The principle of *Onye aghala Nwanneya* and *Biri Ka Mbiri* should be rekindled in the philosophy and ideology of the Africa being African socialism²³

Therefore, philosophical or epistemic co-operativism which is what Kant employed in the attempt to whither the intellectual storm engulfing the epistemic world by reason of the rationalist-empiricist crisis, can be consciously applied by the Nigerian leadership and government, in all sectors of the society namely, politics, economics, religion etc. when this is applied in the realm of politics, political co-operativism will be the result. In this case, there should exist a symbiotic relationship between the government and their instruments of governance on one hand and the governed or citizens on the other, which is geared towards the peaceful development of the society. However, “the attitude of the rulers and the ruled towards each others in the political process in Nigeria has been anti-

²² Nyerere, Julius, *Freedom and Unity: A Selection from Writings and Speeches*. 1952 – 1965. Nairobi: Oxford University Press, p. 8.

²³ Ikegbu, Ephraim. A., Sunday A. Duru and Samuel E. Ndem ”African Socialism: Metaphor for Political Freedom and Economic Prosperity in the 21st Century” *Journal of Integrative Humanism*; Ghana, Vol. 3 No1, 2013, pp. 37-50.

progressive. It does not allow for the level of co-operation needed for a peaceful co-existence and a meaningful development in the country”²⁴. Truly, without co-operative processes, political life would indeed be “cruel and chaotic”²⁵.

On the other hand, when philosophical co-operativism is applied in the realm of economics, the result will be economic co-operativism. In this case, the Nigeria government and leadership would have ensured that the economy is not dominated by one commodity at the expense of others, rather a combination of diverse commodities that will be exported for foreign exchange. In other words, crude oil needs not continue to be seen as the only foreign exchange commodity in the nation, just as Kant refused to see rationalism nor empiricism as the ultimate and only source of knowledge but a combination of both. Other foreign exchange commodities such as cotton, rubber, palm, textile, etc. must be given equal opportunity to co-operate with crude oil in bringing foreign exchange to the country and on the long run a stabilized and developed economy.

Similarly, religious co-operativism will ensue, when the government of the day employs the attitude and philosophy of co-operativism in attending to issues of religious concerns in the nation. In this case, the two major religions in Nigeria namely Christianity and Islam would cease to war against each other over supremacy and dominance as was the case with rationalism and empiricism, but would rather, in an attitude of epistemic co-operativism be made to dissolve their differences and project their similarities. This would provide a fair playing ground for both religions to assert their relevance towards the common good of social cohesion and national development.

Conclusion

Genuine and authentic national development that will stand the test of time is dependent on the inculcation and subsequent exhibition and application of the philosophical attitude of co-operativism by every stakeholder in Nigerian nation. This is the thesis of this paper, substantiation of which we have attempted to make in the foregoing. The government of the day, the citizenry, the machineries of government, different groups and their group interest, cooperate bodies, religious bodies etc must come to the understanding that they are relevant to each other’s growth, aspirations and therefore to the development of the nation at large.

²⁴ Enyimba, M., *Democracy, Politics Society: A Philosophical Approach*. Calabar: Iyke Press, 2003, p. 23.

²⁵ Uchendu, V.C., *Public Policy Analysis: Concept, Process and Theory*. Calabar: University of Calabar Press, 1994, p. 354.

Until governmental policies, actions and projects are founded on this philosophy and until this philosophical attitude forms the fundamental aspects of the thought systems, actions, speeches, behaviours and conducts of individual citizens, genuine development will continue to elude Nigeria. Epistemic co-operativism discourages selfism, selfish and group interest but encourages mutualism, common good and communal interests. All these in turn provide the necessary condition for the nation to genuinely or authentically develop.

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PURITANISM A RETROSPECTIVE APPROACH TO THE AMERICAN COLONIZATION

Andreea Popescu*

andreea_popescu9@yahoo.com

Abstract: *The Puritan colonization of America is the landmark for the creation of a new nation, a process during which much of the subsequent American mentality emerged. The colonization identified both with the religious background and the daily existence aimed at surviving in a new and often hostile land. The religious principles belonged both to Calvinism and Lutheranism as they were applied in the epoch of the Reformation. The passengers of the Mayflower, be they intellectuals, merchants or farmers, looked at America as the home offered by fate, the Promised Land in which to build their houses. Gradually, the Pilgrims wondering at the beauty of their new country became a population mastering the land and evolving towards a modern approach to life.*

Keywords: *colonization, congregation, covenant, grace, predestination, wilderness*

In 1607 Captain John Smith, founder of the colony of Virginia, uttered the following words: "Heaven and earth never agreed better to frame a place for man's habitation."¹ In those times the English were only exploring what later would become the territories of the New World. America was seen as a land where all the dreams of man could be fulfilled, especially the one about freedom and religious liberties. The colonization of America should be understood in the historical context of England. When in 1603 Queen Elizabeth I Tudor died without having children of her own, her successor was James VI Stuart of Scotland who later became King James I of England. He was a Presbyterian and tried to introduce the rigour and austerity of the Church of Scotland in the Anglican one. Also called the Established Church of England the Anglican Church originated in the Reformation principles of Martin Luther and Jean Calvin.

The Reformation was adopted in England due to the personal wish of Henry VIII Tudor to break away with Papacy and create a national church

* Associate Professor, PhD., English Department, Faculty of Foreign Languages and Literatures, University of Bucharest.

¹ John Smith, cited in Olson, Keith. W., *An Outline of American History*, Washington, United States Information Agency, 1995, p. 10.

which could serve his purposes. What was in the beginning a personal wish of the king, became a matter of national interest as the links with Rome were already thought to be superficial. The English considered the Reformation as the means by which they could assert their national independence and pride by showing the West that they did not depend on any authority but their own. In 1517 Martin Luther, a German monk and professor at Wittenberg University, proposed a cleaning of the Catholic Church of the evil elements brought by corruption and the selling of pardons. In Luther's view such aspects tainted the prestige of Catholicism. Principles like sola fides, sola scriptura, theologia crucis became the bases of the Protestant Church. A consequence of the Reformation was the creation of national churches in which the divine service was held in the national language. An important change also occurred at the level of symbols. Instead of a visual culture which characterized the previous epochs, the Reformation brought a written culture which focused on education and reading the Bible. Due to the invention of the printing press by Guttenberg books could spread more easily among the people.

In England the official church became the Anglican Church, but there existed other branches of Protestantism as well. Among them there were the Puritans, also called radical Protestants. The aim of this branch was to purify the Church of England of all Catholic influences and in this way to keep it close to the Reformation principles. The Puritans were not convinced that the English Reformation had been fully applied and they considered that the Anglicans preserved too much of the Catholic ceremonial and ecclesiastical hierarchy. The doctrine they supported insisted on austerity and profound religious devotion. The Puritans believed that their faith should be based on the Bible which they thought to have been divinely inspired. They shared common views on the nature of God, the sinful human nature and the relationship between man and God. An important concept for them was the one of the covenant which divided in two. The covenant of works asserted that God promised Adam and Eve eternal life in exchange for perfect obedience. After the fall of man and the primordial sin the covenant of works was not valid anymore as man had become essentially sinful. Being sinful creatures humans deserved eternal damnation. However, due to the sacrifice of Christ there also exists the covenant of grace by which those chosen by God could be saved. The covenant of grace was the basic concept for Puritanism as it was the only way to escape eternal damnation.

The Puritans believed in physical and spiritual piety as well as in fervent worship and purity of doctrine. Different from other branches of Protestantism they were intolerant and inflexible towards those who had committed mistakes. A great influence played Calvinism and the principle

of the double predestination. Calvin spoke of the predestination for good and the predestination for bad. Both depended on the deeds man accomplished during his earthly existence. Predestination for good meant that if man led a moral exemplary life then he could hope to go to Heaven. It was not certain that he would arrive there, but faith helped man to reach his aim. Predestination for bad was more complex since it involved the idea of retribution. If once man did something evil, then no matter how virtuous his life would continue to be that evil deed would catch up with him in the future and he would pay for it. The reality of divine punishment conditioned the life of the Puritans every day. They also believed that there were a number of people who were elected by God to receive salvation and grace, while others would suffer eternal damnation and go to hell. Yet, no one was certain that he would deserve salvation. Following in the steps of Calvin, the Puritans thought that the elect were people who had already been selected by God to receive salvation. This was a concept which they called unconditional salvation. The grace of God was given only to these elect who showed that they observed the religious doctrine and responded to the call of God by reading the Bible. This attitude related to a concept which they called irresistible grace.

The English Puritans tried to introduce these concepts in the Anglican Church, but they failed because they were too strict in their belief and their doctrine did not match Anglicanism. Another aspect which they tried to change was the usage of the Book of Common Prayer. This book had appeared in the time of King Edward VI Tudor and it contained all the prayers commonly used during services in the Anglican Church. The Puritans accepted the Book of Common Prayer, but they tried to add new texts to it and to make it more flexible in the ideas it taught. Two main concepts were essential for the Puritan faith: baptism and the Last Supper. These two sacraments constituted the core of their belief. In Puritan churches baptism was simplified, containing only the strictly necessary elements without any ceremony attached to it. The Last Supper was considered the moment when the Church was born and when the mission of the Apostles began. The events related to it represented the proof of God's love for those whom He had elected. It also supported the idea that salvation was given only to some. The Book of Common Prayer was a text which was eventually accepted by the Puritan branch, but their constant opposition to the official Anglican Church made the situation quite tense.

In order to find a way to prevent any other negative reactions, King James I Stuart involved them in an effort which brought about the creation of a treasure of English culture: King James Bible. Also called the Authorized Version, it is the first complete translation of the Bible in English. It was finished in 1611, being the work of intellectuals and

professors at Oxford and Cambridge Universities. In the effort to pacify the Puritans King James offered them the chance to contribute to this cultural endeavour. The new translation had to respect the ecclesiastical doctrine of the Church of England and limit the Puritan influence. Though they were part of this general effort, the Puritan intellectuals considered themselves marginalized by the king and this situation deepened the conflict between these two authorities.

Given the fact that many Puritans increasingly felt that their position was more and more intolerable, the idea that England was no longer their home began to grow in their minds. They were already considered Separatists and were not allowed to educate their children in public schools. Other civil rights had already been taken from them. In this climate of dissatisfaction there appeared the first wish of leaving for America. The first voyage started in Southampton in 1620 on a ship called the *Mayflower*. She crossed the Atlantic carrying 102 passengers (men, women and children) and a crew of 30 men. After 10 weeks at sea the voyagers, also called Pilgrims, reached Cape Cod on 19 November 1620. The initial plan was to set sail on two ships, hoping to arrive in America in early October, but delays and the bad weather prevented them from achieving their plan. The second ship, called *Speedwell*, suffered damages when at sea and she had to return to England. Arriving in America on the threshold of winter, the Pilgrims had to endure hardships caused both by the weather and their rudimentary means of survival. The *Mayflower* was a small ship that had been used for commerce between England and France. The 102 passengers were crowded in their quarters and suffered terribly during the two month voyage. Many storms assailed the ship, some people perished, others were miraculously saved. The passengers stayed below deck in semi-darkness, holding to each other and praying for salvation. What kept them alive was their profound faith and the strong belief that they had a covenant to fulfill like the people of the Old Testament.

The people who had left England belonged to the middle class, they were educated and were quite well-to-do. Yet, the voyage at sea proved a terrible test and they lived through it due to their profound faith and religious devotion. Going to America represented for them a reiteration of the episode in the Bible when God helped the Hebrews to flee Egypt and offered them the Promised Land. Another symbolical moment which inspired them was the episode when the Hebrews left Babylon in order to escape bondage and returned to Jerusalem where they would build the temple. In this context one should consider that the voyage of the *Mayflower* identified with a journey of faith, a quest at the end of which the Pilgrims would settle the New Jerusalem. Building the city upon the hill referred to creating a spiritual Jerusalem in America.

When they left for America the Pilgrims had ended all their businesses in England and had bought necessary objects for their new life. It is assumed that they carried tools, food and weapons as well as live animals, such as dogs, sheep, goats and fowl. The ship also had two small live boats powered by oars or sails. She carried artillery pieces which were meant to protect the voyagers from attacks of European forces or the Native Americans. After arriving in Cape Cod the Puritans attempted to travel south to the colony of Virginia in Jamestown which was already English land and where they had obtained permission to settle from the part of the Merchant Adventurers. These people belonged to one of the new social classes created by King Henry VII Tudor who reconfigured English society after the War of the Roses. The Merchant Adventurers were traders and explorers. They had settled the Virginia Territory, a first American colony in the time of Queen Elizabeth I Tudor under the command of Sir Walter Raleigh. The harsh winter conditions prevented the Pilgrims to reach Jamestown and they returned to Cape Cod where they remained. Before going back they signed the Mayflower Compact, a document establishing legal order and preventing any conflicts among the colonists. It was the first document which functioned as a legal act in the new colony. The consequence of the Mayflower Compact was the final decision of the Pilgrims to remain forever there and to form a self-governing colony separated from Virginia. It received the name Plymouth Colony. The region where they lived was called New England, a fact which suggested that in the beginning the Pilgrims did not want to break any links with the mother land. Permanent and intense commercial exchanges would continue until the American Revolution when the colonies would obtain their independence from England.

Plymouth faced many problems during the first winter, mainly because of starvation and lack of appropriate shelter. The colonists remained on board the ship, but diseases broke out and killed many of them. Out of 150 people 52 died. An important aid came from the Natives who helped them with food and in the next spring taught them how to plant corn and hunt in the wild. In memory of this help at the one year anniversary of the *Mayflower* arrival the first Thanksgiving Day was celebrated. It was in November and it referred to the concepts of communion, friendship and gratitude in the name of God who had helped the Pilgrims to survive their first winter. Both the Europeans and the Natives took part in the celebration. The feast still exists nowadays and it takes place on the last Thursday of November. In the Puritan age it lasted three days and it numbered 53 colonists and 90 Natives. The colonists were mainly Separatists as most of the original Pilgrims had moved to another place which they called Massachusetts Bay Colony with its capital Boston.

Separatists, also known as English Dissenters, shared the same Calvinist strict doctrine. Thanksgiving reiterated the success of the colonization and demonstrated the power of adaptation which the Pilgrims had.

A Puritan community was formed on the religious bases of the congregation following the Calvinist doctrine. They combined Calvin's organisation principles and Luther's concepts. The Puritans founded their groups in congregational churches, agreeing to be guided by sola scriptura. The Holy Scripture was not only the essential reading for the colonists, but it was also a way of life because all the models and lessons they needed were found there. Luther considered that reading only the Bible was enough in order to know the world. Every congregation was based on a church covenant which was a written document by which every community had the right to elect its own officers and take care of its own affairs. Every congregation was led by a minister who preached and administered the sacraments. He was among the elders of the community, namely a person of high respect that would set a moral example to the others. There were teaching elders and ruling elders who helped with the problems of the community. The religious basis of the congregation and the Puritan faith in general relied on the conviction that man was saved by grace alone and not by any merit linked to good deeds. Such belief differed from the Calvinist doctrine of predestination. There were three stages by which a person could say that the grace of God worked in him: introspection when the Bible was read, humiliation when the person realized that he could not break away from sin and justification when he understood that salvation was possible only through divine mercy. At the end of the process the person was supposed to show that he had received divine grace and thus he could be admitted as one of the elect.

The elect were not only people providing moral examples, they were also those who had been chosen to rule the colony. Initially the system functioned in Massachusetts Bay Colony and then in all New England. The elect formed a board of governors helping with the well-being of the people. They could impart justice, having political and religious power. One of the most important governors in Massachusetts was John Winthrop who left behind a *Journal* describing daily life in the colony. It is a precious document narrating about the beginnings of the colonial period and an invaluable literary creation as well. The governor was elected from 4 to 4 years, a democratic process which would be maintained along the centuries. The elect formed a group of the so-called "visible saints", including those that had experienced conversion. The purpose was to worship God and to help each other in search for religious truth.

The members of a Puritan community believed in the church autonomy whose members would respect the church covenant, namely the

doctrine corresponding to that particular church. Among the concepts characterizing the Puritan belief some were essential as they offered a comprehensive view of the Puritan mentality. They all pointed towards the annihilation of all personal desire and the permanent avoidance of pride. Self-denial and self-humiliation are key elements in understanding this view. They corresponded to the status of the fallen man and the innate sinfulness of mankind. Self-humiliation referred to the state of mind in which man should not enjoy his earthly life, but rather think of the next one in which he has to respond for his deeds. It was an appeal to introspection and self-analysis. It presupposed meditation and renunciation. Self-humiliation corresponded to the capacity of man to avoid pride which was one of the seven deadly sins. Self-denial identified with the attitude of giving up all joy and concentrating on one's own sinful nature. Puritan life was austere, every Sunday people went to church where they listened to the sermon in which they were told to repent while waiting for Judgment Day. Though the colonization of New England succeeded due to the courage and perseverance of the first colonists, they would not feel proud of it. They simply enacted the words of God who had sent them with the mission of colonizing a new land. In the centuries to come self-denial would be replaced by self-reliance, characterizing the American nation on the dawn of modernism.

Life in a Puritan community identified with the human toil for daily survival. One of the concepts which appeared in those early days was "Work keeps one alive". After the first winter spent in Plymouth and the first harvest the colonists gradually started to assimilate the land. They built homesteads made of wood where the family and the animals took shelter. Next to them were the pasture and the plot of land which the farmer cultivated. The method involved ploughing with the help of cattle or horses, the plough being used manually by the farmer. Seeds were planted and the harvest was collected. Beside farming, other activities implied fishing and hunting in the woods. Later on, when the communities grew, trade relationships established among them. As simple as life was, it provided the colonists with what they needed and soon the villages flourished. Though in the beginning, when they first saw a glimpse of their new home, the Pilgrims felt quite uneasy, later on the forests and the vast shores proved to be an invaluable treasure, providing them with all that they needed. The colonial family houses had their origins in the modest homesteads built along the rivers and in places with rich soil. Such wild spaces offered them raw building materials for furniture or ships.

A new concept appeared, gradually becoming one of the essential symbols of American mentality: the frontier. In the Puritan age it had two connotations: real and imaginary. The real frontier corresponded to the

space which separated the village from the wilderness around. In those times the wilderness represented a place of danger where the solitary man could lose his life. Safety lay in the community and not outside it. The land was not fully explored by the colonists and perils existed everywhere. In the following centuries this real frontier would be pushed further and further until all the land would be conquered. The imaginary frontier bears a more interesting meaning. It was the imaginary line which delimited the known space of the community from the unknown space of the wilderness. In the Puritan age the wild was the place of temptations, of the devil where man would lose his soul. It was a space which frightened because the colonist could not survive on his own, as he needed the help and protection of the community. In symbolical terms, loneliness identified with a spiritual exile when man felt ignored by the others, becoming invisible to them. Exile could also occur in a concrete manner. If a person was found to have disobeyed the rules of the community he was sent away and never accepted back by the others. He was really exiled in the wild and in many cases he would not survive by himself. The wild was a place of danger because of savage animals or the Natives. Though they used to be friendly with the Pilgrims of the *Mayflower*, later they became menacing, especially after the success of the colonization and the subsequent waves of new voyagers.

In many cases the person sent in exile became an outcast not only for the community, but also for other colonists as he carried the guilt all along his life. A common practice was to inscribe the guilt on the person in the form of a symbolical object which had the initial of the sin the condemned had committed. The sign had to be worn all the time as it became part of his nature. A suggestive example is the romance *The Scarlet Letter* by Nathaniel Hawthorne in which the author narrates a story situated in the Puritan age. The main character, Hester Prynne, has to wear the letter A standing for adultery. In some cases the person had to stand on the pillory of shame before the entire congregation in the public square. It was a practice already applied to Separatists in England. The manner in which the Puritans treated such matters displayed their inflexibility and rigid views. In later years a dark episode came to underline the merciless attitude of the Puritans. In 1692-1693 in Massachusetts Bay Colony, in the town of Salem, took place the famous witch trials during which 25 people died either by hanging or by passing away in prison. The witch trials revealed the limits of the Puritan mentality, unveiling their superstitions, fears and hatred. Though their guilt was never fully demonstrated, the condemned were executed in order to give a moral example to the community and to reinforce the rule of the Puritan law among them.

In spite of the negative aspects affecting the Puritan age, the period should also be considered as one of development and successful settlement. A proof of colonial flourishing was the opening of Harvard University in 1636 in Boston. It was named after John Harvard, a clergyman and benefactor of the town. The creation of Harvard showed the level of education of the people living in the colonies and the wish to improve themselves in all domains. Many of the passengers of the *Mayflower* were well-educated people, having studied at universities in England and who brought to America books belonging to great European writers. Literature flourished in the Puritan age. It was mainly represented by journals and religious texts in which the authors expressed their profound religious views. A most famous text was the *Journal* of John Winthrop, one of the first governors of Massachusetts Bay Colony. Winthrop was of an English noble origin and migrated to America because of religious and political persecutions. His *Journal* was a daily recollection of the experiences the colonists had in New England. It is a very precious document about the early days of the colonization. It also contains the legal and political bases on which the colony was founded. The whole text was written in high religious terms, reflecting the permanent influence of faith and the Puritan doctrine in the life of the colonists. "Whereas we all came into these parts of America with one and the same end and aim, namely to enjoy the liberties of the gospel in purity and peace; and whereas by our settling, by the wise providence of God we are further dispersed upon seacoasts and rivers than was at first intended; whereas we live encompassed with people of several nations and strange languages; we therefore conceive it our bounden duty, without delay, to enter into a present consociation amongst ourselves for mutual help and strength in all future concernment. Therefore it is fully agreed and concluded that they will all be called the United Colonies of New England."²

Winthrop's journal was the first important literary piece which told about the life of the people in the colonies. The author conceived it as a guide for the future colonists, giving advice in many practical domains from agriculture to the religious service. The journal also shows the way in which the governor involved himself in the ruling of the colony. He would not only impart justice and impose different principles and doctrines, he was an effective part of the community sharing in their needs and joys. Together with the other elect, he would participate in all the activities of the colony in equal terms, working with the others for the common good. The principle of equality functioned at the level of society and helped with

² John Winthrop, cited in Richard S. Dunne, *The Journal of John Winthrop*, Boston, John Harvard Library, 2000, p. 80.

the welfare of the people. The governor was not only a politician, he was mostly a teacher and a spiritual guide, representing the wishes and the ideals of the community. The unity of such societies consisted in respect and in gathering around the elect who had the grace of God.

Beside journals and religious writings poetry was another literary field cultivated in the Puritan age. The most important poet was Anne Bradstreet. She belonged to a wealthy English family and migrated to America together with her husband in search of a better home. They were both among the founders of Harvard University. Anne Bradstreet represented the intellectuals of the colony, opening the road towards the future generations of writers. Her poems were highly influenced by the Puritan doctrine, being well received by the readers. In the line of the belief about self-denial and self-discipline Anne Bradstreet looked at her poems as a simple creation of a humble mind and did not dare to assume full credit for them. A large part of her texts compare the act of writing with the journey undertaken by the Pilgrims of the *Mayflower*. The voyage on the sea is seen as a journey of initiation in search for an answer which is similar to the effort of the poet to find artistic inspiration. Writing on the blank page is an exploration of new chances, a challenge similar to the one of the colonists who travelled and assimilated their new home. Verses like “At thy return my blushing was not small / My rambling brat (in print) should mother call”³ unveil the feeling that self-denial finds a complementary part in self-assertion. Bradstreet personalizes the poem by comparing it to a child whose destiny is to teach the others by its personal example.

A common theme of her texts is mortality which is associated with the sinful nature of man. Instead of following the habitual perspective of the community, the poet adopts a personal and direct tone. Memory is the concept which gives hope because being remembered is the way of defeating death and remaining in the souls of the others. Verses like “If any worth or virtue were in me / Let that live freshly in thy memory”⁴ underline her need to be part of the collective history of the community. The text entitled *The Author to Her Book* contains her view about the role of poetry in a Puritan society by stating that poetry should be complementary to religion as they both have the same mission to enlighten the human spirit. Bradstreet’s work ought to be understood in the circumstances of the struggle of the Puritans to make a living in the New World. Her texts reflect the common aspects of a colonial existence, underlying that the human mind deserves exploring and praising beyond the strict Puritan doctrine.

³ Anne Bradstreet, cited in Jeannine Hensley, *The Works of Anne Bradstreet*, Cambridge, MA., Belknap Press, 1999, p. 90.

⁴ *Ibidem*, p. 85.

The Puritan colonization of America was not only the adventure of a group of travellers who fled their homeland because of religious persecutions. It was the endeavour of people who looked at the New World with the hope and confidence that God had not abandoned them. They built a new civilization on a once savage continent simply by believing in their capacity and will of survival. The Puritans were soon followed by other nations belonging to different churches and the example they set endured along the centuries. New England became the cradle of the American nation, the symbolical place of freedom and religious liberties. Though the Puritan doctrine was strict and austere, having its own limits and faults, the colonists succeeded due to their power of adaptation and hard work. Much of the Puritan legacy continued in time. It remained in history as the epoch in which people did not merely endure, they prevailed.

Despite the difficulties of the settlement and the inevitable hardships, the Puritans set an example for all the future modern American civilization. The words of John Winthrop summarize the high spiritual mission of the colonists, having served ever since as a symbol of the epoch. "For we must consider that we shall be as a city upon a hill. The eyes of the people are upon us. We must delight in each other, make other's conditions our own, rejoice together, mourn together, labor and suffer together, always having before our eyes our commission and community in the work, our community as members of the same body."⁵

The feeling of strong unity and compassion which the Pilgrims felt for each other transformed the colonization into a story of moral and spiritual accomplishment. The first travellers looked in awe and wonder at the garden that God had given them in the new Promised Land, fearing what might be hidden behind the curtain of trees. The future American inhabitants established themselves as true masters of the land, raising themselves above the mere status of humble explorers. Self-assertion would become the main feature of the American nation which would return to the roots of the Puritan heritage in a permanent attempt to retrieve its spiritual identity.

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⁵ John Winthrop, cited in Richard S. Dunne, *The Journal of John Winthrop*, Boston, John Harvard Library, 2000, p. 81.

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INDIGENOUS PEOPLES OF BIAFRA (IPOB) AND THE RENEWED QUEST FOR BIAFRA

Ngozika Anthonia Obi-Ani,*

ngozika.obi-ani@unn.edu.ng

Okwuchukwu Justice Nzubechi,**

justiceokwuchukwu1997@gmail.com

Paul Obi-Ani***

paul.obi-ani@unn.edu.ng

Abstract: *This paper tried to understand the unceasing agitation for actualisation of Biafra among those who did not experience the Nigerian-Biafran war (1967-1970); those on the margin of state power and the generation of those yet to recover from the traumas of the war. The renewed resurgence of Biafra as epitomised by the Indigenous Peoples of Biafra (IPOB), brings to the fore the issues of post-civil war reconciliation in Nigeria. The official narrative is that Biafra ceased to exist on 15 January 1970. However, in the minds of millions of Igbo suffering from political and economic exclusion, the Biafran war rages on. Using both primary and secondary sources, this paper interrogates the disenchantment among the younger generation of the Igbo and how to build a new Nigeria that would be inclusive.*

Keywords: *Nigeria, Biafra, IPOB, Igbo, Post-Colonial, Conflict*

Introduction

The post war efforts, which aimed at a proper reunification, proved futile in sustaining durable unity between a majority of the Igbo populace and the Nigerian state. Fifty years after the Nigerian-Biafran war, a notable number of her youths are disillusioned with the one Nigeria mantra thus justifying James O'Connell's assertion that 'many Igbo remained

* PhD., Department of History and International Studies, Faculty of Arts, University of Nigeria, Nsukka.

** Department of History and International Studies, Faculty of Arts, University of Nigeria, Nsukka.

*** Department of History and International Studies, Faculty of Arts, University of Nigeria, Nsukka.

secessionists at heart even though they had accepted the Biafran defeat¹. In a bid to unify the Igbo after the war, an organizational assembly known as the Igbo National Assembly (INA) was created. Fear and suspicions drove the federal government at the time to ban the organization, which they felt the Igbo agenda may begin to sprout via the organization, hence, the creation of *Ohaneze Ndi Igbo* in 1976². Apart from fostering unity among the Igbo, this group, dominated by prominent Igbo politicians also claimed to fight for political representation and power for the Igbo. Since the end of the civil war, an Igbo presidency has been the main project of the *Ohaneze Ndi Igbo* which often times is regarded as an association of Igbo politicians. Another major demand of this group was the creation of one additional state of Igbo extraction³. However, the Igbo youths were dissatisfied with the non-radical 'snail pace' at which the *Ohaneze Ndi Igbo* were pushing the Igbo affair. They viewed the *Ohaneze Ndi Igbo* as an organization of selfish Igbo politicians who were only using the platform to fight for personal interests. This coupled with the fact that most of these youths were disgruntled with the discrimination against the Igbo after the war, heightened their susceptibility and as a result, many radical secessionist groups that evolved after the war were seethed with these fiercely eager youths. Thus, unceasing agitation for the State of Biafra is a recurring decimal in the national discourse. These generation of Igbo are what Onuoha termed 'secondary victims'-those who become victims of Nigeria contraption owing to the perpetuation of initial conditions as has been witnessed with the sprouting of different Biafran movements⁴.

After about five decades of the civil war in which more than two million people perished, the Biafra nightmare still reverberate among the Igbo populace. Our research interrogates the renewed quest for Biafra. To do this, we will draw on literature comprised of the civil war discourse (Achebe⁵, Obasanjo⁶, Njoku⁷, Madiebo⁸). Similarly, foreign authors and

¹ Okechukwu Ibeanu, Nwachukwu Orji and Chijioke K. Amadi, *Biafra Separatism: Causes, Consequences and Remedies*, (Enugu: Institute for Innovations in Development, 2016), 6.

² "Welcome to Ohaneze", www.ohanezendigboenugu.org, accessed January 10, 2019.

³ Johannes Harnischfeger, "Igbo Nationalism and Biafra", www.afrikanistik-aegyptologie-online, accessed January 1, 2019.

⁴ G. Onuoha, "Memory, Reconciliation and Peace –building in Post-Civil War Southeastern Nigeria", Princeton University, June 2018, 21-22.

⁵ C. Achebe, *There Was A Country: A Personal History of Biafra*, (London: Penguin Group, 2012), p.95. See also H.M. Njoku, *Tragedy Without Heroes: The Nigeria –Biafra War* (Enugu: Fourth Dimension Publishers, 1987), 79-95.

⁶ O. Obasanjo, *Nzeogwu*, (Ibadan: Spectrum Books Limited, 1985).

⁷ H.M., Njoku, *Tragedy Without Heroes: The Nigeria –Biafra War* (Enugu: Fourth Dimension Publishers, 1987), 79-95.

journalists who wrote on the Nigeria-Biafra war (e.g. St. Jorre⁹; Cervanka¹⁰; Gould¹¹; Forsyth¹²; Waugh & Cronje¹³) discussed the course and causes of the Nigeria-Biafra war but had scant focus on the experiences of civilian-victims or how the Igbo had been reintegrated into the mainstream of the Nigerian polity. Novelists who tried to capture the events of the period (Adichie¹⁴) and (Ike¹⁵) merely fictionalised other works, some of which include those cited above. Obi-Ani is of the view that the victorious federal forces used various subterfuges to stunt Igbo recovery in post-civil war Nigeria thereby arguing that the Gowon's so-called 'no victor no vanquished' was a sham to deceive the international community¹⁶. Falola and Heaton¹⁷, Maier¹⁸ analysed the crises and instability that had rocked the postcolonial Nigerian state. Issues on IPOB: Amanambu¹⁹, Nwofe²⁰, Ibeanu *et al*²¹ examined the IPOB formation, their agitations and mass followership among the Igbo. Biafra has recently attracted the attention of genocide scholars, (Heerten and Moses²², Bird

⁸ A.A. Madiebo, *The Nigerian Revolution and the Biafran War*. (Enugu: Fourth Dimension Publishers, 1980), 175.

⁹ J. De St. Jorre, *The Nigerian Civil War*, (London: Hodder and Stoughton, 1972).

¹⁰ Z. Cervanka, *A History of the Nigerian War 1967-1970*, (Ibadan: Onibonje Press, 1972).

¹¹ M. Gould, *The Biafran War: The Struggle for Modern Nigeria*, (London: I.B. Taurius & Co. Ltd., 2013), 85.

¹² F. Forsyth, *The Making of an African Legend: The Biafran Story*, (New York: Penguin Book, 1969).

¹³ A. Waugh, and S. Cronje, *Biafra: Britain's Shame*, (London: Michael Joseph LTD, 1969).

¹⁴ C.N. Adichie, *Half of a Yellow Sun*, (Lagos: Kachifo Limited, 2006).

¹⁵ C. Ike, *Sunset at Dawn*, (Ibadan, University Press PLC, 2014).

¹⁶ P. Obi-Ani, *Post-Civil War Political and Economic Reconstruction of Igboland, 1970-1983*.

¹⁷ T. Falola. & M.M. Heaton, *A History of Nigeria*. New York: Cambridge University Press, 2008.

¹⁸ K. Maier, *This House has Fallen: Nigeria in Crisis*, (London: Penguin Group, 2000), 59.

¹⁹ U.E. Amamnabu, "A Critical Reflection on the Biafran Agitation and the questions of Nigeria Amalgamation in 1914", *Igwebuike: An African Journal of Arts and Humanities*, vol.3 no5, July 2017.

²⁰ E.S. Nwofe, "Pro-Biafran Activists and the Call for a Referendum: A Sentiment Analysis of "Biafraexit" on Twitter after Uk's vote to Leave the European Union", *Journal of Ethnic and Cultural Studies*, vol.1, No 1, 61-81.

²¹ Okechukwu Ibeanu, Nwachukwu Orji and Chijioke K. Amadi, *Biafra Separatism: Causes, Consequences and Remedies....6*.

²² L. Heerten & D. Moses, "The Nigerian-Biafran War; Postcolonial Conflict and the Question of Genocide" in *Journal of Genocide Research*, vol.16. no 2-3 2014, 169-203.

and Ottanelli²³, Anthony²⁴, Desgrandchamps²⁵, Doron²⁶, Levy²⁷, and Smith²⁸). These scholars have dissected how the Nigeria-Biafra war will remain a crucial episode in Nigerian post-civil war conflicts unless genuine efforts at healing the wounds are undertaken. Doron maintained that the propaganda tool of Biafra laid the foundation of the discussion of genocide against the Igbo. Biafra used its propaganda strategy to market genocide to the outside world. Today the issue of genocide has continued to feature in the discourse of Biafra²⁹. Bird and Othanelli in their 'The Asaba Massacre and the Nigerian Civil War: Reclaiming Hidden History', concluded that the unresolved burden of memory has indeed become a potent symbol of festering injustices. They maintained that addressing the memory of the war will contribute to meaningful reconciliation³⁰. Nonetheless, there is an officially sanctioned amnesia of the event. But, the socio-political and economic marginalization, militancy, kidnapping, farmers-herders conflict has resurrected the Biafran discourse in the public spaces. Thus, Anthony avers that even as the immediate threat of genocide faded with the end of the shooting war, the trauma of 1966 and the war years did not³¹. The experiences of the people during the period are no longer expressed in private spaces, the wounds are yet to be healed, genuine reconciliation is yet to be effected. The ghost of Biafra is yet to be laid to rest. As such, Heerten and Moses aver that 'dealing with the history of the war is important for an understanding of the fabric of postcolonial Nigeria of the international order in which the event unfolded'³². However,

²³ S.E. Bird & F. Ottanelli, 'The Asaba Massacre and the Nigerian Civil War: Reclaiming Hidden History' in *Journal of Genocide Research*, vol. 16, no 2-3 2014, 379-399.

²⁴ D. Anthony, 'Ours is a War of Survival: Biafra, Nigeria and Arguments about Genocide, 1966-1970', in *The Journal of Genocide Research*, vol. 16, no 2-3 2014, 205-225.

²⁵ M. Desgrandchamps, 'Dealing with 'Genocide': The ICRC and UN during the Nigerian-Biafran War, 1967-70', in *The Journal of Genocide Research*, vol. 16, no 2-3 2014, 281-297.

²⁶ R. Doron, 'Marketing Genocide: Biafran Propaganda Strategies during the Nigerian Civil War, 1967-70', in *The Journal of Genocide Research*, vol. 16, no 2-3, 2014, 227-246.

²⁷ Z. Levy, 'Isreal, Nigeria and the Biafran Civil War 1967-70', in *The Journal of Genocide Research*, vol.16, no 2-3, 2014, 263-280.

²⁸ K.E. Smith, 'The UK and 'Genocide' in Biafra', in *The Journal of Genocide Research*, vol. 16, no 2-3 2014, 247-262.

²⁹ R. Doron, 'Marketing Genocide: Biafran Propaganda Strategies during the Nigerian Civil War, 1967-70'... 227-246.

³⁰ S.E. Bird & F. Ottanelli, 'The Asaba Massacre and the Nigerian Civil War: Reclaiming Hidden History ...379-399.

³¹ D. Anthony, 'Ours is a War of Survival: Biafra, Nigeria and Arguments about Genocide, 1966-1970'...205-225.

³² L. Heerten & D. Moses, 'The Nigerian-Biafran War; Postcolonial Conflict and the Question of Genocide' in *Journal of Genocide Research*, vol.16, no 2-3, 2014, 169-203.

the official denial of Biafra and the suppression of memory of Biafra have metamorphosed into a new phenomenon in Igboland especially of generation of those who did not experience the war but who rejected docility in the face of festering injustices.

IPOB embodies the continuity of the war because of the perceived political and economic marginalisation of the Igbo since the cessation of the Nigerian-Biafran war in 1970. So far, many groups seeking for an Igbo secession have evolved with names such as Biafra Zionist Movement (BZM), Movement for The Actualization of The Sovereign State of Biafra (MASSOB), Biafra Independent Movement (BIM), Indigenous People of Biafra (IPOB). Of all these groups however, the Indigenous People of Biafra (IPOB) in recent years has been more influential than the others and will therefore form the focal point of this paper.

The Indigenous People of Biafra (IPOB)

The Indigenous People of Biafra (IPOB) which like the MASSOB is also an Igbo separatist group founded in 2014. The movement wants a group of states in south-east Nigeria, made up mainly of people from the Igbo ethnic group, to break away and form the independent nation of Biafra. The organization carries out its agitation activities through unarmed protests, media messages, radio broadcasts and civil disobedience. The group operates a London based radio station which was established in 2009. In Nigeria, access to the frequency modulation (FM) broadcasts is available in six States (Abia, Anambra, Imo, Port-Harcourt, Ebonyi and Enugu) although there are restraints to its access in some of these areas. In other States which may not have any access to the Frequency Modulation, the broadcasts can be listened to online as the group also runs a web based radio station. According to the director Mazi Nnamdi Kanu, ‘the new Radio Biafra had been broadcasting from London, on short wave frequency since 2009, he further revealed that Radio Biafra broadcast was brought home to intensify the struggle for Biafran restoration by creating awareness and mobilizing the indigenous People of Biafra (IPOB) and other Pro-Biafran groups like the Movement for the Actualization of the Sovereign State of Biafra (MASSOB) towards achieving the goal’³³. Efforts of government to shut down the radio station were unsuccessful as it still broadcast today on 102.1 FM and 15.6 AM at

³³ Nwafor, Gideon and Omeovah, Blessing, “Analysis of Radio Biafra Effectiveness on The Renewed Agitation for The Restoration of Biafra Republic Among Listeners in Onitsha Metropolis”, 1, www.researchgate.net, accessed February 21, 2019.

different wavelengths³⁴. However, while some have alleged that the radio station spreads hate speeches and incites war in Nigeria (which Nnamdi Kanu often refers to as a zoo in his broadcasts), supporters of the group have vehemently asserted that the radio broadcasts were only being truthful. An informant had asserted;

Nnamdi Kanu is only speaking the raw truth and that's why these Nigerians who don't like hearing the truth are angry with him. Being truthful has nothing to do with hate speech instead, people hate you for speaking the truth³⁵.

Nevertheless, phrases such as monkeys and baboons (referring to Nigerian citizens), zoo republic (referring to Nigeria), Biafra or nothing, the zoo must fall, *Ohaneze ndi aturu na ndi eberibe* (*Ohaneze Ndigbo*- an association of sheep and fools), are some derogatory words often used by the IPOB leader in some of his broadcasts. From the messages passed through these broadcasts, the group's mission and activities are made known to the public. The sit at home order for members of the group normally holds on the 30th May³⁶ (the day Ojukwu the then military Governor of Eastern Region and later the Military Head of Republic of Biafra declared Biafran independence in May,1967) of every year which they have mapped out as a day to remember Biafran fallen heroes. The issue of victimization as a reason for secession is buttressed in the organization's letter to the United Nations on the 19th of December 2013. Below is a duplicate of the letter³⁷.

³⁴ Nwafor, Gideon and Omeovah, Blessing. "Analysis of Radio Biafra Effectiveness on The Renewed Agitation for The Restoration of Biafra Republic Among Listeners in Onitsha Metropolis."...2

³⁵ Obiorah Pius, shop owner, C.45 years, interview held at Aba, 4th November 2018.

³⁶ The call for sit at home on May 30, 2017 marking the 50th anniversary of the declaration of Biafra was a huge success in the five Southeastern States. Movement and businesses were crippled even in the Northern Nigeria where a substantial number of Igbo are domiciled. The success of the sit at home prompted the Arewa youth (The youth wing of Northern socio-cultural organization-Arewa) to give the Igbo domiciled in the North a quit notice to exit from all the Northern States while calling for the arrest of IPOB leader Nnamdi Kanu. Pressures from both UN and other international and local commentators forced them to rescind.

³⁷ www.indigenousofbiafra.org



INDIGENOUS PEOPLE OF BIAFRA

19th December, 2013

From: Executive Council of Indigenous People of Biafra

To: United Nations Committee on Human Rights
Heads of State of All Countries

EXPIRATION OF NIGERIA'S AMALGAMATION PROCLAMATION AND RESTORATION OF THE SOVEREIGN STATE OF BIAFRA

In 1914, the British Government under the recommendation of Frederick Lugard amalgamated the southern and northern regions of areas bordering with Cameroon, Chad, Niger, and Benin republic, and proclaimed the amalgamated geospace as a country with the name *Nigeria*. This amalgamation was executed without the consent of the indigenous people that constitute these regions. According to the proclamation documents, the amalgamation was conditioned to have a lifespan of 100 years (expiring on December 31, 2013) after which any of the amalgamating regions or peoples would have the right to opt out. For the past 100 years, the indigenous people of Biafra who are part of the constituents of Nigeria have suffered untold hardship, threats to their culture, tradition and their way of life combined with political and economic emasculation, and annihilation of her citizens by the Hausa/Fulani- Yoruba dominated Nigerian government.

The attached chronology is only a microcosm of the constant blood-letting being visited regularly on the Indigenous People of Biafra by the rest of Nigeria under a lawless society driven by intense hatred and desire to annihilate the remnants of the Indigenous People of Biafra. The number of Biafrans murdered by the people of Nigeria, Nigerian government and their agents are now nearing 5 million. There are no perpetrators brought to justice for all these crimes against humanity. The Judeo-Christian values of the people are today being eroded by combined forces of Islam and Arabia. All efforts made to ensure the implementation of genuine national reconciliation and forgiveness after the cessation of the Biafra-Nigeria war through the convening of Oputa panel were rebuffed. Many perpetrators including present-day politicians and even flag bearers of major political parties refused to attend the panel. Their choice instead, which they have carried out, was to empower their people and agents to continue with the systematic killings and destruction of the places of worship and the businesses of our people at with increasingly alarming intensity. What used to be a secular country is today implementing sharia legal code in 19 northern states under official adoption of Islam as a state religion.

Headquarters: Ogui New Layout Enugu, Enugu State Nigeria | UK Office: 30 Sandlings Close, Pilkington Road London SE15 3SY UK
All Correspondence : Mulberry Place, 4th FL, Rm A407, 118/8-9 Phetkasem Road, Soi 42 -40, Phasi Charoen, Bang Wa, Bangkok 10160, Thailand
Contact Details: (United Kingdom) +447831308376 / (Nigeria) +2348098665851 / (Thailand) +66870227827 / (Malaysia) +60147600876
Email: contact@indigenouspeopleofbiafra.org | Website: www.indigenouspeopleofbiafra.org | www.radiobiafra.co



INDIGENOUS PEOPLE OF BIAFRA

Corruption and carting of state funds is now the order of the day. The Treasury and Justice departments are no longer independent. These and more have rendered Nigeria into nothing but a lawless society. Nigeria since 1970 has retrogressed. The claim that Nigeria-Biafra war was only an economic war has been rendered bare for all to see the emptiness of the falsehood.

In view of the stated expiration date of the amalgamation proclamation and relying on the rights of Indigenous People to self-determination as expressly stated in Articles 3 & 4 of the United Nations Declaration of the Rights of Indigenous Peoples (September 13, 2007), and with these stated facts as a background, the Indigenous People of Biafra hereby declare that they shall no longer be part of Nigeria but rather exist as a separate country called the Sovereign State of Biafra. In Biafra the Rule of Law, Preservation of ways of life, Independent Justice System, Independent Treasury, the Rights of men and women to live in peace and freedom and the pursuits of happiness are fully guaranteed and form the bedrock of its foundation.

We, the Indigenous People of Biafra, have resolved not to extend the amalgamation and hereby state that Nigeria ceases as a legal corporate entity which represents the Indigenous People of Biafra in any capacity from the 1st of January 2014. The Indigenous People of Biafra is seeking your understanding and cooperation to ensure that loss of lives are minimized and peace restored to all ethnic components that presently make up Nigeria. Examples already abound where Indigenous People formed their own countries and these include constituents of former USSR, Yugoslavia, Czechoslovakia, Ethiopia, Sudan, and others. Even Great Britain that created Nigeria will soon let Scotland decide their fate. Biafra's quest shall not be different because her citizens are no less humans than the peoples inhabiting the countries mentioned above. Please support the rule of law and the Rights of Indigenous People by understanding and agreeing that the Indigenous People of Biafra deserve succour from a century of enslavement; that we reserve the right to determine and political and economic future. Thank you for anticipated reactions.

For more information, please visit www.radiobiafra.co or call +44 7831308376 or any of the telephone numbers listed at the bottom of this page.

Signed:

Nnamdi Kanu

Ikechukwu Enyiagu

Emmanuel Okafor

Director

Principle Administrator

Secretary

Headquarters: Ogui New Layout Enugu, Enugu State Nigeria | UK Office: 30 Sandlings Close, Pilkington Road London SE15 3SY UK
All Correspondence : Mulberry Place, 4th Fl., Rm A407, 118/8-9 Phetkasem Road, Soi 42 -40, Phasi Charoen, Bang Wa, Bangkok 10160, Thailand
Contact Details: (United Kingdom) +447831308376 / (Nigeria) +2348098665851 / (Thailand) +66870227827 / (Malaysia) +60147600876
Email: contact@indigenouspeopleofbiafra.org | Website: www.indigenouspeopleofbiafra.org | www.radiobiafra.co



An informant stated that Nnamdi Kanu's Biafra will be one free of corruption, underdevelopment and ethnic sentiment where constituent units would be developed with indigenous technology. He further asserted

that the problem of neglected sea ports and airports which have been one of the major reasons for IPOB's agitations would be resolved³⁸. In a radio broadcast by the group's leader, he posited:

The proposed Constitution of the upcoming United States of Biafra is that Biafra will run a unique political system designed to cater for the needs of our people. We are going to have nation states; we will have an Igbo Nation within Biafra; we will have an Efik Nation within Biafra; We will have Annag Nation within Biafra, if they so choose. We will also have Ijaw Nation within Biafra; we will have Isoko Nation within Biafra, Idoma Nation within Biafra; we will equally have Igala Nation within Biafra, and they will all be autonomous. Each nation state will control the resources in their own land. The only thing that will bind us together will be a common defense, economic, health and education policy. The people will develop the best policies according to the pace that they wish or they decided amongst themselves to go by. Mr Kanu, the group's leader also assured that, laws will be done in local languages, Igbo Parliament will make their own laws in Igbo language. Ijaw Parliament will make their own laws in Ijaw language. The same thing applies to Ibibio and others so that when people are lying to us, we will know because you know lying is good in English language, but you can't deceive the people when you are actually speaking in the language that they understand³⁹.

Nwannekaenyi Nnamdi Kenny Okwu Kanu is the known leader of the Indigenous People of Biafra (IPOB) and also the director of Radio Biafra. He was born in Isiama- Afara, Abia state, Nigeria and studied in the University of Nigeria for two years but had to migrate to Europe in order to finish his studies following delays occasioned by incessant strikes by the University's academic and nonacademic staff. Kanu was later admitted to London Guildhall University now known as London Metropolitan University to study Political Economics⁴⁰. He founded the Radio Biafra in 2009⁴¹, since then, he has been very active in his secessionist activities and just like the MASSOB, he firmly believes that the Igbo are Jews and constantly refers to himself as one.

³⁸ Stephen Chukwuanu, Trader, C. 60 years, interviewed at Aba, 23 September, 2017.

³⁹ J. Egbas "This is what new nation will look like", www.pulse.ng, September 22, 2017.

⁴⁰ G. Christen, "Full Biography of Nnamdi Kanu And How He Became a Living God in Nigeria", www.entorm.com, accessed July 20, 2019.

⁴¹ BBC NEWS, "Biafran Leader Nnamdi Kanu: The Man Behind the Nigeria's Separatists, May 2, 2017.

On 14th of October, 2015, he visited Nigeria⁴², where he was arrested in his hotel room at Golden Tulip Essential Hotel Ikeja, Lagos State on charges of treason⁴³. On October 18, 2015, his followers took to the streets in several major cities in southeastern Nigeria protesting against his arrest. On the 19th of October 2015, it was reported that Nnamdi Kanu had been granted bail after a secret arraignment at Magistrate Court, Wuse 11, under stringent bail conditions.⁴⁴ However, "upon the issuance of the Form 36, the court Ordeal was unable to produce Mr Kanu. Kanu's continual incarceration despite meeting his bail conditions, prompted the lawyer to tag the anomaly, 'a clash between judiciary and executive' in a democratic government⁴⁵. In a statement, Prof Nwala also condemned the continual detention of Mr Kanu despite calls for his release by local and foreign governments and organizations. In Nigeria, governments and leadership of various zones from within and outside the Eastern parts of Nigeria appealed to the President to release Mr. Kanu, whom, everyone knows as an unarmed, non-violent prisoner of conscience⁴⁶. Rather, he was arraigned in an Abuja magistrate court for the first time on November 23, 2015 on the charges of 'criminal conspiracy, intimidation and membership of an illegal organization' - charges that could amount to treason⁴⁷. On that day, his supporters went to Abuja (the capital of Nigeria) on a peaceful protest. They protested with placards, sang and danced outside the court premises while the hearing proceeded. Inscriptions like 'Biafra Now or Never', 'Buhari Release Kanu For Us', 'On Biafra We Stand', were written on their T-shirts. More protests by IPOB members numbering over 15,000 and 20,000 protesters grounded vehicular movements in the southeastern key economic cities of Onitsha and Aba concurrently⁴⁸.

⁴² He was held at Kuje prison in the capital Abuja for nearly two years since his arrest in October 2015 on charges of criminal conspiracy and belonging to an illegal society.

⁴³ I. Asomba, "Radio Biafra Director, Nnamdi Kanu Reputedly Arrested" *Vanguard*, October 18, 2015. See also, E. Ikhilae, "How Biafra Radio Chief Kanu was Arested in Lagos, by DSS," December 28, 2015.

⁴⁴ Three sureties were needed. They are the Chairman of the Senate's South-East Caucus, Eyinnaya Abaribe, A Jewish priest, Immanuel Shalom, and an accountant and Abuja resident, Tochukwu Uchendu. See, E Okakwu, "Updated: Nnamdi Kanu Released from prison, sureties identified" April 28, 2017.

⁴⁵ C. Gaffey, "Nigeria Is Putting Nnamdi Kanu On Trial but He's Been Missing For Weeks", www.newsweek.com, accessed July 20, 2019.

⁴⁶ T. David, "Biafra: Why Igbo Need IPOB - Prof Nwala, www.sunnewsonline.com, accessed on March 6, 2020.,

⁴⁷ BBC NEWS, "Biafran Leader Nnamdi Kanu: The Man Behind the Nigeria's Separatists, May 2, 2017.

⁴⁸ BBC NEWS, "Biafran Leader Nnamdi Kanu: The Man Behind the Nigeria's Separatists, May 2, 2017.

However, the government ignored several court orders calling for Mr Kanu's bail until nearly two years when a court order on the 28th of April 2017 granted bail to Mr. Kanu 'on health ground', while giving a list of stringent bail conditions to meet if he intended to stay free. The IPOB leader was banned from public speaking, granting interviews or being in a group of more than ten people. As a condition of that bail, Mr Kanu had to bring a prominent Igbo leader, a wealthy resident of Abuja and a senior Nigerian Jewish leader to provide 100m naira (\$260,000; £200,000) each as surety⁴⁹. Nonetheless, as soon as Mr. Kanu was out of the prison, he went against his bail conditions. He asserted thus:

I am a Biafran that holds a British citizenship. Nigerian law courts and their judges are of no consequence to me. I am not a Nigerian citizen; therefore, your bail revocation is completely meaningless to me. My devotion to the absolute and puritanical pursuit of the total restoration of the sovereignty of the Republic of Biafra is unwavering⁵⁰.

Protests and activities by the IPOB members increased during this time and in response, the government initiated a program which it termed 'Operation Python Dance'.

Operation Python Dance II and The Proscription Of IPOB

The operation as declared by the Army is intended to check kidnapping, banditry, assassination and secessionist activities within the Southeastern region, amongst other forms of criminal activities. On the commencement of the exercise on the streets of Umuahia, at the country home of the IPOB leader, there was a confrontation between the Nigerian Army and members of IPOB on Sunday, September 10, 2017. A day presumed to be the commencement date of the said Operation Python Dance II and was expected to end on October 14, 2017 in the South East⁵¹. According to the group's media and publicity secretary Emma Powerful, he alleged that during the confrontation of September 10, 2017, IPOB members were killed by the Nigerian army. He further stated:

Soldiers of the Nigerian Army and the Police have surrounded our leader's house today being September 12, 2017, to harm Kanu and other IPOB members who strongly believe and fight in the struggle for the liberation of Biafran people, the soldiers of Operation Python Dance are now seriously embarking on forceful abduction of

⁴⁹ Radio Biafra Online, www.liveonlineradio.net

⁵⁰ Radio Biafra Online, www.liveonlineradio.net

⁵¹ V. Ujumadu & A Okoli, "Operation Python Dance 11: One Week After", *Vanguard*, September 23, 2017.

Biafrans, brutalizing anybody seen with Biafra insignia, whether it is in their vehicle or houses and called on the international community to prevail on the Nigeria Government to leave Biafrans alone⁵².

In a verbal reaction to the situation in Abia State, the Commissioner of Police, Leye Oyebade, in an interview with a Vanguard correspondent retorted that there was no cause for alarm.

We are managing the situation. We know that people are apprehensive because they see a lot of military presence. It's a special operation approved for the South East. Military high command sensitized members of the public on what is going on. That is exactly what is going on now. Their presence should be complimentary efforts to support what we have been doing so far. We finished our security meeting and I advised the Governors to make a public announcement to assure members of the public that there is no cause for alarm. So far, we have not recorded any casualty. What is happening is that wherever they see the patrol vehicles, IPOB members threaten them with broken bottles. They should not see it that way. I assure you that we are on ground to ensure that all commuters and those going about their lawful duties are given free passage⁵³.

This claim was however refuted by the IPOB leadership who alleged that at about 3.02 pm of September 12, 2017, 15 of its members on a solidarity visit to Mr. Kanu from Isiala Ngwa to Umuahia were shot dead at an Army Checkpoint while others sustained various degrees of gunshot wounds⁵⁴. A video which displayed soldiers maltreating a group of young boys who had gone to show solidarity to the IPOB leader surfaced during this time⁵⁵. The subsequent attack on Nnamdi Kanu's residence by soldiers however opposed the said purpose of the operation and increased the tension in the state. The IPOB leader's residence was ransacked by soldiers in a bid to apprehend him. It however, turned out to be an exercise in futility as his whereabouts became unknown. During this time, there were reports that journalists were also attacked by soldiers who accused them of

⁵² T. Okafor, "I Can Cause Trouble for Nigeria If Provoked - Nnamdi Kanu", www.punchng.com, accessed July 20, 2019. See also, BBC NEWS, "Biafran Leader Nnamdi Kanu: The Man Behind the Nigeria's Separatists, May 2, 2017.

⁵³ C. Gabriel *et al*, "Operation Python Dance II: Abia Govt Slams 3-Day Curfew, Soldiers Apologize", *Vanguard*, September 13, 2017.

⁵⁴ C. Gabriel *et al*, "Operation Python Dance II: Abia Govt Slams 3-Day Curfew, Soldiers Apologize", *Vanguard*, September 13, 2017.

⁵⁵ "MUST WATCH! Nigerian Soldiers Torture IPOB Members, Force Them to Sleep in And Drink Dirty Water", www.youtube.com, accessed March 27, 2019. See also, V. Ujumadu, "Biafra: The other side of Operation Python Dance", *Vanguard*, September 19, 2017.

writing reports that were against their motive in the occupied area. It was recorded that about 20 soldiers had ascended a building from which the journalists were observing them, held them hostage for about 10 minutes within which they assaulted the journalists, smashing their I-pads, phones and other working devices. The soldiers accused the journalists of writing 'nonsense' about the military as well as recording videos and taking photographs that denigrate them⁵⁶. One of the journalists recorded their experiences thus:

At about 10.15am today (Tuesday, September 12, 2017) a convoy of armed military personnel, apparently on a show of force in Umuahia, approached the Aba/Umuahia Road/Railway intersection, which is close to the Nigeria Union of Journalist NUJ Press Centre as I was just stepping into the office. Some of my colleagues were watching from the balcony, while I was watching from the window. As they were negotiating round the Tower to Bende Road, some of their trucks stopped and I noticed one of the soldiers pointing at me. Simultaneously, I saw many soldiers jump down from two trucks and headed towards our office. Swooping on our office, one of them pointed at me and ordered me to give him my phone. I told him that I had no phone with me at that material time; he slapped me and ordered me to open my bag which I was carrying. As I was bringing the contents out, I brought out my Samsung Tablet 3, he snatched it from me and smashed it. They equally collected another phone from Sunday Nwakanma of Daily Times and destroyed it with their gun and made away with another phone belonging to Comrade Chidi Asonye of the Authority Newspapers.⁵⁷

The commander of the 14 Brigade, General Abdukalifa Ibrahim however expressed his regrets and sent apologies to the journalists⁵⁸. In the latter days that ensued after the incident, it was reported that curfews were enacted from 7am to 6pm in the State.

The arrest of any IPOB supporter or anyone who had the flag or poster became rife. Those who listened to the Radio Biafra did so within the confines of their homes. There were also reports of military brutality on unarmed civilians who were suspected to be IPOB sympathizers. A video of such brutality revealed a group of soldiers forcing some young boys to

⁵⁶ C. Gabriel *et al*, "Operation Python Dance II: Abia Govt Slams 3-Day Curfew, Soldiers Apologize", *Vanguard*, September 13, 2017.

⁵⁷ C. Gabriel *et al*, "Operation Python Dance II: Abia Govt Slams 3-Day Curfew, Soldiers Apologize", *Vanguard*, September 13, 2017.

⁵⁸ C. Gabriel *et al*, "Operation Python Dance II: Abia Govt Slams 3-Day Curfew, Soldiers Apologize", *Vanguard*, September 13, 2017.

crawl in a pool of dirty, muddy water was leaked. Most of these boys had the Biafra flags, posters or other insignias with them⁵⁹. In the midst of these tensions, the *Ohaneze Ndi Igbo* decried the operation, remarked it as one that was unnecessary. In his statement, Chief John Nnia Nwodo –the president of the organization, gave a rundown of the activities of the operation, criticizing it and beckoning on the Federal government to quell the operation. The statement reads as follows:

On September 8, 2017, Major General D D Ahmadu, Chief of Training and Operations of the Nigerian Army, announced an exercise called Operation Python Dance II, which he said was going to take place in the five South Eastern states to address ‘rampancy of assassinations, attack on security personnel, theft of weapons, violent agitations, armed banditry and kidnapping. Operation Python Dance 1 has been on for quite a while in the South East. Whilst Operation Python Dance 1 lasted, major roads, entries and exits of important cities in the South East had zigzag check points supervised by members of the Nigerian Army. They turned out to be toll gates used in extorting money under gun point from helpless motorists. Our people were shamelessly intimidated and harassed at these check points. Operation Python Dance 1 procured no arrests of criminals that were prosecuted for any of the criminal activities that Operation Python Dance II is supposed to address. Instead, it witnessed reckless and indiscriminate murder of self-determination agitators in Asaba, Aba, Nkpor, and Port-Harcourt numbering up to 191 by the estimates of Transparency International and shattered public confidence of South Easterners in the Nigerian Army and Police⁶⁰.

He further reiterated that:

Operation Python Dance II announced to be launched for the five South Eastern states whose crime rates by Police statistics are not the highest in the country, turned out to focus on a tiny suburban road leading to the home of Mazi Nnamdi Kanu, the IPOB Leader. Last night, that road was visited by a combined team of Police and Military personnel with Armoured Personnel Carrier (APC) and armed personnel. Video posts from IPOB and the Nigerian Army did not indicate any act of disobedience before the invasion of this suburban environment. We believe that it is a deliberate invasion of a quiet homestead, an act of provocation and a continuing policy of intimidation. Crimes of monstrous proportions are

⁵⁹ C. Gabriel *et al*, "Operation Python Dance II: Abia Govt Slams 3-Day Curfew, Soldiers Apologize", *Vanguard*, September 13, 2017.

⁶⁰ O. Nzeshi, O. Eze & S. Uzoechi, "Ohaneze Demands Military's Withdrawal from S'East," *New Telegraph*, September 13, 2017.

occurring in other parts of Nigeria. Such crimes include ravaging killings by Fulani herdsmen in the Middle Belt, Secret cult killings in Lagos and the South West, bunkering and armed resistance in the Delta, wanton kidnappings and killing of military personnel in Kaduna State and environs as well as Boko Haram insurgency in the North East. The Nigerian Army has never embarked on Operation Python Dance in any of the other five geopolitical zones on account of these incidences. Innocent civilians living in these other parts of Nigeria have not witnessed the type of invasion Umuahia witnessed last night. Ohanaeze Ndigbo is left with no alternative than to conclude that this is a containment policy aimed at the South East to intimidate our people from freely expressing their anger and angst at their marginalization and treatment as second-class citizens⁶¹.

Ohanaeze Ndigbo therefore called on the Federal Government to call off the phony Operation.

In the same manner, there was also an outcry by the Southeast senators concerning the military activities in the Southeast. According to Senator Eyinnaya Abaribe;

It is daunting that the operation ‘python dance II’ operating in the South East in a peace time, has no doubt fouled the environment and sent strong signal that the region is under siege, which should not be so in a democracy. We, therefore, urge extreme caution, and advise the Military to de-escalate the situation and choose the best operational modus that will not only guaranty the safety of Nigerians, but also enhance national unity. Nigeria is not at war, people are only exercising their constitutional and universally guaranteed rights. So far, they are carrying on in a manner that have never given room to violence which could warrant a wholesale military expedition.⁶²

The South-East Senators also pushed for dialogue as a means to settle the uprisings in the southeast. Nevertheless, the soldiers were stationed at some strategic checkpoints to check on the activities of the people. Sometimes, people returning from the market were required to lift up their hands when they walk past a checkpoint and they were also careful not to identify with the IPOB⁶³.

In the midst of all these furor, Nnamdi Kanu was declared missing by the military who raided his home. Funny enough, he resurfaced in Israel

⁶¹ O. Nzeshi, O. Eze & S. Uzoechi, "Ohaneze Demands Military's Withdrawal from S'East," *New Telegraph*, September 13, 2017.

⁶² O. Nzeshi, O. Eze & S. Uzoechi "Ohaneze Demands Military's Withdrawal from S'East," *New Telegraph*, September 13, 2017.

⁶³ Chika Isaac, businessman, C.40 years, Interviewed at Aba, Abia State, September 18, 2018.

almost a year later. How he had eluded the soldiers, still remains a controversy. On the 20th of September 2017, IPOB was proscribed as a terrorist group by the acting chief judge of the Federal High Court, Justice Abdul Kafarati⁶⁴. The proscription had been judged by many as one which is baseless because of the none terrorist activities of the IPOB. An informant had bitterly complained:

While the Fulani herdsmen were busy killing innocent people with impunity, IPOB which has nothing to do with taking of life is being called terrorist and to say we are not marginalized in this country? Little wonder our leader calls it a zoo⁶⁵.

Another informant asserted, “If you say that IPOB is a terrorist group, then what would you call the Fulani herdsmen?⁶⁶ The proscription is very funny though, no other country recognizes IPOB as terrorist group except Nigeria. However, the mayhem of armed Fulani herders in Nigeria has left thousands of Nigerian citizens in Southern Kaduna, Middle belt, Southsouth, Southeast and Southwest displaced, traumatized and butchered. Yet, the federal government of Nigeria treat this non-state army of occupation with kids’ glove. Thus, sending a signal that the clampdown on IPOB members who are unarmed by the security agents, is a deliberate agenda of Buhari’s administration against the Igbo ethnic group. In a multi-ethnic society like Nigeria, every effort should be made by those at the helm of affairs to be seen not to be partial in the discharge of their duties. A situation where there is an ethnic undertone in government policies, portends a dangerous situation.

Instances of Confrontations with Security Agents

Unfortunately, before the above event, there had been serious clashes between the IPOB and security agents in which the protesters either lost their lives or were seriously injured. It was reported that on 2nd December 2015, protesters were shot by soldiers at Onitsha head bridge during a march. Six people were reportedly killed while 12 were alleges to be injured. On the 9th of February 2016, several IPOB members had gathered at the National High School in Aba, Abia state to pray for their leader

⁶⁴ An Abuja Federal High Court granted an order declaring the activities of IPOB as “acts of terrorism and illegality. Following an ex-parte motion filed by Attorney General of the federation (AGF), Abubakar Malami, in suit No:FHC/ABJ/CS/8712017. The court granted the order and proscribed the existence of IPOB throughout Nigeria, with particular attention paid to South east and South South. (V. Ujumadu & A Okoli,” Operation Python Dance 11: One Week After”, *Vanguard*, September 23, 2017).

⁶⁵ Chika Isaac, businessman, C.40 years, Interviewed at Aba, Abia State, September 18, 2018.

⁶⁶ Chiemela Sebastine, C.21 years, interviewed at Aba, Abia State, November 4, 2017.

Nnamdi Kanu who was being arraigned in court on that same day. However, it was reported that as soon as they commenced, four police men and several soldiers arrived at the scene and arrested the coordinators and while they were being taken away, shooting started. Four days later (13th February), 13 corpses were discovered in a pit along the Aba-Port Harcourt express way⁶⁷. Local Human Rights Defenders however confirmed that those were the bodies of the men taken away by the security agents four days ago at the National High School, Aba⁶⁸. Amnesty International reports that eight of the men had their hands tied behind their backs, three of whom were blindfolded. They also reported that a Biafra flag was seen lying close to the bodies while there was no insect activity or strong smell, indicating that a chemical had been used⁶⁹. As reported by Amnesty International, a military source had confidentially asserted that after the shooting at the school, the soldiers had carried the corpses as well as injured detainees to the military barracks in Asa, Aba. He further disclosed that some of those injured bled to death and thereafter, all the corpses were dumped in a borrow pit where they poured chemicals on them⁷⁰.

The events of 30th May, 2016 was a very remarkable one. On the aforementioned date, approximately over a thousand protesters had gathered for a rally in Onitsha, Anambra State to mark the 49th anniversary of the declaration of the Republic of Biafra. The rallies were disrupted when soldiers started shooting at the protesters. Three areas of Nkpor, Onitsha and Asaba were especially targeted. Though the exact number of victims is unknown, Amnesty International gave an estimate of over 60 recorded deaths and over 70 allegedly injured. Days after the incident, some delegates of the Organization (Amnesty International) had reported that over 41 patients were being treated for gunshot wounds in the leg, stomach, ankle and arm in a nearby hospital⁷¹. More so, an account of their visit to the mortuary revealed that some of them were shot at the back, an indicator that they may have tried fleeing the pandemonium when they got shot. In Asaba, it was reported that there had been three instances of shooting by the security agents as the bridge which linked Asaba and Onitsha was seethed with soldiers, policemen and Navy officers who

⁶⁷ “Nigeria: ‘Bullets Were Raining Everywhere’: Deadly Repression of Pro-Biafra Activists” published by Amnesty International, 2016, 26.

⁶⁸ “Nigeria: ‘Bullets Were Raining Everywhere’: Deadly Repression of Pro-Biafra Activists” published by Amnesty International, 2016, 24.

⁶⁹ “Nigeria: ‘Bullets Were Raining Everywhere’: Deadly Repression of Pro-Biafra Activists” published by Amnesty International, 2016, 32.

⁷⁰ “Nigeria: ‘Bullets Were Raining Everywhere’: Deadly Repression of Pro-Biafra Activists” published by Amnesty International, 2016, 33.

⁷¹ “Nigeria: ‘Bullets Were Raining Everywhere’: Deadly Repression of Pro-Biafra Activists” published by Amnesty International, 2016, 33.

patrolled the area to prevent people from crossing over to Onitsha to join the rally⁷².

However, since the release of Nnamdi Kanu and the incidence of the Operation Python Dance, IPOB activities had lessened in the Southeastern States though there had been pockets of protests here and there. Some had suggested that the arrest of the IPOB leader and the subsequent raid of his residence was a big mistake on the government's part as it garnered him more international recognition and momentum. Others have however applauded the move by the government regarding it as one which would dissuade other individuals that may rise to divide the country. It has also been reported that IPOB members abroad have in some occasions, harassed Igbo politicians (when these politicians travel for a visit or event) whom they accuse of being nonchalant towards the Igbo marginalization in Nigeria. One of such is the harassment of Senator Ike Ekweremmadu on the 15th of August 2019 by the IPOB members in Germany where he had attended an Igbo Union event.

As the 2019 presidential election approached, Nnamdi Kanu beckoned on IPOB members to boycott the election. He assured his followers that in the event of a successful election boycott, the Federal Government may be forced to grant them referendum. Apposite to this order, the group's Media and Publicity Secretary stated:

Our leader, Mazi Nnamdi Kanu, during his weekly radio Biafra broadcast from the holy land of Israel on Saturday evening reaffirmed strongly to the people and gullible Nigerians who still doubt our stand towards boycotting the forthcoming presidential election next month. It is crystal clear that one of our major lethal weapons to achieve this present Biafra demand is civil disobedience. Therefore, we urge Biafrans, both home and abroad, to advise their families not to vote and totally boycott this coming election no matter the level of promises and inducement politicians of these days might have given them⁷³.

However, some days to the election, the IPOB leader called off the boycott stating that the IPOB has reached a decision with the 'stake holders' to call off the planned election boycott. In a statement by Emma Powerful, he had alleged:

After a brief emergency session of the Directorate of State late last night presided over by our leader, it was determined that all our

⁷² "Nigeria: 'Bullets Were Raining Everywhere': Deadly Repression of Pro-Biafra Activists" published by Amnesty International, 2016, 33.

⁷³ C. Ogbanna, "IPOB Gives Reasons for Election Boycott", www.punchng.com, accessed August 1, 2019.

terms and conditions had been met by those wishing us to lift the ban on voting, it was unanimously agreed that the boycott should be lifted. The signed document agreeing to IPOB terms and conditions are in our possession and will be made public in due course⁷⁴.

Nevertheless, the evidence of such agreement is yet to suffice. So far, the protests to secede from Nigeria both by the MASSOB and IPOB have been met with stiff opposition from the government and just like the MASSOB, some members of the IPOB have either been killed, wounded or imprisoned. The two factions apart from their struggle for secession, have also been known to use rhetoric as a means of assuring their followers of freedom from the Nigerian enclave. In summary, although the demands of these groups have revealed some of the grievances of the Igbo in Nigeria, they have only attracted brutal reproach from the federal government to their own detriment. A case is a recent event, on August 23, 2020, where Emene community was awash with the blood of her youth who assembled at Emene Community High School to have their Jewish prayers and training in martial arts⁷⁵. It is said that the school premises have been a beehive of activities on Sundays as people converge for their various sporting activities. IPOB members have equally been having their prayer meetings and training for several months in the school. On that fateful day, security agents comprising soldiers, air force, police and operatives of Department of State Services arrived the premises and opened fire on them. It was recorded that no less than 22 youth were massacred.⁷⁶ Unfortunately, in the ensuing fracas between the security agents and IPOB members, people going to church and tricycle riders were not spared. The Biafran struggle has been watered with the blood of martyrs. It is being suggested that a new approach be adopted in the quest for the actualization of Biafra. A more diplomatic and round table dialogue by both the federal authority and the Igbo leaders could provide more fruitful results and spare the people the incessant and reckless murder of her youths by trigger happy security agents.

Conclusion

The persistence in the agitation for secession by the Igbo decades after the brutal Nigeria-Biafra war only echoes the ills of the post war

⁷⁴ T. Okafor, "Nnamdi Kanu Calls Off Election Boycott in South-East," www.punchng.com, accessed August 1, 2019.

⁷⁵ Raphael Ede, "Bloody Sunday in Enugu as Security agents hunting for IPOB kill unarmed people", *Punch Newspaper*, August 27, 2020, <https://punchng.com/bloody-sunday-in-enugu-as-security-agents-hunting-for-ipob-kill-unarmed-people/>

⁷⁶ *Ibid.*

reconciliation scheme thus buttressing the Igbo stance that the so-called efforts at reintegrating the Igbo into the Nigerian family was a sham. The claim that the past determines the present and the present determines the future and these events occurring at any particular time are dependent on the result of what has happened before and these things as they are today will follow into future generations⁷⁷. Thus, the attempt to marginalize the Igbo at the end of the war through State policies such as: state creation, quota system, lack of employment opportunities in federal parastatals, none siting of major industrial establishments like petro-chemicals, international seaports and airports are so glaring that even the blind understands its intentions to stagnate the Igbo.

It is an already established fact that the agitation for Igbo secession started with the counter coup of 29 July,1966, the pogrom and the civil war which decimated the cream of the Igbo society. Since the end of the civil war, the Igbo have been treated as second class citizens in all spheres of life in Nigeria. For those born after the war, what their parents were able to endure within the Nigerian federation, they are finding it difficult to cope with. He that sows the wind, will reap the whirlwind. This is the crux of the matter which Nigerian leaders must address with fairness and justice if the ghost of Biafra will be permanently buried.

Rwanda for instance, passed through a worst turmoil. But a perceptive statesman had undertaken the healing process with greater sense of earnestness and equity. The people with the help of international community have pursued with vigor true sense of justice by ensuring that all those who were implicated in the genocide of 1994 were served a good measure of justice no matter where they may run to in the four corners of the world. In retrospect, those who masterminded the pogrom in Nigeria and who committed war crimes during the civil war were never made to face justice. Thus, a justice system that is skewed against the downtrodden and the oppressed would continue to create fissures and agitators.

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⁷⁷ I.D. Ikerionwu," The Place of Ndi-Igbo In Nigeria's Social and Economic Development", *Journal of Education Research and Behavioral Sciences*, nos. 239-249(2013), 248 and 249.

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SHOULD THE JUDICIAL INSPECTION BODY CARE ABOUT JUDICIAL CORRUPTION? THE CASES OF MOLDOVA AND ROMANIA

Andrei Negru,*

negruan@list.ru

Natalia Creciun**

natalia.creciun@gmail.com

Abstract: *The present paper contains arguments referring to the fact that the Judicial Inspection, as a body with attributions of analysis, verification and control in particular areas of manifestation of Justice and exponent of the judicial self-government, should acquire the status of authority with express competencies in the fight against judicial corruption. Such an approach reflects the essence of good judicial self-government and of the Rule of Law, where Human Rights and Freedoms are Fundamental Values. In order to achieve this purpose, the necessity to strengthen the functional status of the judicial inspection body is argued and the ways of enhancing the capacities of the judicial self-government in preventing judicial corruption are generalized.*

Keywords: *Judicial Inspection, judicial corruption, interinstitutional collaboration, human rights.*

Introduction

Judicial corruption undermines the independence, the impartiality and the integrity of the Judiciary and the Rule of Law itself. As an impact, Human Rights and Freedoms are the most affected; the Human Being is disregarded and humiliated. For these reasons, the intolerance for all kind of corruption and for judicial corruption, in particular, must be encouraged at all the levels of social life, through legal, institutional, social and educational measures.

The rationale of the research. There are many studies regarding the phenomenon of judicial corruption, focusing on mechanisms of

* Doctor Habilitated in Law, University Professor, Law Faculty, Moldova State University, Chisinau.

** PhD. Student, Law Faculty, Moldova State University, Chisinau.

prevention, control and sanction, on perceived corruption, causality, risk factors etc. The rationale of this research is to detect the degree of alignment of judicial self-governing bodies to the anticorruption policies in the field of Justice and, especially, the degree of involvement of the judicial inspection body in the fight against judicial corruption. The possibility to increase the capacity of the judicial self-government as a whole in the mentioned field is also examined.

The purpose of the research. The purpose of the research is to argue the indispensability of involving the judicial inspection body in preventing and combating judicial corruption, this being a mission of the judicial self-government, a premise of the independence and the impartiality of the Judiciary and a precondition of the Rule of Law, where Human Rights and Freedoms are protected and guaranteed.

The objectives of the research. In order to achieve the purpose of the research, we shall try to achieve the following objectives: a) to analyze the legal provisions in the field of preventing and combating judicial corruption; b) to identify the institutions with particular competencies in preventing and combating judicial corruption; c) to synthesize the role of the judicial self-governing bodies in the mentioned field; d) to demonstrate the indispensability of the judicial self-governing bodies in the mentioned field; e) to justify the need to strengthen the functional status of the judicial inspection body in the context of preventing judicial corruption; f) to generalize the modalities of increasing the judicial self-governance capacities in the fight against judicial corruption.

Achievement of objectives. *The analysis of legal provisions in the field of preventing and combating judicial corruption. International regulations.* *The United Nations Convention against Corruption*¹ is the main legal act in the field of preventing and combating corruption, ratified by 187 states², including Republic of Moldova³ and Romania⁴. It regulates the area of prevention and fight against judicial

¹ United Nations Convention against Corruption, General Assembly Resolution 58/4 of 31 October 2003, New York.

https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf (visited 24.04.2020)

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³ Law on the ratification of the United Nations Convention against Corruption, no.158 of 06.07.2007. In: *Official Gazette of the Republic of Moldova*, 20.07.2007, no.103-107. https://www.legis.md/cautare/getResults?doc_id=12294&lang=ro (visited 24.04.2020)

⁴ Law on the ratification of the United Nations Convention against Corruption, adopted at New York at 31 October 2003, no.365 of 15.09.2004. In: *Official Gazette of Romania*, 05.10.2004, no.903.

corruption, too. Nevertheless, bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary⁵.

*The Criminal Law Convention on Corruption*⁶ (ratified by the Republic of Moldova⁷ and Romania⁸) is another legal act on preventing and combating corruption among public officials, including judges.

*The Resolution of the Committee of Ministers of the Council of Europe on the Twenty Guiding Principles For the Fight Against Corruption*⁹ refers to several recommendations for the member states of the Council of Europe in respect of combating this negative phenomenon, that are also valid for the organization and functioning of the Justice sector.

*The Opinion of the Consultative Council of European Judges "Preventing Corruption among Judges"*¹⁰ is directly applicable to the dimension of judicial corruption and is focused on examining the factors leading possibly to corruption among judges and the general safeguards against corruption.

National legal regulations. Most legal systems adopt, at their nation level, legal acts on preventing and combating corruption. For

<http://legislatie.just.ro/Public/DetaliuDocumentAfis/55622> (visited 24.04.2020)

⁵ Art. 11 of the United Nations Convention against Corruption, General Assembly Resolution 58/4 of 31 October 2003, New York.

https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf (visited 24.04.2020)

⁶ Criminal Law Convention on Corruption, Strasbourg, 27.01.1999.

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⁷ Law on the ratification of Criminal Law Convention on Corruption, no.428 of 30.10.2003. In: *Official Gazette of the Republic of Moldova*, 21.11.2003, no.229. https://www.legis.md/cautare/getResults?doc_id=2529&lang=ro (visited 24.04.2020)

⁸ Law on the ratification of Criminal Law Convention on Corruption, adopted at Strasbourg at 27 January 1999, no.27 of 16.01.2002. In: *Official Gazette of Romania*, 30.01.2002, no.65. <http://legislatie.just.ro/Public/DetaliuDocumentAfis/33701> (visited 24.04.2020)

⁹ Resolution 97(24) on the Twenty Guiding Principles for the Fight against Corruption. Adopted by the Committee of Ministers, 06.11.1997.

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¹⁰ Opinion of the Consultative Council of European Judges (CCJE) *Preventing corruption among judges*, no.21 of. 09.11.2018, Zagreb.

<https://www.coe.int/en/web/ccje/ccje-opinions-and-magna-carta> (visited 24.04.2020)

example, related to the Republic of Moldova, we identify the following acts: *Law on integrity*¹¹, *Law on whistleblowers*¹², *Law on institutional integrity assessment*¹³, *Law on declaration of income and personal interests*¹⁴, *Law on the Code of Conduct of the public servant*¹⁵, *National Strategy on Integrity and Anti-corruption for 2017-2020*¹⁶ etc.

Related to the legal system of Romania we can mention: *Law on preventing, discovering and sanctioning of corruption acts*¹⁷, *Law regarding measures on ensuring the transparency in exercising public dignities, the civil services and in the business environment, preventing and sanctioning corruption*¹⁸, *Law regarding the integrity in pursuing public service and public dignities, for amending and completing Law 144/2007 regarding the establishment, organization and functioning of*

¹¹ Law on integrity, no.82 of 25.05.2017. In: *Official Gazette of the Republic of Moldova*, 07.07.2017, no.229-243.

https://www.legis.md/cautare/getResults?doc_id=105688&lang=ro (visited 24.04.2020)

¹² Law on integrity whistleblowers, no. 122 of 12.07.2018. In: *Official Gazette of the Republic of Moldova*, 17.08.2018, no. 309-320.

https://www.legis.md/cautare/getResults?doc_id=105486&lang=ro (visited 24.04.2020)

¹³ Law on institutional integrity assessment, no.325 of 23.12.2013. In: *Official Gazette of the Republic of Moldova*, 14.02.2014, no.35-41.

https://www.legis.md/cautare/getResults?doc_id=106168&lang=ro (visited 24.04.2020)

¹⁴ Law on declaration of the income and of personal interests, no.133 of 17.06.2016. In: *Official Gazette of the Republic of Moldova*, 30.07.2016, no. 245-246.

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¹⁵ Law on the Code of conduct of the public servant, no.25 of 22.02.2008. In: *Official Gazette of the Republic of Moldova*, 11.04.2008, no.74-75.

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¹⁶ Decision of the Parliament on the approval of the national integrity and anti-corruption strategy for 2017-2020, no.56 of 30.03.2017. In: *Official Gazette of the Republic of Moldova*, 30.06.2017, no.216-228.

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¹⁷ Law on preventing, detecting and sanctioning of corruption acts, no.78 of 08.05.2000. In: *Official Gazette of Romania*, 18.05.2000, no.219.

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¹⁸ Law regarding measures on ensuring the transparency in exercising public dignities, the civil services and in the business environment, preventing and sanctioning corruption, no.161 of 19.04.2003. In: *Official Gazette of Romania*, 21.04.2003, no. 279. <http://legislatie.just.ro/Public/DetaliuDocument/43323> (visited 24.04.2020)

*the National Agency for Integrity, and also to amend and complete other legislative acts*¹⁹, *National Anti-corruption Strategy for 2016-2020*²⁰ etc.

The role of the mentioned legal acts (the list is not exhaustive) is to prevent and combat the phenomenon of corruption in the public sector (and in the private sector tangentially). They are applicable to the field of preventing and combating judicial corruption, in so far as they do not affect the independence and the impartiality of judges as individuals and of the Judiciary in general.

Identification of the institutions with particular competencies in preventing and combating judicial corruption. Republic of Moldova. The Law on integrity of the Republic of Moldova expressly lists the anti-corruption authorities in the field of public service (the leaders of public entities and the civil society have a special role in the named field)²¹. Specific competencies in the fight against judicial corruption are assigned to the National Anti-corruption Center, to the Anti-corruption Prosecutor`s Office and to the National Integrity Authority.

The National Anti-corruption Center exercises the competency of assessment of institutional integrity of courts. The assessment of the institutional integrity is a process of identification of risks of corruption in the public entity through analytical and practical methods (professional integrity testing), of description of factors leading to the identified risks and their consequences, as well as proposing recommendations for diminishing these consequences. The interference of the National Anticorruption Center and of the testers in the process of exercising justice

¹⁹ Law regarding the integrity in pursuing public service and public dignities, for amending and completing Law 144/2007 regarding the establishment, organization and functioning of the National Agency for Integrity, and also to amend and complete other legislative acts, no.176 of 01.09.2010. In: *Official Gazette of Romania*, 02.09.2010, no.621. <http://legislatie.just.ro/Public/DetaliuDocument/121924> (visited 24.04.2020)

²⁰ Decision on the approval of the national anti-corruption Strategy for 2016-2020, of the sets of performance indicators, of the risks associated to the objectives and of the measures of the strategy and of the sources of verification, of the inventory of measures of institutional transparency and prevention of corruption, of the assessment indicators, as well as of the standards of publication of the information of public interest, no. 583 of 10.08.2016. In: *Official Gazette of Romania*, Part I, 23.08.2016, of. 644. <http://legislatie.just.ro/Public/DetaliuDocument/181123> (visited 24.04.2020)

²¹ Art.3, 25, 34, 43 para (2) of the Law on integrity, no.82 of 25.05.2017. In: *Official Gazette of the Republic of Moldova*, 07.07.2017, no.229-243.

https://www.legis.md/cautare/getResults?doc_id=105688&lang=ro (visited 24.04.2020)

in cases pending in courts during the process of testing the professional integrity of judges is forbidden²².

The Anti-corruption Prosecutor`s Office has particular competencies in the fight against corruption, including judicial corruption. In general, the Prosecutor`s Office is an autonomous public institution within the Judicial Authority which contributes to the respect of public order, to the exercise of Justice, the protection of human rights and legitimate interests of the individuals and of the society – in criminal procedures and other procedures provided by law. The Anti-corruption Prosecutor`s Office is a subdivision specialized in combating criminal cases of corruption; it exercises the criminal investigation in cases assigned by criminal procedural law²³, conducts criminal prosecution in cases investigated by the National Anti-corruption Center and represents the prosecution in courts²⁴. The Anti-corruption Prosecutor`s Office also investigates cases of reasonable suspicion of committing of criminal acts of corruption by judges.

The *Security and Intelligence Service* is another national body with competencies in the field of preventing and combating corruption in the public sector. It had exercised verifications regarding judges and candidates for the position of judge by the prism of the Law on verification of office-holders and candidates for public office²⁵ until December 2017. On the 5th of December 2017 the Constitutional Court of the Republic of Moldova adopted the Judgement no. 32²⁶, by which the legal provisions in the part of verification of the mentioned subjects by the Security and

²² Art.4, art. 12 para (4) of the Law on institutional integrity assessment, no.325 of 23.12.2013. In: *Official Gazette of the Republic of Moldova*, 14.02.2014, no.35-41. https://www.legis.md/cautare/getResults?doc_id=106168&lang=ro (visited 24.04.2020)

²³ Art. 270¹ of the Criminal Procedural Code of the Republic of Moldova, no.122 of 14.03.2003. In: *Official Gazette of the Republic of Moldova*, 05.11.2013, no. 248-251. https://www.legis.md/cautare/getResults?doc_id=120596&lang=ro# (visited 24.04.2020)

²⁴ Art.1, 9 para (1), (4) of the Law on the prosecutor`s office, no. 3 of 25.02.2016. In: *Official Gazette of the Republic of Moldova*, 25.03.2016, no. 69-77. https://www.legis.md/cautare/getResults?doc_id=120703&lang=ro# (visited 24.04.2020)

²⁵ Law on verification of office-holders and of the candidates for public office, no. 271 of 18.12.2008. In: *Official Gazette of the Republic of Moldova*, 24.02.2009. https://www.legis.md/cautare/getResults?doc_id=94533&lang=ro (visited 24.04.2020)

²⁶ Judgement of the Constitutional Court of the Republic of Moldova on exception of unconstitutionality of certain provisions of the Law no. 271-XVI of 18 December 2008 on verification of office-holders and candidates for public office (verification of judges by the Security and Intelligence Service) (Complaint no. 115g/2017), no.32 of 15.12.2017. In: *Official Gazette of the Republic of Moldova*, 09.02.2018, no. 40-47. In force from 05.12.2017.

<http://www.constcourt.md/public/ccdoc/hotariri/ro-h322017115groomd8cd.pdf> (visited 24.04.2020)

Intelligence Service were declared unconstitutional. The named Judgement of the Constitutional Court was a crucial step in guaranteeing judicial independence, by excluding the external control exercised on the judicial power by an executive militarized authority, activating on the principle of conspiracy²⁷.

As a result, the Security and Intelligence Service has not the competency of verification and control of judges at their appointment or promotion. Such a situation corresponds to international standards that state that in no circumstances should the fight against corruption of judges lead to the interference by secret services in the administration of justice. Corruption of judges is an offence and should therefore be tackled within the framework of established legislation²⁸, the interference of the Security and Intelligence Service being indispensable only when exist reasonable suspicion about committing by a representative of the Judiciary of an act of corruption that can affect the public order and the state security.

The National Integrity Authority, another anti-corruption institution, has a special mission: to ensure integrity in exercising the public office and public dignities and in prevention of corruption, through the control of the income and personal interests, the respect of the legal regime of conflicts of interests, incompatibilities and restrictions²⁹.

Judges exercise a function of public dignity³⁰ and, for these reasons, they are verified by the National Integrity Authority (according to the law, at least 40% of the controls of the declarations of income and personal interests carried out during one year refer to persons that exercise public dignities³¹). Any disciplinary procedure initiated against judges on the bases of the findings of the National Integrity Authority should be carried out in compliance with all the exigencies of such a procedure at the level of judicial self-governing bodies and at the level of courts, if necessary.

²⁷ Art. 3 of the Law on Security and Intelligence Service of the Republic of Moldova, no. 753 of 23.12.1999. In: *Official Gazette of the Republic Moldova*, 31.12.1999, no. 156. https://www.legis.md/cautare/getResults?doc_id=108511&lang=ro (visited 24.04.2020)

²⁸ Para 27 of the Opinion of the Consultative Council of European Judges (CCJE) Preventing corruption among judges, no.21 of. 09.11.2018, Zagreb. <https://www.coe.int/en/web/ccje/ccje-opinions-and-magna-carta> (visited 07.04.2020)

²⁹ Art. 5 of the Law on National Integrity Authority, no. 132 of 17.06.2016. In: *Official Journal of the Republic of Moldova*, 30.07.2016, no. 245-246. https://www.legis.md/cautare/getResults?doc_id=94148&lang=ro (visited 24.04.2020)

³⁰ Annex of the Law on the status of persons with dignity functions, no. 199 of 16.07.2010. In: *Official Gazette of the Republic of Moldova*, 05.10.2010, no. 194-196. https://www.legis.md/cautare/getResults?doc_id=60944&lang=ro (visited 24.04.2020)

³¹ Art. 27 para (3) of the Law on National Integrity Authority, no. 132 of 17.06.2016. In: *Official Journal of the Republic of Moldova*, 30.07.2016, no. 245-246. https://www.legis.md/cautare/getResults?doc_id=94148&lang=ro (visited 24.04.2020)

Romania. There are public anti-corruption institutions in the legal system of Romania with similar competencies of those functioning in the Republic of Moldova. These are: National Anti-corruption Direction, National Integrity Agency and Romanian Intelligence Service.

The National Anti-corruption Direction is a structure with legal personality within the Prosecutor`s Office attached to the High court of Cassation and Justice, independent in relation to courts, Prosecutor`s Offices attached to them and in relation to other public authorities, with specific competencies in preventing and combating corruption in general and judicial corruption in particular (including the exercise of criminal investigations, notifying courts for taking measures provided by law and for examining cases of criminal corruption, participation in judging sessions, creation and updating the database of corruption acts etc.)³²

The National Integrity Agency is an autonomous administrative authority with legal personality that activates at the national level on the principle of operational independence³³. The purpose of the National Integrity Agency is to ensure the integrity in exercising public dignities and public offices and the prevention of institutional corruption, by exercising responsibilities in the assessment of declarations of the income, of data and information about wealth, as well as about patrimonial changes, incompatibilities and possible conflicts of interest in which may be the subjects detaining the mentioned functions³⁴.

The Romanian Intelligence Service is a state organized service, specialized in the field of information about the national security of Romania, a component part of the national defense system, without particular competencies in preventing and combating corruption. The Romanian Intelligence bodies cannot exercise criminal investigations, take measures of retention or arrest, nor have own spaces for arrest. However, if data and information about the preparation or committing criminal acts are found as a result of their specific activities or verifications, the mentioned data and

³² Art. 1 para (1), art.2, art.3 para (1) of the Emergency Ordinance on the National Anti-corruption Direction, no.43 of 04.04.2002.

<https://www.pna.ro/legislatie.xhtml?sectiune=2&id=13> (visited 24.04.2020)

³³ Art.13 para (1), art. 15 para (1) of the Law regarding the foundation, the organization and the functioning of the National Integrity Agency, no.144, 21.05.2007. In: *Official Gazette of Romania*, 03.08.2009, no.535.

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³⁴ Art. 8 of the Law on integrity in the exercise of public and dignity functions, of the amendment and completion of the Law no. 144/2007 regarding the foundation, the organization and the functioning of the National Integrity Agency, as well as for the amendment and completion of other normative acts, no.176, of 01.09.2010. In: *Official Gazette of Romania*, 02.09.2010, no.621.

<http://legislatie.just.ro/Public/DetaliuDocument/121924> (visited 24.04.2020)

information are transmitted to the criminal investigative bodies, in the conditions of art. 61 of the Criminal Procedural Code³⁵, after drawing up a protocol about the found circumstances³⁶. So, the activity of the Romanian Intelligence Service may have correlations with the phenomenon of preventing and combating corruption in the public sphere, especially with that of preventing and combating judicial corruption, only by the prism of ascertaining criminal acts (of corruption), with the exercise of the following investigative actions by competent bodies.

It is worth nothing that at the request of the manager of the public institution, of trading companies, the Romanian Intelligence Service verifies and offers data about persons that are to occupy a function in these units, which involve access to information and secret activities or which cannot be disclosed, according to the law, judges (and prosecutors, that are magistrates in the legal system of Romania)³⁷) being excepted from this rule³⁸.

Synthetization of the role of judicial self-governing bodies in the field of preventing and combating judicial corruption. The bodies with competencies in preventing and combating corruption in general and judicial corruption in particular listed above are exponents of the executive power (National Integrity Authority in Moldova and National Integrity Agency in Romania), some of them genuine criminal investigative bodies (National Anti-corruption Center and Anti-corruption Prosecutor`s Office in Moldova³⁹ and National Anti-corruption Direction in Romania⁴⁰)

³⁵ Art.1, 11, 13 of the Law on the organization and the functioning of Romanian Intelligence Service, no.14 of 14.02.1992. In: *Official Gazette of Romania*, 03.03.1992, no. 33. <http://legislatie.just.ro/Public/DetaliiDocument/2144> (visited 24.04.2020)

³⁶ Art.61 of the Criminal Procedural Code, no.135, of 01.07.2010. In: *Official Gazette of Romania*, 15.07.2010, no.486.

<http://legislatie.just.ro/Public/DetaliiDocument/185907> (visited 24.04.2020)

³⁷ Art. 1 para (1) of the Law on the status of judges and prosecutors. Republished, no.303 of 28.06.2004. In: *Official Gazette of Romania*, 13.09.2005, no. 826. <http://legislatie.just.ro/Public/DetaliiDocument/64928> (visited 24.04.2020)

³⁸ Art.4 of the Law on the organization and functioning of Romanian Intelligence Service, no.14 of 14.02.1992. In: *Official Gazette of Romania*, 03.03.1992, no. 33. <http://legislatie.just.ro/Public/DetaliiDocument/2144> (visited 24.04.2020)

³⁹ Art. 253 para (1) p. 3), art. 270¹ of the Criminal Procedural Code, no.122 of 14.03.2003. In: *Official Gazette of the Republic of Moldova*, 05.11.2013, no. 248-251. https://www.legis.md/cautare/getResults?doc_id=120596&lang=ro# (visited 24.04.2020)

⁴⁰ Art.3 para (1) of the Emergency Ordinance regarding National Anti-corruption Direction, no.43 of 04.04.2002. <https://www.pna.ro/legislatie.xhtml?sectiune=2&id=13> (visited 24.04.2020)

or finding bodies in the meaning of criminal procedural law (Security and Intelligence Service in Moldova⁴¹ and Romanian Intelligence Service⁴²).

One of the objectives of the present research is to synthesize the role of judicial self-governance in combating the phenomenon of judicial corruption, independently or in collaboration with the institutions examined above. "The independence of the courts in their institutional form assumes that courts are self-governing, i.e. that the courts carry out the tasks of court management largely on their own, with their own resources, and separately from the central administration"⁴³. At the same time, "court administration should secure the judicial values, especially independence and impartiality of courts and judges. Failure to ensure these values means failure of the effective court performance because without upholding these values the society cannot have a confidence in the judiciary and in a legal state. The mission of court administration is to ensure the systematical functioning of independent and impartial court acting on a very high professional level"⁴⁴. "At the broadest level, the judiciary as an institution should be accountable to the society it serves. However, in a democratic society ruled by law the obligation that the judiciary owes to society is limited to applying the law in an independent and impartial way, with integrity and free of corruption"⁴⁵. In such conditions, the involvement of the judicial self-governing bodies in increasing judicial integrity and, implicitly, in preventing and combating judicial corruption is indispensable.

⁴¹ Art.273 para (1) letter d) of the Criminal Procedural Code, no.122 of 14.03.2003. In: *Official Gazette of the Republic of Moldova*, 05.11.2013, no. 248-251. https://www.legis.md/cautare/getResults?doc_id=120596&lang=ro# (visited 24.04.2020)

⁴² Art.11 al of the Law on the organization and functioning of Romanian Intelligence Service, no.14 of 14.02.1992. In: *Official Gazette of Romania*, 03.03.1992, no. 33. <http://legislatie.just.ro/Public/DetaliuDocument/2144> (visited 24.04.2020)

⁴³ Lienhard A., Kettiger D. (2017). Between Management and the Rule of Law: on the move towards a management model for the judiciary - Results from the project „Basic research into Court Management in Switzerland”. *International Journal for Court Administration*. p. 9. <https://www.icajournal.org/articles/abstract/10.18352/ijca.219/> (visited 24.04.2020)

⁴⁴ Simonis, M., 2019. Effective Court Administration and Professionalism of Judges as Necessary Factors Safeguarding the Mother of Justice – The Right to a Fair Trial. *International Journal for Court Administration*, 10(1), pp.47–58, p.55. DOI: <http://doi.org/10.18352/ijca.294> (visited 24.04.2020)

⁴⁵ Judicial Accountability. International standards on accountability mechanisms for judicial corruption and judicial involvement in human rights violations. Practitioners Guide No. 13, International Commission of Jurists, June 2016, p. 14.

<https://www.icj.org/wp-content/uploads/2016/06/Universal-PG-13-Judicial-Accountability-Publications-Reports-Practitioners-Guide-2016-ENG.pdf> (visited 24.04.2020)

It is unanimously accepted that judicial self-governance is preponderant exercised by Judicial Councils. There are analogical institutions in the legal systems of the Republic of Moldova and of Romania – The Superior Council of Magistracy. In the context of the present research, it is essential to interpret its role or the role of the bodies functioning within the Superior Council of Magistracy in the fight against judicial corruption.

The Superior Council of Magistracy is not an anti-corruption authority under the Law on integrity of the Republic of Moldova and, expressly, does not have competencies in the named field. However, we consider that such a competency results from the spirit of legal regulations on the organization and the functioning of Justice and reflects the essence of judicial self-governance. The Superior Council of Magistracy is the guarantor of the independence of Judicial Authority⁴⁶ and an independent Judicial Authority is (or must be) free of corruption. Thus, its interference in preventing and combating corruption among judges is indispensable.

The Superior Council of Magistracy of the Republic of Moldova is not isolated from the national anti-corruption policies. It is responsible of concrete actions in this sphere, by the prism of the National Anti-corruption and Integrity Strategy for 2017-2020⁴⁷ (for example: creating specialized courts to examine cases of corruption). The Superior Council of Magistracy is assimilated to the employer in relation to the judges and has to examine disclosures of illegal practices and to protect integrity whistleblowers⁴⁸ when somebody communicates about possible risks of corruption or about committing acts of corruption in courts. The Superior Council of Magistracy has such an obligation under the Regulation on integrity whistleblowers inside the Superior Council of Magistracy and in the courts⁴⁹. Another way of involvement in the fight against judicial

⁴⁶ Art. 1 para (1) of the Law on the Superior Council of Magistracy, no. 947-XIII of 19.07.1996. In: *Official Gazette of the Republic of Moldova*, 22.01.2013, no. 15-17. <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=346406>(visited 24.04.2020)

⁴⁷ Annex II of the Decision of the Parliament on the approval of the national integrity and anti-corruption Strategy for 2017-2020, no. 56 of 30.03.2017. In: *Official Gazette of the Republic of Moldova*, 30.06.2017, no.216-228.

<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=370789> (visited 24.04.2020)

⁴⁸ Art. 3, 10 para (1), art 16 para (2) of the Law on integrity whistleblowers, no. 122 of 12.07.2018. In: *Official Gazette of the Republic of Moldova*, 17.08.2018, no. 309-320. https://www.legis.md/cautare/getResults?doc_id=105486&lang=ro(visited 24.04.2020)

⁴⁹ Decision of the Superior Council of Magistracy regarding the approval of the Regulation on integrity whistleblowers inside the Superior Council of Magistracy and in courts, no. 663/21 of 05.08.2014. In: *Official Gazette of the Republic of Moldova*, no.

corruption is the management of cases of undue influence within the courts and the Superior Council of Magistracy⁵⁰, in order to strengthen the institutional integrity climate in the mentioned institutions.

The legislation of the Republic of Moldova establishes an active role of the Judiciary in the fight against corruption: the type of involvement of the Superior Council of Magistracy has been described above; simultaneously, the Superior Council of Magistracy and court presidents are responsible for the cultivation of institutional integrity⁵¹; judges, in their turn, are required to declare acts of corruption they have found in the exercise of their functions.⁵²

The Superior Council of Magistracy is not expressly recognized as anti-corruption authority in the legal system of Romania, the same as in the legal system of the Republic of Moldova. Also, taking in consideration the competencies of the Superior Council of Magistracy in Romania (the protection of the independence of judges and prosecutors; the adoption of decisions about the fulfillment of the condition of good reputation; the adoption of the deontological Code of judges and prosecutors; exercising the role of disciplinary court in the context of disciplinary liability of judges and prosecutors etc.)⁵³, its mission in preventing judicial corruption – by the prism of guaranteeing and strengthening the independence, the impartiality and the integrity of judges and of Justice in general – is evident.

Despite this fact, we consider that the capacities of the judicial self-government in the fight against judicial corruption might be enhanced by strengthening the functional status of the judicial inspection body.

297-309. <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=355004> (visited 24.04.2020)

⁵⁰ Decision of the Superior Council of Magistracy regarding the approval of the Regulation on the evidence of cases of improper influence in the Superior Council of Magistracy and in courts, no.964/31 of 02.12.2014. In: *Official Gazette of the Republic of Moldova*, 31.12.2014, no. 397-399.

<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=356214> (visited 24.04.2020)

⁵¹ Art. 10 para (2) of the Law integrity, no.82 of 25.05.2017. In: *Official Gazette of the Republic of Moldova*, 07.07.2017, no.229-243.

https://www.legis.md/cautare/getResults?doc_id=105688&lang=ro (visited 24.04.2020)

⁵² Art. 15 para (1) letter f¹) of the Law on the status of judge, no.544 of 20.07.1995 In: *Official Gazette of the Republic of Moldova*, 22.01.2013, no. 15-17.

https://www.legis.md/cautare/getResults?doc_id=94177&lang=ro (visited 24.04.2020)

⁵³ Art. 35 letter a), c), art. 38 para (1), art. 44 of the Law on the Superior Council of Magistracy, Republished, no.317 of 01.07.2004. In: *Official Gazette of Romania*, 01.09.2012, no.628. <http://legislatie.just.ro/Public/DetaliuDocument/64942> (visited 24.04.2020)

The Judicial Inspection in the legal system of the Republic of Moldova is an independent specialized body, attached to the Superior Council of Magistracy, which verifies the organizational activity of the courts in the exercise of justice (competencies of analysis, verification and control in particular activity fields). The Judicial Inspection activates under the principle of operational independence⁵⁴.

The Judicial Inspection in the legal system of Romania is a structure with legal personality within the Superior Council of Magistracy which acts under the principle of operational independence⁵⁵ in relation to the Superior Council of Magistracy, to courts, prosecutor`s offices attached to them and to other public authorities. It exercises competencies of analysis, verification and control in particular fields of activity, under the law⁵⁶.

Demonstration of the indispensability of the judicial inspection body involvement in preventing and combating judicial corruption. The competencies of the judicial inspection body. The Judicial Inspection of the Republic of Moldova verifies the organizational activity of courts in exercising justice, examines petitions on issues referring to judicial ethics, verifies and examines complaints on acts that may represent disciplinary offences committed by judges⁵⁷ etc.

The competencies of the Judicial Inspection of Romania are divided into two categories: a) attributions regarding the activity and the conduct of judges and prosecutors, including those that are members of the Superior Council of Magistracy or judicial inspectors and the assistant-magistrates of the High Court of Cassation and Justice; b) attributions of control regarding the activity of courts and prosecutor`s offices. The attributions of the judicial inspectors regarding the activity and the

⁵⁴ P.1.1 of the Decision of the Superior Council of Magistracy regarding the approval of the Regulation on the organization, the competency and the functioning of the Judicial Inspection, no.506/24 of 13.11.2018. In: *Official Gazette of the Republic of Moldova*, 18.01.2019, no.13-21. <https://www.csm.md/files/Hotaririle/2018/24/506-24.pdf> (visited 24.04.2020)

⁵⁵ Art. 1 of the Regulation on the organization and the functioning of the Judicial Inspection. Approved by the Order no.134 of 10.12.2018. In: *Official Gazette of Romania*, 11.12.2018, no.1049, Part I. <http://legislatie.just.ro/Public/DetaliiDocument/208780> (visited 24.04.2020)

⁵⁶ Art. 65 para (3) of the Law on the Superior Council of Magistracy, Republished, no. 317 of 01.07.2004. In: *Official Gazette of Romania*, 01.09.2012, no.628. <http://legislatie.just.ro/Public/DetaliiDocument/64942> (visited 24.04.2020)

⁵⁷ P. 5.1 letters a), c), d), h) of the Decision of the Superior Council of Magistracy regarding the approval of the Regulation on the organization, the competency and the functioning of the Judicial Inspection, no.506/24 of 13.11.2018. In: *Official Gazette of the Republic of Moldova*, 18.01.2019, no.13-21.

<https://www.csm.md/files/Hotaririle/2018/24/506-24.pdf> (visited 24.04.2020)

conduct of magistrates are the following: the verification of complaints regarding the improper activity or conduct of judges and prosecutors; in disciplinary matters, the initiation and the exercise of disciplinary proceedings with respect to judges and prosecutors; the verification of the violations of the norms of conduct regulated by the deontological Code of judges and prosecutors; the verification regarding the fulfillment of the condition of good reputation for serving judges and prosecutors; the exercise of verifications for the examination of the requests regarding the protection of professional reputation and of the independence of judges and prosecutors etc.⁵⁸

Neither the Judicial Inspection in the Republic of Moldova, nor the Judicial Inspection of Romania do not expressly have competencies in preventing and combating judicial corruption, their activity relating rather to the institution of disciplinary liability of magistrates and to the dimension of judicial ethics and deontology. But, taking in consideration that one of the purposes of the judicial inspection activity is to identify and remove vulnerabilities within the judicial system and to prevent risks in the activity of courts⁵⁹ and prosecutor`s offices (valid for the legal system of Romania⁶⁰) and the disciplinary proceedings are an important regulatory mechanism to fight corruption⁶¹, we consider that the mentioned institution cannot have a passive role in the fight against this negative phenomenon.

The position of the authors. Based on the incursions made above, we synthetize the indispensability of the involvement of the judicial inspection body in preventing and combating judicial corruption. This position corresponds to the spirit of the pertinent legal regulations, represents the quintessence of judicial self-governance and a precondition of the right to

⁵⁸ Art. 3 of the Regulation regarding the norms of exercising works of judicial inspection by the Judicial Inspection. Approved by the Decision of the Superior Council of Magistracy, no.1027 of 15.11.2012. In: *Official Gazette of Romania*, 29.11.2012, no.802, Part I. <https://www.csm1909.ro/274/Legislatie> (visited 24.04.2020)

⁵⁹ P. 1.3 letter d) of the Decision of the Superior Council of Magistracy regarding the approval of the Regulation on the organization, the competency and the functioning of the Judicial Inspection, no.506/24 of 13.11.2018. In: *Official Gazette of the Republic of Moldova*, 18.01.2019, no.13-21. <https://www.csm.md/files/Hotaririle/2018/24/506-24.pdf> (visited 24.04.2020)

⁶⁰ Art.4 letter d) of the Regulation regarding the norms of exercising works of judicial inspection by the Judicial Inspection. Approved by the Decision of the Superior Council of Magistracy, no.1027 of 15.11.2012. In: *Official Gazette of Romania*, 29.11.2012, no.802, Part I. <https://www.csm1909.ro/274/Legislatie> (visited 24.04.2020)

⁶¹ Para 30 of the Opinion of the Consultative Council of European Judges (CCJE) Preventing corruption among judges, no.21 of. 09.11.2018, Zagreb.

<https://www.coe.int/en/web/ccje/ccje-opinions-and-magna-carta>(visited 24.04.2020)

a fair trial (which also presumes the examination of the case by an independent, impartial and free of corruption court).

Arguments. Exercising its functional competencies, the judicial inspection body is able to detect factors and risks of corruption among judges from: 1) inside the judicial system; 2) outside the judicial system; 3) the social media.

When we investigate the possibility to detect factors and risks of corruption from inside the Judiciary, we refer to the verifications exercised by the judicial inspection body regarding the organizational activity of courts, which comprises the managerial activity of court presidents, the activity of judges, registrars, archives etc. Under the legal framework of the Republic of Moldova, the purpose of the mentioned control is to ensure the efficiency of the activity of courts, judges and the court staff, to report and to verify the cases of violation of the independence and the impartiality of judges. Prevention is an important component of the activity of the Judicial Inspection in order to remove the risks and the malfunctions from the system.⁶²

The control exercised by the Judicial Inspection of Romania has many similarities with the control exercised in the legal system of the Republic of Moldova. One difference refers to the fact that the control is exercised in order to ensure the good functioning of the courts and of the prosecutor`s offices⁶³.

The judicial inspection body can detect minor malfunctions during the process of control, these being possible to remediate through the prism of the responsibility of the magistrates and of the court staff, by enhancing the communication inside the courts (and prosecutor`s offices), intensifying the managerial activity, ensuring the harmonious working climate, organizing round tables, conferences etc. But it can also detect vulnerabilities that are able to affect seriously the independence and the impartiality of the judicial system (in case of detecting elements of possible corruption acts).

The judicial inspection body can detect information about risks of corruption from outside the judicial system, by examining the notifications

⁶² P. 3 of the Decision of the Superior Council of Magistracy regarding the approval of the Regulation on the volume, the methods, the grounds and the procedure of verification of the organizational activity of courts in exercising justice, no. 239/9 of 12.03.2013. In: *Official Gazette of the Republic of Moldova*, 31.05.2013, no. 119-121. <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=348101>(visited 24.04.2020)

⁶³ Art. 3 para (3) of the Regulation regarding the norms of exercising works of judicial inspection by the Judicial Inspection. Approved by the Decision of the Superior Council of Magistracy, no.1027 of 15.11.2012. In: *Official Gazette of Romania*, 29.11.2012, no.802, Part I. <https://www.csm1909.ro/274/Legislatie> (visited 24.04.2020)

(petitions and the complaints) regarding violations of ethical and/or disciplinary norms. Risk factors may be found in the activity of a certain court (or prosecutor's office) or in the activity of a certain judge (or prosecutor).

Another source of information may be the social media whereas the Judicial Inspection has the right to initiate ex-officio a disciplinary case with respect to a judge⁶⁴ or a prosecutor⁶⁵. An additional verification of the information does not exclude the possibility to detect elements of possible acts of criminal corruption.

Hypothetical dilemmas. The question of interest in the described context is how will react the judicial inspection body if it finds hint of corruption in the activity of a judge (or a prosecutor) or of a court staff representative during the usual exercise of functional competencies. The legal framework referring to the organization and the functioning of the Judicial Inspection in the legal system of the Republic of Moldova and Romania does not expressly oblige the judicial inspector to notify the competent investigative bodies, the single possible sanction for the magistrate or the clerk concerned being a disciplinary one. In our opinion, in this way the fight against corruption is ruined and judicial independence, impartiality and integrity are seriously affected.

The corollary of the powers and the trust conferred by society upon judges is that there should be some means of holding judges responsible, and even removing them from office, in cases of misbehaviour so gross as to justify such a course. The need for caution in the recognition of any such liability arises from the need to maintain judicial independence and freedom from undue pressure⁶⁶, the disciplinary or the criminal responsibility of judges being part of their punitive accountability⁶⁷.

⁶⁴ Art. 19 para (2) of the Law on disciplinary liability of judges, no. 178 of 25.07.2014. In: Official Gazette of the Republic of Moldova, 15.08.2014, no. 238-246. https://www.legis.md/cautare/getResults?doc_id=106150&lang=ro (visited 24.04.2020)

⁶⁵ Art. 38 para (1) of the Regulation regarding the norms of exercising works of judicial inspection by the Judicial Inspection. Approved by the Decision of the Superior Council of Magistracy, no.1027 of 15.11.2012. In: *Official Gazette of Romania*, 29.11.2012, no.802, Part I. <https://www.csm1909.ro/274/Legislatie> (visited 24.04.2020)

⁶⁶ Para 51 of the Opinion 3(2002) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality, no.3 of 19.11.2002, Strasbourg. <https://rm.coe.int/16807475bb> (visited 24.04.2020)

⁶⁷ Para 26 of the Opinion 18(2015) of the Consultative Council of European Judges (CCJE) The Position of the Judiciary and its relation with the other powers of state in a modern democracy, no.18, 16.10.2015, London. <https://rm.coe.int/16807481a1> (visited 24.04.2020)

Solution. In our opinion, considering the above, the appropriate solution is to establish expressly, at the normative level, the obligation of the judicial inspectors to notify the criminal investigative bodies about elements of possible judicial corruption acts found with the occasion of exercising the day-to-day activities. The obligation should be part of the normative act regulating the organization and the functioning of the judicial inspection body (and should not only be presumed by the prism of the spirit of the law regulating the functioning of the public sector). The notification of the criminal investigative bodies might be done through the chief judicial inspector, through the Superior Council of Magistracy or by the judicial inspector himself (or herself). Such a state of affairs corresponds to the recommendations of Freedom House for the institutions of the Justice sector of the Republic of Moldova regarding the need to strengthen the role of Judicial Inspection, to offer appropriate and prompt reactions to the reports referring to issues of integrity of the representatives of the mentioned sector, to ensure the irreversibility of the accountability and of the recovery from the inside, to adjust the normative and institutional framework and to promote the real application of the anti-corruption instruments⁶⁸.

The proposed solution is in the spirit of the law, in the context of the functionality of the judicial inspection body. According to a *Report regarding the functional analysis of Justice in Romania*, for instance, the Judicial Inspection of Romania is recognized as an institution involved directly in combating the phenomenon of corruption, underlining that, from all the complaints, it will examine only those referring to judicial ethics and discipline. The Judicial Inspection does not investigate corruption cases but if, during the investigations, it finds evidence in this sense, it has the obligation to transmit the cases and the findings to the National Anti-corruption Direction or to common prosecutor`s offices⁶⁹.

The Judicial Inspection should be a key institution within the judicial self-government involved in the fight against judicial corruption in the legal system of the Republic of Moldova too, especially thanks to its functional features, its organizational subordination to the Superior Council of Magistracy (guarantor of the independence of the Judiciary) and its recognized operational independence. In the context, we refer to preventive anti-corruption activity, the investigation of possible acts of

⁶⁸ Integritatea în justiție: realizări, provocări, perspective. (Integrity in Justice: achievements and challenges). Chisinau, 2018, Freedom House. 23 p., p.23. <https://freedomhouse.org/sites/default/files/Shadow%20Report%20v2%20-%20Web%20-%20RO.pdf> (visited 24.04.2020)

⁶⁹ The Functional Analysis of Justice Sector in Romania, March 2013, p.87-88, 182. <http://www.just.ro/wp-content/uploads/2015/09/Analiza-functionala-a-sectorului-Justitiei-RO.pdf>(visited 24.04.2020)

corruption and the sanctioning of the responsible subjects being particular competencies of the criminal investigative bodies and of the courts.

Justification of the need to strengthen the functional status of the judicial inspection body in the context of judicial corruption prevention. To promote the active role of the judicial inspection body in the fight against corruption among judges (and court staff, or prosecutors in the legal system of Romania) it is necessary not only to oblige the judicial inspectors to notify the criminal investigative bodies in particular conditions, but also to strengthen their functional status. One modality is to sustain its radical reformation, from the point of view of its substantial competence. We refer to the reconsideration of the control function of the judicial inspection body through establishing a specific category of personnel – of investigative judicial inspectors who will exercise operative activity. The essence of the reorganization in such a manner of the judicial inspection body is to enhance its functional capacities and to facilitate the process of detecting at initial stages the existent malfunctions in the organization of courts (and prosecutor`s offices), as well as of undue conduct admitted by judges (and prosecutors) or by the court staff. The activity of investigative judicial inspectors may be determinant in this sense. In the context, it is crucial that the mentioned investigative judicial inspectors should not have decisional capacity in initiating and/or exercising operative activity; decisional capacity should have only the chief judicial inspector and/or the President of the Superior Council of Magistracy⁷⁰. Such a reconceptualization of the control function of the judicial inspection body should inevitably strengthen its position within the judicial self-government and should contribute to the improvement of the system of self-control of the quality, of the efficiency and of the incorruptibility of justice in all its aspects⁷¹.

It is necessary to strengthen the functional status of the judicial inspection body in order to enhance its real capacity to exercise activity of prevention and combat of judicial corruption, together with other anti-corruption institutions part of the executive power. Even if judges in the legal system of the Republic of Moldova are obliged to notify about

⁷⁰ Negru A., Creciun N., *Reconceptualizarea funcției de control a Inspecției Judiciare. (The reconceptualization of the control function of the Judicial Inspection)* In: *Studia Universitatis Moldaviae*, no. 3(113), 2018, p.47-56, p.49, 51.

https://ibn.idsi.md/sites/default/files/imag_file/47-56_0.pdf (visited 24.04.2020)

⁷¹ Negru A., *Aprecieri de esență a principiului consolidării justiției. (Appreciations of essence of the principle of consolidation of justice)*. In: *Legea și Viața*, Chisinau, 2012, no.11, p.23. <http://www.legeasiviata.in.ua/archive/2012/11-md/11-md.pdf> (visited 24.04.2020)

possible acts of corruption and the representatives of the courts staff have the right to be whistleblowers in possible cases of corruption⁷², such a scenario is unlikely in the national social reality (by the way, it is unlikely in other legal systems too, where the culture of judicial integrity and of human rights is not cultivated and improved). The anti-culture of the integrity has forced the extension of the demagoguery: is considered guilty whoever speaks about irregularities and not whoever has committed the irregularities. This is how is explained, for instance, the lack of denouncements from magistrates regarding acts of corruption committed inside the Judiciary.⁷³ Or a judge might be the victim of undue pressure, be it by peers or by influential groups within the court system. It seems to be a rather widespread perception that judges cannot sufficiently defend themselves against these kinds of pressure due to the very specific nature of the role and position they hold⁷⁴. “In many cases, undue influence on judicial rulings comes not from politicians directly, but via the judicial hierarchy [...]. Such influence may be the result of direct pressure from superiors; more subtle incentives based on judges’ anticipation that a ‘wrong’ decision in an important case could have career consequences”⁷⁵. The organizational silence can be based on multiple factors: participants’ doubt regarding their legitimacy, the fear that the opposition may be perceived as a factor of aggressivity, the desire not to affect the cohesion of the group or not to be disregarded by the hierarchical superiors⁷⁶, the lack of judicial democracy, the lack of a deontological culture, the general

⁷² P. 5 of the Decision of the Superior Council of Magistracy regarding the approval of the Regulation on the integrity whistleblowers inside the Superior Council of Magistracy and in courts, no. 663/21 of 05.08.2014. In: Official Gazette of the Republic of Moldova, 10.10.2014, no. 297-309.

https://www.csm.md/files/Acte_normative/Regulamentul_privind_avertizorii_de_integritate.pdf (visited 24.04.2020)

⁷³ Danileț C. Corupția și anticorupția în sistemul juridic. (Corruption and anti-corruption in the legal system). C.H. Beck Publishing House, 2009, 209 p. p.146. https://www.kas.de/c/document_library/get_file?uuid=3aa82403-8d21-bd2f-132c-181792196d98&groupId=252038 (visited 24.04.2020)

⁷⁴ Para 16 of the Opinion of the Consultative Council of European Judges (CCJE), Preventing corruption among judges, no.21, 09.11.2018.

<https://www.coe.int/en/web/ccje/ccje-opinions-and-magna-carta> (visited 24.04.2020)

⁷⁵ Gloppen S., (2014), Courts, Corruption and Judicial Independence. In: *Corruption, Grabbing and Development: Real World Challenges (Book Chapter)*. p. 72. <https://www.cmi.no/publications/5091-courts-corruption-and-judicial-independence#author-details> (visited 24.04.2020)

⁷⁶ Alt E., *Calitatea hotărârilor judecătorești. (The quality of judicial decisions)* În: *Revista Forumul Judecătorilor*, no. 2/2009, p. 53

<http://www.forumuljudecatorilor.ro/wp-content/uploads/Art-7-Forumul-judecatorilor-nr-2-2009.pdf> (visited 24.04.2020)

accepted opinion that chiefs cannot be criticized, cases of incompetency must be covered, acts of corruption are not publicly disclosed⁷⁷.

The judicial inspectors, in their turn, are part of the Judicial Authority but not part of the collective where the potential suspect subject of corruption activates; so, the probability that they would notify the criminal investigative bodies is higher. For these reasons, the Justice reform – both in the legal systems of the Republic of Moldova and of Romania – should be refocused on the enhancing of functional capacities of the judicial inspection body. In the context, it is timely to examine the possibility of reconsidering in a radical manner its control function through establishing the operative activity. Each State shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption. Each State shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption and care about increasing and disseminating knowledge about the prevention of corruption. Each State shall grant the anti-corruption body or bodies the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence⁷⁸.

To fit the concept of good judicial self-governance, the judicial inspection body should be focused on the permanent self-purification and self-improvement of the judicial system, on enhancing the intern strategies of prevention of the violations of law, deontology and ethics, on promoting the responsibility among judges and among other actors of the Justice sector, the conceptual differences *between legal responsibility and legal accountability* being determinant. *The legal responsibility* is a conscious and legal activity of the subject in the process of realization of permissive legal norms, oriented towards a voluntary acceptance and execution of certain legal obligations that is a part of the content of a certain legal relation. The realization of the responsibility does not presume the inevitable intervention of legal accountability and of the legal sanction⁷⁹.

⁷⁷ Danileț C., *Corupția și anticorupția în sistemul juridic. (Corruption and anti-corruption in the legal system)*. C.H. Beck Publishing House, 2009, 209 p. p.42-43. https://www.kas.de/c/document_library/get_file?uuid=3aa82403-8d21-bd2f-132c-181792196d98&groupId=252038 (visited 24.04.2020)

⁷⁸ Art.5 para (3), art. 6 para (1) letter b), para (2) of the United Nations Convention against Corruption, General Assembly Resolution 58/4 of 31 October 2003, New York. https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/o8-50026_E.pdf (visited 24.04.2020)

⁷⁹ Negru A., Chicu O., *Interacțiuni doctrinare dintre răspunderea juridică și responsabilitatea juridică. (Doctrinal interactions between legal accountability and*

An external constraint for determining the magistrate to adopt an appropriate conduct is not sufficient. The desideratum of the fight against corruption may be obtained only when it springs from an urgent internal need of the magistrate who has understood his or her fundamental role in the society: that of imposing the correctness and of respecting the rules by all the citizens, the judge himself or herself becoming a moral pillar of the democratic society⁸⁰.

Generalization of the modalities of enhancing the capacities of the judicial self-government in the fight against judicial corruption. As a generalization, we will mention several ways of enhancing the capacities of the judicial self-government in the fight against judicial corruption: the normative, the institutional and the educational ones.

Referring to the normative level, it is absolutely necessary to limit the discretionary right of all the actors of the Justice sector in the process of realizing of legal norms, especially regarding the subjects with competencies of verification and control in particular areas for the manifestation of Justice, as is the case of the judicial inspection body. The establishment of parameters for judicial discretion in the interpretation of law is a measure that helps to increase the integrity of the Judiciary. Such parameters could be used as guidelines that would help identify possible acts of corrupt behaviour in unusual court decisions.⁸¹ The forums, the authorities and the organisms that deal with cases of disciplinary liability have to interpret the exact meaning of the legal texts defining facts that represent disciplinary offences in a manner that excludes any suspicion or arbitrariness.⁸² The qualitative realization of legal regulations in the field

legal responsibility). In: *Studia Universitatis Moldaviae*, 2018, no. 8(118), p.42. http://studiamsu.eu/wp-content/uploads/05.p.35-44_118.pdf (visited 24.04.2019).

⁸⁰ Danileț C., *Corupția și anticorupția în sistemul juridic. (Corruption and anti-corruption in the legal system)*. C.H. Beck Publishing House, 2009, 209 p. p.182. https://www.kas.de/c/document_library/get_file?uuid=3aa82403-8d21-bd2f-132c-181792196d98&groupId=252038 (visited 24.04.2020)

⁸¹ Para 80 of the Report of the Special Rapporteur on the independence of judges and lawyers. A/67/305, UN DOC, 13.08.2012.

<https://undocs.org/pdf?symbol=en/A/67/305> (visited 24.04.2020)

⁸² Bozeșan V., Călin D., Militaru I., Judge of the Supreme Court removed from judicial office Judecător al Curții Supreme exclus din corpul magistraților printr-o procedură disciplinară nelegală. Lipsa de independență și imparțialitate al Consiliului Superior de Justiție și a instanței de control judiciar – încălcarea art. 6 și 8 din Convenție – cauza Oleksandr Volkov c. Ucrainei. (Judge of the Supreme Court removed from judicial office through an illegal disciplinary procedure. Lack of independence and impartiality of the Superior Council of Justice and of the instance of judicial control – violation of the art. 6 and 8 of the Convention – case Oleksandr Volkov v. Ukraine). În:

of Justice and the removal from the legal regulations of any possibilities of subjectivism in the area of legal accountability of magistrates is an objective of the value expression of a consolidated Justice⁸³.

In our opinion, the judicial inspectors should be obliged under the regulations on the organization and the functioning of the judicial inspection body to report to criminal investigative bodies about findings of possible acts of corruption committed by judges (or prosecutors) and other court staff (just like in the case of integrity inspectors of the National Integrity Authority of Moldova who have the obligation to notify the criminal investigative body or the fiscal body if they find the existence of reasonable suspicion of committing of a crime or a violation of fiscal law⁸⁴). This would be an important step in recognizing the active role of the judicial inspection body in the fight against judicial corruption. The judicial inspection body would acquire the status of anti-corruption authority, with express competencies in this area.

At the institutional level should be provided permanent and constructive communication among all the actors of the judicial system, especially among representatives of the judicial self-government, judges (prosecutors), other court staff (in a broader approach the professional communication should be encouraged not only within the judicial system, but throughout the legal system; the legal system refers not only to magistrates, but also to all the institutions and professionals involved in resolving a dispute: bodies of finding crimes and contraventions, judicial police, prosecutors and judges, courts' auxiliary specialized personnel, lawyers, mediators, experts, insolvency practitioners, judicial executors, public notaries, integrity inspectors⁸⁵).

A constructive communication also includes the organization of seminars, round tables, initial and continuous training, encouraging creative, research and didactic activity – all of which inevitably contribute

Juris Clasor CEDO. Universitara Publishing House, Bucarest, 2013, p. 39-56, p.47. <http://www.hotararicedo.ro/files/files/Jurisclasor%202013%20final.pdf> (visited 24.04.2020)

⁸³ Negru A., Obiective ale procesului de consolidare a justiției contemporane. (Objectives of the process of consolidation of contemporary justice). In: *Revista Institutului Național al Justiției*, no. 4(51)2019, p.39-45, p.40.

https://www.inj.md/sites/default/files/39-45_3.pdf (visited 24.04.2020)

⁸⁴ Art. 34 para (2) of the Law on the National Integrity Authority, no.132 of 17.06.2016. In: Official Gazette of the Republic of Moldova, 30.07.2016, no.245-246. https://www.legis.md/cautare/getResults?doc_id=94148&lang=ro (visited 24.04.2020)

⁸⁵ Danileț C. Corupția și anticorupția în sistemul juridic. (Corruption and anti-corruption in the legal system). C.H. Beck Publishing House, 2009, 209 p. p.20-21. https://www.kas.de/c/document_library/get_file?uuid=3aa82403-8d21-bd2f-132c-181792196d98&groupId=252038 (visited 24.04.2020)

to the propagation of good practices and to the spread of knowledge exchange. The mentioned communication should refer to the area of judicial corruption too, encouraging research on corruption being one of the Twenty Guiding Principles for the Fight against Corruption⁸⁶. A lack of regulations concerning a judge's ethical conduct, a lack of general awareness of the dangers of corruption, and a lack of guidance from court management can lead to judges becoming indifferent to the requirements of objective and impartial justice⁸⁷. Joint efforts are needed in order to cultivate the culture of the independence, of the impartiality, integrity and of the incorruptibility of individual judges and of Justice in general.

From an educational point of view, it is appropriate to promote and to encourage the ethical thinking and the ethical behavior among magistrates (and not only among them). The judicial inspection body is able to contribute to the realization of this mission, especially through the primary verification of petitions regarding the violations of ethical rules, the examination of complaints regarding the violations of the discipline, the verification of the organizational activity of courts (and prosecutor`s offices).

The interinstitutional collaboration is just as important in preventing and combating judicial corruption. Usually, corruption does not affect a single area; it is a complex phenomenon, able to harm a variety of aspects of social life. Human Rights are the most vulnerable. Endangering the authority of the law⁸⁸, corruption is a threat to democracy, to the pre-eminence of law and Human Rights, it undermines the principles of good administration, equity and social justice, endangers the stability of democratic institutions and the moral basis of the society⁸⁹. For these reasons, the eradication of corruption needs joint efforts. Combating corruption within the judicial system is important in order to strengthen judicial credibility and independence. Thus, the establishment of internal

⁸⁶ Para 18 of the Resolution 97(24) on the Twenty Guiding Principles for the Fight against Corruption. Adopted by the Committee of Ministers, 06.11.1997. <https://rm.coe.int/16806cc17c> (visited 24.04.2020)

⁸⁷ Para 15 of the Opinion of the Consultative Council of European Judges (CCJE) Preventing corruption among judges, no. 21 of 09.11.2018, Zagreb. <https://www.coe.int/en/web/ccje/ccje-opinions-and-magna-carta> (visited 24.04.2020)

⁸⁸ Гравина А.А. Реализация международных принципов противодействия коррупции при осуществлении правосудия. Журнал российского права, (Gravina A.A. The realization of international principles of counteracting corruption in the exercise of justice), no. 11, 2017, p.120-132, p.123. <https://cyberleninka.ru/article/n/realizatsiya-mezhdunarodnyh-printsipov-protivodeystviya-korrupsii-pri-osuschestvlenii-pravosudiya/viewer> (visited 24.04.2020)

⁸⁹ Danileț C., *Corupția și anticorupția în sistemul juridic. (Corruption and anti-corruption in the legal system)*. C.H. Beck Publishing House, 2009, 209 p. p.52-54, 116. https://www.kas.de/c/document_library/get_file?uuid=3aa82403-8d21-bd2f-132c-181792196d98&groupId=252038 (visited 24.04.2020)

and external mechanisms of accountability for judges, prosecutors and the court staff is imperative. An important element in the investigation, prosecution and punishment of corruption is the cooperation and competence of the investigatory services. Measures to prevent and combat corruption should involve cross-institutional efforts and include the participation of all sectors of society.⁹⁰

So, the judicial self-governing bodies (especially the Superior Council of Magistracy and the Judicial Inspection) should collaborate with national integrity authorities, with national anti-corruption authorities and with intelligence services, under specific conditions, in order to ensure the prevention and the combat of judicial corruption. It is significant each institution to be limited strictly to the exercise of its functional competencies, without mutual interference in their activity. Such a cooperation would represent an efficient materialization of the principle of separation and of collaboration of state powers.

The fight against judicial corruption can fail in case of severe isolation of the state powers. The three powers function in a relationship of interdependence. In that sense there can never be a complete “separation of powers”. However, in order to achieve a proper balance of the three powers of state, each power must exercise proper restraint in its relations with the other powers. In a state governed by the principle of separation of powers, interferences between the action of one branch of the State and other branches must be maintained within the bounds of the law and internationally accepted standards. The Consultative Council of European Judges (CCJE) considers that, when an unwarranted interference does occur, the powers of the state should loyally cooperate to restore the balance and so the confidence of society in a smooth functioning of public institutions⁹¹.

In general, the states shall adopt such measures as may be necessary to ensure that public authorities, as well as any public official, co-operate, in accordance with national law, with those of its authorities responsible for investigating and prosecuting criminal offences by informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the criminal offences of corruption has been committed

⁹⁰ Para 85, 102, 110 of the Report of the Special Rapporteur on the independence of judges and lawyers. A/67/305, UN DOC, 13.08.2012.

<https://undocs.org/pdf?symbol=en/A/67/305> (visited 24.04.2020)

⁹¹ Para 39, 43 of the Opinion of the Consultative Council of European Judges (CCJE) *The position of the judiciary and its relation with the other powers of state in a modern democracy*, no.18 of 16.11.2015, London. <https://rm.coe.int/16807481a1> (visited 24.04.2020)

or by providing, upon request, to the latter authorities all necessary information⁹².

At the same time, any form of collaboration between control bodies of the judicial self-government system (as is the case with the judicial inspection body) and investigative bodies or control bodies part of the executive power must be transparent. The clarity and the transparency of the verification and/or control procedures – in the area of ethical responsibility and, in particular, in the area of disciplinary or criminal accountability – is required either in relation to the verified or controlled subjects or in relation to the society. This exigency is one of the premises of the credibility of the judicial system, in the context of its tendency to ensure the self-purification and the self-improvement of the system, to adapt to social realities – all of which are specific manifestations of the complex process of reformation and consolidation of Justice.

The remark is made in the context of the suspicions – in our opinion, reasonable suspicions – regarding the independence of the Judicial Inspection of Romania, after signing, in 2016, in absolutely secret conditions, of the Protocol regarding the organization of the cooperation between The Romanian Intelligence Service and The Judicial Inspection within the Superior Council of Magistracy in order to carry out their tasks, according to the law⁹³. The procedures of disclosing of the named Protocol began on the 28th of March 2017. In a press release, the Judicial Inspection of Romania mentioned that none of the duties of the Judicial Inspections was an object of any protocol containing or not classified information with any public institution. No resolution, report or any other document adopted by the Judicial Inspection was communicated to any entity on the basis of any protocol. The verifications of the Judicial Inspection were exercised exclusively in cases and under procedures provided by law, by the judicial inspectors and never by or with the support of other persons from outside the institution; no other persons have had access to any of the exercised verifications⁹⁴.

As a matter of fact, the cooperation Protocol was based on the principles of the Rule of Law, guaranteeing judicial independence, respect

⁹² Art.21 of the Criminal Law Convention on Corruption, Strasbourg, 27.01.1999. <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f5> (visited 24.04.2020)

⁹³ Protocol regarding the organization of the cooperation between The Romanian Intelligence Service and the Judicial Inspection within the Superior Council of Magistracy in order to carry out their tasks, according to the law, 2016.

<http://www.inspectiajudiciara.ro/> (visited 24.04.2020)

⁹⁴ What the Protocol signed by the Judicial Inspection does not contain. (Ce nu conține Protocolul încheiat de Inspekția Judiciară) <http://www.inspectiajudiciara.ro/> (visited 24.04.2020)

of the obligations and responsibilities of the parties, *need to know/need to share* (the transmission of the relevant information for carrying out the duties by the parties, according to the law, only to the persons that need to work with that kind of information or to have access to them). The declared purpose of the cooperation Protocol was to ensure the independence and the exercise of justice, to prevent and combat disciplinary offences among magistrates, to know, prevent and counteract the vulnerabilities and the risk factors that may affect the state of legality, to mention the legal order, as well as the climate of exercising the Fundamental Human Rights, Freedoms and Obligations, as values of national security, in accordance with the democratic norms and principles established by the Constitution⁹⁵.

Despite the statements of the Judicial Inspection of Romania and the content of the Protocol itself, its secret character has seriously undermined the image and the credibility of the judicial Inspection body.

However, the interinstitutional communication should be improved, including the communication regarding the fight against judicial corruption. The cooperation and the coherence are principles promoted at the level of the National Anti-corruption Strategy for 2016-2020 (Romania). According to the Strategy, the institutions involved in preventing and combating corruption must closely cooperate, ensuring a unitary conception of the objectives that have to be achieved and of the measures that have to be taken. The Superior Council of Magistracy and the Judicial Inspection must have an active role in addressing the integrity of the magistrates, in order to enhance the integrity, to reduce the vulnerabilities and the risks of corruption in the judicial system⁹⁶. For this purpose, the judicial self-governance should cooperate with certain entities with attributions of investigation or control, including the intelligence services. In the context, may be relevant the statement of the members of the Superior Council of Magistracy – representatives of the civil society – referring to the provisions of the named secret Protocol. They have mentioned that their approach is not to stigmatize the Romanian

⁹⁵ Art.1, 2 of the Protocol regarding the organization of the cooperation between The Romanian Intelligence Service and the Judicial Inspection within the Superior Council of Magistracy in order to carry out their tasks, according to the law, 2016. <http://www.inspectiajudiciara.ro/> (visited 24.04.2020)

⁹⁶ Decision on the approval of the national anti-corruption Strategy for 2016-2020, of the sets of performance indicators, of the risks associated to the objectives and of the measures of the strategy and of the sources of verification, of the inventory of measures of institutional transparency and prevention of corruption, of the assessment indicators, as well as of the standards of publication of the information of public interest, no. 583 of 10.08.2016. In: *Official Gazette of Romania*, Part I, 23.08.2016, of. 644. <http://legislatie.just.ro/Public/DetaliuDocument/181123> (visited 24.04.2020)

Intelligence Service, whose current leadership has decided openly and transparent to disclose and denounce the protocols with structures from inside the Judicial Authority, but to clarify all the aspects for establishing the facts and, especially, the mechanisms and the norms that will guarantee that the judicial duties are exercised by judges and prosecutors exclusively in accordance with the law, free of pressures in the administration of a fair trial specific for the Rule of Law and for the constitutional democracy, in a European Romania.⁹⁷

Thus, any form of interinstitutional collaboration in exercising verification and/or control procedures, including in the fight against judicial corruption, should be transparent, every institution being responsible of exercising its own particular competencies. The degree of collaboration should be limited through pertinent legal provisions.

Conclusions

Based on the reported above, we consider that, in order to intensify the fight against judicial corruption, the capacities of the judicial self-governing bodies in the mentioned area should be enhanced in a multidimensional way. This desideratum might be obtained through the fortification of the functional status of the judicial inspection body, by reconsidering its control function, in the sense of establishing the position of investigative judicial inspector who will exercise operative activity. Another way of intensifying the fight of the judicial self-governance against judicial corruption is to oblige the judicial inspectors to notify the criminal investigative bodies about a potential committing by a magistrate or a courts staff representative of an act of corruption, liable of criminal investigation and sanction. Such an obligation must be part of the normative act regulating the organization and the functioning of the judicial inspection body (and should not only be presumed by the prism of the spirit of the law regulating the functioning of the public sector).

A coherent and performant communication among all the actors of the judicial system (and even of the legal system), the interinstitutional cooperation, in accordance with the law, the promotion of the culture of the independence, of the impartiality, integrity and of the incorruptibility of the Judiciary, encouraging the ethical thinking and the ethical behavior in the judicial sector, the propagation of the scientific research in the anti-

⁹⁷ Statement. Members of the Superior Council of Magistracy, representatives of the civil society, take note with concern of the provisions of the secret Protocol signed between the Romanian Intelligence Service and the Judicial Inspection. (Comunicat. Membrii CSM, reprezentanți ai societății civile iau act cu îngrijorare despre prevederile protocolului secret între SRI și Inspekția Judiciară). Bucarest, 10.10.2018. <https://www.csm1909.ro/PageDetails.aspx?Type=Title&FolderId=6132>(visited 24.04.2020)

corruption area – all of these measures might contribute to the enhancing of functional capacities of the judicial self-government in preventing and combating judicial corruption.

In the end, the question “*Should the Judicial Inspection, as a control body inside the judicial self-governance system, care about the prevention of judicial corruption?*” is a rhetorical one. The active role of the judicial inspection body in the fight against judicial corruption is related to the essence of the judicial self-governance, to the essence of the intern control over the Judiciary and to the essence of the complex phenomenon of the consolidation of Justice. The mission of the judicial inspection body is to contribute, through the activity of analysis, verification and control in particular areas of manifestation of Justice, to the promotion, guaranteeing and the safeguarding of the independence and the incorruptibility of the judicial system both for the benefit of good judicial administration and, as a priority, for the benefit of the Rule of Law, where the Human Rights and Freedoms are Fundamental Values. The independence of judges is not a prerogative or privilege granted in their own interest, but in the interest of the Rule of Law and of all those who seek and expect justice. Judicial independence is the means by which judges' impartiality is ensured. Only an independent Judiciary can implement effectively the rights of all members of society. Thus, independence is the fundamental requirement that enables the Judiciary to safeguard democracy and Human Rights.⁹⁸

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⁹⁸ Para 10 of the Opinion of the Consultative Council of European Judges (CCJE) *The position of the judiciary and its relation with the other powers of state in a modern democracy*, no.18 of 16.11.2015, London. <https://rm.coe.int/16807481a1> (visited 24.04.2020)

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GEOPOLITICS OF THE RUSSIAN FEDERATION REGARDING THE REPUBLIC OF MOLDOVA

Andrey Goltsov*

andrgengolts1@ukr.net

***Abstract:** The article deals with the main trends of geopolitics of the Russian Federation concerning Moldova and reflects the means of their implementation. Geopolitical and geo-economical interests of Russia presuppose the restrictions on cooperation of Moldova with the NATO and the EU, ensuring the preservation of the neutral and non-aligned status of the country. The Russian Federation's geostrategy aims to strengthen its geopolitical position in Moldova and involve it in Eurasian integration structures. The geopolitical model of Moldova as a pro-Russian 'buffer' of the country, which will serve for interaction between Russia and the EU, is in the best interests of the current Russian leadership. The current geopolitics of the Russian Federation regarding the Republic of Moldova uses mainly 'soft power' tools. The Russian government exerts its largely latent influence on Moldova through interconnected political, economic, cultural, informational and other means. Pro-Russian political forces and 'agents of influence' in Moldova are receiving mixed support from the Russian leadership. Transnistria is very important for Russia, particularly in strategic sense. The Russian government exercises indirect comprehensive control over Transnistria and maintains a military contingent in the region as a lever of political influence over Moldova. The geopolitical interests of the modern Russian Federation correspond to the preservation of the sphere of its latent influence in Gagauzia.*

***Keywords:** geostrategy, geopolitics, geopolitical interest, 'soft power', Transnistria, Gagauzia.*

Introduction

The Republic of Moldova (RM) is one of the poorest European countries in terms of social and economic development. Social and political situation is unstable in Moldova with lean times. During the period of the dissolution of the Soviet Union Moldova underwent the geopolitical destruction – regions of Transnistria and Gagauzia proclaimed their independence. Contradictions between Moldova and Gagauzia were

***Professor, Doctor of Political Science, Head of the Chair of International Relations and Tourist Activity Organisation, Educational-Scientific Institute of International Relations and Social Sciences, Interregional Academy of Personnel Management, Kyiv, Ukraine.**

regulated peacefully – the autonomy of Gagauzia was created. In 1992, Moldova and Transnistria had an armed conflict during which the Russian army was helping the Transnistrian armed forces. As a result, Transnistria has got ‘de facto’ independence from Moldova, and the Russian Federation (RF) established informal supremacy in this region and provided military presence in its territory. Under the current conditions of confrontation with the West, Russia is interested in strengthening its geopolitical position in Moldova, taking measures to strengthen its influence in the country. Thus, the study of the main strategic principles, directions and means of geopolitics of the RF in relation to both the RM as a whole and its regions, Transnistria and Gagauzia, is of considerable scientific and practical interest.

Literature Review

Various scholars and experts analyse the policy of Russia concerning Moldova. Moldovan scientists A. Burian, S. Cebotari, V. Chirila, V. Croitoru, V. Juc, V. Saca, N. Stercul, A. Tcaci, V. Ungureanu, E. Vardanean investigated numerous urgent geopolitical aspects of Moldovan-Russian relationships in their works, as well as the influence of the RF on political, social, economic and cultural life of the country. For instance, V. Croitoru studied geopolitical problems of Moldova development under the influence of external influential actors¹. In their monograph ‘Foreign policy of the Republic of Moldova in the context of integration processes’² the authors analyzed the chronology of Moldova’s foreign policy development with Russia and other countries, especially Romania and other international organizations, revealing the advantages and disadvantages of the European neighborhood policy and determining the cooperation perspective of the RM and the EU.

Among American and European scientists and experts, quite meaningful developments were made by D. Cenusa, W. Hill, Ch. King, N. Popescu, E. Rumer, S. Secieru, T. de Waal and others. Thus, E. Rumer conducted a thorough study of Russia's strategy in the post-Soviet space and revealed the characteristics of Russia's policy towards most of the newly independent countries, including Moldova³. W. Hill analyzed in detail the historical, political, economic, social and other factors of the Transnistrian problem, as well as the international political aspects of

¹ Croitoru, V., The geopolitical connotation of the spheres of interest and influence. *Moldoscopy: (problems of political analysis)*. No. 3(LXVI), 2014, pp. 147-154.

² Cebotari, S., Saca, V., Coropcean, I., *Foreign policy of the Republic of Moldova in the context of integration processes*. Chisinau: Inst. Military of the Armed Forces, 2008, p. 180.

³ Rumer, E., *Russia and the Security of Europe*. Washington, DC: CEIP, 2016, p. 56

attempts to resolve the Transnistrian conflict, in particular the activities of the OSCE⁴. The problematic issues of Russian geopolitics regarding Moldova are considered in the light of its interaction with the Western countries (the EU and the NATO). A particularly important subject of research is the further search for ways to resolve the Transnistrian conflict.

The purpose of the study: to identify the main features of modern geopolitics of Russia in relation to Moldova and to analyze the directions and means of its implementation.

Presentation of basic material of the research

Geopolitics, in the applied sense, means the development and application by the state (or other actor) of certain political technologies to establish and maintain control over geospace. Geostrategy is interpreted as a set of officially undeclared main goals, objectives and directions of foreign policy. It determines certain areas, tools and specific means of geopolitics of the state in the international arena. Geopolitics is usually complex in nature and involves the implementation of interrelated areas using appropriate means.

Under the 1994 Constitution, The RM was declared a neutral state with a unitary system. By pursuing a multi-vector foreign policy, Moldova has sought to balance the influence of Russia, the West and Romania, and to secure its sovereign existence. The conclusion of the Agreement on the Association of the RM with the EU on 24 June 2014, with the establishment of a free trade area was a great achievement in the country's European integration progress, but it could not in itself lead to rapid and significant economic results. At the same time, in the summer of 2014, the RF launched another 'economic war' against the RM. The lack of a significant improvement in the socio-economic situation led to the further spread of 'Eurocepticism' in Moldova. In the context of Moldova's economic difficulties, cooperation with the EU is very important for the country. According to the results of 2019, the EU countries accounted for 65.8% of exports and 49.5% of Moldova's imports⁵. Against the background of intensification of the European integration course, there is

⁴ Hill, W., *Russia, the Near Abroad, and the West: Lessons from the Moldova-Transdnistria Conflict*. Washington, DC :Woodrow Wilson Center Press with Johns Hopkins University Press, 2013, p. 296.

⁵ External trade by groups of countries, 1997-2019. *National Bureau of Statistics of the Republic of Moldova*. URL:

http://statbank.statistica.md/PxWeb/pxweb/en/40%20Statistica%20economica/40%20Statistica%20economica__21%20EXT__EXT010__serii%20anuale/EXT010100.px/?rxid=b2ff27d7-0b96-43c9-934b-42e1a2a9a774

also a significant economic and political rapprochement of Moldova with Romania.

Moldova is still one of the most problematic among independent countries in Eastern Europe. The formal introduction of the basic attributes of a liberal-democratic political system, without being closely linked to relevant market reforms, has led to the fact that ‘...one of the most democratic countries in the CIS remains one of the poorest’⁶. The oligarchic groups that have built their system of power in the state had no interest in productive economic reforms and qualitative transformation of the political system in accordance with European norms. The country may have experienced ‘political paralysis and economic stagnation’⁷ for a long time. This situation in Moldova provides potential opportunities for foreign ‘agents of influence’, in particular Russian, in the political and economic spheres of the country.

The competition between the geopolitical projects of the EU and Russia is evident in Moldova's internal political struggle. In the field of pro-European foreign policy, parliamentary coalitions and governments have sought to pursue cooperation with the EU (with the prospect of candidate status), strengthen strategic partnerships with Romania, develop cooperation with Ukraine, deepen strategic dialogue with the USA, etc. But pro-European governments have not achieved significant socio-economic success. At the same time, such phenomena as high-level corruption, abuse of power, grand frauds, etc. were widespread. Corruption scandals have even led to the suspension of EU financial support for Moldova. Pro-European governments demanded constant economic support from the EU institutions, they actually were resorting to geopolitical blackmail threatening the coming to power of pro-Russian parties. The Socialist Party, which announces a course of cooperation with Russia and the Eurasian structures, has successfully used the failures of pro-European political forces to increase its influence on the public life of the country. In 2016, the representative of this party I. Dodon was elected President. A retrospective analysis leads to the conclusion that throughout the historical development of independent Moldova, its political leadership has been inefficient and extremely corrupt even for post-Soviet countries. At the same time, the foreign policy of the RM was ‘inconsistent, unbalanced and unsystematic’⁸.

⁶ Trenin, D., *Post-Imperium: A Eurasian Story*. Moscow: ROSSPEN, 2012, p. 112.

⁷ Rumer, E., *op. cit.*, 2016, p. 34.

⁸ Tcaci, A., Foreign policy convergence strategy of interests of the Republic of Moldova in the framework of the European and Eurasian integration processes. *Review of Philosophy, Sociology and Political Sciences*. No. 3(181), 2019, p. 244.

The society of Moldova still has a geopolitical split between the pro-Western and Eurasian ways of developing the country, although at the same time there are widespread ideas about the expediency of mutually beneficial relations with both East and West. For a long time (until 2019) there was a sharp political struggle between the Socialist Party and the Democratic Party (demonstratively pro-European, controlled by the oligarch V. Plakhotnyuk). In June 2019, an alliance between the Socialist Party and the pro-European ACUM bloc was formed in the Parliament of Moldova. Instead, V. Plakhotnyuk was deprived of his network of influence in Moldova, he lost Western support, and was forced to leave the country. Regarding Moldova, despite the opposition in the Ukrainian and Syrian issues, the West (European countries and the USA) and the RF, in fact, reached an informal geopolitical compromise. But in November 2019, the coalition government of Prime Minister M. Sandu resigned after a vote of no confidence. The government was headed by technocrat I. Chicu at the suggestion of President I. Dodon. This can be seen as a certain success of Russian geopolitics in Moldova. In March 2020, the parliamentary fractions of the Democratic Party and the Socialist Party formed a majority to support the current government. But as early as June 2020, the pro-government coalition in Parliament shrank and became a 'ruling minority'.

The EU countries, especially Romania, as well as the USA are not interested in transforming Moldova into Russian sphere of influence and support pro-Western political forces in the country. In November 2020, during the presidential election in Moldova the main struggle will inevitably take place between the pro-Western candidates A. Nastase and M. Sandu and the candidate from the Socialist Party (probably I. Dodon). The authorities of the RF are interested in the President, who will strengthen Moldovan-Russian cooperation, so he will provide political and financial support primarily to the candidate from the Socialists. The outcome of the presidential election will greatly affect the future geopolitics of the RM.

In Moldova, as in a number of other post-Soviet countries, the problem of national and state identity of the population has not lost its relevance⁹. The formation of the geopolitical image of the RM as a separate state with its Moldovan political nation is complicated by numerous external and internal factors. There are two identities among the country's population - Moldovan and Romanian. The formation of the Moldovan national idea did not receive a solid enough foundation. National values

⁹ Holovatyi, M., Multiculturalism as a means of nations and countries interethnic unity achieving. *Economic Annals-XXI*. No.11-12, 2014, p. 17.

and traditions are, in fact, Romanian. Romanian is recognized as the official language in Moldova.

Romania's geopolitics may eventually lead to the disappearance of the RM as a separate state. For many years, Romania has granted citizenship to the residents of the RM. Moldova's population is gradually growing in favor of 'reunification' with Romania, and local communities are in the process of adopting symbolic declarations of unification between the two countries. Romanian governmental and non-governmental institutions support irredentist political forces in Moldova. In January 2020, five Moldovan political parties advocating unification with Romania formed the 'Unirea' political movement. In Moldova's foreign trade, Romania became the largest partner – in 2019 it accounted for 27.5% of exports and almost 14.5% of Moldova's imports¹⁰. It is likely that Romania's political elite acts against Moldova through gradual incorporation and does not encourage the acceleration of unification processes. A. Yazkova believes that the EU is not interested in violating the status quo on the 'European frontier' and restoring 'Greater Romania'¹¹. So far, the geopolitical project of interstate unification based on the principle of 'one nation - one country' has not received the support of the majority of Moldova's population. But based on the analysis of numerous data, it can be stated that in general, the geopolitical image of 'United Romania' and the corresponding geopolitical model are gradually becoming more and more ingrained in the public consciousness of the population of the RM.

In the current geopolitical situation, the most appropriate for Moldova in the international arena is '...careful balancing between Russia and the West'¹². It is especially undesirable for the Russian authorities to intensify Moldova's partnership with NATO. The clear geopolitical interest of the RF is to preserve Moldova as a neutral and non-aligned state¹³. At the same time, Russia has the opportunity to use its levers of geopolitical control over Transnistria and Gagauzia to influence the situation throughout Moldova.

¹⁰ External trade by groups of countries, 1997-2019, op. cit.

¹¹ Yazkova, A., European frontier: the Republic of Moldova between Europe and Russia. *Contemporary Europe*. No.4(70), 2016, p. 45.

¹² Rumer, E., (2017), Moldova between Russia and the West: A Delicate Balance. *Carnegie Endowment for International Peace*. URL:

<http://carnegieendowment.org/2017/05/23/moldova-between-russia-and-west-delicate-balance-pub-70056>

¹³ Nursha, A., *Moldova between Europe and Eurasia: What to Expect from the 'Moldovan Spring'?* Astana; Almaty: IWEP under the Fund of the First President, 2016, p. 62.

Russian geostrategy on the RM should be considered in the context of its overall European geostrategy, aimed at 'active defense' against the West and at the same time cooperation with individual European countries. Russia's geopolitical interests are indeed in line with maintaining strategic positions in Eastern Europe¹⁴. Therefore, Moldova (and separately Transnistria and Gagauzia) remain strategically important objects for the current leadership of the RF. From the point of view of Russia's geopolitical and geoeconomic interests, the following geopolitical models of the future Moldova are possible: 1) a pro-Western country (integrated into the EU and NATO); 2) a weak, unstable, neutral country - a 'buffer' between Russia and the West; 3) pro-Russian 'buffer' country involved in Eurasian integration with the prospect of deepening partnership with the RF and other EAEU countries - a potential 'ally'¹⁵. Russia's current geostrategy on Moldova is largely in line with the third geopolitical model. At the same time, the second model of Moldova is also acceptable for the RF in terms of its geopolitical interests.

The development of political and economic integration between Moldova and Romania, moreover, the potential unification of these states contradicts the geopolitical interests of the RF, which benefits from the sovereign and at the same time the weak and neutral RM. Therefore, in its geopolitics towards Moldova, the Russian authorities are implementing measures to reduce Romania's political and ethnocultural influence on the situation in the country. At the same time, the RF is trying to hinder Moldova's interaction with Ukraine, especially in the Transnistrian issue.

The leadership of the RF has repeatedly resorted to 'tough' geoeconomic measures against Moldova, including 'economic wars'. The root causes of these 'wars' were geopolitical in nature, forcing Moldova to cooperate on terms dictated by Russia. For many years, Russian economic entities have been conducting money laundering operations through Moldovan businesses. One of the vulnerabilities of the RM economy is its dependence on energy and electricity imports. Natural gas has traditionally been supplied to the country from Russia. Moldova's gas imports are currently being diversified through supplies from Romania through the 'Iasi-Ungheni-Chisinau' gas pipeline and cooperation with Ukraine ('Naftogaz'). Most of the electricity in Moldova traditionally comes from a power plant located in Transnistria and is controlled by the Russian corporation OJSC 'Inter RAO UES'. Starting from 2018, the revenues to the RM of electricity from Ukrainian companies have been increased.

¹⁴ Cebotari, S., The Republic of Moldova in the Context of the Russian Federation's Interests. *Military Magazine. Security and Defense Studies*. No.1(15), 2016, p. 29.

¹⁵ Goltsov, A., Moldova in the Contemporary Strategy of Russia. *UA Foreign Affairs*. No.10, 2017, p. 11.

Thus, Russia's geoeconomic position in Moldova is further weakened in the fuel and energy sector.

The RM is a member of the CIS. Since the 1990s, the Russian government has used the institutions of interstate cooperation within the CIS to form controlled structures in the post-Soviet space. Moldova's participation in the structures of the CIS, despite a wide range of areas of cooperation, has shown low effectiveness for the country. Russia's involvement in cooperation with Eurasian integration institutions, primarily with the EAEU, is in the geopolitical and geoeconomic interests of the Russian government. On April 3, 2017, the 'Memorandum of Cooperation between the Eurasian Economic Commission and the Republic of Moldova' was adopted, in which the goals of cooperation were to increase mutual trade and investments, remove barriers, etc¹⁶. In 2018, Moldova even established an unprecedented observer status at the EAEU. Despite the general decline in economic cooperation between the countries, Russia still remains a significant foreign economic partner of Moldova - in 2019 it accounted for 9% (in 2017 - 13.7%) of exports and 11.8% of imports¹⁷.

There is a widespread perception among Russia's scientific and expert community that as Moldova's economic situation deteriorates, more and more of its population is becoming a supporter of Russia and the EAEU¹⁸. Despite the considerable spread of 'Euro-scepticism' in Moldovan society, the population's support for the foreign policy course of cooperation with Russia and Eurasian structures should not be overestimated. Thus, although the RF has no direct connection with Moldova, the latter remains important for the implementation of European strategic plans of the Russian government. Russia's geostrategy for this country combines the realization of geopolitical and geoeconomic interests. To achieve the RF's geostrategic goals in Europe, it needs to reach compromises with the EU countries, at least some of them. It is reasonable to assume that Russia's strategic plans give Moldova the role of a kind of geo-economic 'field' for future cooperation between the EAEU and the EU. In fact, the task is to form a geoeconomic triangle 'EAEU - Moldova - EU'.

Modern Russian geostrategy on Moldova involves the implementation of a set of numerous measures in the economic, political, cultural and information spheres and is characterized by the use of mostly 'soft' tactical means. At the same time, the Russian leadership uses 'agents of influence',

¹⁶ Memorandum of Cooperation between the Eurasian Economic Commission and the Republic of Moldova. URL:

https://docs.eaeunion.org/docs/ru-ru/01413501/ms_05042017

¹⁷ External trade by groups of countries, 1997-2019, op. cit.

¹⁸ Yazkova, A., op. cit., 2016, p. 44.

means of indirect action, and introduces latent mechanisms of subordination of political and economic structures in Moldova.

The Russian authorities and many Russian scholars believe that Moldova is part of the 'Russian World'. Therefore, the Russian state and non-state institutions are actively spreading the ideas of 'Russian World' on the territory of the RM. Numerous Russian cultural centers and public organizations of 'Russian compatriots' maintain close ties with the RF. Some institutions and clergy of the Moldavian-Chisinau Metropolitanate of the Russian Orthodox Church were involved in promoting the ideas of the 'Russian World'. Russian political discourse was promoted to the people of Moldova through a number of television channels that broadcast Russian Media products. Cases of anti-government and anti-state propaganda have been repeatedly recorded in their programs. In 2014-2018, the legislative and executive authorities of Moldova repeatedly took measures to protect the information security of their country. Russia in response accused the RM authorities of discriminating against Russian Media. During 2017-2018, there was an escalation of the information war between the RF and Moldova. In general, Russia's long-term cultural and information expansion towards Moldova has shown limited success.

The geopolitical position of the Pridnestrovian Moldavian Republic (PMR) is characterized primarily by the fact that it has no access to the sea and is in fact 'sandwiched' between the main territory of Moldova and Ukraine. At the time of the collapse of the USSR, a 'Soviet' (imperial) identity was dominating among the people of Transnistria, which was formed as a result of a combination of historical, political, socio-economic, ethnic and cultural factors. The PMR is not recognized by any country in the world, not even the RF itself. In 2006, in Transnistria, its government organized an illegal referendum, after which it announced the results, according to which 97.1% of the population allegedly voted for the independence of the Republic with its subsequent accession to the RF¹⁹.

Back in the 1990s, The RF provided long-term conservation for the 'frozen' state of conflict around Transnistria. The Russian leadership officially declares its desire 'to find an inclusive solution to the Transnistrian issue, respecting the sovereignty, territorial integrity and neutral status of the Republic of Moldova in determining the special status

¹⁹ Results of the referendum on independence of the Transnistrian Moldavian Republic on September 17, 2006. URL: <https://www.cikpmr.com/index.php/o-vyborakh-i-referendumakh/informatsiya-o-referendumakh/item/211-rezultaty-referenduma-17-sentyabrya-2006-goda>

of Transnistria'²⁰. It is reasonable to assume that Russia's strategic plans for Transnistria provide for the following three main options. The first is the official recognition of the PMR by Russia (possibly several other countries). For example, in the case of the unification of Moldova with Romania or a sharp strengthening of the European integration and Euro-Atlantic geopolitics of Moldova. The second is to hold a referendum in the region and join the PMR to the RF as a subject of the federation. Both of these options, especially the second, are currently unfavorable for the RF, in particular because in practice their implementation is extremely difficult (or even impossible) due to the geographical location of Transnistria - the lack of direct communication with Russia. The third option is to maintain the current *status quo*. According to S. Secrieru, 'Transnistria's independence has never been an end in itself for Russia, the main thing for it is the opportunity to influence Moldova's domestic and foreign policy'²¹. Transnistria appears essentially as the geopolitical 'bridgehead' of the RF, which is important for the realization of Russia's strategic interests in South Eastern Europe.

Under contemporary conditions, the risk of military confrontation between the RM and the PMR is considered minimal. Despite the current confrontation between Russia and the West, the process of resolving the Transnistrian conflict in a '5 + 2' format is going on slowly. Since 1993, the OSCE approach has been that Transnistria should be part of Moldova, but with a special political status. As a result of the negotiation process during 2016-2018, some progress was made in the Transnistrian settlement (in numerous but insignificant aspects). Russian authorities sought to increase the authority of I. Dodon and contributed to the progress of negotiations between him and the leadership of the PMR.

Russia's geopolitical control over Transnistria is ensured, in particular, by its armed forces. The Russian Task Force, which is stationed in the region, does not pose a significant threat to Moldova's security. Russian military presence is demonstrative in nature and is used as a tool of geopolitical influence on the situation in Moldova. The RF periodically conducts demonstration exercises of its group of troops together with the Transnistrian armed formations. During 2014-2018, the official demands of the legislative and executive authorities of the RM to withdraw Russian troops from the territory of Transnistria were unsuccessful.

²⁰ Foreign Policy Concept of the Russian Federation. URL: https://www.mid.ru/foreign_policy/official_documents/-/asset_publisher/CptICkB6BZ29/content/id/2542248

²¹ Secrieru, S., (2018), The Real and Hidden Costs of Russia's Foreign Policy. *EUISS Brief*. No.4. URL:

https://www.iss.europa.eu/sites/default/files/EUISSFiles/Brief%202%20Russian%20Foreign%20Policy_o.pdf

Transnistria's economy remains heavily dependent on the RF. Regular financial assistance from the Russian authorities is necessary, as the operation of the PMR is provided by its own revenues only less than 1/4²². An effective economic means of support for Transnistria by the Russian Federation is the supply of Russian gas to it, for which 'Gazprom' is still trying to place its debts on Moldovagaz. Russian business retains a strong position in Transnistria. There are companies in the region that have cooperative ties with the military-industrial complex of the RF. According to numerous reports, the Russian government exercises indirect control over many local business groups. Russia offers its market for Transnistria manufacturers on a very favorable basis. But now Russia's geoeconomic position in Transnistria is weakening, while the role of Moldova and EU member states is growing²³. Numerous Transnistrian companies receive formal registration in Moldova and take advantage of tangible benefits from participating in the free trade zone with the EU. There is also some increase in trade between Transnistria and Ukraine.

For the PMR steering groups, it is generally acceptable to maintain the current state in which the RF provides its economic support to the unrecognized republic, especially in the fuel and energy sector. Some Russian business groups benefit significantly from working with Transnistrian channels in the EU. Transnistria's ongoing financial support is quite costly for the RF. However, geopolitical considerations of control over Transnistria remain a priority for its leadership.

The RF maintains its dominance in the cultural and information sphere of the PMR. Transnistria has an extensive network of 'Russian World' structures that provide a lasting cultural and informational impact on the population. According to O. Ivanov, '...the goal of Russian policy in the region is to promote the 'soft power' of Eurasian values through institutions'²⁴. Transnistria operates Russian television and radio, and distributes printed publications that affect the public consciousness not only of the population of the region, but also of the whole of Moldova. Positive geopolitical images are produced for the local population, primarily related to the historical heritage of the USSR. Numerous material attributes of Soviet memory geopolitics remain in the region. The results of Russian studies of socio-political processes in Transnistria and Gagauzia indicate some successes in Russia's information geopolitics in

²² Ivanov, O., The Transnistrian Conflict: Current State and Ways of Solution. *World Politics*. 2018, No.1. URL:

https://author.nbpublish.com/wi/article_25259.html

²³ Gushchin, A., Markedonov, S., *Transnistria: Dilemmas of Peaceful Settlement*. Moscow: Russian International Affairs Council, 2016, p. 7-8.

²⁴ Ivanov, O., 2018, *op. cit.*

these regions of Moldova²⁵. Since 2017, the authorities of the RF have introduced facilitated conditions for obtaining Russian citizenship for residents of Transnistria. According to unofficial data, at the beginning of 2020, out of the total population of Transnistria, about 465 thousand people more than 2/3 had Russian citizenship. As a result of such measures, the Russian authorities are gaining more control over Transnistria. According to its Foreign Policy Concept (2016), the RF undertakes to 'ensure the protection of the rights and legitimate interests of Russian nationals'²⁶. Thus, Russia receives formal grounds for the possible use, if necessary, of various means (even military) to protect its citizens.

For Ukraine, the presence of Russian troops in Transnistria is a constant source of local military danger. In 2014, the RF military group could probably be used to implement a geopolitical project tentatively called 'Novorossiya'. In the event of its hypothetical success, a series of quasi-republics of 'Novorossiya' would connect Transnistria and Crimea with Russia²⁷. The implementation of the geopolitical project 'Republic of Budjak' (Southern Bessarabia together with Gagauzia) in 2015 would be extremely dangerous for the territorial integrity of Ukraine and Moldova. But the implementation of this separatist geopolitical project did not take place due to special operations conducted by the Security Service of Ukraine in April 2015.

The current confrontation between Russia and Ukraine could theoretically be beneficial for Moldova in the context of resolving the Transnistrian problem. In principle, in the event of a bilateral (Moldovan-Ukrainian) blockade of the PMR, the latter must agree to the terms offered by Moldova. In May 2015, Ukraine banned the transit through its territory to Transnistria of Russian servicemen and military cargo from the RF. According to A. Devyatkov, the authorities of the RM with the help of Ukraine are trying to expand their control over the external communications of Transnistria²⁸. In November 2015, Ukraine and Moldova reached an agreement on the introduction of joint control at the so-called 'Transnistrian' border section. According to Russian experts, such actions of Ukraine did not correspond to its status as a guarantor country, as

²⁵ Okunev, I., Russia and Europe: The Deconstruction of a Discourse of 'Othering': A Case of Geopolitical Conflict in Moldova. *Comparative Politics Russia*. Vol. 6, No.4, 2015, pp. 56-58.

²⁶ Foreign Policy Concept of the Russian Federation, op. cit.

²⁷ Goltsov, A., *Geopolitical Dimension of the Strategy of the Russian Federation in the post-Soviet space*. Kyiv: CEL, 2018, p. 290.

²⁸ Devyatkov, A., (2017), The Instability Game: Easing Tensions between Russia and the West in Moldova. *Carnegie Moscow Center*. URL:

<https://carnegie.ru/commentary/73548>

it led to the isolation of Transnistria²⁹. The State Duma of the Russian Federation accused the Ukrainian authorities and the Government of Moldova of creating ‘a real threat to the stability of the region, the well-being and security of the people of Transnistria’³⁰. Continued cooperation with Ukraine and the EU on secure border management helps to protect Moldova's security and reduce the smuggling flows.

The current leadership of the RM does not show a desire to radically solve the Transnistrian problem. Destabilization of the geopolitical situation is unfavorable for all parties. Instead, the current relatively stable *status quo* leaves significant benefits and potential ‘windows of opportunity’ for the parties to the conflict and external actors. In general, Russia continues to accept the ‘frozen’ state of conflict in Transnistria, as it allows it to hold positions in the region to put pressure on both the EU, Moldova and, to a much lesser extent, Ukraine.

Russia's geopolitics regarding Gagauzia is also characterized by the use of a set of tools: political, economic, cultural and educational, etc. For example, during the ‘economic war’ of 2014 against the RM, the RF authorities introduced a preferential regime for producers of goods from Gagauzia to export their products to the Russian market. Russian researcher I. Okunev believes that Moldova's discourse on ‘Europeanness’ is ‘artificially constructed’, as not only Russians in Transnistria but also Gagauz and Bulgarians are in favor of integration with Russia³¹. In February 2014, local authorities held an illegal referendum in Gagauzia, after which they released the results, according to which about 98.5% of participants were in favor of integration with the Customs Union, only 2.8% - for Moldova's accession to the EU, more than 98% - for ‘deferred independence status’ of Gagauzia³². The latter means that if Moldova loses its independence (joins Romania), Gagauzia will have reason to declare itself an independent state. The pro-Russian organizations and ‘agents of influence’ use the complex socio-economic problems of the region and its ethnocultural mosaic for separatist propaganda, particularly among Bulgarians. Russia stimulates the spread of the Russian language, which has an official status in the autonomy, along with the state and Gagauz languages. Russian is taught in a number of Gagauzia educational institutions. Russian geopolitics in the region is characterized by the use of

²⁹ Gushchin, A., Markedonov, S., *op. cit.*, 2016, p. 3.

³⁰ The State Duma adopted a statement on the situation around Transnistria. *Parliamentary newspaper*. 07.07.2017. URL: <https://www.pnp.ru/politics/gosduma-prinyala-zayavlenie-po-situacii-vokrug-pridnestrovyya.html>

³¹ Okunev, I., *op. cit.*, 2015, p. 57.

³² Referendum in Gagauzia: results. URL:

<http://www.cis-emo.net/ru/news/referendum-v-gagauzii-itogi>

‘soft power’ and at the same time the widespread involvement of ‘agents of influence’. In general, Russia's geostrategy on Gagauzia is aimed at ensuring latent geopolitical control over the region.

Conclusions

The RF's geostrategy on Moldova aims to ensure its indirect geopolitical control over the country. Russia's strategic interests include strengthening its geopolitical and geoeconomic positions in the Southwest of the post-Soviet space. The RF's geopolitics towards Moldova is implemented in the following areas: facilitating the coming to power in the RM of political forces loyal to Russia; strengthening its latent influence on the political and economic system of Moldova; ensuring further neutral and non-aligned status of the RM; maintaining indirect geopolitical control over Transnistria and Gagauzia. Russia's geopolitical interests correspond to the restriction of Moldova's cooperation with the RF and NATO, and the prevention of its integration with Romania. The RF's geostrategy on the RM aims to implement a geopolitical model of the country's pro-Russian ‘buffer’, focused on cooperation with the EAEU. In the future, Russia is interested in forming a geoeconomic triangle ‘EAEU - Moldova - EU’.

The Russian geostrategy on Moldova and its regions of Transnistria and Gagauzia clearly shows the complex nature of Russian geopolitics, which involves the implementation of interconnected political, economic, cultural and informational and other means. Russia's geopolitics on the RM and its regions combines ‘soft power’ tools with political blackmail, pressure and the use of ‘agents of influence’.

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AN EMPIRICAL STUDY OF THE RELEVANCE AND LEGAL CHALLENGES OF AN E-CONTRACT OF AGREEMENT IN NIGERIA

Paul Atagamen Aidonojie,*

aidonojie.paul@edouniversity.edu.ng

Odojor Oyenmwosa Anne,**

odojor.anne@edouniversity.edu.ng

Odetokun Olukayode Oladele***

kodetokun@gmail.com

Abstract: *The study is concerning contract of agreement in Nigeria, which had developed into an internet or electronic trade that parties to a contract do not need to have personal contact in transacting business. Despite the advantages e-contract provides, there is legal uncertainty as to whether there is a binding contract or it can be enforced in Nigeria. This is given the fact that where parties reach an agreement via the internet, and parties do not sign it, there is no contract. Given this, the study made use of online survey questionnaires sent to 406 respondents (randomly selected) residing in various states of the Federal Republic of Nigeria. Descriptive and analytical statistics were used to analyse 406 respondents' responses to the questionnaire. The study found that information communication technology is a viable way of negotiating e-contract of agreement, but there is no primary legal framework to regulate e-contract of agreement in Nigeria. It was therefore concluded and recommended that there is a need for a practical legal framework to regulate e-contract of agreement in Nigeria to prevent lapses or challenges that may occur.*

Keyword: *Contract, e-contract, Contract of Agreement, Information Communication Technology, Nigeria.*

* Department of Public and International Law, Edo University Iyamho, Nigeria.

** Department of Public and International Law, Edo University Iyamho, Nigeria.

*** Department of Public and International Law, Edo University Iyamho, Nigeria.

Introduction

The emergency of the computer age is of great relevance in commerce¹. The improvement and development of information and communication technology (I.C.T) in Nigeria had contributed enormously to enhance human communication² and improve social life effectively³. As a result of this development stride, it has led to the transformation of the commerce in Nigeria into an e-commerce⁴, and it serves as an alternative to a paper based contract of agreement or transactions. New types of contracts and goods have now been created, such as virtual and digital goods⁵, digital contracts, and online transactions. The electronic contract of agreement in all ramifications surpassed the traditional paper-based, or documented agreement, as it is a universally preferred method of negotiating a contract of agreement⁶. E-contract of the agreement is referable to as a result of its advantages which includes: ease of transacting business without having physical contact, it provides for speedy and faster facilitation of transaction, creation of new types of contract and goods, such as virtual goods, and online-transaction, it saves time and cost in negotiating a contract of agreement, and it provides easier and cheaper means of communication in negotiating a contract both locally and internationally.

This is given the fact that there is no primary legal framework that regulates the e-contract of agreement⁷. Also, an individual who negotiates

¹ Entehawu, G., 'The Legal Framework for Electronic Contracts in Ethiopia with Special Emphasis on General Contract Law' (LLM Thesis, Addis Ababa University, Ethiopia 2013) p 12; Ariyoosu D.A., "An Examination of the Legal Regulations and Taxation of Telecommunications and Electronic Commerce in Nigeria" (PhD Thesis, University of Ilorin, Nigeria 2012) p. 1.

² Aidonjje, P.A. and Agbale O.P. "E-Contract (by Mail) and the Clause 'Subject to Contract': A Case Study of Nigeria and Australia", *Port Harcourt Law Journal*, Vol. 9 (1), 2020, p. 42.

³ Idigbe A., 'Legal And Institutional Framework for E-Commerce in Nigeria' being a paper discussed on Wed. June 9, 2010 Bankers House, PC 19 Adeola Hopewell St., V/I, Lagos This paper was prepared with the assistance of Nnamdi Oragwu (Partner) & Okorie Kalu Esq (Senior Associate) PUNUKA Attorneys & Solicitors Lagos Nigeria, p. 4.

⁴ Adaralegbe B., 'E-Business and Matters Arising from some Commercial Law Perspective' www.babalakinandco.com/.../e-business accessed on 24th September, 2016.

⁵ Zhaohui L. 'Motivation of Virtual Goods Transactions Based on the Theory of Gaming Motivations', *Journal of Theoretical and Applied Information Technology*, Vol. 43 No.2, 2012, p. 256.

⁶ Tasneem, T., "The Legal Issues of Electronic Contracts in Australia", *Int. J Manag Bus. Res.*, Vol. 1(2), 2011, p. 88.

⁷ El-Shaddai Ikeh, (2014), 'Towards a Legal Framework for the Development of E-Commerce in Nigeria' Issues & Prospects'

www.mondaq.com/Nigeria/x/294344/contract+A+legal+framework+for+the+Development+of+E-commerce+in I accessed on 29/08/2018

contract through an electronic means often assumes that they are not bound unless the agreement is reduced to writing and signed by parties⁸. Furthermore, there is a prevalence and incidence of internet fraudster who often disguise as genuine businessmen/women. The documentation and signing of a contract of agreement, is a core issue that makes parties to an e-contract of an agreement to be skeptical whether a binding contract has been initiated⁹ or if an e-contract of agreement suffices as a contract in writing within the meaning of the statute of fraud.

Given the above, the researchers tend to conduct doctrinal and non-doctrinal research on the relevance and legal challenges of an e-contract of agreement in Nigeria. The researcher shall also propose or recommend some relevant solutions in remedying the challenges posed by an e-contract of agreement in Nigeria.

Methodology

Doctrinal and non-doctrinal survey research approach is adopted for this study. The theoretical session is aimed at analyzing and theorising the legal challenges of enforcement of e-contract in Nigeria. Furthermore, descriptive and analytical quantitative research methods were used to enable the authors to gather data that are objective, statistical, mathematical, and numerical for analysis. These data were obtained through online questionnaire surveys via the use of online Google form. The quantitative method allows the authors to collect and analyse extensive data (respondents' responses to the questionnaire) to reach a certain generalisation in ascertaining the relevance and legal challenges of an e-contract of agreement in Nigeria. Furthermore, it will also enable the researchers to reach a concluded generalization, that there is a need to enact a primary legal framework that will cater to the challenges embedded in an e-contract of agreement in Nigeria.

Research Questions

1. What is the level of awareness of using electronic means in negotiating a contract in Nigeria?
2. Do Nigerians often make use of electronic means in negotiating a contract of agreement?

⁸ Sagay I.E., *Nigeria Law of Contract*, 2nd ed. (Ibadan, Spectrum Book Limited, 2006), Ezenwa V. K.S.H.S.M.B (2011)2 NWLR (PT 1251) 89 CA, Pp 115 Para E-G, Aiki V. Idowu (2006)9 NWLR (PT 984) Para. A-G

⁹ Bamodu G., "Information Communication Technology and E-commerce: Challenges and Opportunities for the Nigeria Legal System and the Judiciary" *The Journal of Information, Law and Technology (JILT)* Vol. 2, 2004, p. 6.

3. What are the electronic means through which an individual in Nigeria can negotiate an agreement?
4. Do Nigerians prefer an electronic contract of agreement over a written or documented contract of agreement?
5. What are the advantages associated with an e-contract?
6. What are the challenges associated with an e-contract of agreement?

Literature Review

In most jurisdictions such as Australia, it has been an established principle of law that the rules that regulate traditional handwritten contract also applies to an e-contract of agreement¹⁰. In this regard, where all the essential elements of an e-contract are present, such a contract can be enforceable¹¹. However, in Nigeria, an issue may be formulated as to whether the use of electronic means in negotiating a contract of agreement suffices as a contract in writing within the meaning of the Statute of Fraud¹² and the legislation in Nigeria. Furthermore, the issue of whether an electronic mark will constitute a valid signature to execute a valid contract may also pose a challenge in enforcing an e-contract of agreement.

It is important to note that the central issues in the e-contract of an agreement are documentation and signing. There is a statutory requirement that provides that a contract should be evidenced in writing, and which also requires it to be signed by parties to the agreement. *Section 4 of the Statute of Fraud*¹³ provides that a suit to enforce a contract for a sale of land can only be brought where the contract or some memorandum or note of it is written and signed by the persons whom the action is brought against or that person's authorized agent¹⁴.

However, several works of literature have identified some of the relevance and challenges associated with an e-contract of agreement. Aidonjio and Agbale in their research work "E-Contract (by Mail) and the Clause 'Subject to Contract': A Case Study of Nigeria and Australia" emphasizes on the relevance of e-contract of agreement in Nigeria which led to a great deal of development stride in the commercial sector in Nigeria¹⁵.

¹⁰ Duxbury R., *contract Law* 8th ed. (London, Sweet & Maxwell, 2009), p. 47.

¹¹ Goodchild A., Herring C., and Milosevic Z., (2000), "Business Contract for B2B", available at <http://www.ceurs.or/vol-30/paper8> I accessed on 20/10/2016.

¹² Statute of fraud 1677.

¹³ Ibid.

¹⁴ *Ogobona V. K.S.D & P. Co* (2014) 11 NWLR (pt 1417)189 pg 201.

¹⁵ Aidonjio P.A. and Agbale O.P. "E-Contract (by Mail) and the Clause 'Subject to Contract': A Case Study of Nigeria and Australia" *Port Harcourt Law Journal*, Vol. 7 (1), 2020, p. 42.

However, Ibam et al., in their study, stated that despite e-commerce is a viable means that had a significant impact on the economies of Africa, its adaptability and sustainability calls for concern. This is given by the fact that there is a lack of trust in using electronic means in negotiating a contract of agreement. However, they further recommended an investment in the infrastructure of e-commerce to encourage the use of electronic means in commerce¹⁶. Jessah stated that electronic means of negotiating a contract is very relevant in the commercial word. However, there is much risk associated with the transfer of sales of goods contracts electronically and that an individual who transacts business via this medium may be at a loss because of internet fraudster¹⁷. Adejoh, in his study, found that the adoption of e-commerce has contributed and impacted the growth of Konga sales of online product as well as other online business in Nigeria. In this regard, he further suggested that policy should be geared towards promoting e-commerce in Nigeria¹⁸.

In determining whether there is a regulatory framework of e-contract of agreement, Obafemi¹⁹, in his study ‘the challenges of globalization on e-commerce in Nigeria’, identified the fact that at as 2012 e-commerce is at its infancy stage in Nigeria and there is no effective policy regulating e-commerce. He further suggested and recommended that the Nigerian Government should create an enabling environment through policies for e-commerce to thrive and to reduce the rate of internet scams.

It is relevant to note that it was in the year 2012 that Obafemi stated that Nigeria does not have an effective regulating e-contract of agreement, and to date, that is still the current challenges posed by e-contract of agreement. Given the relevance of e-contract of agreement, it is relevant to state that the enforcement of e-contract of agreement in Nigeria should not be a matter of literary entrapment of literary connotation or a speculative conjecture but rather should be echoed via a legal framework codified in a statute book.

¹⁶ Ibam E. O., Boyinbode O.K., and Afolabi M.O., “e-Commerce in Africa: The Case of Nigeria” *EAI Endorsed Transactions*, Vol. 4 (15), 2017, p. 1, 2 and 5.

¹⁷ Jessah J.E., “E-Commerce in Nigeria: Liability for Loss or Damage to Goods Supplied by a Seller Pursuant to an Electronic Contract” *IJOCLLEP*, Vol. 1(3) 2019, p. 107.

¹⁸ Adejoh V.A., “Role of E-Commerce in the Economic Development of Nigeria (Konga a case study)” *Texila International Journal of Management*, Vol. 4 (1) 2018, p. 63.

¹⁹ Obafemi O.M., “The Challenges of Globalization on E-Commerce in Nigeria” (2012), being Project Submitted to the Post Graduate School of Ahmadu Bello University, Zaria in Partial Fulfillment for the Award of the Degree of Masters in International Affairs and Diplomacy (Miad), p. 53.

Importance of E-contract of agreement

The development of internet communication technology in Nigeria provides several advantages when negotiating a contract of agreement²⁰. Several contracts of an agreement are now conducted by e-mail where parties express their terms of the agreement, and in most instances, parties do not need to have personal contact when negotiating the contract of agreement²¹. However, some of the salient advantages of E-contract agreement are:

- (1) It enables parties to transact business without getting to meet physically, which might not be that convenient for the parties involved;
- (2) With an e-contract of agreement, one can steadily and efficiently carry out business negotiations all over the world;
- (3) It makes communication of negotiation of agreement faster, in this regard, it speeds up and facilitates a transaction;
- (4) It increases the speed of delivery of goods and services to customers;
- (5) E-contract agreement has led to the creation of new types of contracts and goods, such as virtual goods, and online-transaction;
- (6) It has led to a better and improved productive saving of time and cost in negotiating a contract of agreement
- (7) It affords parties to a contract of agreement a more comfortable and cheaper means of communication both locally and internationally;

Types of E-contract of agreement

A contract can be entered into and concluded through the exchange of terms of an agreement through electronic means²², and it serves the same purpose as regular letters or traditional hard copy or documented contract of agreement between parties²³. Most e-contract of agreement normally takes place or occurs via²⁴:

- A. Contract by E-mail
- B. Shrink-wrap

²⁰ Gisler M., Stanoevska K.S., Greunz M., "Legal Aspects of Electronic Contracts Infrastructures for Dynamic Business-to-Business Service Outsourcing (IDSO'00)", *Stockholm publication Journal*, Vol. 5(6) p. 1.

²¹ *ibid.*

²² Asaolu T.O., Ayoola T.J., Akinkoye E.Y., "Electronic Payment System in Nigeria: Implementation, Constraints and Solutions" *Journal of Management and Society*, vol. 1, No. 2, 2011, p. 58.

²³ Gisler M., Stanoevska K. S., Greunz M., 'Legal Aspects of Electronic Contracts Infrastructures for Dynamic Business-to-Business Service Outsourcing (IDSO'00)' *Op cit*, p. 2.

²⁴ Squires S., 'Some Contract Issues Arising from Online Business-Consumer Agreement' *Deakin Law Review*, Vol. 5 No. 1, 2011, p. 103.

C. Click-wrap and

The above are analysed as follows:

Contract by E-mail

Electronic mail is a form of exchange of information²⁵ or message through the internet network, and is commonly called 'e-mail.' Email is used by two or more users to send and receive messages through a computer channel. It is an important means of negotiating a contract of agreement. In this regard, an e-contract will be formed²⁶ if parties who intend to enter into a contract of agreement send an offer with its own e-mail address to another party e-mail address who, upon receiving it, also responds by sending a mail of acceptance²⁷ of the offer. E-mail is an essential means of facilitating a contract of agreement. One of the advantages it has over a click-wrap agreement is that a contract of agreement can easily be negotiated between two parties, unlike click-wrap agreement that is one-sided.

Shrink Wrap Contract of Agreement

A shrink wrap agreement refers to a license agreement or the terms and condition that is contractual in nature, and the terms and conditions can only be read and accepted after the customers have opened the product²⁸. In this regard, they become bound by the contract or products they purchase. That is once a software package, a note which contains the terms and condition is usually placed at the top of the packaged product²⁹, once the packaged software is open by the buyer, it is deemed that they have read the terms and conditions; Therefore they are bound by the agreement.

The term shrink wrap describes the plastic wrapping, which is used to cover software boxes, and a license is placed inside the shrink-wrapped plastic box containing the software³⁰. The mere opening of the plastic

²⁵ Edwin, O.E., "Online Contracts In Nigeria –An Overview", *The Nigerian Juridical Review*, Vol. 11, 2013, p. 58.

²⁶ McNair, D., "Email and Contractual Notices" *Investing in Infrastructure International Best Legal Practice in Project and Construction Agreement*, (2016), p. 4; *Kavia Holdings Pty Ltd v Suntrack Holdings Pty Ltd*. [2011] NSWSC 716.

²⁷ Squires S., "Some Contract Issues Arising from Online Business-Consumer Agreement", *op. cit.*, p. 98.

²⁸ Jiao X., 'A Comparative Study of Shrink-Wrap License' *Journal of Politics and Law* Vol. 2, No. 2, 2009, p. 86.

²⁹ *Pro CD Inc V. Zeidenberg*, 1996 WL 10068 (W. D. Wis – 1996), cited by O.E. Edwin "Online Contracts in Nigeria –An Overview", *op. cit.*, p. 72.

³⁰ Edwin O.E., "Online Contracts In Nigeria –An Overview" *op. cit.*, p. 58.

shrink-wrapped the buyer agrees to the terms of the license; in this regard, an e-contract of an agreement is formed. This kind of e-contract of an agreement is usually one-sided; it does not open any ground of negotiation.

Click Wrap Agreement

Click-wrap is the electronic equivalent of shrink wrap, which enables users or intending purchasers to read the terms and conditions to the agreement before accepting to click on the accept button³¹. That is, the intending purchaser has the opportunity to read through the terms and conditions before they can decide to click on the 'accept' button. Once the accept button is clicked on, an e-contract of an agreement is formed, and the person is bound by the agreement³² as contained in the terms and conditions.

The click-wrap agreement does not need the signature of the parties to be valid, and the terms and conditions cannot be changed or amended, but in this kind of a contract of an agreement the bargaining power is one side, that is, it is in favour of the seller as the intending buyer is either required to take it or leave it³³.

There are two types of click-wrap agreements:

1. The "Type and Click": in this type of click-wrap, the terms and conditions are displayed before the buyer, and it requires a party after reading the terms and condition to type "I Agree" and click on the submit button³⁴. This is to ensure clear evidence of assenting to the terms and condition

2. The "Icon Clicking": this kind of click-wrap agreement³⁵ is derived from the very fact that for a party to access most digital or online products or services, such access must require the party to click on the accept icon³⁶ on the computer screen to signify their acceptance

³¹Clapperton D., Coronos S., 'Unfair Terms in Click Wrap and Other Electronic Contract', *The Australian Business Law Review*, Vol. 35, 2007, p. 5.

³² Ibid.

³³ Ibid.

³⁴ Jeffery E.W., "Electronic Contracts" *Negotiation and Drafting Major Business Agreements Conference Federated Press October 2007*, p. 2.

³⁵ Clapperton D., Coronos S., 'Unfair Terms in Click Wrap and Other Electronic Contract', pp. 5.

³⁶ Squires S., 'Some Contract Issues Arising from Online Business-Consumer Agreement', *op. cit.*, p. 112.

Can an E-Contact of Agreement be Enforceable in Nigeria?

In Nigeria, there is no primary legislation regulating electronic commerce or transaction. However, since 2009 the Nigerian legislature have had before them the Electronic Commerce Bill³⁷ 2009, which is still being deliberated upon and yet to be passed into law. The Bill³⁸ has with it numerous provisions that ensure effective use of an electronic medium in transacting business as it provides for the validity of record and documents used in electronic commerce, the use of electronic signatures in a transaction, etc., thereby permitting the formation of contracts or transaction through an electronic medium. However, the Electronic Commerce is yet to be adopted into law, although there is no primary legal and regulatory framework regulating e-contract of agreement and upon which e-contract of agreement³⁹ can be enforceable in Nigeria, but there are enactments in the Nigerian Evidence Act⁴⁰ and judicial decision, which provide for and recognized e-signature and admissibility of electronically generated evidence. *Section 93 (2) and (3) of the Evidence Act*⁴¹ provide for the proof of signature, handwriting, and electronic signature.

By the above section of the Evidence Act⁴², an electronic signature in relation to a data message conveniently satisfies any requirement for a handwriting signature in so far as it sufficiently identifies an electronic record to the individual. This provision is in line with Chapter II, Application of Legal Requirements to Data Messages Article 7 (1) and (2) of the UNCITRAL Model Law on Electronic Commerce⁴³.

With regard to the admissibility of electronic evidence and the procedure for proving same, though the old Evidence Act⁴⁴ did not provide for electronically generated evidence within its provisions⁴⁵, however courts in Nigeria did not close their eyes when there is need to do substantial justice when an issue relating to electronic evidence was raised as an issue for the court to determined. In the case of *F.R.N V. Femi-Kayode*⁴⁶, the respondent was charged with money laundering. In the course of the testimony, the prosecution applied to tender a true certified

³⁷ The Electronic Commerce (Provision of Legal Recognition) Bill 2009.

³⁸ Ibid.

³⁹ Idigbe A, 'Legal and Institutional Framework for E-Commerce in Nigeria' *op. cit.*, p. 8.

⁴⁰ Evidence Act 2011, No. 18.

⁴¹ *ibid.*

⁴² *ibid.*

⁴³ UNCITRAL Model Law on Electronic Commerce.

⁴⁴ Evidence Act CAP. E. 14, Laws of the Federation of Nigeria, 2004.

⁴⁵ Idigbe A, "Legal And Institutional Framework for E-Commerce in Nigeria" *op. cit.*, p. 12-13.

⁴⁶ (2010) ALL FWLR (PT. 534) 181.

copy of the computer-generated statement of account of the respondent, domiciled with the First Inland Bank PLC. The respondent objected to it on the ground of section 97(1) (h) of the former Evidence Act⁴⁷, and the trial court upheld the objection⁴⁸. However, on appeal, the Court held that the fact that PW2 (that is the witness for the prosecution) testified on oath that the computer-generated statement of account was a document from the custody of the bank and it was certified and a true representation of the statement of the account was kept by the bank, then, there is substantial compliance with section 97(2) (e) of the Evidence Act 2004⁴⁹.

From the above decision of the trial court and Court of Appeal, it was evident that when an issue of electronic evidence was raised, it was not adequately dealt with in that regard, the reason being that time, the Evidence Act⁵⁰ did not provide for electronic evidence. Despite the decision of the court, courts in Nigeria, before the old Evidence Act was repealed⁵¹, have in many instances, tried to give pronouncement that though computer-generated evidence is not provided for by any of the Nigerian laws, still they cannot shut their eyes against injustice. In the case of *Trade Bank PLC V. Chami*⁵² Salami J.C.A (as he then was) held as follows: "Although the law does not talk of "computer" and "computer printout" it is not oblivious to or ignorant of the modern business world and technological advancement of the modern jet age". As far back as 1969, the Supreme Court in the case of *Esso West Africa Inc. V. T. Oyegbola*⁵³ held that; "The law cannot be and is not ignorant of modern business method and must not shot its eye to the mysteries of the computer".

In *Dickson V. Sylva & Ors*⁵⁴, Per Nweze in determining Conditions for admissibility of computer-generated documents stated clearly *ipssissima verba* that Section 84 of the Evidence Act lays down the conditions for the admissibility of statements produced by a 'computer' which is defined in Section 258 of the Act to mean any device for storing and processing information, and any reference to information being derived from other information is a reference to its being derived from it by calculation, comparing or any other process.

⁴⁷ Which is now the section 89 of the current Evidence Act 2011.

⁴⁸ FHC/L/C/523c/2008, cited by Idigbe, A "Legal And Institutional Framework for E-Commerce in Nigeria" Op Cit p. 16.

⁴⁹ Section 97(2)(e) and 90 of the Evidence Act.

⁵⁰ *ibid.*

⁵¹ *ibid.*

⁵² (2003) 13 NWLR (PT. 836) 158, at 216-217, Para G-A.

⁵³ (1969) NMLR 194.

⁵⁴ (2016) LPELR-41257, P 23-24 para A-E.

However, in the circumstances where computer-generated evidence is tender without laying the appropriate conditions as contemplated by section 84 of the Evidence Act, such document will be regarded as inadmissible. In *Kubor V. Dickson*⁵⁵, the supreme court decision was that a party that seeks to tender in evidence a computer-generated document needs to do more than just tendering such document from the bar, by fulfilling the conditions set out in section 84 (2) of the Evidence Act 2011. In this regard, since the Appellant fails to fulfill the pre-conditions laid down by law Exhibit 'D' and 'L', which were internet print outs of Punch Newspaper and list of candidates posted on INEC'S website, were inadmissible as computer-generated evidence document.

The above provision of the Evidence Act is in line with Article 5, 6 (1) and (2) and 8 (1), (2) and (3) of the UNCITRAL Model Law on Electronic Commerce⁵⁶.

From the above provision of the Evidence Act⁵⁷, it will not be an error to opine that any evidence that is electronically generated or created is relevant and admissible whenever there is a matter before a court of law in Nigeria as regard record of any transaction stored in electronic form or vide electronic means. In a recent decision of the Court of Appeal in *Continental Sales ltd V. R. Shipping Inc*⁵⁸, in this case, negotiation between the Appellant and Respondent broke down, the Appellant was given notice of arbitration by e-mail dated on the 31st of August, 2009 by the Respondent and was invited to nominate its own arbitrator. Subsequently, the arbitrator awarded damages against the Appellant in favour of the Respondent. The Appellant challenged the arbitral award on the ground that service through e-mail was not sufficient enough. According to Ogunwumiju, J.C.A he said,

"E-mail is a form of communication that is set down in writing, and it is not oral. The fact that it is electronic is immaterial. It is not in thin air; it can be downloaded and as real as a hard copy of the letter or mail in your hand".

Furthermore, in pg 86, para C-F, he said, "It is in my view unconscionable for the Appellant to turn around to say that the form of communication has not been a form of communication". Given this, an individual is likely to incline to interpret electronic signature or marks in

⁵⁵ (2013) 4 NWLR (PT 1345) 534 at P 574 Para D-E.

⁵⁶ UNCITRAL.

⁵⁷ *ibid*.

⁵⁸ (2013) 4 NWLR (PT. 1343) 67 CA. PG 85, PARA G-H and PG PARA C-F.

email and electronic transactions⁵⁹ as sufficient enough to satisfy the traditional requirement of writing and execution. However, the enforcement of e-contract of agreement in Nigeria should not be a matter of literary entrapment of literary connotation or a speculative conjecture but rather should be echoed via a legal framework codified in a statute book.

Data Presentation and Analysis

Sampling Technique and Sample Size

An online questionnaire was designed by the researchers (using Google form, which suits the purpose of ensuring social distancing as a result of the Covid19) distributed to respondents via various internet means of communication. 406 respondents were randomly picked from various states of the federation of Nigeria to provide both predetermined options and free opinions response, and a simple random technique was used in selecting the respondents. The simple random sampling technique is considered the best for this study to arrive at a general conclusion, with regard to the fact that the sample size focus is targeted at respondent within the various states of the federation of Nigeria, which is homogenous. According to Prof. (Dr.) G. S. Bajpai *et al.*, in their research work “Law Research Methodology: ‘Sampling Techniques’⁶⁰” stated that the advantage of simple random sampling techniques is:

- i. It is a hassle-free method of sampling population. It is homogeneous.
- ii. There is no chance of personal bias of the researcher to influence sampling.

However, to successfully arrive in an unbiased general conclusion, this study used a sample size of 406 respondents from the various states in Nigeria.

⁵⁹ *Okereke V. Umahi* (2016) 11 NWLR, (PT 1524)440 at484-485, PARA, H-D, where Nweze, J.S.C, quoted section 34(1) (a) and (b) of the Evidence Act 2011.

⁶⁰ Prof. (Dr.) G.S. Bajpai, Ms Maanvi Tiku (Content Writer/Author), Prof. (Dr.) Ranbir Singh (Principal Investigator), Prof. (Dr.) G.S. Bajpai (Co-Principal Investigator and paper coordinator) and Prof. V.K.Srivastva (Content Reviewer), “Law Research Methodology: ‘Sampling Techniques’”

http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/law/09._research_methodology/12._tools_and_techniques_of_data_collection/et/8171_et_et.pdf accessed 3rd June, 2020.

Data Presentation/Analysis

The following research questions have been formulated for this study.

Research Question One

What is the level of awareness of using electronic means in negotiating a contract in Nigeria?

Are you aware you can negotiate or enter into a contract through electronic means?

399 responses

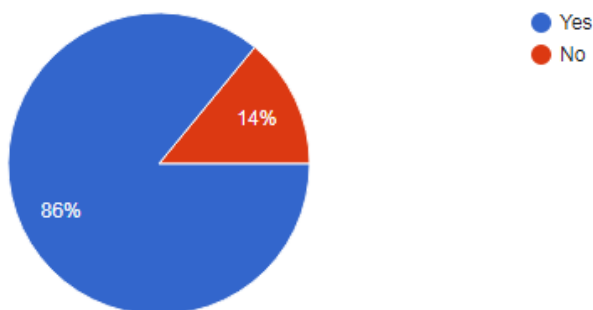


Figure 1: Respondent awareness of electronic means in negotiating a contract of agreement

	Response	Percent
Valid Yes	343	86%
Valid No	56	14%
Total	399	100%

Table 1: Valid response of respondents' awareness of electronic means in negotiating a contract of agreement

Figure 1 and Table 1 represent a valid response of the respondent and reveals the fact that it was 399 of the respondent that responded to whether they are conversant with an electronic means of negotiating a contract of agreement in Nigeria. Although the total number of respondents is 406, 399 of the respondents, which represent an absolute majority of the respondents' responded to the question.

Research Question 2

Do Nigerians often make use of electronic means in negotiating a contract of agreement?

Have you ever negotiated or enter into a contract through electronic means?

399 responses

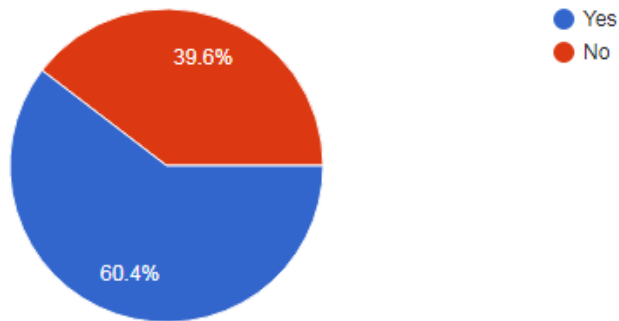


Figure 2: Respondent response to the use of electronic means in negotiating a contract of agreement

	Response	Percent
Valid Yes	241	60.4%
Valid No	158	39.6%
Total	399	100%

Table 2: Valid response of respondents negotiating via electronic means

Figure 2 and Table 3 represent a valid response of the respondents, and 399 of the 406 respondents responded to the question on if they have ever negotiated a contract of an agreement via electronic means in Nigeria.

Research Question 3

What are the electronic means through which an individual in Nigeria can negotiate an agreement?

Which of the following electronic means you have used in negotiating or entering into a contract? (you can click more than one option)

317 responses

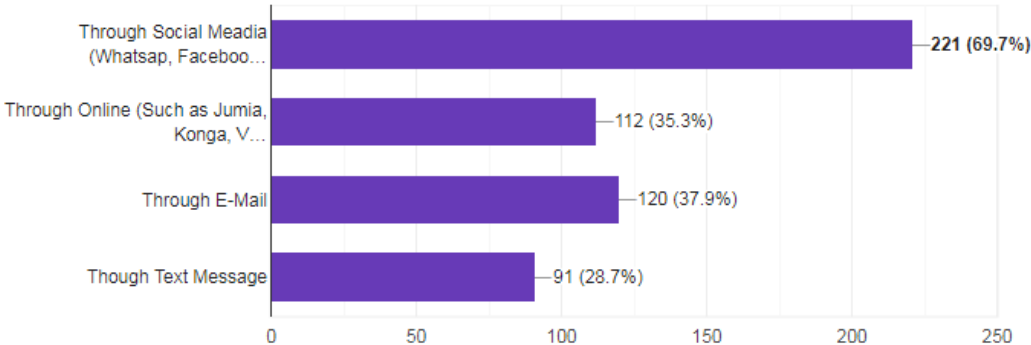


Figure 3: Respondent response to various electronic means through which they have negotiated an agreement

S/N	Cluster of Response	Response	Percentage
1	Through Social Media (WhatsApp, Facebook, Instagram)	221	69.7%
2	Through Online (Such as Jumia, Konga, VConnect, Kara, Payporte, Jiji Nigeria)	112	35.3%
3	Through E-Mail	120	37.9%
4	Though Text Message	91	28.7%

Table 3: Valid cluster of response from respondent stating the various electronic means through which they have negotiated a contract

Figure 3 and Table 3 represent a valid cluster response of the respondents in selecting the various electronic means through which they had to transact a business or a contract in Nigeria.

Research Question 4

Do Nigerians prefer an electronic contract of agreement over a written or documented contract of agreement?

Do you prefer an electronic contract or agreement over a contract that is written and documented?

397 responses

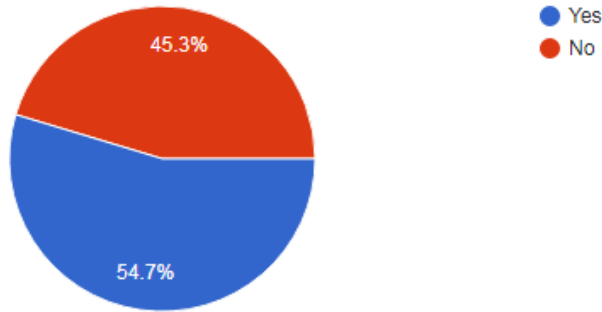


Figure 4: Respondent preference for e-contract over a documented contract of agreement.

	Response	Percent
Valid Yes	217	54.7%
Valid No	180	45.3%
Total	397	100%

Table 4: Valid response of respondents' preference of e-contract over a documented contract of agreement

Figure 4 and Table 4 is a representation of a valid response of the respondents reflecting their preference of either an e-contract or a documented (hard copy) contract of agreement. However, as presented in table 3, 397 respondents responded to the question, which in essence, is an absolute majority of the respondents.

Research Question 5

What are the advantages associated with an e-contract?

Which of the following serves as an advantage associated with an electronic contract? (you can tick more than one)

238 responses

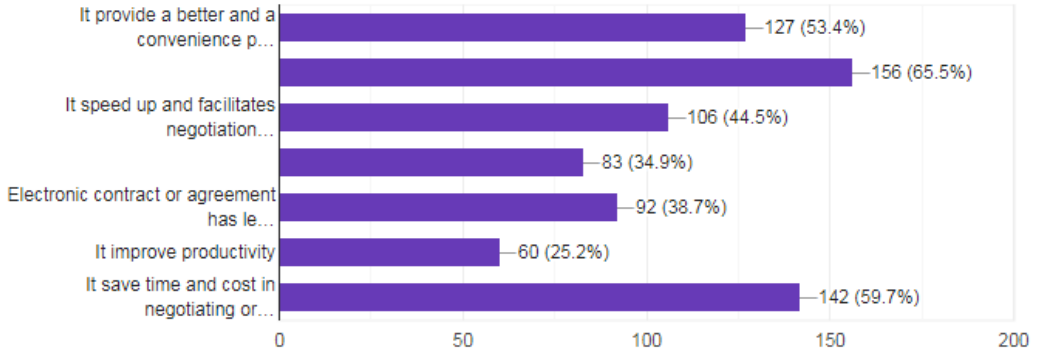


Figure 5: Advantages associated with an e-contract of agreement

S/N	Cluster of Response	Response	Percentage
1	It provides a better and convenient process of negotiating or entering into a contract without physical contact	127	53.4%
2	With E-contract of agreement, one can steadily and efficiently carry out business negotiation all over the world	156	65.5%
3	It speeds up and facilitates negotiation or the process of entering a contract	106	44.5%
4	There is a speed of delivery of goods and services to customers	83	34.9%
5	Electronic contract or agreement has led to the creation of new types of contract and goods, such as virtual goods, and online-transaction	92	38.7
6	It improves productivity	60	25.2%
7	It saves time and cost in negotiating or entering a contract of agreement	142	59.7%

Table 5: Valid cluster of respondent stating the advantages associated with an e-contract of agreement

Figure 5 and Table 5 represent valid cluster responses of the respondent identifying the various advantages associated with an e-contract of agreement in Nigeria. The said question and with the option provided avail the respondents the opportunity to select the various advantages associated with an e-contracted of agreement in Nigeria.

Research Question 6

What are the challenges associated with an e-contract of agreement?

Which of the following serves as challenges associated with an electronic contract? (you can tick more than one)

228 responses

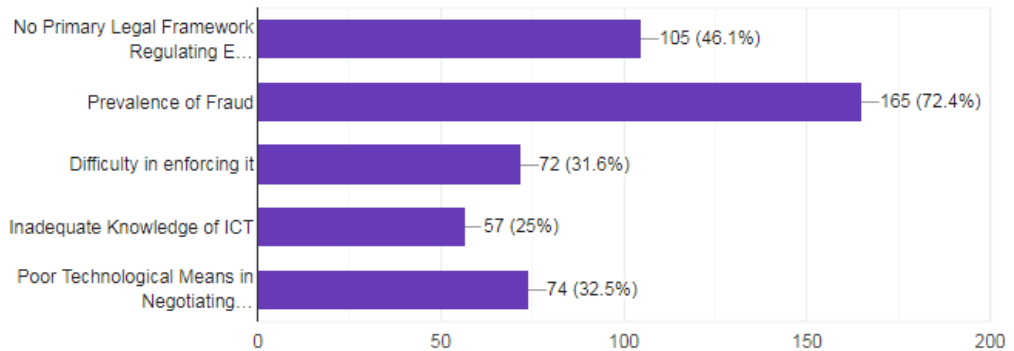


Figure 6: representing some of challenging associated with e-contract of agreement

S/N	Cluster of Response	Response	Percentage
1	No Primary Legal Framework Regulating Electronic Contract in Nigeria	105	46.1%
2	Prevalence of Fraud	165	72.4%
3	Difficulty in enforcing an e-contract of agreement	72	31.6%
4	Inadequate knowledge of ICT	57	25%
5	Inadequate Technological Means in Negotiating a Contract through Electronic Means	74	32.5%

Table 6: Valid cluster of respondent responses showing advantages associated with e-contract of agreement

Figure 6 and Table 6 are a representation of the respondents' valid cluster of responses identifying the various disadvantages associated with an e-contract of agreement in Nigeria. The said question and with the options provided, avail the respondents the opportunity to select the various disadvantages associated with an e-contracted of agreement in Nigeria.

Discussion of Findings

Figure 1 and Table 1 show that 86% (343 respondents) of the respondents that reside in the various states of the Federal Republic of Nigeria are conversant with the use of an electronic means in negotiating an agreement. The 343 respondents who seem to be aware of an e-contract represent an absolute majority of respondents, which is the focus of this study. Furthermore, Figure 2 and Table 2 above shows that Nigerian are not only conversant with e-contract of agreement, but an overwhelming 60% (241) of the respondents have used electronic means in negotiating a contract of agreement. However, the various electronic means at which they negotiate their agreement was captured in the research question three below.

Figure 3 and Table 3 shows clusters of responses which avails the respondents the opportunity to select the various electronic means through which they have negotiated a contract of agreement. The respondent response reveals that 69.7% (221 respondents) of the respondents had made use of Social Media such as WhatsApp, Facebook, and Instagram in negotiating a contract of agreement, 37.9% (120 respondents) of the respondents had negotiated a contract of an agreement through e-mail, 35.3% (112) of respondents said through Jumia, Konga, VConnect, Kara, Payporte, Jiji Nigeria and 28.7% (91 respondents) of the respondents said through text message. The responses of the respondent reveal that they are not only aware that a contract of agreement can be negotiated through electronic means, but they have also been involved in negotiating a contract of an agreement through electronic means. Figure 4 and Table 4 shows that the majority of respondents (54% of the respondents) prefer an e-contract over a paper-based or documented contract of agreement. This show the level of how technology has greatly lead to an improvement in e-commerce in Nigeria, however, the reason for their preference of an e-contract is as a result of its advantage captured in question four as presented in figure 5 and table 5 which shows clusters of respondents' responses which avails the respondents the opportunity to select the advantages associated with an e-contract of agreement. 65.5% of the respondent agreed that with e-contract of agreement one could steadily and easily carry out business negotiation all over the world, 59.7% of the respondent says it saves time and cost in negotiating a contract, 53.4% agreed that it is convenient, 44.5% agreed that it speedup and facilitate a transaction, and 38.7% further agreed that e-contract has led to the creation of new types of contract and goods, such as virtual goods, and online-transaction. Given this, it explains the reason why respondents prefer e-contract of agreement.

However, irrespective of the advantages an e-contract of agreement tends to provide in contract negotiation; it has several challenges that tend to discourage an individual from negotiating a contract of an agreement through electronic means. In identifying the challenges associated with an e-contract of agreement, Figure 6 and Table 6 shows clusters of respondent responses, which avails the respondents the opportunity to choose some of the challenges associated with an e-contract of agreement. 72.4% of the respondent agreed that the prevalence of fraud often hampered the use of electronic means in negotiating a contract of agreement. Furthermore, it is also apt to state that 46.1% and 31.6% of the respondent agreed that “no primary legal framework regulating e-contract in Nigeria and the difficulty in enforcing an e-contract of agreement serves as a disadvantage of an e-contract of agreement. In essence, this gives credence to the very fact that in as much an individual in Nigeria may prefer to negotiate a contract of an agreement via electronic means, however, because of the legal challenges associated with an e-contract of agreement, there is bound to be resentment in using electronic means.

Recommendation

With regard to the analysis that has been carried out by this research work with regard to the challenges of electronic contracts, it has been revealed that Nigeria is still lagging behind in terms of an inadequate legal framework for regulating e-contract. It is in this regard that the following is therefore recommended:

1. Adoption and implementation of the international regulatory framework on e-contract of agreement;
2. Fast-tracking and enactment of the Nigeria Electronic Transaction Bill into law;
3. Judges in Nigeria should assuage technicalities to doing substantial justice;
4. A virile Nigeria Bar Association in assisting in updating the Nigeria laws.

Conclusion

The transformations of the commercial world⁶¹ into what is now currently known as electronic commerce or contract is as a result of the further improvement of information communication technology⁶².

⁶¹ Tasneem F., “Legal Effect of Electronic Contracts in Australia” *Global Research Journal of Engineering, Technology and Innovation*, Vol. 3(1), 2014, pp. 87-89/

⁶² Tasneem F., “Enforceability of Electronic Contracts in Australia” being Project Submitted to the School of Graduate, School of Business and Law, College of Business RMIT University (2015) pp. 1-4/

However, it is observed that irrespective of the beautiful advantage and relevance to which e-commerce tends to provide parties to a contract, it is still with some legal challenges such as documentation and signing of the contract as required by law. Despite these challenges, some jurisdictions such as the Australians have been able to set a legal framework to remedy the deficiency of the enforcement of e-contract of agreement⁶³.

It is further observed that though Nigeria is developing along with the developmental process on information communication technology, its legal system is yet to be updated to be in accordance with the current trend of challenges of e-commerce⁶⁴. It is in this regard that it is hereby suggested that if Nigeria must be able to ensure balanced and effective e-commerce which can be regarded as enforceable, laws should be enacted to accommodate and regulate e-commerce, most especially as it relates to documentation (contract in writing) and signing of a contract.

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⁶³ Section 8, 9, and 10 of The Western Australia Electronic Transaction Act No. 46 of 2011.

⁶⁴ Idigbe A, "Legal And Institutional Framework for E-Commerce in Nigeria" p. 4.

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THE FAILURE OF THE “FAILURE ARGUMENT” IN ETHAN NADELMANN’S *THE CASE FOR LEGALIZATION OF DRUGS*

Vitor Olusola Olanipekun*

olanipekuno@oauife.edu.ng

Abstract: *This article examines Ethan Nadelmann’s critique of drug prohibition in his paper; The Case for Legalization. Nadelmann argues that one of the fundamental reasons why it is important to think about drug legalization is because current drug control policies have failed, are failing, and will continue to fail in good part because they are fundamentally flawed. Contrary to Nadelmann’s view, the paper argues that Nadelmann’s argument is not only an exaggerated view but also fallacious. The paper further argues; (i) assuming that drug policies actually failed, the failure of the drug policies in the past and present does not necessarily guarantee the future failure, (ii) that the failure of the drug policies does not necessarily justify legalisation of drugs, (iii) that if the policies has succeeded in deterring potential criminals in the past and present, it will be wrong to conclude that it has failed. Finally, the paper concludes by showing through logical analysis, how and why Nadelmann’s failure argument is an exaggerated view.*

Keywords: *Drugs, Legalization, Prohibition, Failure Argument, Drug-control Policies*

Introduction

This paper examines Nadelmann’s critique of drug prohibition and his defense of the case for legalization. In his highly controversial paper *The Case for Legalization*, Nadelmann emphasizes the reasons why drugs should be legalized. In *The Case for Legalization*, Nadelmann presented three main arguments in defence of the case for legalization of drugs. The first is what I called the ‘Failure Argument’¹; the second, ‘Economic Argument’²; the third is ‘Negative Consequence Argument’³. The focus of this paper is on the first argument. That does not mean that the other two arguments may not be helpful in reinforcing our point. To begin with, what

* Department of Philosophy, Obafemi Awolowo University Ile-Ife. Osun State. Nigeria.

¹ Nadelmann Ethan, “The Case for Legalization”, in *Today’s Moral Issues*. (London: Mayfield Publishing Company, 1996) p. 52

² Ibidem, p. 54.

³ Ibidem, p. 58.

does legalization mean? When the advocates of drug legalization argue that drugs should be legalized, what exactly do they mean? Etymologically, legalization is directly coined from the Latin word “*Legalis*” which means “to make legal”. For the purpose of clarification, there are varieties of ways by which the proponents of legalization use the term. First, the term “legalization” is used to describe the idea that addicts with established drug habits should have legal access to psychoactive drugs through clinics.⁴ Secondly, complete legalization means making any psychoactive substance available to any willing buyer.⁵ Thirdly, it could also mean the idea of keeping distribution illegal, but end the arrests of consumers.⁶ In this paper, our concern is on the second usage of the term. This specifically, is the sense in which Nadelmann used the term in *The Case for Legalization*. The first sense of the term legalization restricts the meaning to drug addicts alone. The third sense also restrict the meaning of legalization to the drugs consumers only. Meanwhile, the second is a complete legalization.

At this stage of the paper, it is highly essential for us to announce our intention in this paper. The caution is that, the fact that this paper argues that Nadelmann’s arguments neither undermine drug prohibition nor justify legalization, does not necessarily imply that we are defending prohibition as a more plausible position. Our intention ultimately is to assess Nadelmann’s ‘failure argument’ (i.e the argument that current drug control policies have failed, are failing, and will continue to fail in good part because they are fundamentally flawed).

The paper is divided into three main sections. Section one focuses on the questions that surround the issue of drugs. The task of second section is to engage Nadelmann’s Arguments in defense of the Case for Legalization due to the Failure of the past drug-control policies (it shall be written as “DCP” from here on). Meanwhile, the third section attempts a critical assessment of Nadelmann’s critique of drug prohibition due to the failure of past policies.

What is the Issue from the Literatures?

Let us begin by considering the statements below to see what scholars are saying about the issue of drugs;

⁴ See, Trebach, A., *The Heroin Solution* (New Haven, Yale University Press, 1982). p. 19., Mark A.R. Kleiman Aaron J. Saiger “Drug Legalization: The Importance of Asking the Right Question” in *Hofstra Law Review*, vol.18, (1990): 530.

⁵ Mark A. R. Kleiman Aaron J. Saiger “Drug Legalization: The Importance of Asking the Right Question” in *Hofstra Law Review*, vol.18, (1990): 530.

⁶ *Ibidem*: 529.

Statement 1. “We’re not really going to get anywhere until we take the criminality out of drugs”⁷

Statement 2. “Drugs are not dangerous because they are illegal; drugs are illegal because drugs are dangerous”.⁸

Statement 1 above represents the view of the proponents of drug legalization, while statement 2 represents the view of the proponents of drugs prohibition. In the contemporary time, the issue of drugs is one of the seriously debated issues in the world today. This is an issue that generates heated discussions not only among philosophers, but also from legal, medical and social points of views. Even governments of various countries are currently battling with the question of right approach for addressing the issue of drugs because “it is an issue that rooted in real-world concerns over crime, violence, and public health, is also about values”⁹. The three vital helpful questions for consideration as a point of departure in this paper are;

Q1. Is the issue of drugs a moral issue?

Q2. Should government be involved?

Q3. What should be the stand of the government on the issue of drugs?

In ethics, it is generally believed that an action becomes a moral issue if such action have the potential to help or harm others or ourselves. Consequently, several human actions or inactions that devoid of the potential of helping or harming others or oneself are not within the purview of ethics and thus, are not of ethical concern. Now, in response to Q1, there is no disagreement between pro and anti- drugs prohibition concerning Q1 because both parties admit that drugs have the potential of harming the user or people around the user. In fact, the defenders of drugs legalization referred to drugs as harmless crime. That is, a crime that only affects the user alone without affecting other people. Similarly, for Q2, there is no disagreement between the two parties. Both the pro-drugs prohibition and anti-drugs prohibition accepted that government should be involve in the issue of drugs. However, where the disagreement or controversy lies is with the Q3. This is a question about what the stand or

⁷ See Huggins Deadlock, *On Drugs* (Washington: Hoover Press, 2004)p.129, George P. Shultz McNeil-Lehrer News Hour December 18, 1989.

⁸ See Huggins Deadlock, *Getting Specific: On Drugs* (Washington: Hoover Press, 2004) p. 129. David Griffin Canadian Police Association spokesman 2001.

⁹ Scott Barbour “Current Controversies: Drug Legalization” in Huggins Deadlock, (ed.) *Getting Specific: On Drugs* (Washington: Hoover Press, 2004) p.124. Also see Scott Barbour, *Current Controversies—Drug Legalization* (San Diego, CA: Green haven Press, Inc.2000).

position of the government ought to be. In addressing the Q3, the pro-drugs prohibition scholars argue that giving the effects of drugs on the societies, government ought to play the paternalistic role by prohibition the use of hard drugs through the enforcement of DCP. Meanwhile, for the anti-prohibition scholars the stand of the government ought to be to put legalization policies in place and not prohibition policies. The argument of the pro-legalization is that government should legalize the use of drugs for two major reasons. One, drugs is a harmless crime.¹⁰ And two, due to other challenges associated with prohibition policies, drug should be legalized. But can there ever be anything like “harmless crime” in the real sense of the word? Can whatever is called a crime be harmless? This is another topic entirely to be discussed in another paper.

Scholars such as Ethan Nadelmann (2007, 2013), Douglas Husak (1992), Thomas Szasz (1996), Miron Jeffrey (2012), Waldock Catherine (2012), Duke Steven (2001) to mention but a few are the main proponents who defended legalization of drugs for various reasons ranging from ineffective drugs-control policies, economic implications and so on. Meanwhile, the opponents such as James Wilson, William Bennett (1993), James A. Inciardi (1989) and Duane C. McBride (1989) supported prohibition. Now, what should be the way out of this impasse? Should we legalize drugs or prohibit it? From Steven Duke’s paper; *End the Drug War*, in 2001, one could deduce what could be regarded as the primary agenda of the supporters of drug legalizations. For Duke,

What principle ought to drive drug policy and what change should we make in current policy consistent with that principle? We should strive to achieve the greatest good for the greatest number. ...we should end drug prohibition in this country and then regulate drugs rationally, the way we deal with legal drugs, food, health care and automobile.¹¹

It is obvious that Duke argues from the utilitarian point of view in order to canvass for legalization. His argument is that majority of the American citizens support drug legalization thus, drug should be legalized. It is however clear that Duke’s argument is far from being sound because it

¹⁰ What the proponents of legalization mean by “Harmless crime” is that it is a crime that does not affect anybody but the user alone. This is line with J. S. Mill’s *Harm Principle*. It is on this note that proponent of drug prohibition like James Q. Wilson rejects Mill’s harm principle; and advocates a rather different conception of individual liberty and social responsibility. See James Q. Wilson. “Against Legalization of Drugs” In *Today’s Moral Issues*.(London: Mayfield Publishing Company, 1996) p. 63.

Also see MILL, J.S., (1947), *On Liberty*, edited by Alburey Castell, New York: Appleton-Century Crofts, Inc.

¹¹ Steven Duke, “End the Drug War”, in *Social Research*, vol.68, (2001):875.

is not rational in the first place to justify drug legalization base on majority's acceptance. Moreover, in the United States, Miron and Waldock argue that; with our current laws and policies having caused over 1.8 million nonviolent drug arrests in the 2007 as well as 16.5 billion dollars in Federal spending, it is a topic that every U.S citizen should be concerned with¹². The argument is that drug prohibition should be discouraged due to the economic effect on the country's budget. In fact, Supporters of legalization contend that easing the nation's drug laws would have numerous benefits. Perhaps most importantly, they say, it would destroy the black market for drugs and the criminality that surrounds it.¹³

Now, the central question for the two parties that are involved in the controversy over drug control policies is that 'do we really need drug-control policies?' While the advocates of drug prohibition supply an affirmative answer, the proponents of legalization argue otherwise. Since Nadelmann is our focus in this paper, let us now focus on his arguments in defense of legalization for us not to stray from our primary concern. What are his arguments? The next section of the paper is set to do justice to that.

Nadelmann's Arguments in Defense of the Case for Legalization due to the Failure of the Past Policies

Nadelmann's arguments in defense of legalization of drugs are in two parts. The first is the argument about the reason why current drug policies failed. Meanwhile, the second argument is argument about the failure of international drug control.

Part 1. Argument about the Reason Why Current Drug Policies Failed

For Nadelmann, most proposals for dealing with the drugs today reflect a desire to point the finger at those most removed from one's home and area of expertise.¹⁴ The argument is that several attempts to curb drugs in the United States of America ended up in impasse. In fact, Nadelmann contends that;

Many of the drugs-prohibition officers privately acknowledge the futility of all current drug-control strategies and wonder whether

¹² Miron Jeffrey and Waldock Catherine, *The Budgetary Impact of Ending Drug Prohibition*, (Washington; Scribd.com. 2012.) pp. 3-7. Web. 18 march, 2012.

¹³ Scott Barbour "Current Controversies: Drug Legalization" in L. E. Huggins (ed.) *Drug War Deadlock: The Policy Battle Continues* (Washington: Hoover Press, 2005) p. 121

¹⁴ Nadelmann Ethan, p. 52.

radically different options, such as legalization, might not prove more successful in dealing with drug problem.¹⁵

The point Nadelmann is making is that even some of the drugs-prohibition officers are giving a second thought to legalization as the only available option and solution to drugs problems. engaging to above quotation, one may have to be skeptical about Nadelmann's view above because if it is true that the drugs-prohibition officers are privately or publicly supporting legalization, then I wonder whether they will not be thinking about the risk of losing their job. The reason is that if drugs are legalized then, there will be nothing to prohibit. Consequently, if there is nothing to prohibit, the services of drugs-prohibition officers will no longer be needed. Thus, they will be out of job.

Nadelmann further argue that "All these drugs prohibition trends suggest that drug-enforcement efforts are not succeeding and may even be backfiring. If this is the case, legalization might well succeed in reversing today's trend toward more potent drugs and more dangerous methods of consumption."¹⁶ What Naldemann is saying in the above quotation is that all effort towards drug prohibition may even be causing more evil than the problem it's meant to address. In fact, this view finds support in the work of David Borden who is also another advocate of legalization. According to ` Borden, "Prohibition causes a wide range of harms, including criminal and violent or subversive activity, public health harms, impediments to medical care, and curtailing of civil liberties, among others".¹⁷ However, should we now accept legalization because of the above problems? It is obvious that answering this question in the positive affirmative is the desire of the proponents of legalization. Meanwhile, the advocates of drugs-prohibition supply different answers. Let us consider another argument from Nadelmann in order not to deviate from the main issue.

Part 2. Argument about the Failure of International Drug Control

According to Nadelmann, many drugs-enforcement officials and urban leaders recognized the futility of domestic drug-enforcement efforts and place their hopes in international control efforts. Yet, these too are

¹⁵ Ibid, p.52

¹⁶ Nadelmann Ethan, P. 53

¹⁷ David Borden, "If Hard Drugs Were Legalized, Would More People Use Them?" In *Cardozo Pub. Law Policy & Ethics*, Vol. 12, no. 576. (2000):574. Also, see <https://www.aclu.org/drug-law-reform/against-drug-prohibition>.

doomed to fail for numerous reasons.¹⁸ The reasons for the failure according to Nadelmann are;

First; Marijuana and opium can be grown almost everywhere.¹⁹

Second, wherever drug-eradication efforts succeed, other regions and countries quick to fill the void.²⁰

Third; the temptation by drug-traffickers to bribe the officials often prove overwhelming.²¹

Fourth, international source-control efforts face a variety of other obstacle. Such as inability to crack down on drug production due to limited resources by governments of various countries.²²

Consequently, resting on the above reasons, Nadelmann submitted that drugs should be legalized.

However, are the above reasons sufficient to justify the conclusion that drugs should be legalized? One may be tempted to think like an advocate of prohibition by supplying negative answer to the above question. For the **first reason** that drugs are grown almost everywhere, effective community policing and sensitization can help in curbing the problem. Similarly, for the **second reason** that wherever drug-eradication efforts succeed, other regions and countries quick to fill the void, it may be suggested as a way out that if governments of various countries are so strict with their immigration policies, the idea of transporting drugs from one region to another may be minimized. For the **third reason** that the temptation by drug-traffickers to bribe the officials often prove overwhelming, all we need is more credible people to serve as the officials of drug-control policies. Also, for the **fourth reason** that international source-control efforts face a variety of other obstacle such as inability to crack down on drug production due to limited resources by governments of various countries. The fact that government of various countries have limited resources does not mean that drugs should be legalized because the evil of legalizing drugs may outweigh the problem of limited resources that most countries are facing. Furthermore, Mark Kleiman and Aaron Saiger suggested a way out of the challenges that confront drug policies. According to them,

The challenge of drug policy is to find least-cost solutions to the problems created by the age-old fact that some human beings take more of various mind-altering substances than is good for them or their neighbors, and by the modern fact that the variety of available

¹⁸ Ethan Nadelmann, p. 53

¹⁹ Ibid, p. 53

²⁰ Ibid, p. 53

²¹ Ethan Nadelmann, p. 54

²² Ibid, p. 54

psychoactive is rapidly increasing. To concentrate on changing labels from “legal” to “illegal”.²³

The above quotation Kleiman and Saiger supported drugs prohibition policies with the view that government should criminalize and declare the abusive use of hard drugs illegal.

Essentially, there is one harsh and self-stultifying argument made by Nadelmann that requires consideration. According to him,

...the past twenty years’ experience had demonstrated that even dramatic increases in interdiction and source-control efforts have little or no effect on the price and purity of drugs. The few small successes, such as the destruction of Turkish-opium “French connection” in the early 1970s and the crackdown on Mexican marijuana and heroin in the late 1970s, were exceptions to the rule. The elusive goal of international drug control since then has been to replicate those unusual successes. It is a strategy that is destined to fail, however, as long as millions of Americans continue to demand the illicit substances that foreigners are willing and able to supply.²⁴

From the above loaded quotation, there are so many important questions and clarifications that Nadelmann needs to make. This is because, the burden of proof lies with the claimer. What did Naldemann mean by these ‘unusual successes’? What is the meaning of ‘the few small successes’? Is the drug-control strategy really destined to fail? For me, if the law of logic is anything to go by then, there is a manifest contradiction on the part of Nadelmann who admitted that DCP recorded what he called “unusual successes” and “the few small successes”, and subsequently concluded that DCP is a failure or destined to fail. In fact, Nadelmann provides no sufficient justification to defend such a strong conclusion. Now, how plausible are Nadelmann’s arguments in defense of drugs legalization? Let us turn to the next section for answer to this question.

A Critical Assessment of Nadelmann’s Critique of Drug Prohibition due to the Failure of past policies

According to Nadelmann, current drug-control policies have failed, are failing, and will continue to fail, in good part because they are fundamentally flawed.²⁵ Nadelmann’s argument can be reconstructed in

²³ Kleiman and Saiger: *Drug Legalization: The Importance of Asking the Right Question*, p. 565.

²⁴ Ethan Nadelmann, p. 54.

²⁵ Nadelmann Ethan, *The Case for Legalization, in Today’s Moral Issues*.(London: Mayfield Publishing Company, 1996), p. 52

this syllogistic form for a better understanding in order to show the inherent mistakes in his conclusion:

Premise 1. Drug-control policies have failed

Premise 2. Drug-control policies are failing

Premise 3. So, Drug-control policies will continue to fail

Therefore, Drug should be legalized

The above syllogism summarizes Nadelmann's argument with which he made a case for legalization of drugs. What follows is that we now have the tools to critically assess Nadelmann's argument since this is what we are interested in doing in this section. In this case, we can challenge the premises of the argument. In premise (1), Nadelmann's argument that drug-control policies have failed may not be correct. Why? The reason is that, the fact that the policy is still there has what it takes to deter potential criminals. In fact, it may be argued that the purpose of the DCP is to deter potential criminal and not the addicts. Thus, if the DCP could perform the function of deterred people, even if it is just one person, then it will be wrong to say that it has failed. So premise (1) is false. To take care of premise (2), the argument provided for premise one can be repeated. Thus, premise (2) is also false. Now, premise (3) is even the most problematic one. Even if premise (1) and (2) are true, it is not certain that premise (3) will be true. Why? The reason is to avoid the problem of induction due to what our experience has thought us. Even let us accept for the purpose of argument that DCP has failed in the past and its failing in the present, how does that guarantee future failure? It will be fallacious to reason that way. And more so, premise (1) is false, premise (2) is false, and premise (3) is also false. From all indications, the above argument is not valid and it cannot be a sound argument at the same time. Following the analysis in the above case, the premises (1) – (3) failed to provide a convincing reason to believe its conclusion. Perhaps, justification for drug legalization rests on another argument other than the "failure argument".

Furthermore, for anyone to accept Nadelmann's claim that drugs should be legalize because DCP has failed, failing and continue to fail, such a fellow will be liken to "one who should refuse ever to leave his house for fear that he might take the wrong way because he had took the wrong way in the past."²⁶

²⁶ A.C. Ewing, *Second Thought in Moral Philosophy*, (London: Routledge and Kegan Paul Ltd, 1959) p. 38.

Conclusion

This article examined Ethan Nadelmann's critique of drug prohibition in his paper; *The Case for Legalization*. It has argued that Nadelmann's critique is unsuccessful for at least three reasons. First, the failure of the drug policies in the past and present does not necessarily imply the future failure. Second, the failure of the drug policies does not necessarily justify legalisation of drugs. Third, that if the policies have succeeded in deterring potential criminals in the past and present, it will be wrong to conclude that it has failed. It should be noted that the author is a professor of Politics and Public Affairs. No wonder he retired to such a partial view even though, his discourse involves large philosophical issues. "If we wanted home truths, we should have stayed at home"²⁷ Finally, the paper concludes by showing how and why Nadelmann's *failure argument* may not survive logical analysis. Consequently, his arguments fail to undermine the pro-drugs prohibitionists' view. However, the failure of the 'failure argument' itself does not necessarily imply that prohibitionists' argument is more plausible. The point is that the supporters of drugs legalization will need more sophisticated argument to establish the notion that drugs should be legalized.

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²⁷ C. Geertz, *Available Light: Anthropological Reflections on Philosophical Topics*, Princeton, New Jersey, 2000, Princeton University Press, p. 65.

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ASSESSING ISSUES, CHALLENGES AND PROSPECTS OF ETHIOPIA'S DEMOCRATIC DEVELOPMENTALISM

Fesseha Mulu,*

fesseha2017@gmail.com

Dereje Fikre**

derejefikre2018@gmail.com

Abstract: *This paper assesses the issues, challenges & prospects of Ethiopia's democratic developmentalism which has been executed since the early 2000s. Despite some argue that the ideology is a threat to democracy and its implementation results in degradation of the constitutional autonomy of regional states, in the last 15 years the country has becomes one of fastest growing economies in the world; increase citizens' per capita income; ranked the second country in Sub-Sahara in attracting FDIs next to South Africa & experienced remarkable expansion of social infrastructures like hydropower, telecom, inter-state-and-cross boarder roads, industrial parks, educational and health centers etc. Despite these, the ideology has been implemented with a number of challenges like: incompetent, politically partial, less-efficient, non-merit based bureaucracy, corruption, shortage of hard currency, weak media, and political instability. Above all, the internal power strife among sister parties of the ruling front, EPRDF, which results in dissolution of the front in recent months put the future of the ideology at crossroad.*

Keywords: *Autonomy, Democracy, Democratic Developmentalism, EPRDF, Internal power strife.*

Introduction

Following 2005 electoral shock which resulted in losing the seats of the city council of the capital of the country, Addis Ababa¹, to the

* **Researcher, first and corresponding author, Department of Civics and Ethics Studies, Jimma University, Ethiopia.**

** **Researcher, second author, Department of Civics and Ethics Studies, Jimma University, Ethiopia.**

¹ In 2005 national election, CUD won 137 seats out of 138 seats while EPRDF won only 1 seat for Addis Ababa city council. And, for Regional States' council, CUD won 33 seat out of 537 seats in Oromoa, 39 seats out of 348 in SNNPR, 106 out of 294 in Amhara region, in the regional State of Benishangul-Gumuz out of 99 seat won 11, in Gambella Regional snate won 1 seat out of 82 seats, in Harari out of 3 out of 36 seats, and won

opposition coalition of four political parties: Ethiopian Democratic League, All Ethiopian Unity Party (AEUP), United Ethiopian Democratic Party-Medhin Party and Rainbow Ethiopia: Movement for Democracy and Social Justice under the name “Coalition for Unity and Democracy (CUD), commonly known by its Amharic name: ቅንጅት ለአንድነት ና ዲሞክራሲ/ ቅንጅት/Qinijit L’andinet’na Democracy/Qinijit” led by Mrs. Birtukan Mideksa, the ruling Ethiopian People's Revolutionary Democratic Front (EPRDF), a coalition of four ethnic political parties: Tigray People's Liberation Front (TPLF) ruling Tigray Regional State since 1991, Oromo People Democratic Organization (OPDO) which later changed its name to Oromo Democratic Party /ODP ruling the most populous state in Ethiopia-the Oromia Regional State since 1991, Southern Ethiopian People's Democratic Movement (SEPDM) ruling the Southern Nations, Nationalities, and Peoples' Regional State, the home to about 56 ethnic groups, and Amhara National Democratic Movement (ANDM) that later changed its name to Amhara Democratic Party/ADP ruling the Amhara Regional State, the second most populous state of the federation, since 1991, led by Meles Zenawi, the long serving chairman of the front and Prime Minister of the Federal Democratic Republic of Ethiopia (FDRE) until his death in 2014, in which the EPRDF has been ruling the country for nearly three decades made an ideological shift from its left wing “Revolutionary Democracy” which categorize the peasants as its main social and political base in to a new type of political and economic ideological orientation called “Democratic Developmental State.”²

This ideology is a combination/mix of two basic terms/concepts: “Democracy” adopted from the western liberal world, and the other term “Developmentalism” taken from the so called “Asian Tigers.”³ The terms indicate two things are a must for Ethiopia to survive as a state i.e. democracy and development as Meles Zenawi, the late Prime Minister of FDRE argues.^{4,5} In various occasions, economic and political forums at

nothing from 182 seats in Somali and 152 in Tigray. (Accessed from: http://africanelections.tripod.com/et_2005state.html on December 28/2019).

² Gebremariam, F.M, & Feyisa, B.D., *The Role of Democratic Developmental State Ideology for National Integration: An Assessment from the Perspective of the 1995 Federal Democratic Republic of Ethiopia Constitution*. Research and Science Today (RST), 2017, No 2(Vol 14): 23-35.

³ Mulu, F., Daba, B., *In defense of Ethiopia’s adoption of “Democratic Developmental State” – Issues and Challenges*. Üniversitepark Bülden, 2017, 6(2), 66-73.

⁴ Daba, B., & Mulu, F. *Incorporating “Democratic Developmental State Ideology” into Ethiopia’s Ethnic Federalism – A Contradiction?* Üniversitepark Bülden, 2017, 6(1), 109-117.

⁵ Gebremariam, F.M, & Feyisa, B.D., *The Role of Democratic Developmental State Ideology for National Integration: An Assessment from the Perspective of the 1995*

national, regional and international level, Meles boldly argues that neo-liberalism is “Dead and finished!” in which it is proved enough that it can’t help Least Developing Countries (LDCs) alleviate from poverty, and recommends that LDCs shall adopt the development path of the Asian Tigers which showed the world as there is a shortest possible path to development and industrialization that disproves the narration of neo-liberals who argue that liberalism and free market as the only path to economic development.⁶

A lot of criticisms were forwarded from opposition political parties, academics, and international financial organizations like the World Bank and International Monetary Fund (IMF) and other development patterns, and Western-allies of the state, but Ethiopia opted to adopt and execute the ideology. The criticisms have a lot of nature and are forwarded from different scenarios. One is from the very condition of the state in which the state is not in a position to effectively adopt and implement developmental state ideology for the reason that there is no enough, competent, skilled and educated manpower to deliver; the absence of effective, responsive and merit based bureaucracy; bad saving habit of the citizens for which it will affect domestic investments; abundance of corruption and bad governance etc.^{7,8,9,10} Others forwarded their criticism from the perspective of the very legality and constitutionality of the ideology .i.e since developmental state demands a more centralized policy making and resource mobilization by the central government which Ethiopia is a federal country will significantly degrade the autonomy of regional states

Federal Democratic Republic of Ethiopia Constitution. Research and Science Today (RST), 2017, No 2(Vol 14): 23-35.

⁶ Negash, M., *In Defence of Meles Zenawi: No Direct Relation Between Democracy and Development*. Horn Affairs. Retrieved on January 1st/2020 from URL: <http://hornaffairs.com/2013/01/13/in-defence-of-meles-zenawi-no-direct-relationbetween-democracy-and-development/>, 2013, January 13.

⁷ Gebretensae, M., *The Challenges and Prospects of Building a Developmental State in Africa: A Comparative Study of Botswana and Ethiopia* (Unpublished Master’s Thesis). Addis Ababa University, Addis Ababa, Ethiopia, 2015.

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¹⁰ Gebremariam, F.M, & Feyisa, B.D. *The Role of Democratic Developmental State Ideology for National Integration: An Assessment from the Perspective of the 1995 Federal Democratic Republic of Ethiopia Constitution*. Research and Science Today (RST), 2017, No 2(Vol 14): 23-35.

as it make them mere recipients and executors of directions and tasks given to them by the central government.¹¹

Above and beyond this some scholars used to come up with a more serious criticism even from the very name of the ideology-Democratic Developmental State. In other words, though as its name seems to be indicating the government in power adopting it has a commitment to bring democracy, for the utmost priority of developmental state, naturally, is to bring a fastest and sustainable economic growth that changes the economic life of citizens so that it will transform the base of the economy from agriculture in to industrial led in a very short period of time as the Asian Tigers do.¹² As the political history of the Asian Tigers shows us the governments that lead developmental states which bring “economic miracle” in the world were all undemocratic and oppressive governments.^{13,14} Since, primarily developmental states are concerned with the economy, and, thus, their human right record is bad, and give little or no attention to democracy.¹⁵

Despite all these and other criticisms the adoption and execution of the ideology bears fruits to Ethiopia and its people¹⁶. Among others: the country has able to witness a continuous and fastest (double digit though it is questionable about the exact figure) economic growth for more than a decade in its economic history; decrease income inequality between the have and haven't sections of its people; increase per capita income; expand social infrastructure like road, railways, telecom, public health centers, water supply, higher education institutions and so forth. Thus, this paper address some of the issues raised by different scholars and assessing the challenges of Ethiopia's democratic developmentalism so that its prospect will be indicated.

¹¹ Daba, B., & Mulu, F., *Incorporating “Democratic Developmental State Ideology” into Ethiopia's Ethnic Federalism – A Contradiction?* Üniversitepark Bülten, 2017, 6(1), 109-117.

¹² Matfess, H., *Rwanda and Ethiopia: Developmental Authoritarianism and the New Politics of African Strong Men*. African Studies Review, 2015, 58(2), 181-204.

¹³ Gebretensae, M., *The Challenges and Prospects of Building a Developmental State in Africa: A Comparative Study of Botswana and Ethiopia* (Unpublished Master's Thesis). Addis Ababa University, Addis Ababa, Ethiopia, 2015.

¹⁴ Yesigat, Z., *Subnational Fiscal Autonomy in a Developmental State: The Case of Ethiopia*. *Beijing Law Review*, 2016, 7, 42-50. <http://dx.doi.org/10.4236/blr.2016.71005>

¹⁵ Mulu, B. *The move towards developmental state in FDRE: The role of Intergovernmental Relation (IGR) for its implementation preserving the Autonomy of regional states* (Unpublished Master's Thesis). Addis Ababa University, Addis Ababa, Ethiopia, 2015.

¹⁶ Daba, B., & Mulu, F., *Incorporating “Democratic Developmental State Ideology” into Ethiopia's Ethnic Federalism – A Contradiction?* Üniversitepark Bülten, 2017, 6(1), 109-117.

Understanding the meaning and features of Developmental State: An Overview

The term “developmental state” is among the new terms which is becoming so popular among scholars of political economy and development literatures. Though the term seems to have been getting new momentum and popularity following the economic miracle of the Asian Tigers, the practice of developmental state was there for so long and practiced by different states in different time and parts of the world. For example, since the 16th century, a number of countries in Europe like Germany, Britain, Sweden and Norway have executed the ideology.¹⁷ But in a more coined and defined way, the term was used by Professor Chalmers Johnson to explain the successful state led development path of Japan following the shocking defeat and destruction it faced in the World War II.¹⁸ As Johnson (1982) stated Japan able to recover from the economic trauma of the WWII in a very successful way and becomes one of the biggest economies in the world next to the USA for so many year before it lost its place to China.

Following the successful and ‘miraculous’ economic transformation of the East Asian countries commonly known as the “Asian Tigers,” a collective name for four countries, namely: Taiwan, Singapore, Hong Kong and South Korea to applauded their economic miracle, the concept ‘developmental state’ becomes so popular in the global development and political economy discourses.¹⁹ And, the ideology has later emerged and proved itself as there is and it is probably the shortest possible path to development for the third world countries apart from what is consistently narrated by the neo-liberal western powers and their financial institutions mainly the WB and IMF arguing that only free market, where the government role is almost non-existent in the market and replaced its role by the fair and rational competitions of the private sector ruled by the rule of ‘supply and demand’ so that it brings successful and sustainable economic development through which the social, physical and economic conditions of citizens will be positively changed.²⁰

¹⁷ Öniş, Z., *The Logic of the Developmental State*. Comparative Politics, 1991, 24(1), 109-126.

¹⁸ Meyns, P., and Musamba, C. (eds), *The Developmental State in Africa: Problems and Prospects*. Institute for Development and Peace, University of Duisburg-Essen (INEF-Report, 101/2010), 2010.

¹⁹ Daba, B., & Mulu, F., *Incorporating “Democratic Developmental State Ideology” into Ethiopia’s Ethnic Federalism – A Contradiction?* Üniversitepark Bülten, 2017, 6(1), 109-117.

²⁰ Bonda, S., *Impact of Ethnic Federalism in Building Developmental State of Ethiopia* (Unpublished Master’s Thesis). International Institute of Social Studies (ISS), The Hague, The Netherlands, 2011.

Wherever we go, government have their own social, political and economic objectives or goals aimed to meet by establishing institutions, mobilizing resources, introducing various policies and so on. But, the priority and utmost goal of developmental states is something different from neo-liberal states in such a way that developmental states categorize and label “poverty as the utmost enemy of the state and their people,²¹ and the main threat for their peace and stability” so that “governments work to establish strong institutions, equip themselves with technocrats, and invest huge capital in building social infrastructure where the private sector failed to address.²² This indicates that the government is an active actor in the market which is not the case in neo-liberalism.

In developmental states both the private sector and state have their own respective irreplaceable economic role to play, and they don't have an overlapping roles that the state is not expected to do and can't do what the private sector can do. Rather, the main reference to what the government can do in the market is not the ability and the interest of the state but the capacity of the private sector.²³ In other words, the state is there to fill the market gap left by the private sectors that can't be filled by their capacity, and the state will not be there forever in the market. Through course of time when the private sector become technologically and economically capable, competitive, strong and independent, the place that the state have in the market will be handover to the private sector in which at the end the market will be in the hands of the private sector, thus capitalism as the late Prime Minister of Ethiopia Meles Zenawi noted.²⁴ From this one can understand that the end of developmental state is capitalism, and the question is which way is the shortest possible way to reach at that end.

In developmental state, the state selectively engage in areas of long term investments that have huge economic impact where domestic private sector in emerging economies can't do which demand huge capital and human resource investment like building social infrastructures like Hydropower, trans national and inter-state roads, railways, higher

²¹ Bagchi, A.K., *The Past and the Future of the Developmental State*. Journal of World Systems Research, 2000, 5(2), 398-442.

²² Daba, B., & Mulu, F., *Incorporating “Democratic Developmental State Ideology” into Ethiopia's Ethnic Federalism – A Contradiction?* Üniversitepark Bültten, 2017, 6(1), 109-117.

²³ Leftwich, A., *States of Development. On the Primacy of Politics in Development*. Cambridge: Polity Press, 2000.

²⁴ Zenawi, M., “State and markets: neoliberal limitations and the case for a developmental state,” In Noman, A., Botchwey, K., Stein, H., & Stiglitz, J. (Eds.), *Good growth and governance in Africa: rethinking development strategies*. New York: Oxford University Press, 2012, 140-169.

education institutions, Hospital, industrial parks etc.²⁵ This indicates that “the existence of state-led macro-economic planning where the state has independent economic, political and policy making autonomy or freedom as well as a clear power to control the economy.”²⁶

Though various scholars sort-out a number peculiar features of developmental states the most common across the literatures of developmental state are the following as clearly discussed below.

A) Ideological Orientation, Vision, Mission and Objective:

The utmost number one priority and objective of developmental states is to bring a fastest, sustainable and transformative economic development that changes the very base of the economy and the livelihood of the public that will alleviate them from poverty in a very short possible period of time.^{27, 28, 29, 30}

In doing that the state shall have an ideological hegemony to manage the macro-economy through its economic policies in which the government shall be, thus, free from the influence and control of the private sector. This can be possible by controlling the main sectors in the economy by the states as the Asian Tigers do so that the government can have the ability to easily direct and define the role of the private sector to play in the economy, and mobilize resources easily for the mega investments the state is going to do.³¹

B) Role of the State and Private Sector in the Market:

In developmental state, the market is not left and exclusively given to a single actor, neither to the state nor to the private sector. Both, the private sector and the state have crucial impact in transforming the economy. In this regard, the government and the private sector are the two

²⁵ Routley, L., *Developmental States in Africa? A Review of Ongoing Debates and Buzzwords*. Development Policy Review, 2014, 32(2), 159-177.

²⁶ Gebremariam, F.M, & Feyisa, B.D., *The Role of Democratic Developmental State Ideology for National Integration: An Assessment from the Perspective of the 1995 Federal Democratic Republic of Ethiopia Constitution*. Research and Science Today (RST), 2017, No 2(Vol 14): 23-35.

²⁷ *Ibidem*.

²⁸ Sehen, B., & Tsegaye R., *Democratization in a Developmental State: The Case of Ethiopia- Issues, Challenges, and Prospects*. UNDP-Ethiopia No.1/2012, 2012.

²⁹ Mkandawire, T., *Thinking about developmental states in Africa*. (Cambridge Journal of Economics; 2001, Vol. 25, No. 3.

³⁰ Johnson, C., *MITI and the Japanese economic miracle: The growth of industrial policy, 1925-1975*. Stanford: Stanford University Press, 1982.

³¹ Gebremariam, F.M, & Feyisa, B.D., *The Role of Democratic Developmental State Ideology for National Integration: An Assessment from the Perspective of the 1995 Federal Democratic Republic of Ethiopia Constitution*. Research and Science Today (RST), 2017, No 2(Vol 14): 23-35.

actors in the economy in which the private sector has its own respective role to play in the economy, and the government/state make selective intervention in the economy where the private sector can't do, thus, don't have an overlapping role unlike in socialism.³²

Some scholars argue that leaving the market exclusively to the state or the private sector is not a right decision and will definitely results what they called “market failure”.³³ To avoid this market gap, those in favor of developmental state strongly recommend effective but selective state intervention in the market at grand and macro-level not at minor and economically less impactful areas where the private sector can easily intervene, handle and fix them.^{34,35,36} Thus, the private sector and the state are there to effectively and efficiently to fill each other's market gap left not to replace each other's respective role. This is against the beliefs and ideological orientation of neo-liberalism which calls for little, if possible no government intervention, in the market which consider government intervention in the market as it has disruptive effect.³⁷

C) “Enemy of the State,” Source of Legitimacy and Popular Support

This is highly related to the Ideological Orientation, Vision, Mission and Objective of Developmental States. Government of such kind of states mobilize the public and its attention towards bringing a fastest, sustainable and transformative economy which will basically change the base of the economy and the livelihood of the people, and this will be the only means to gain popular support and legitimacy from the people they rule, and, thus, to rule.³⁸

Developmental States never portray a physical enemy to face and defeat. Rather, they unequivocally categorize “poverty” as the number one

³² Alemayehu, T., *The Ethiopian developmental state: requirements and prerequisites*. Journal of Business & Economics Research, 2009, 7(8), 11-18.

³³ Leftwich, A., *Developmental states, effective states and poverty reduction: The primacy of politics*. United Nations Research Institute for Social Development (UNRISD) Project on Poverty Reduction and Policy Regimes. Geneva, Switzerland, 2008.

³⁴ Gebremariam, F.M, & Feyisa, B.D., *The Role of Democratic Developmental State Ideology for National Integration: An Assessment from the Perspective of the 1995 Federal Democratic Republic of Ethiopia Constitution*. Research and Science Today (RST), 2017, No 2 (Vol 14): 23-35.

³⁵ Daba, B., & Mulu, F., *Incorporating “Democratic Developmental State Ideology” into Ethiopia's Ethnic Federalism – A Contradiction?* Üniversitepark Bülten, 2017, 6(1), 109-117.

³⁶ Mulu, F., Daba, B., *In defense of Ethiopia's adoption of “Democratic Developmental State” – Issues and Challenges*. Üniversitepark Bülten, 2017, 6(2), 66-73.

³⁷ *Ibidem*.

³⁸ Johnson, C., *MITI and the Japanese economic miracle: The growth of industrial policy, 1925-1975*. Stanford: Stanford University Press, 1982.

enemy of the state and their people, and the utmost threat of the country's survival, stability and vulnerability to foreign intervention and aggression.³⁹ Governments use historical narrations of their glorified past to mobilize the public and its resources to fight poverty and illiteracy as it has been doing in Ethiopia, for example, after the second millennium of the country. The government in power propagated a motto states: "sometime in our history, we were great [referring to the Axumite Empire existed between 100–940 AD which was the most powerful in Africa, and third most power empire in the world next to Byzantine and Persian empire in the world (<https://liikaha.fi/007k/svp9x1.php?mhs=axum-empire-technology> accessed on December 26, 2019)], and we shall be great again!" following which the EPRDF led government introduced a number of grand investment projects like the Grand Ethiopian Renaissance Dam, Addis Ababa light Railway project, Addis Ababa-Djibouti Railway project, Industrial Park development projects, ten sugar projects and so forth to realize Ethiopia's 'renaissance.' Besides, the late Prime Minister of the Federal Democratic Republic of Ethiopia, Meles Zenawi stressed that:

"...Narrating that our fore fathers able to create the obelisks of Axum, the rock-hewn churches of Lalibela, the castle of Fasilades of Gonder doesn't have any meaning if we use them to cover our [current] problem [i.e. poverty], but have a meaning if we use them as a great lessons from which we can learn and motivate us that like our fore fathers who do history in their time to which we are talking about these days we shall also do our parts that the coming generations can talk about us- alleviating our people from poverty." (Researchers' translation).

D) Effective, Competent, Merit-based and Non-political Bureaucracy

The other peculiar feature of developmental states is that recruiting for and assuming public position is necessarily and mainly not based on the political affiliation of someone to the government in power, but merely and mainly based on merit, capacity and ability of someone to deliver what is expected from him/her.^{40,41} Thus, the entire leadership is expected to a

³⁹ Bekele, S., & Regassa, T., *Democratization in a Developmental State: The Case of Ethiopia Issues, Challenges, and Prospects*. UNDP Ethiopia No 1/2012. Governance and Human Rights Unit, UNDP Ethiopia.

⁴⁰ Daba, B., & Mulu, F., *Incorporating "Democratic Developmental State Ideology" into Ethiopia's Ethnic Federalism – A Contradiction?* Üniversitepark Bülten, 2017, 6(1), 109-117.

⁴¹ Leftwich, A., *Developmental states, effective states and poverty reduction: The primacy of politics*. United Nations Research Institute for Social Development (UNRISD) Project on Poverty Reduction and Policy Regimes. Geneva, Switzerland, 2008.

patriot having a strong love to his state and his people, and committed and determined to change the bad economic history and status of the state so that he/she will end the economic sufferings of his/her people from which he/she is, and the institutions in the state are expected to be built based on this mission, objective and attitude.^{42,43} Thus, such kind of political leadership is probably less corrupt, well trained and educated.

Ethiopia and Democratic Developmentalism: Rationale and Successes

In the early 2000s following the 2005 national electoral shock that the ruling EPRDF never expected of losing the capital, Addis Ababa, to the opposition CUD forced it to aggressively engage in a lot of state sponsored development projects across the state to get public support once again through the political and economic U-turn done by ignoring and categorizing the dominant neo-liberal thought as “Dead and finished!” that can’t and will not help Ethiopia and other developing countries lift and alleviate from their bad economic and social conditions as usually argued by its leader Prime Minister of the Federal Democratic Republic of Ethiopia, Meles Zenawi, and (he) argued on the other hand for the adoption and contextualization of developmental state ideology from the economic history of the Asian Tigers that experienced a miraculous economic development that changed their status in the world, become one of the most industrialized states in the world in a very short period of time and exemplary to the LDCs.^{44,45}

Unlike in capitalism where it allows the private sector to be the major, if possible the only actor, in the market nor in socialism which allows for the state to be the major actor in the market, developmental state recognizes and calls for the very importance of both the state’s and the private sector’s to have respective non-overlapping role in the market to avoid “market failure” that results from leaving the market exclusively to

⁴² Mulu, F., Daba, B., *In defense of Ethiopia’s adoption of “Democratic Developmental State”– Issues and Challenges*. Üniversitepark Bültten, 2017, 6(2), 66-73.

⁴³ Gebremariam, F.M, & Feyisa, B. D. *The Role of Democratic Developmental State Ideology for National Integration: An Assessment from the Perspective of the 1995 Federal Democratic Republic of Ethiopia Constitution*. Research and Science Today (RST), 2017, No 2(Vol 14): 23-35.

⁴⁴ Zenawi, M., “*State and markets: neoliberal limitations and the case for a developmental state,*” In Noman, A., Botchwey, K., Stein, H., & Stiglitz, J. (Eds.), *Good growth and governance in Africa: rethinking development strategies*. New York: Oxford University Press, 2012, 140-169.

⁴⁵Gebretensae, M., *The Challenges and Prospects of Building a Developmental State in Africa: A Comparative Study of Botswana and Ethiopia* (Unpublished Master’s Thesis). Addis Ababa University, Addis Ababa, Ethiopia, 2015.

either the actors.⁴⁶ Thus, the state and the private sectors are active actors in the market in which the government is there to make very selective intervention in the market in areas where the private sector can't handle.⁴⁷

But, while Ethiopia adopts developmental state from the Asian Tigers, mainly from Taiwan and South Korea, it never installed and executed as the Asian Tigers do. Rather, it contextualized it and implement it in a different scenario called “Democratic Developmental State”.⁴⁸ In other words, Ethiopia takes the concept “Democracy” from the neo-liberal Western World and “Developmental State” from the Asian Tigers which is so exclusive to Ethiopia’s developmental state that makes it different from others.⁴⁹

The context that Ethiopia is and the Asian Tigers were while introducing developmental state is quite different. The Asian Tigers execute the ideology for mere economic objectives/goals under undemocratic rule while in Ethiopia though economic and development questions are so crucial, democracy is equally important to the state and its people as Prime Minister Meles Zenawi noted.⁵⁰ To solidify this, Meles in an interview with a state owned national TV, Ethiopian Television (ETV), now Ethiopian Broadcasting Corporation (EBC), noted that:

“Democracy is the founding block of the country’s existence. In its absence, the country would end up in civil war, and the substance of the state as a state would be jeopardized. Thus, democracy is non-negotiable. However, realizing democracy is not an end in itself. These days, our greatest enemy is poverty, not any other. And, poverty could be reduced, and if possible eliminated, so long as we adopt a good policy that organizes its people to work. Neo-liberalism has been delivered to poor countries like Ethiopia as if there is no other way to development, and we adopted it. But, it failed to help us and our people tackle poverty. And, now we look for another ideology from the East, ‘Development State.’ This new ideology works in our context. [Though, the utmost priority of a

⁴⁶ Yesigat, Z., Subnational Fiscal Autonomy in a Developmental State: The Case of Ethiopia. *Beijing Law Review*, 2016, 7, 42-50. <http://dx.doi.org/10.4236/blr.2016.71005>

⁴⁷ Alemayehu, T., *The Ethiopian developmental state: requirements and perquisites*. *Journal of Business & Economics Research*, 2009, 7(8), 11-18.

⁴⁸ Mulu, F., Daba, B., *In defense of Ethiopia’s adoption of “Democratic Developmental State”– Issues and Challenges*. *Universitpark Bülten*, 2017, 6(2), 66-73.

⁴⁹ Negash, M., *In Defence of Meles Zenawi: No Direct Relation Between Democracy and Development*. *Horn Affairs*. Retrieved on January 1st/2020 from URL: <http://hornaffairs.com/2013/01/13/in-defence-of-meles-zenawi-no-direct-relationbetween-democracy-and-development/>, 2013, January 13.

⁵⁰ Gebretensae, M., *The Challenges and Prospects of Building a Developmental State in Africa: A Comparative Study of Botswana and Ethiopia* (Unpublished Master’s Thesis). Addis Ababa University, Addis Ababa, Ethiopia, 2015.

*developmental state is to realize economic development] Democracy is also vital to our existence. Thus, we are a Democratic Developmental State.*⁵¹

Meles persistently argued that given what the economic history of the Least Developing Countries (LDCs) looks like after they implement what the neo-liberals lecture them (i.e. LDCs) on the way to development, none of the countries are able to alleviate their people from poverty and underdevelopment. That ideology creates a system of unequals-North and South or Developed and Undeveloped countries, where the gap has and will never be narrowed, and only benefit the developed countries, and thus exploitative.⁵² That's why Meles categorically conclude that "Neo-liberalism is Dead, and just finished!" and, argued that it is developmental state that can help LDCs to transform their economy and change the life condition of their people in a very short period of time as the Asians Tigers do.⁵³ But, at the same time Meles, while arguing about the how to adopt developmental state in Ethiopian context, it is good if it is adopted with sort of democratic element as only economic development can't save the country from disintegration and political stability.⁵⁴

Following the adoption of developmental state ideology, Ethiopia has able to experience great successes mainly in the economic front. For example, the country has become one of the fastest growing economies in the world with an average annual rate of growth of about 9.9% for more than a decade,⁵⁵ significantly decrease the number of people living under absolute poverty from 41.9% in 2005 to 29.6% in 2011, significance improvement in Human Development Index (HDI) by about 16% in 2011 from what it was in 2005, the country has become the first in East Africa Region and the second in sub-Sahara to attract Foreign Direct Investment, for instance in 2016 it attracts about US\$2.2 billion, encouraging improvement in various social infrastructures like road, railway (e.g Addis Ababa light railway and Addis Ababa-Djibouti railway projects), building dozens of public universities, hospitals, Technic and Vocational Education and Trainings (TVETs) across the country, hydropower projects like Gil-

⁵¹ Mulu, F., Daba, B., *In defense of Ethiopia's adoption of "Democratic Developmental State"– Issues and Challenges*. Üniversitepark Bülden, 2017, 6(2), 66-73.

⁵² *Ibidem*.

⁵³ Daba, B., & Mulu, F., *Incorporating "Democratic Developmental State Ideology" into Ethiopia's Ethnic Federalism – A Contradiction?* Üniversitepark Bülden, 2017, 6(1), 109-117.

⁵⁴ *Ibidem*.

⁵⁵ World Bank. <https://www.worldbank.org/en/country/ethiopia/overview> , 2019.

gel-Gibe III, Grand Ethiopian Renaissance Dam, Industrial Parks.^{56,57} Above all, as IMF reports, following the adoption of developmentalism. Ethiopia has become the biggest economy in the East Africa Region overtaking Kenya in 2017 and one of the top 10 economies in Africa with overall Gross Domestic Product (GDP) of US\$78 billion.⁵⁸

Issues, Challenges and Prospects of Ethiopia’s Democratic Developmentalism

Despite there are a lot of success stories of Ethiopia’s developmentalism, there are also some issues and concerns raised by a number of scholars. Among the concerns raised by so many scholars which many people share is that the very term of “Democracy” in developmental states.⁵⁹ In other words, there is no such a thing called democracy in a developmental states for the reason that the utmost attention of the governments in such kind of states is bringing a fastest and sustainable development⁶⁰, and as the history of the so called successful economies of the Asian Tigers show us that they grow under dictatorship⁶¹, thus states can’t be developmental and democratic at the same time.⁶²

Besides, governments in developmental states rationalize assuming state power for so long to meet their long term economic objectives at the expense of democracy which is impossible to meet in one or two election periods.⁶³ Meles also argued and disclosed to the members of the parliament of House of Peoples Representative (HPR) of Ethiopia in one of his speech in 2014 in favor of and the need for establishing a vanguard or main party in Ethiopia that can assume state power for so long with little or

⁵⁶ Mulu, F., Daba, B., *In defense of Ethiopia’s adoption of “Democratic Developmental State”– Issues and Challenges*. Üniversitepark Bülden, 2017, 6(2), 66-73.

⁵⁷ Daba, B., & Mulu, F. *Incorporating “Democratic Developmental State Ideology” into Ethiopia’s Ethnic Federalism – A Contradiction?* Üniversitepark Bülden, 2017, 6(1), 109-117.

⁵⁸ Shaban, A.R.A., *Ethiopia overtakes Kenya as economic giant of East Africa*. Africa News. (URL: <http://www.africanews.com/2017/05/29/ethiopiaovertakes-kenya-as-economic-giant-of-east-africa/>), 2017, May 29. Retrieved on January 2nd/2020).

⁵⁹ Asnake, K., *Narratives of Developmentalism and Development in Ethiopia: Some preliminary explorations*, 2011. Available on: <http://www.nai.uu.se/ecas-4/panels/41-60/panel-57/AsnakeKefale-Full-paper.pdf>. Accessed on 03/01/2020.

⁶⁰ Prado, M.M., Schapiro, M. & Coutinho, D.R., *The Dilemmas of the Developmental State: Democracy and Economic Development in Brazil*, Law Dev Rev, 2016; 9(2): 369–410.

⁶¹ List-Jensen, A.S., *Economic Development and Authoritarianism: A Case Study on the Korean Developmental State*. Aalborg University: Department of History, International and Social Studies, Aalborg University, 2008.

⁶² Matfess, H., *Rwanda and Ethiopia: Developmental Authoritarianism and the New Politics of African Strong Men*. African Studies Review, 2015, 58(2), 181-204.

⁶³ *Ibidem*.

no challenges from the opposition political parties that could help the state meet its economic objectives which was making Ethiopia to be among the middle income countries by 2025 in this case.⁶⁴

The other important concern related to Ethiopia's democratic developmentalism is that the very constitutionality of adopting the ideology to Ethiopia's federal structure.^{65,66} By the same token, since Ethiopia is a federal state as of 1995 constitutionally by the 1995 FDRE constitution where regional government and federal government have their own respective roles and responsibilities and are constitutionally guaranteed and autonomous on their own affairs, and the federal government can't just intervene in the affairs of regional states unconstitutionally, and the very existence of the regional states is constitutively assured. But, since the very nature of developmental states demand planning and designing development policies and programs by the central government, and regional states are expected to act in accordance to the direction given to them by the central government, they will have very little autonomy and become mere recipients of orders and executors of policies of the central government, and, thus, the ideology and its practice contradicts with the federal constitution accordingly.^{67,68} Besides, the execution of developmental states in federal states can result in vertical fiscal imbalance on the side of regional governments for the fact that their fiscal autonomy will be endangered.⁶⁹

Apart from the issues raised above a number of challenges have been there in the time while Ethiopia adopts and executes the ideology that hinder the ideology from meeting its objectives as planned and intended. Among others, the first one is that ethnic federalism where the way that state members of the federation are structured and arranged is a problem

⁶⁴ Capital. *The Late Prime Minister Meles Zenawi and the Issue of State, Democracy and Development*. Capital. Retrieved from <http://capitalethiopia.com/2012/09/17/the-late-prime-minister-meles-zenawi-and-the-issue-of-state-democracy-and-development/#.WjyjAreWbZs>, 2012, September 17.

⁶⁵ Daba, B., & Mulu, F., *Incorporating "Democratic Developmental State Ideology" into Ethiopia's Ethnic Federalism – A Contradiction?* *Universitepark Bülten*, 2017, 6(1), 109-117.

⁶⁶ Jebena, B.A., *Ethnic Federalism and Democratic Developmental State in Ethiopia: Some Points of Contradiction*. *International Journal of Political Science and Development*, 2015, 3(7), 291-300.

⁶⁷ *Ibidem*

⁶⁸ Mulu, B., *The move towards developmental state in FDRE: The role of Intergovernmental Relation (IGR) for its implementation preserving the Autonomy of regional states* (Unpublished Master's Thesis). Addis Ababa University, Addis Ababa, Ethiopia, 2015.

⁶⁹ Yesigat, Z., *Subnational Fiscal Autonomy in a Developmental State: The Case of Ethiopia*. *Beijing Law Review*, 2016, 7, 42-50. <http://dx.doi.org/10.4236/blr.2016.71005>

by itself.⁷⁰ He argued that “establishing highly competent bureaucracy due to the ethno-language criteria for recruitment and appointment of bureaucrats and their patron client arrangement” affects the successful implementation and execution of the ideology, and creates difficulty to have and reach at a common national consensus where the country failed to addresses access to education across all ethnic groups and regions equally.⁷¹

The other challenges was the absence of legitimate and confident political leader in mobilizing and persuading the public to execute the ideology which was not there after the death of Meles than just recalling Meles’s vision and programs.⁷² Besides, rampant corruption, bad governance, political instability during the last three years of Prime Minister Hailemariam, the successor of Meles, from 2015-2018, weak and partial media, weak, inefficient, incompetent, non-adaptive and non-autonomous technocrats and bureaucracy, inflation, public grievance as peasants and poor urban dwellers displaced from their lands in the name of investment, restrict freedom of speech and movement of Non-Governmental Organizations (NGOs).^{73,74}

Furthermore, many of the state sponsored and led mega projects like Yayu Chemical and Fertilizer Industry, ten Sugar projects, Grand Ethiopian Renaissance Dam among others are not completed on the planned time schedule where they forced the state to incur additional money which is a loss to the country in which some are transferred to other contactors where the state owned METEC (Metal and engineering corporation) was the winner of the projects and the main contractor to empower by the government where unable to handover any project at his hand to the government on time which was an issues in recent years and some of its officials like Brigadier General Kinfe Dagneu, former Director of METEC, and many other of his associates are in jail for suspect of grand corruption.

Beyond the stated challenges above, the ideology is under a clear threat from the side of the ruling party in which following the coming of Prime

⁷⁰ Bonda, S., *Impact of Ethnic Federalism in Building Developmental State of Ethiopia* (Unpublished Master’s Thesis). International Institute of Social Studies (ISS), The Hague, The Netherlands, 2011.

⁷¹ *Ibidem*.

⁷² Fantini, E., *Developmental state, economic transformation and social diversification in Ethiopia*, ISPI Analysis No. 163, 2013. Accessed on 12th of January, 2020 from URL: <https://www.ispionline.it/en/pubblicazione/developmental-state-economictransformation-and-social-diversification-ethiopia-7650>

⁷³ Kiros, T., *Participatory democracy, an alternative to the developmental state and constitutional monarchy*. *Ethiosun*. Retrieved on December 24th/2019 from URL: <http://www.ethiosun.com/archives/27324>, 2011, July 22.

⁷⁴ Kefale, A., “*Narratives of Developmentalism and Development in Ethiopia: Some preliminary explorations*”, 2011.

Minister Abiy Ahmed to power in April 2018 as the new EPRDF leader, he boldly criticized the way developmental state executed as a loss to the country in which the state just invested a lot of public money gaining nothing in return, exacerbate corruption and rent-seeking, results the country to be under timely unpaid foreign loan where his government just gave attention to finish the projects underway, not to start any new.

Above all, the internal power strife among EPRDF sister parties which finally results in the dissolution of three parties namely: Oromo Democratic Party/ODP, former OPDO; Amhara Democratic party/ADP, former ANDM & Southern Ethiopia People's Democratic Movement /SEPDM and formed a new political party named "Prosperity Party/PP" in recent months with other five dissolved political parties ruling other five regions of the federation namely: Harari National League (HNL) ruling Harari Regional State, Afar National Democratic Party (ANDP) ruling Afar Regional State, Ethiopian Somali People Democratic Party (ESDP) ruling Somali Regional State, Gambella People's Democratic Movement (GPDM) ruling Gambella Regional State and Benishangul-Gumuz Peoples Democratic Party (BGPDP) ruling Benishangul-Gumuz Regional State. PP is formed with entirely different ideology from its predecessor, EPRDF, called "inclusive capitalism"⁷⁵ which leave developmental state in to the hands of Tigray People's Liberation Front/TPLF as the only supporter of the ideology in the dissolved front, EPRDF. Thus, unless TPLF able to form a strong and competitive front/coalition and win a majority seat in the coming national election, which is less probable, developmental state still will no longer the ideology of the government assuming federal power.

Conclusion and Recommendations

Primarily developmental state is adopted by the EPRDF led government in the early 2000s to fight poverty and realize a fastest and sustainable economic growth that shakes the base of the economy from agricultural based in to industrial led economy as indicated in the country's two consecutive year plans, Growth and Transformation Plan I/GTP I (2010/11-2014/15) (Ministry of Finance and Economic Development (MoFED) of The Federal Democratic Republic of Ethiopia, 2010) and Growth and Transformation Plan II/GTPII (2015/16-2019/20).⁷⁶

⁷⁵ "**Inclusive Capitalism** is a global movement to engage leaders across business, government, and civil sectors and encourage them to practice and invest in ways that extend the opportunities and benefits of our economic system to everyone." (URL: <https://www.inc-cap.com/> accessed on 21/01/2020).

⁷⁶ Gebremariam, F.M., & Feyisa, B.D., *The Role of Democratic Developmental State Ideology for National Integration: An Assessment from the Perspective of the 1995*

Following the adoption of the ideology, Ethiopia, the home to about 109 million people, second most populous in Africa next to Nigeria, and home to about 80 ethnic groups which strives to be among the lower-middle-income status by 2025 as indicated in its GTPI& GTPII, has able to experience a lot of economic achievements.⁷⁷ Millions of Ethiopians are lifted out of poverty, the gap in income inequality decreased, per capita income of citizens increased which now about \$790 USD (Ibid), which was around 163 in 1992, increased expansion of social infrastructures like road, hydro powers, railways, schools and health centers and so on.⁷⁸

Despite the successes, there have been a lot of issues like the legality of the ideology from the perspective of the FDRE constitution in which the practice of the ideology will significantly regard regional states autonomy as the regional states will be mere executors of plans and programs and strategies of the central government, impossible to be democratic while states are developmental, and will pave a way for a given government to stay in power in a very undemocratic way to meet its long term economic objectives and so on.

Besides, Ethiopia's trend of democratic developmentalism has been implemented under a number of challenges like lack well trained, competent and merit based technocrat, weak media, oppressive government which restrict freedom of speech, bad governance, less efficient, unresponsive and incompetent bureaucracy that negatively affect the ideology not to meet its objectives as intended and planned.

Finally, since the proclaimed main vanguard of ideology, EPRDF, is pronounced as 'Dead' where three of the sister parties which constitute the front namely: Oromo Democratic Party/ODP, former OPDO; Amhara Democratic party/ADP, former ANDM & Southern Ethiopia People's Democratic Movement /SEPDM, except Tigray People's Liberation Front/TPLF, decided to dissolve themselves and merge with other five dissolved political parties ruling other five regions of the federation namely: Harari National League (HNL) ruling Harari Regional State, Afar National Democratic Party (ANDP) ruling Afar Regional State, Ethiopian Somali People Democratic Party (ESDP) ruling Somali Regional State, Gambella People's Democratic Movement (GPDM) ruling Gambella Regional State and Benishangul-Gumuz Peoples Democratic Party

Federal Democratic Republic of Ethiopia Constitution. Research and Science Today (RST), 2017, No 2 (Vol. 14): 23-35.

⁷⁷ World Bank. (URL link:

<https://www.worldbank.org/en/country/ethiopia/overview>, 2019).

⁷⁸ Gebremariam, F.M., & Feyisa, B.D., *The Role of Democratic Developmental State Ideology for National Integration: An Assessment from the Perspective of the 1995 Federal Democratic Republic of Ethiopia Constitution*. Research and Science Today (RST), 2017, No 2 (Vol. 14): 23-35.

(BGPDP) ruling Benishangul-Gumuz Regional State and formed a new political party called “prosperity party/PP with new ideology called “inclusive capitalism.” The newly formed party, Prosperity Party/PP, has basically a different structure and ideology from EPRDF which signals developmental state is dead at the center, and it is recommended that in a very less probable way TPLF, the only sister party in the ruling front, EPRDF, that didn’t dissolve itself and not willing to join newly formed national political party, Prosperity Party/PP, is the only vanguard of developmental state can rescue the ideology and will bring to the center once again if it wins majority seats in the federal parliament at the upcoming national election by creating a competitive front with other political parties under the ideology, which seems less likely, and rescue the ideology from being forgotten from the national political and economy forum and dialogue.

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BUSINESS AND LABOUR CULTURE CHANGES IN DIGITAL PARADIGM: RISE AND FALL OF HUMAN RESOURCES AND THE EMERGENCE OF TALENT DEVELOPMENT¹

Antonio Sánchez-Bayón,*

antonio.sbayon@urjc.es

Estrella Trincado Aznar**

estrinaz@ccee.ucm.es

***Abstract:** This article aims to be a critical review, with comparative and hermeneutic techniques, about the labour relations development into the welfare state economy and the current fall in the digital economy and the post-globalization. There is a diagnosis of the transition in progress (4th industrial & digital revolution with the change in labour relations and business culture), from the human resources departments for replicate-workers in traditional bureaucratic corporations, to the emergence of the talent development areas for creative-collaborators in agile business organizations. Also, it includes additional explanations about the new kind of collaborators (knowmads & freeriders), and the officer of cultural management and talent development.*

***Keywords:** Business & labour culture; digital transition; human resources; labour relations; talent development; wellbeing economics.*

JEL cod.: A14, B5, J8, Ko, N3, O15.

Introduction

With the globalization, social changes have been intensified (in the whole social spheres: Law, Policy, Economy, mainly). The world is moving from a controlled rigidity period (world in squares) to other new, more flexible and open (world in circles). The world in squares (based in the belief of security and scarcity), refers to the period dominated by the

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* **Asoc. Prof. Applied Economics at Universidad Rey Juan Carlos (Madrid, Spain). ORCID: <https://orcid.org/0000-0003-4855-8356>.**

** **Full-Prof. Applied Economics & History of Economy at Universidad Complutense de Madrid (Madrid, Spain), ORCID: <https://orcid.org/0000-0002-3422-2360>**

nation-state, which sought to protect all social spheres within its borders, with its rigid rules and institutions, of a directional and bureaucratic nature. The world in circles (of uncertainty and abundance), manifests itself with globalization when the global-village project for humanity is recovered, as announced by the UN Charter of 1945, and its order of international organizations, with a set of network for a global convergence. These changes request a review of the paradigm to understand and to manage better the social reality. Especially, considering that globalization has already ended, after *the 2008 crisis of values* (named for affecting financially and morally, with the moral risk), giving way to post-globalization². The *post-globalization* is the trial period and convergence (Horizon 2030) for peoples to align themselves in the project of achieving the desired knowledge society and its corresponding economy: the knowledge economy or true welfare economy (not of the State and its *welfare state economy*, but humanity or *well-being economics-WBE*). In the current transitional period, the digital economy (DE) has hatched, after of the 4th industrial & technological revolution, whose current phase is the so-called gig economy, which comprises the combinatorial of the *collaborative/shared & circular economy* (CCE), the *autonomous economy* (AE) and the *orange economy* (OE)³.

However, if everything changes, should not the academic apparatus with these changes are also studied? Does it make sense to continue

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(**) SJD/PhD in Law (UCM), PhD in Theology (UM), PhD. in Humanities (UVA), PhD in Philosophy (UCM) and PhDc in Economics (UVA). Prof. Applied Economics at URJC (office J49, Vicalvaro campus, 28032 Madrid, Spain; email: antonio.sbayon@urjc.es). Former lawyer (ICAM), consultant (GRIN), and collaborator in several mass-media. ORCID: <https://orcid.org/0000-0003-4855-8356>.

² This (what this?) is a brief phase of adaptation: from 2008 (end of globalization with the crisis of values) to 2030 (no-return point, called Horizon 2030). The following converging synergies have established this date: a) international organizations (e.g. UN and its *global compact* and *2030 Agenda of SDGs*, ILO and its *Future of Work*, EU and its commitment to all of the agenda (as Green deal) in multi-year budgets 2021-27), b) geopolitics (e.g. consolidation of the transpacific area and its world primacy, end of the five-year Chinese plans for its pearl necklace and new silk route); c) generational (retirement of generations identified with EB, such as *baby-boomers & gen-x*); d) technological (consolidation of the singularity: the moment in which technological progress will accelerate globally), among others.

³ Minimum notes on DE gig phase: a) CCE, is based on social networks, recycling shared goods and services (e.g. Airbnb, Uber); b) AE, is based on big data, IoT, AI, AR-VR-MR, among others., articulated through 5G, blockchain, smart contracts and DAOs (e.g. autonomous car fleet investment funds, fintech); c) OE, is based on talent and creativity applied to experience and entertainment (e.g. gastronomy, tourism, video games).

reducing the economy to its macroeconomic and econometric study as it has been dominating in the years of splendor of the *Welfare State Economy* (WSE) or should other renewed approaches be considered? Facing the dominant or *mainstream* economic trend (from Keynesians to econometrics and cultivators of game theory or neural networks for modelling), here it is preferred to follow the current renovating proposals such as *Global Economics & Cross-Cultural Management* (GE&CCM). This approach is the merger of several initiatives that have occurred after globalization, in particular, that, operating in the USA (a few countries, like Netherlands) with the renewal of studies in Business Schools (e.g. dimensions of Hofstede, management of organizational happiness of Seligman) and the so-called Fresh-water Economic School (inland universities and great lakes: Chicago, Northwestern, Michigan, Minneapolis, Carnegie Mellon, Pittsburgh, Minnesota, Cornell, Rochester, among others). Also for the hermeneutic turn in the Nobel Prize in Economics, since Amartya Sen (1998), the majority have been paying attention to consumer behavior and labour and organizational relations (e.g. Akerlof, Deaton, Kahneman, Schelling, Smith).

Thanks to GE&CCM approach, it is possible to realize a micro-cultural analysis of labour and organizational relations, following the transition from an old rigid and bureaucratic HR model (within WSE) to a new, flexible one and creative of authentic welfare (according to DE's talent and happiness management, see supra). In the old model, as if it were a train, one "stood on the rails" in an organization, knowing in advance its route, stops, and the exact day of completion of its journey (or retirement). It makes sense to speak of HR (as replaceable pieces of the system), but since the dawn of globalization (as early as the 1970s), this paradigm entered into crisis, and today it is coming to an end. The main reasons:

a) the organizations sought the satisfaction of objectives, functioning as well-gearred machinery, in addition to having abundant spare parts (HR);

b) a mechanistic and bureaucratic vision of labour relations and business organizations, giving way to another more organicist cycle, even diffuse, not only due to its uncertainty but also due to its fading, when the tangible and the virtual coexist.

Human resources: rise and fall

During the 2nd industrial revolution in the USA, there was a great transformation: taking advantage of the great migration from the countryside to the city, which led to the industrial boom, mass recruitment, and the awakening of Labour Law. This is when engineers as

F.W. Taylor design the organization of work, standardizing it, within the framework of a production chain, measuring and adjusting tasks and times, as if it were a piece of large machinery (Taylor 1911). Thus the so-called Taylorism and/or Fordism is developed. Current historiography seems to insist on differentiating approaches (as some Ford biographers, as Hounshell 1985 and Brinkley 2003). Nevertheless, both characters converged on business goals as well as personal and institutional connections. Ford applied Taylor's management principles, not only by reading it (co-authored in his writings with S. Crowther 1922, 1926, 1930), but also benefited from his studies at *Bethlehem Steel Co.* for the manufacture of the *Model T* (Paxton 2012), in addition to their connection via *American Society of Mechanical Engineers* (ASME), and *The Franklin Institute*.

The combination of proposals from Taylor and Ford, led to increased production in the manufacture of automobiles (achieving the mass-production), at the same time as the establishment of one of the first most successful HR models, known as the scientific organization of the work for chain production: based on scientific methods of that time, that is, with positivist methods, measurement and experiment of trial and error, where a typified relationship of the worker with production is proposed to maximize its results: the artisan production was intuitive and limited (each artisan made a reduce number of pieces, similar but unique); the industrial production, thanks to the specialization and division of tasks, with the help of machines, it was possible the mass-production (Rosenberg 1965). In this system, for its critics, it seems that the workers were reduced to simple force of labour, with mechanical tasks designed, with no place for creativity (Marx 1867). This mechanical system (in which the worker has a minimum qualification in a dependent employment relationship, leasing his effort and time in exchange for a salary), is corrected and increased with the interwar period bureaucracy when the differentiation between the blue-collar and white-collar worker (Wright Mills 1956), reaching its zenith with WSE after 2nd World War (Sánchez-Bayón 2017). It follows that every mechanistic system (as the old HR model) has a limited cycle (lacking self-regenerative capacity), suffering from crisis, and its final expiration. This can be seen in the 4th industrial revolution and digital transition: thanks to the internet, programming (e.g. *blockchain*) and mobile (as an integrated office), the era of social networks, *apps* & *ewc* or continuous virtual marketing, giving the return of the professional (*knowmads v. free riders*, see later), who can be a commission agent, biller, affiliate, among others. (New formulas for the regulation of mixed labour relations emerge, e.g. *click-pay*, *flexicurity*, part-time jobs mix). It is also the period of the emergence of *smart contracts* & *DAOs* (smart

contracts in the form of codes in the cloud, whose parts are artificial intelligence, which operates from the Stock Market to driving without a driver). In this way, it is not only transited to the phase gig of DE, but it is also outlining the new stage of capitalism, such as talent, promoted by *happiness management* (Sánchez-Bayón 2019b).

Hence, the fact of having fulfilled objectives and having completed cycles, should not be seen as a weakness, as precariousness and mourning for the rigid and safe world in expiration, nor is it a threat of volatility and fragility due to the continuous and accelerated changes. Rather, if the *post-Modern veils of confusion* are removed (just *veils* for next mentions, Sánchez-Bayón 2017), there is a chance to make a balance, to understand how is the transition from the technical and reiterative workers of WSE to the creative and proactive collaborators with talent in DE.

To make a balance of the development of industrial relations, and with them, also of HR, it is not necessary to return to the origin⁴; it is enough to evaluate the last century and a half, since the 2nd industrial revolution (as it has already mentioned). Even when it comes to HR, it is enough to return to the 1990s, given the crises as mentioned above, transitions, and new cycles. Given the veils extended, it is an emergence the review. It is an attempt to recover the management of the authentic, rational, and real (bia *logos-ethos: technical-rationality*), abandoning at once the ideological, discursive, and emotional (bia *pathos-mythos: collective emocionalidad*). For this, it is advisable to re-graduate the view in terms of the paradigm used, such as intellectual glasses, to better perceive and manage the underlying reality, solving its problems and challenges, in addition to recognizing the ground on which is stepped. This post-globalization is in progress, humanity is at a cross-point and it is not just an emergence to rediscover the reality (social and natural, plus the virtual in growing), also it is necessary to review the paradigm to apply. In this sense, this paper offers some critical and refreshing notes on HR model during the WSE, and the talent development model in DE (see table 1)

⁴ Possibly, talent-based labor relations arose in western civilization from cathedral builders, being the only itinerant and reputation-dependent guild, forerunner of the Liberal Arts, e.g. medicine, advocacy, journalism.

Table 1. Revelations of paradigmatic changes and labour relations in companies

OLD PARADIGM (WSE)	NEW PARADIGM (DE: gig to WBE)
Industrial and material economy (mechanistic)	Economy of Knowledge and experiences (quantum)
Male (hierarchical, competitive) Tangible and scarce (factory/office, goods) Reification (money, overtime, qualification, results in orientation: hygienic measures) Workers: uniforms, Secondary sector, subordination (salaried, straight) Syst. closed: rigid and poor (bureaucratic, for a position) Competition (repetition –partition ratio-, business / multinational concentration: rails) Macroeconomic study. and econometric: main agent SP Simple, one-way relationships (B2C), single-business L / P, and limited FPP (fixed costs) Atom (size and location of offices, warehouse stock, number of employees) Manufacturing (value added by the transformation of goods) Control management (correct and monopolize inf.) Results for pressure and decisions for fear (dismissal)	Feminine (holocratic, communicative) Virtual and abundant (mobile, connections, experiences) Humanization (welfare, leisure, talent, orientation to people: motivational measures) Collaborators: diverse, tertiary and quaternary sector, choice (autonomy, responsibility) Syst. open (autopoietic): flexible and abundant (creative and changeable) Collaboration (Innovation –Westminster system: 1 st . wins all-, co-working: elephants –big companies- and ants –each professional- world) Microeconomic study. and CCM: main entrepreneurial agent Complex and multiple relationships (B2C, B2B, P2P, among others.), multi-business C / P, variable FPP (heuristics) Bit (speed & everywhere-commerce, on-demand, collaborators talent) Mind-factoring (qualified service – concept/experiences- and higher value) Delegation/coach management (rules and information sharing) Results. for projects and achievements, and decisions for love (to what I do, with whom, m-v-v)

Source: own-elaboration.

To make a true balance of the evolution of labour relations and the HR area, the first veil to be removed is that of the socialist epic in this regard: the progress achieved is not a monopoly of any party or union, but it is a convergent institutional synergy of reform (in the interwar period), which starts from the International Labour Office of the League of Nations (later the International Labour Organization in the United Nations), passing through the state parliaments at its various levels, up to the implementation guidelines within companies, with the participation of

company committees and other intervening agents. Hence –and once again-, everything starts with the second industrial revolution, applied to the primary sector, when a good part of the traditional agricultural and energy trades disappear, in addition to promoting the secondary sector, with the development of industries with chains of production, and with them, the emergence of new labour relations. Thus there is a migration from the countryside to the city, with an endless number of socio-cultural changes, not exempt from conflict and the urgency of planning in this regard.

Hence, the true is launched of Labour Law (relating to salaried employees and in a dependent relationship), has its peak in the aforementioned interwar period, with the minimum common framework given by the ILO, developed by national parliaments, and made in each company. The said framework was revised and expanded in the post-war period, with the boom in the tertiary sector and to leap WSE and its diversity: with private workers employed by others (Labour Law) and their own (Commercial Law), work services and society (Civil Law), public employees (Administrative Law), among others. In this interwar period, Fayol (1930) & Mayo (1924), they contributed to the theory of positive administration, studying the efficiency of managers in organizations: the workers were more affected by social factors, such as moral and satisfactory relationships in a workgroup (Sennett 1998).

It should be noted that neither the denomination nor the inspiration of the WSE is social democratic (rather, much criticized by it in the beginning, VV.AA. 1971). Its name comes from the opposition to the war economy (instead of war-state, it was passed to welfare-state), being driven by liberals, Labour and Christian Democrats (e.g. Lord Beveridge, Lord Keynes, Adenauer, De Gasperi, Schuman). After the interwar period, there was a shift from HR focused on hiring industrial workers for others, low-skilled and undifferentiated (hence the perception as interchangeable parts of the system), to the qualification of human capital (a term used on the Pacific coast) and Personnel Administration (a term used on the Atlantic coast). This required specific attention to the specific positions and the most suitable people for their performance. Nonetheless, despite the qualitative transition, the mechanistic and bureaucratic vision is maintained, even increased: since, after the devastation of World War II, only the public sector has the muscle to reactivate the economy, it proceeds to hybridize politics and economy in the WSE model, nationalizing the leading companies in strategic sectors (e.g. France: *France Telecom, Air France, Renault*; Spain: *Telefónica, Iberia, SEAT*). In this sense, the Personnel Administration operates in the same terms as the rest of the Public Administrations: public calls for contracts via selection

systems close to the competition-opposition, hierarchizing and standardizing employees, among others

Regarding human capital, it is worth paying attention to the positive feedback between the US and Japan, although it also ends up reaching other Asian tigers: South Korea, Singapore, Hong Kong, and Taiwan. Unlike the European bureaucratic and directional model (sometimes with US funding, e.g. German Ordo-liberalism, French Gaullism), the Asian variants aim to go further, giving rise to the peculiar corporate bureaucracy of family conglomerates favoured by the State (e.g. South Korean chaebols: LG, Lotte, Daewoo, Samsung, Hyundai). In these variants, the bureaucracy is not so much due to the valued processes, since it seeks to lighten them decisively and expeditiously, but rather to the psychosocial hierarchies and ties on which they are based (it is a bureaucracy not of suitability, but identification mission-vision-values). Thus, expressions such as:

- Toyotism (also known as *ohnoism*): if an engineer and consultant as Taylor formulated the scientific organization of work, successfully applying it by an industrialist as Ford to lay the modern foundations of chain production and HR with selection and training of labour for large factories, in Japan it was two distinguished engineers who made toyotism a reality, going further (Gronning 1997). On the one hand, Kiichiro Toyoda (son of the textile industrialist, but who made a reconversion of the company towards the automobile sector); on the other hand, Taiichi Ohno, who would learn from the practices of the US Army deployed in his country (e.g. TWI training programs), combining them with his cultural approaches, especially Taoism and Buddhism. In this way, he implemented the kaizen model of improvement, for quality management and without waste. It is continuous improvement, with a reduction of waste (materials left over from the production process), warehouse stock (both raw materials and production), schedules, and employees (with shift rotation and equipment), among others. Thus was born *Toyota Production System* (TPS). After the energy and the industrial crisis of 1973, when the expectation of developing mentalism and full employment fades, Americans assimilate the TPS model, replacing chain production with just in time or adjusted, on-demand, and cost reduction. This response was influenced by the ideas of Schumacher (1973) who, in his bestseller, *Small is beautiful*, criticized the inhuman way of work that automation brought, and appealed to work as a place of fulfilment, to an “economy Buddhist” in which work allowed the development of personality. Society, he said, needed equipment that was: cheap enough to be available to everyone, on a small scale, and compatible with man's creative ability. Most of the progress of the economy was pointing in the direction of quantification at

the expense of understanding quantitative differences - because quantifying is easy, but understanding difficult. And in a way, Toyotism seemed to meet many of its demands. Besides, it promoted other management proposals, such as the replacement of the push system (or sales forecast) by pull (or replacement, the base of the current supermarket retailer), improvement teams, as well as other non-waste-oriented (e.g. production levelling, quick die changes, one-piece flow, flexible job assignments, removing non-value-added work). With this transplant, the corporate deinstitutionalization and certain job insecurity will begin.

- Kaizen Nissan (literally: good change in Japanese): This is an updated version of TPS, intensifying a flexible and agile model of joint production. It was driven by another Japanese car company (Nissan), which is distinguished in the 80s by expanding internationally and surpassing the American GM - not only for its HR management but for being a pioneer in the production of fewer cars pollutants. Its model is based on the selection of agile workers and collaborators, even in a transversal way, combining workshop and office, at the same time, decisive and expeditious. One of its operational rules is 2x2: after detecting a problem in production, an interdisciplinary team called quality circles is formed, inspired by K. Ishikawa, who has two days to find the solution and implement it in the chain before two hours (Feuer et al 1988)

- Lean (it is a loan from Japanese, translated into English, and is usually understood as an agile and adjusted system): it refers to innovative production since the 90s, which not only does not worry about not wasting production as TPS focused It also integrates the agility of response from kaizen-Nissan, in addition to seeking to improve the customer experience, offering more suitable solutions: intuitive proposals, greater comfort, and others. The proposal was born in American business schools, with doctoral theses such as J. Krafcik's at Sloan-MIT (1988), then going on to consultants, like those of Womack (who stopped being a professor at MIT to found the Lean Enterprise Institute in 1997, and Lean Global Network in 2007). Thus, a business culture of improvement is promoted, adding to all of the above a vocation of heuristics based on challenges and the proactivity of collaborators, achieving greater motivation, in addition to perfecting and streamlining the value chain (Womack et al. 1990, 2003, 2014).

Thus began the rigid deinstitutionalization of typical WSE work, to move to another flexible DE, of collaborative and mobile workers (Zwick 2018). Such a transition has not been easy or pleasant, but rather problematic:

a) Due to cultural differences: Southeast Asia began its westernization

in the 19th c., intensifying after the 2nd World War, but it is an unfinished process and in many ways only formal so that transplants can fail. Accordingly, as an example of cultural difference - and its difficult transfer to the rest of the West -, the case of Japan, where strikes have not only been of stoppages and pickets but also zeal and overproduction: by producing more, it subverts the Toyota system. Even another variant is flooding the market for free goods or services: from automobile overproduction and dairy products in the 1980s to recent cases in May 2018, such as the Okayama bus strike, which offered transportation without charge. Perhaps the most striking manifestations, which prove the problems of cultural transplants, are the *karoshi* cases - death by work: 200 cases a year, approx. (Frank 2014); *karojisatsu* -suicide by labour relations: about 2000 cases per year (Amagasa et al 2005); *hikikomori* - social isolation of young people who made telework: about 500,000 cases (Rosenthal et al 2012).

b) By those responsible for his transplant and its veils of confusion and by the request of mature organizations committed to change. With the cultural wars (1960-80), The New Left emerged at the university. Reference is made to the 4th International of Socialism or *Situationism*, such as the anti-protest movements, such as the hippies, which inspired the university revolts of the 1960s, especially in the United States (influenced by Marcuse, Adorno, Bloch, et al.) and France (e.g. Sartre, Derrida, Foucault). But the approaches of these authors were not very credible in economic terms, until they hybridized with the nationalizing visions of Keynes, highlighting such popular authors as Galbraith from Harvard⁵.

c) In addition to the spread of organizations as the Club of Rome since 1968, with the support of researchers from Harvard, MIT, and others. In this way, political demands for awareness and debureaucratization were mixed with the approaches of the WSE and the problems of quality of life, even population problems, growth, and its externalities, plus its impact on nature (Meadows et al 1972). The fact is that, as happened with the hippies, who later became yuppies, the New Left and its New Economy hybridized and needed their nemesis: New Liberals. Upon reaching power as a generation, social, ethnocultural, gender problems, and others increased, as well as the level of indebtedness that consumed the wealth of subsequent generations, in addition to the greatest devastation of the environment, postulating an eugenic new-malthusianism against climate change. Since the 80s, when the cultural transplantation of the models proposed to the rest of the West became general, due to the urgency of reconversion and not due to full conviction, it turns out that those in

⁵ Schumpeter (and his pupil Samuelson) had already been doing it, but it did not reach university students the same (Lindbeck 1971).

charge of this work were the *baby-boomers* and the X generation, already yuppies of direction. This extended accumulation of veils on flexible deinstitutionalization, which thus became precarious for the following generations (e.g. millennials tend to be contract for 1,000 euros/month, therefore they are so-called “*mileuristas*”/thousanders).

Flexibility, as a physical condition, is defined as what allows materials to deform under pressure (such as crises) without breaking and recovering later. But crisis after crisis and given the deinstitutionalization promoted, the new generations, despite their higher qualifications, enjoy fewer rights, having to know how to negotiate their labour benefits in each new professional experience (beyond the emotional salary). To the risk of rejection of cultural transplantation and its inadequate operation, as indicated, we must add the requirement of mature organizations: those focused, no longer on mere production and benefits, but people and sustainability, based on a model of happiness and wellbeing. Before to keep going, it is necessary a previous explanation: until the globalization, the psychological and psychiatric approaches in the human mind were in negativity way (e.g. the diagnosis of disorders such as those collected in DSM-APA and ICD-WHO); it was a New Yorker psychologist, Martin Seligman, who began a hermeneutical turn toward self-help and finally, the application of a truly positive approach: how to be happy in organizations. Seligman has been a Professor of Psychology at Cornell University and Univ. Pennsylvania (later director of the Department of Psychology). He used his contacts and publications (Seligman 2002 & 2011), to become President of the American Psychological Association-APA in 1998, using this platform to postulate the paradigm shift, from education to work.

In this balance, it is necessary to add the criticism expressed by the unexpected Cultural Studies, of neo and post-Marxist style, which are echoed by the Business Schools, and which postulate the following synthetic formula (on the HR development): In the 1960s, a uniform male paradigm dominated, of a competitive-developmental nature - growth at all costs. Its leading sector was the automobile sector, with large factories and offices, and aimed at the normalization of workers, usually from the area, selected for educational degrees and uniformed accordingly. After globalization, there has been a transition to a feminine multi-paradigm, collaborative-possibility, where companies are no longer valued for their production and properties, but their talent and transformative capacity. In this, the leading sector is technology (e.g. GAFA: Google, Apple, Facebook, Amazon), with diverse collaborators (in nationalities, ethnic groups, gender, among others.) and creative (with initiative and original approaches).

Table 2. Balance of labor relations: from hygienic measures (emerging organizations) to motivational (mature organizations)

a) Productivity and incentives (1910's): - Rewards and punishments; - Money moves the worker (bonus)				
b) An ergonomics and PRL (1990): - Improve the environment and climate (common areas); - Prevent accidents (prevention plan)				
c) Up to quality (of life, 2000's): - Improve processes and job design - Care for worker-family (health insurance, childcare)				
d) Ethics and CSR (1950's - alternative to WSE): - Participate in decision making & mission - From image enhancement to org. healthy				
e) Motivation & happiness (1999 Seligman) - Care for a collaborator as a client; positivity - Promote healthy habits, personal wellness				

Source: own-elaboration.

Consequently, the changes in HR approaches, from hierarchical and long-term rigidity to transverse and short-term flexibility (discussed in table 2), are before the exhaustion of WSE, with its bureaucracy and directionism, only that all of which is aggravated by the crises of globalization. Thus, a new paradigm for post-globalization is urgent and necessary. To know the current State of affairs, diagnosis and prognosis of labour relations are offered below in the framework of the gig phase of DE, introducing novel notions related to collaborators (e.g. knowmads, flexicurity, part-time jobs mix), and organizations (e.g. wellness & happiness model).

Diagnosis & forecast in digital economy

As has been pointed out, the gig phase of DE brings together manifestations such as CCE, AE & OE. Its name comes from an American expression, related to artistic bowling: a professional offers services for a performance and, if the experience is enjoyed, it will be possible to repeat. Something similar works the gig economy: a professional must be on social networks and platforms, pending the call for his performance, which is valued and it depends on whether he continues to provide this service in his area, even in other places (Zwick 2018). Then what are the pros and cons of the economic phase gig?

a) In favour: it allows ordinary people from all over the world to start businesses and participate in markets without intermediaries and respecting the environment by sharing, recycling, and renting, stopping the planned obsolescence and excessive waste. By this way, you are your own boss, managing your time and income; you know your talent and how to offer it to others; there is not much bureaucracy and directionism; the risk becomes an opportunity and an experience, which is also shared with others, generating collaborative intelligence, adding even more value to the work done (also being a first milestone on the road to the knowledge society).

b) Against: the process to move to virtual world has some inconveniences, like the offices and camaraderie disappear, making it difficult to organize and defend labour rights. Since hardly any taxes or contributions are paid, there is almost no labour protection, disappearing paid vacations, unemployment or sickness benefits, retirement, among others.

As there is not so much control of the markets or the jobs, it is very difficult to control them by the public authorities. In this way, attempts are made to regulate against new initiatives, such as tourist apartments (e.g. Airbnb, Rentalia), transport vehicles with drivers (e.g. Uber, BlaBlaCar), second-hand bazaars (e.g. Wallapop, eBay, OpenBazaar), among others. And no longer because they escape its burden, but because of the lack of influence in its future, and restrictions, such as licenses, associations, among others cannot be established, which leads to violating the monopoly of the State of the social system (Schor 2016). Citizens no longer need public powers and their notaries for the provision and validation of goods and services, but rather it is the communities of individuals who do it, with resources such as scores, comments and, rankings, as well as technology blockchain, operational in the wake of the 2008 crisis. Indeed, that the trend of social networks, platforms, and applications on which the gig economy is based has been one of concentration, as has already happened

with the main multinationals in the WSE, but the great difference is the influence of creative destruction with great changes in a short time, a constant heuristic and technological renewal, among others., so that the leaders of the sector, as well as the sectors themselves, are periodically renewed. As an example, the music industry –to continue with the allusion to bowling–, which was reduced to four large conglomerates, giving rise to relationships of elephants and ants (that is, large companies and each of the professionals), but that is seen subjected to constant creative destruction thanks to technology.

The phase gig ends a good part of the bureaucracy and the directionism, restoring a certain autonomy to the collaborator - who is no longer a dependent worker or labour force; Of course, it increases risk and uncertainty, in addition to requiring agility, adaptability and talent (both in the own differential value, as well as in that contributed to the employment relationship). When it comes to HR, the gig economy is affecting above all two types of professionals, at opposite poles: knowmads (highly qualified) and free riders (low qualified).

a) Knowmads (know+nomads = knowledge nomads: doctors, lawyers, professors, engineers, designers, among others): they are highly qualified knowledge professionals, open to mobility. As an example, the case of collaborators in holocratic startups or companies (self-managed or without a boss) How to hire the best and then tell them what they have to do, slowing everything down with supervisory barriers? From pioneers as Zappos (shoe company) or Gore (gore-tex clothing), through DaVita (health services), to Valve (video games), Netflix (audiovisual entertainment), Rastreator (search engines and service comparators) or Ternary Software (computer services), and needless to say in sectors renewed by creative destruction, FinTech type. In these companies, everyone can propose and take on projects, without fixed positions or roles, but rather in a hierarchical way (beyond the traditional cooperatives). Thus, it is charged according to participation and results, in addition to demonstrations such as telework from anywhere, the mobile being the office; flexicurity being qualified collaborators, they know their rights and can afford to give up the employment relationship (that is their security). Consequently, the conditions are open to negotiation; part-time job mix, when collaborating in startups to ensure turnover (not salary), you must have a basket of collaborations. Even, the inversion of perception is recommended, starting to consider employers as clients, so that the psychosocial stigma of dismissal disappears, and it is only about looking for another new way of financing (Moravec 2013).

b) Free riders, are lone riders, offering services with little administrative control. In HR, it refers to low-skilled operators, forced to

move (e.g. delivery men, replenishers, security guards). One of the most illustrative cases is that of Deliveroo or Glovo distributors. In both companies, there is an open and flexible hiring system, but full of risks and hidden costs: people in an irregular situation can start working immediately⁶. Of course, almost without coverage and having to register several distributors under the same account, to ensure compliance with deliveries and their frequency, to remain visible in the service distribution rankings. As a correction to these elephants, alternatives such as *La Pájara*, or specialized distribution ants are emerging (e.g. for consultancies, offices).

As a result of the balance made, the expiration and paradigmatic change in economics, business, labour, and HR, among others, in the tertiary sector (in the transition to the quaternary), with constant corrections to improve during the current post-globalization, are verified. For this reason, both the diagnosis and the prognosis are less clear than is desirable, since the rigid WSE model and the flexible DE still have to coexist, giving rise to diverse levels of precariousness. What is clear is that WSE is increasingly reduced in importance, with its bureaucratic labour relations and directed dependent employees, exposed to a greater precariousness for not taking the risk of discovering their talent, cultivating it, and offering it to others. Besides, the precariousness that is being talked about is surely not attributable to the fourth industrial revolution and its digital transformation, which destroys so many jobs, as new creates - as it already happened in the other industrial revolutions, but to the bad practice of baby-boomers and gen x at various levels:

a) Economic: despite being the most benefited from WSE, they have led to its collapse having consumed more wealth than generated, spending that of the following generations by debt;

b) Business: they have promoted the deinstitutionalization of companies, from the relocation and dumping of labour –corrected with the digital transformation- to the intensification of precarious work figures, internships -as instead of the internship and apprenticeship contract -, so there is no longer a common project or sustainability, but each one has their own hidden agenda, jumping from project to project (Pérez-Huertas et al 2013);

⁶ Anyone who has a good or service that is not required at the time (e.g. room, car, telephone minutes), can make it available to others, winning all, except the State, since it is more difficult to control. Even irregular immigrants can participate, only, unfortunately, their availability is reduced - temporarily - to the condition of free-riders, since that of knowmads requires the draw of administrative obstacles (Navajas et al 2016).

c) Human Resources: at the same time as there has been super-regulation, the fraud of the law has intensified, so that new workers have been hired below their qualification, imposing abusive conditions, under a false promise of Future improvement and that others will come who will bear the overload. Due to the deinstitutionalization, there are no longer job careers to use, occupying a multitasking position as appropriate, since the management is no longer reached by internal promotion, but via talent-hunting. In short, it is the end of WSE and its HR. The gig economy is only one more phase, with errors to correct if you want to achieve the knowledge society; the reason why it is recommendable as soon as possible to learn what the new paradigms are and how to operate on them.

Conclusions

The changes announced at the beginning of this text are increasingly manifested in reality: the crisis of values of 2018, now followed by the coronavirus crisis (COVID-19) and the great lockdown and confinement, among others, highlight the emergency to review and reformulate the paradigms and models: there are more and more problems outside of them, and those few that can be recognized and managed are minimal, although in a deficient way. The failed economic-social policies (health, labour, among others) of WSE in many of the countries of the European Union (especially the Mediterranean block) serve as a concrete example, compared to the chaebols models oriented to the DE of tigers Asians (e.g. Singapore, South Korea, Taiwan). Even these require revision, as they respond to alternative models of the 1960s.

Concerning changes in labor relations and business organization, it has offered here a critical synthesis of its development in the rigid, bureaucratic and directed framework of WSE, paying special attention to its HR model, given the emergence of the talent paradigm and the stimulation of happiness management for post-globalization. Throughout the text, key ideas have been planted, the obsolescence of HR due to the fulfilment of objectives and cycle; the balance of the changes from WSE to DE, both economic-social, as well as business, from the conglomerates of the automobile sector to the virtual GAFA, as well as of HR, of the management and bureaucratic model of titled employees, replicated to the model of happiness for talented and motivated collaborators; diagnosis and prognosis in the face of the gig economy, with two affected and polarized profiles (knowmads & free riders), among others. It also affects creative destruction itself, as well as the emergence of talent: every mature organization requires talented collaborators, starting with those who must manage said talent. Today, an officer in cultural management and talent development is critical for an organization, because as a coach: this person

knows pretty well the team, helping in the personal and professional growth of everyone, to "go out to win". Also, the cultural management, it is not just about measures on organization climate, it is about to promote a participatory and inclusive organizational culture (e.g redefining and making accessible the mission, vision, and values of the company, the internal regulations of the company, conflict resolution and its prevention). Then, an officer of cultural management and talent development must be empathetic and pragmatic at the same time; also, the officer must follow the 80/20 rule: most of the time supporting collaborators, and as little as possible dedicated to paperwork and red-tape.

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DIGITAL DIRECTION OF MODERN ECONOMY DEVELOPMENT – PROSPECTIVE FOR UKRAINE

Bochulia Tetiana,*

bochulya@i.ua

Amit Kumar Goel**

amitgoel53@gmail.com

Abstrat: *The article is devoted to solving topical issues concerning perspective development of digital economy for Ukraine, which is a new trend of socio-economic relations and aims to promote innovative development of modern Ukrainian business. The status of digital economy and society in Ukraine are analyzed. The substantive content of the essence of digitalization has been worked out, which made it possible to develop the structural model of digital development of business model of the enterprise. The key parameters of digital business transformation were characterized, which allowed structuring the process of modification of entrepreneurial relations. The innovative principles of digital transformations are made, which provide coordination of the development strategy for the implementation of digital transformation, which allows establishing effective information relations in the enterprise management system in accordance with modern conditions of activity. The roadmap of digital transformation of business is developed, in which takes into account the parameters of innovation in the formation of core competencies, which in the complex give a universal formula for modern business development.*

Keywords: *Digital economy, Digital Society, Ukraine, Digital Devices and Economic Growth.*

Introduction

The exponential growth of information technology has led to revolutionary shifts in all walks of life, laying the groundwork for the digital revolution as a logical consequence of qualitative changes in

* **Doctor of Economics, Professor, Academician of the Academy of Economic Sciences of Ukraine, Professor of Finance and Accounting Department, Kharkiv State University of Food Technology and Trade, Kharkiv, Ukraine.**

** **Doctor of Economics, Assistant Professor, Integral University, Lucknow, India.**

business, culture, society, etc. The advent of digital age has been associated with the abandonment of analogue media in favor of electronic data processing tools, which has transformed the ordinary processes of processing, transmitting and storing data. The next stage of digital transformation is explained by the demand among consumers for a new type of services that have provided innovative technologies through the development of e-commerce and a new type of retail space, which has caused changes in the original essence of business relations. Accordingly, the technology-based business has taken the lead position, with a new form of capital and the prevalence of technological innovation in products and services. Today, digitalization has touched upon the areas of collaboration and communication that underpin entrepreneurial relationships and focus on building new organizational models of business that meet the essence of the impression economy and the expectation economy. The phenomenon of digitalization is manifested not only in the technical or technological nature, but also in the behavioral aspect of the object and subject of management, thus prompting conceptual changes in the economy and society respectively. Passing on to a new paradigm, namely from the information society to the virtual society had a great impact on the way in which individuals conduct their activities, communicate and share their knowledge by cooperating.

The effects of the virtual society paradigm can be seen as growing in complexity at all dimensional levels, as they are integrated in the virtual space¹. Digitalization as a major driver of global economic growth is determined by the benefits of creating new value for consumers, saving time and increasing data. In a digital economy that has already become a reality, many companies will not be able to succeed simply by adjusting management practices that have led to success in the past. The essence of digital transformation is not in technologies, but in change. The need for digital transformation is beyond doubt, the only question is when and how to implement it. In developing countries the current economic conditions have made a high number of enterprise moves towards internet-based systems to increase efficiency, reduce operating costs and support the capacity of operating in real-time between various platforms. In recent years or developed new products and services fully based on the internet

¹ Ciobanu, G., Ghinăraru, C., Davidescu, A. A-M., Crețu, A. Ș., Chiriac, B., *Aspects of the digital economy development in Romania: theory, measurement techniques, development policies and job generation*, Bucharest, Universitară Publishing House, 2015, p. 196.

have appeared and continued to evolve and they can compete with the existing ones².

PROBLEM STATEMENT

The research goal is to reveal the essence of digital transformations of business with development of the roadmap as effective tool for business modernization in the conditions of large-scale technological changes.

SIGNIFICANCE OF THE STUDY

The significance of the study is that, proposing an alternative digital development scenario for the Ukrainian economy will contribute to provision of qualitative changes at all levels of innovation-priority transformation.

OBJECTIVE OF THE STUDY

1. To find the Daily Internet Usage Rate in Ukraine under different Age Groups in the year 2018.
2. To find the distribution of payment methods used for online transactions in Ukraine in 2018.
3. To find out the devices and their proportion being used for internet access in 2018.
4. To develop roadmap of digital transformation of business.
5. To propose an alternative digital development scenario for the Ukrainian economy.

HYPOTHESIS OF THE RESEARCH

- 1 There is no significant difference in daily internet usage rate under different Age Groups in Ukraine in the year 2018.
- 2 There is no significant difference in the payment method used for online transactions in Ukraine in 2018.
- 3 There is no significant difference in the devices used for internet access in 2018.
- 4 The digital transformation of the business should take place in accordance with the scenario developed and the roadmap.

LIMITATION OF THE STUDY

The focus of this study is confined to the Ukraine and its coverage is 2018. However, a model questionnaire has been framed and mailed to the citizen of Ukraine (Respondents) belonging to all walks of life in terms of

² Ciobanu, G., Ghinararu, C., *Digital Economy in Romania - Sociological and Economic Dynamics*, HOLISTICA Journal of Business and Public Administration, Association Holistic Research Academic (HoRA), vol. 7(2), pages 30-39, August. 2016.

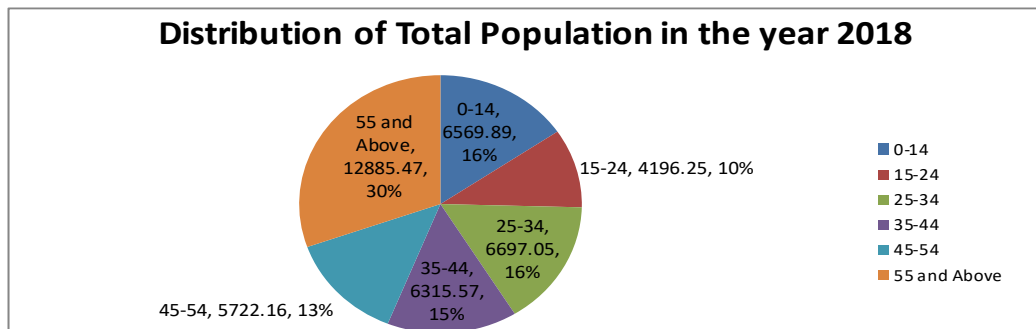
qualification, age, gender, employment etc. but the response is dismal therefore the researcher had restricted this study on the analysis of secondary data collected through desk research by applying appropriate quantitative techniques for analysis of data.

RESEARCH METHODOLOGY

This study is qualitative in nature and examines the causal relationship between age, population and usage of internet and electronic devices for the purpose of digital payment in Ukraine during the period of last 2 years from 2016-18.

DATA ANALYSIS

Distribution of Population under different Age Groups in 2018



Source:

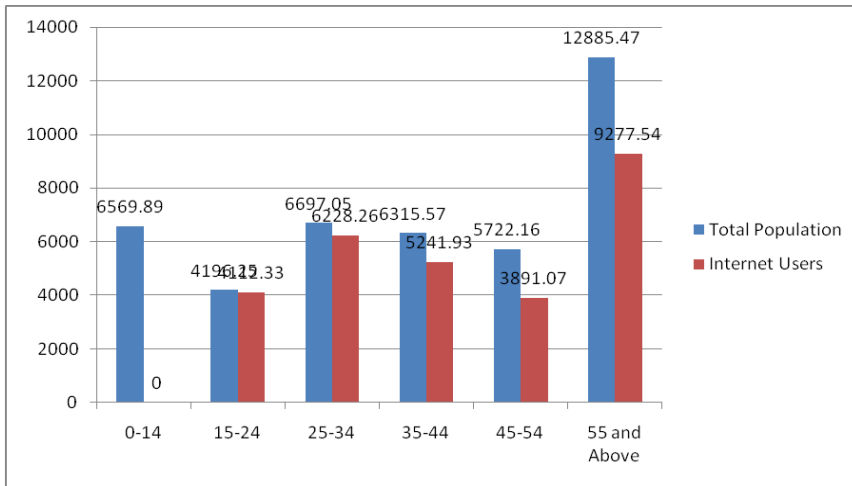
https://www.indexmundi.com/ukraine/demographics_profile.html

OBJECTIVE 1

To find the Daily Internet Usage Rate in Ukraine under different Age Groups in the year 2018

Age Group	Total Population	Internet Users
0-14	6569.89	0.00
15-24	4196.25	4112.33
25-34	6697.05	6228.26
35-44	6315.57	5241.93
45-54	5722.16	3891.07
55 and Above	12885.47	9277.54

Source: <https://www.statista.com/statistics/348237/daily-internet-usage-age-group-ukraine/>



Hypothesis Testing

Source: developed by the authors

One-Sample Test

	Test Value = 0					
	t	df	Sig. (2-tailed)	Mean Difference	95% Confidence Interval of the Difference	
					Lower	Upper
Internet_Users	3.844	5	.012	4791.855	1587.30	7996.41

Source: developed by the authors

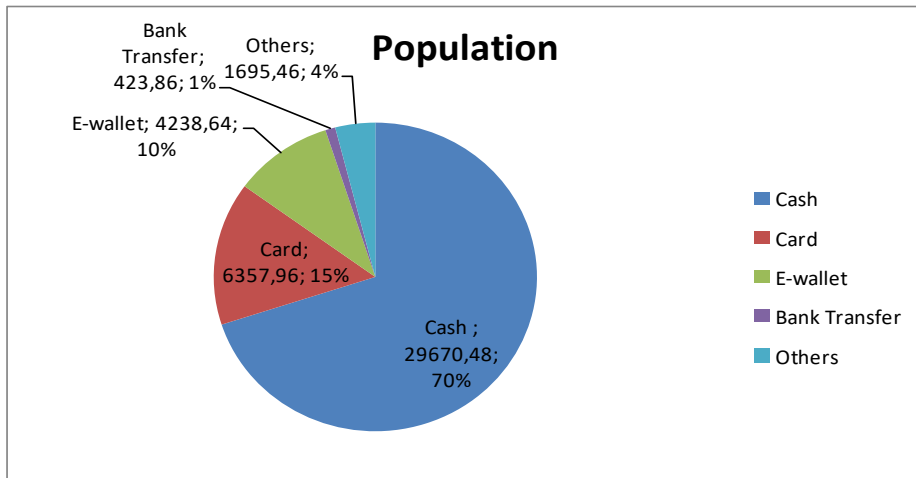
One Sample t-test is applied to the data and it was found that the obtained calculated t-value (3.844) is more than table value (2.56) and so we reject the hypothesis and conclude that there is significant difference in the Internet Usage.

OBJECTIVE 2

To find the distribution of payment methods used for online transactions in Ukraine in 2018

Mode of Payment	Population
Cash	29670.48
Card	6357.96
E-wallet	4238.64
Bank Transfer	423.864
Others	1695.456
	42386.400

Source: <https://www.statista.com/statistics/1028730/online-payment-methods-in-ukraine/>



Source: <https://www.statista.com/statistics/1028730/online-payment-methods-in-ukraine/>

One-Sample Test

	Test Value = 0					
	t	df	Sig. (2-tailed)	Mean Difference	95% Confidence Interval of the Difference	
					Lower	Upper
Total Population	1.571	4	.191	8477.280	-6506.01	23460.57

Source: developed by the authors

Hypothesis Accepted

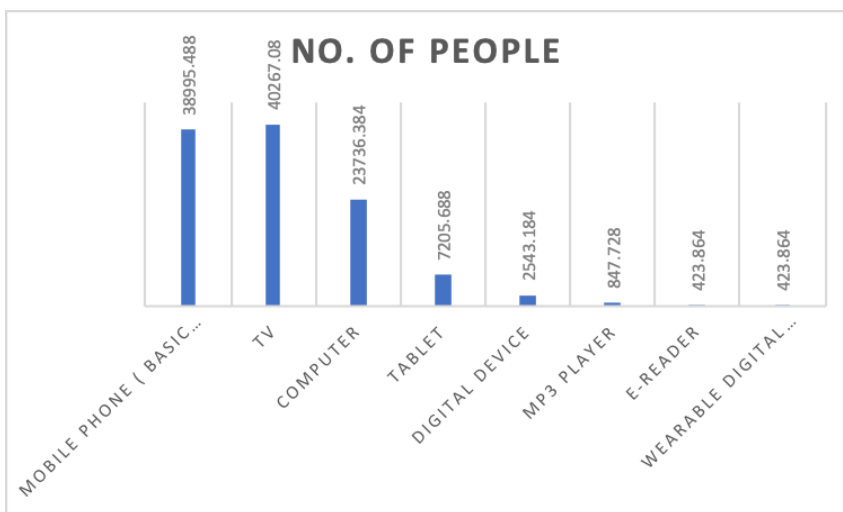
There is no significant difference in the users

OBJECTIVE 3

To find out the devices and their proportion being used for internet access in 2018

Device used	No. of people
Mobile Phone (Basic Mobile phone & Smart Phone)	38995.488
TV	40267.08
Computer	23736.384
Tablet	7205.688
Digital Device	2543.184
Mp3 Player	847.728
E-Reader	423.864
Wearable Digital Device	423.864

Source: <https://www.statista.com/statistics/362800/electronic-device-usage-ukraine/>



Source: <https://www.statista.com/statistics/362800/electronic-device-usage-ukraine/>

One-Sample Test

	Test Value = 0					
	t	df	Sig. (2-tailed)	Mean Difference	95% Confidence Interval of the Difference	
					Lower	Upper
Total_Population	2.689	8	.028	14646.856	2086.11	27207.60

Source: developed by the authors

Hypothesis Rejected

There is significant difference

Today, in the new turn of digital development, one of the main challenges is the growing number, quality and diversity of relationships between socio-economic systems, enterprises, organizations, countries, accompanied by the abrupt dynamics of the number of transactions and volumes of data accessing and leading to more complex and synchronized integration, which forms a new type of economy – an economy for all, based on partnership as opposed to competition.

The essence of the digital economy is defined by two categories - digital data, namely the extent of processing, transmission and storage of information, and digital platforms. The interconnection of these categories is the management of data that is hosted on different digital platforms due to the activity of the data subjects. Data in the digital economy is a moving asset that is leveraged to increase competitive sustainability on the promising markets that determines the future for business. Today, data

traffic has increased significantly – in the last 20 years, this figure has increased from 100 GB per second to 150 700 GB per second, which is explained by the significant increase in the number of Internet users. So, today the totality of information that received by a person per day, can be compared with an array of Big Data, to which data are available from everywhere, structured and unstructured, needed, secondary and frankly unnecessary knowledge³. Changes in data volumes have usually been affected by the notion of "creating value of information" with the monetization of data, which today is transformed into digital knowledge, the types of which depend on the type of information.

Along with the increase in data volumes, digital platforms are emerging that use business models as a basis for managing information to transform relevant economic sectors. Digital platforms are mechanisms that enable the interaction of information subjects in different directions. Modern digital platforms are organized as an environment of developed analytical applications and software in the form of technological standards and operating systems. If the enterprise organizes activities on the basis of the digital platform, it receives significant benefits because gets the opportunity to use the online activity of users in the formation of the database.

The economic geography of the digital economy does not trace the traditional North-South divide. The leading role is invariably played by two countries, one of which is developed, the other is developing, namely the United States and China. For example, they account for 75% of all patents related to blockchain technologies, 50% of the world's spend on the Internet of Things, and more than 75% of the global open source cloud computing market. And most notably, they account for 90% of the market capitalization of the world's 70 largest digital platforms. Europe accounts for 4% and Africa and Latin America in total – 1%⁴.

The concept of information development is the basis of methodological transformations in economic processes, the modernization of which is due to the influence of theories of information, global communication and the symbol. Thus, according to separate forecasts at 2020, personal computers will reach the computing power of the human brain; at 2022 will begin to adopt laws that govern the relations of people and robots; at 2026 per unit time it will be possible to extend human life to more time than it has been; at 2040 search engines will work not only on

³ Bochulia T., *Accounting and analytical provision of management in the times of information thinking* / T. Bochulia, O. Melnychenko // European Cooperation. – 2019. – №1 (41). – p. 52–64.

⁴ Digital Economy Report 2019. Value Creation And Capture: Implications For Developing Countries [Electronic resource]. – Access mode: https://unctad.org/en/PublicationsLibrary/der2019_en.pdf.

the basis of requests from the voice of a person, but also from opinions; at 2043 the human body will be able to take any form due to nanorobots and cybernetic devices that will be substitutes for human organs at a much higher quality; at 2045 technological singularity will begin – the transformation of the planet into a complete computer, when technical progress will be beyond the limits of its understanding⁵.

Digitalization was the impetus for the creation of new products, services, value propositions, new relations with the target audience, its expansion, which collectively allowed to develop a new strategy with an innovative model of profit and access to an unfilled niche in the market, and thus creating a new platform for the economy.

The main distinguishing feature of digitalization is scalability, namely the ability to manipulate any volume of information with a significant ease of access for users to products, services, information, etc. In this is being implemented the complexity that manifests itself in the triad of interest, speed and innovation, which collectively and in full provide requests, balancing borders and time. Digitalization is a platform with advanced communication channels and offering new levels of interaction between business entities and consumers, allowing for timely adjustments to supply and early forecasting of changes in demand.

Thus, digitalization trends affect the business model of an entity with the ability to form a universal development strategy that is consistent with the realities of time and does not conflict with the physical underpinnings of the economy, which is also an integral element of entrepreneurial relations (Figure 1).

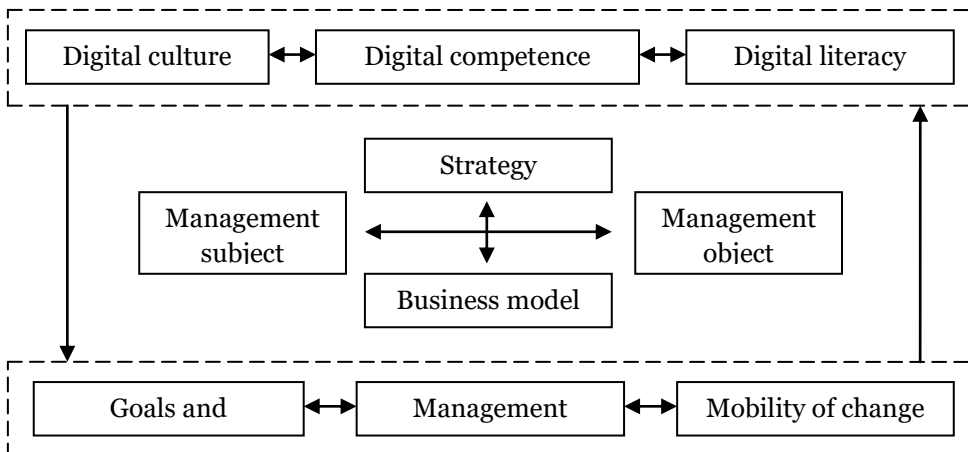


Figure 1. Structural model of digital development of business model of the enterprise

⁵ The future of the world: a forecast up to the year 2099 [Electronic resource]. – Access mode: <http://earth-chronicles.com/science/the-future-of-the-world-a-forecast-up-to-the-year-2099.html>.

In the model shown in Figure 1, shows the implementation of the digital context in the traditional pattern of business model of the enterprise, including the goals of the development of new solutions, the temporal context of the activity, the reasons for change and the subject of leadership influence.

Every decision, new goal that affects the business model, should be aligned with the pre-selected decision templates as an alternative to the strategy.

The business model should be corrected for the potential positive or negative impact of the new solution, which reduces the risk of uncertainty.

The digital architecture of changing the business model should be consistent with the time context of the enterprise's activity and its readiness for transformation. Accordingly, timeliness is the main feature, providing the necessary amount of information on the status and prospects of the business without minimizing the probable risks.

Digitalization should not be spontaneous but calculated with a clear understanding of the consequences of change and the new development project. Otherwise, digital transformations will have the opposite effect - imitative development, which leads to the formation of a risky model of enterprise development.

According to the results of questioning of the heads of IT-directions and managers of organizations from the USA, United Kingdom, Germany, China, Japan and other countries, the stages of IT transformation for world companies are determined [5]⁶:

Stage 1 – use outdated information technologies (12%): do not meet many, if not all criteria of the IT transformation that used in the ESG study.

Stage 2 – developing countries (42%): demonstrate progress in IT transformation, but few implement modern technologies of the datacenter.

Stage 3 – progressive companies (41%): committed to IT transformation, use and upgrade data center technologies and delivery methods for IT services.

Stage 4 – transformed companies (5%): adapted to digital transformation and actively implement them.

Short-term project aimed at earning a one-time profit cannot be the basis for digital change, and accordingly provides for a long-term change policy that requires investment and time. Thus, the motives for the

⁶ Modernize IT to improve customer experiences [Electronic resource]. – Access mode: <https://www.dellemc.com/en-us/it-transformation/index.htm#scroll=off>.

transformations should be realistically evaluated and aligned with the strategic development plan.

Deciding on digital business development should be based on the substantiating of changes and the definition of basic parameters of transformation, which is a source of value and the basis for creating a new competitive form of business. The company has several options for moving to the digital activity model – failure, destruction and new construction; incremental improvements; superficial changes. Each option has its advantages and disadvantages according to the real state of the business, its size, market niche, strategy and model of activity. Strategy of the completely abandoning core activity, destruction of the adopted development pattern, and trying to build a new model is unjustified for most businesses as it is a massive change that requires significant investment and global transformation. Usually, market leaders cannot afford this strategy because of the high risk of losing competitive sustainability, which is what the “paradox of unconditional leader” manifests. Therefore, a step-by-step strategy with a gradual transition to the digital platform without major changes to the business model is appropriate for such business entities. Also, the strategy of superficial change is ineffective, which is expressed in following the trends of the environment without a clear understanding of the real need for transformations. Leader companies may fall into this trap trough for fear of losing competitive positions, but not starting a digital transformation project. Accordingly, the strategy is ineffective and adversely affects the activity, primarily because of the waste of time for productive changes.

Digital transformations are based on an understanding of the governing apparatus of essence and nature of changes and readiness for such transformations, which is accordingly implemented in a set of tasks that collectively serve a single purpose - development that corresponds to the reality of the digital stage without managerial asymmetry (Table 1).

Table 1. Purpose parameters of digital business transformation

Parameter	Characteristic
Initiative	Understanding the extent of the real need for digital initiatives with basic decision making and inherent risks. Following the chosen goal without moving on to other projects. Application of cascade strategy in decisions and processes, which minimizes the risk of project depreciation due to incompleteness of previous tasks. Ability to determine in a timely manner the prospect of each task for the productivity of the end result
Control	Discipline of decisions in each management subsystem. Willingness to delegate control with the structuring of the reporting system between the subjects of leadership influence.

	Horizontal hierarchy in information provision of control
Innovation	The prevalence of new forms and methods of business, the implementation of creative approach in the period of enterprise development without the leveling off previous effective models, principles, methods and procedures. Achieving the balance between new developments and the traditional business model
Financial provision	Highlighting a financial goal as a necessary component of sustainable growth. Focusing on gradual financial provision without income asymmetry, which implies digital changes with income adjustments without a long-term break in time

Parametrization of digital business development is a conceptual change of model, organizational structure, processes, which is collectively implemented in the formation of digital culture of entrepreneurship that implies following the algorithm of change – from the idea and initiative of digital transformations to building a cycle of complete change.

Between these stages, the management system should ensure the development of a strategy and a scenario for change, align initiative proposals with the formed business model, evaluate the need and required volume of borrowing of the leaders-innovators results, make digital transformation, taking into account the peculiarities of the business. Digital transformation is carried out in accordance with the principles that are a mandatory instrument for regulating this process and provide the institutional component of transformation (Table 2).

Table 2. Principles of formation and implementation of digital business transformation⁷

The principle	Brief description
Simplex-method of solving set tasks	Comprehensive approach to solving of set task with a change in the straightforward process to a continuous cycle from search of problem to real action
In-depth data analysis	Implementation of cognitive technologies for processing of big amounts of data with the formation of operational managerial decisions

⁷ Bochulia T., *Digital-strategy of the development in accordance with the concept of corporate social responsibility* / T. Bochulia, A. Grinko, P. Hryenko // Innovation and information technologies in the social and economic development of society: Series of monographs Faculty of Architecture, Civil Engineering and Applied Arts Katowice School of Technology. – Katowice: Wydawnictwo Wyższej Szkoły Technicznej w Katowicach, 2018. – p. 20–30. – ISBN 978–83–947093–5–8.

Personalization of information	Individual approach to personnel information provision that allows to better understand area of responsibility, to use work time more efficiently, and to have objectively relevant data to complete a task
The culture of cooperation	Orientation to the teamwork with equal incentives and equal responsibility. Direct interaction with the leveling of hierarchical barriers
The timeliness of feedback	Feedback in mode of the real time
The unity of information platform	Create an environment with equal access to information, ideas, changes with the ability to make adjustments with the function of instant notifications
The orientation to behavioral models	Establishing the priority of behavior in the organization of the personnel, performing tasks, guiding influence and processing information
The continuity of study of new technologies	Constant critical evaluation of technologies with an assessment of more effective organization of activity

These principles coordinate the development strategy for the implementation of digital transformation, which allows establishing effective information relations in the enterprise management system in accordance with new conditions of activity. These principles are basic for digital transformations and can accordingly be applied in different combinations, given the chosen direction of transformations.

The combination of principles defines not only a set of basic provisions that underpin the transformation of the business model, but the configuration of methodological aspects of activity with the achievement of a balance between management subsystems, which is achieved through the proper integration of the operating structure, organizational model and digital foundation of processes.

Business success is determined by core competence, which is a leading factor in integrity and productivity, a unique feature of the business that allows consolidating competitiveness and occupy own niche in the market. Core competency counteracts the impact of imitators, creating value that delivers competitive advantage and allows avoiding risks of loss of leadership positions.

Digitalization can and should be a core competency for enterprises that are opting for strategy of innovative transformations and moving to the next level of business.

The importance of defining digitalization as a core business competence lies in the ability to take real actions that are different from

the template and previous options, namely the presentation of new attributes of activity that are personified properties of the enterprise, expressed in potential for development. Focusing on digitization as a core competency should be accompanied by a transformation of the business concept with the basic of other regulation of activity, which is to implement the key principles of digitization – consistency and sustainability; singularity; confrontation (more constructive interaction); cognitive rate. These principles are much more complex than previously proposed (See Table 2), as they are intended for companies with complex management structures that have aimed to fundamental change to gain new status among market leaders.

The principle of consistency is that digital transformations do not exclude the physical side of the business (assets, capital, resources, personnel), but are integrated into a single system to provide new channels of information, expand collaboration, facilitate the adjustment of activities without asymmetry in information and managerial impact. In accordance with the principle of consistency, digitalization is the driving force behind the standardization and commercial implementation of the organizational model of business, which allows transforming products, goods, services of the enterprise into assets that based on digital provision. This consistency allows achieving a cumulative effect in competitive advantage, which has a positive effect on the implementation of a strategy without conflicts of interest and unnecessary risks.

Objectively, consistency is the basis not only for competitive advantage, but also for sustainability, which is to ensure the uniqueness of the solution without duplication of the business model, which personifies the development strategy, and therefore allows distinguishing a separate approach to the business with an individual set of technologies, processes, characteristics of the final offers to the consumer. A business that construct on the principle of consistency is more stable compared to analogs of other entrepreneurial solutions because it is based on the integration of solutions that form a universal attribute of development for a particular business model.

The principle of singularity is the emphasis on the combined activity of human and machine intelligence, which allows increasing the efficiency of human activity. It is wrong to criticize the singularity as a step back in the development of behavioral technologies and the rejection of human resources. Singularity is an indispensable component that making progress in business based on digital technology. It is the wise use of artificial intelligence to set the business model to self-development in processes, phenomena, technologies and tools.

The principle of confrontation (more constructive interaction) is manifested in the achievement of development through the clash of interests, knowledge, skills, competences, however, with the basis of a common goal and values. It is not a direct counteraction, but a partnership based on opposing approaches and perspectives on solving the task. Such partnership, on the one hand, is considered impossible due to conflicting opinions, methods and approaches. However, exactly the contrast allows opening innovative directions that were not previously considered because of limitations in calculations, experience and knowledge. This is a new level of understanding with the acquisition of other experience as a hypothesis for action that entitled to exist. One example of productive confrontation-based partnerships is the egalitarian collaboration of Robert Noyce and Andy Grove at the beginning of existence of company Intel⁸.

The principle of cognitive rate is the added benefit of digital transformation as a result of accelerating the processing of big amounts of data. Managing big amounts of information allows moving to a whole new level of forming relevant information to make decisions without wasting time and capturing different data from multiple sources at the same time. Digitalization is a tool that provides the necessary response to information resources, which is manifested in gaining additional business advantage. Cognitive perception of information by human requires more time and has a higher level of subjectivity, which is absent when using digital technologies. Thus, the principle of cognitive rate is the intelligent management of task performance based on technological superiority in information processes. Sustainable performance growth depends on the implementation of technological solutions that enable the creation of a new environment with high potential for processing, transmitting and storing information, involving various real-time stakeholders holding objective, transparent, timely and reliable information.

Adhering to the principles of digitalization means creating as much value as possible for each amount of money transferred by customers. In this way, the reach of the target audience is increased with the increase of the offer scale, which is the new basis of efficiency. Efficiency is a mirror image of the growth that relies on digital transactions.

In modern economy, competition is increasingly becoming a competition not of resources, but of strategies, and investment by companies is increasingly directed towards creating core competencies and ensuring their dynamic capabilities.

⁸ Isaacson W., *The Innovators: How a Group of Hackers, Geniuses, and Geeks Created the Digital Revolution* / W. Isaacson. – Simon & Schuster; Reprint edition, 2015, p. 560.

Digital transformations, innovation potential, the ability to formulate more effective strategies and constantly evolve a company, updating its structure and key business processes in response to challenges of external environmental, are increasingly important. The pursuit of winning the competition puts new demands on the managers, who should set ambitious but achievable goals, form the vision of the future company and make it an asset of all employees, stimulate search and find new non-trivial solutions in the transformation of the enterprise activity on the digital platform.

Business can choose any direction of development, guided by mission activity and available tools for influencing processes. However, it is digital transformation that has the greatest potential, as it is a new prototype for the reconstruction of society and the economy, implemented through the implementation of a flexible modular set of models and tools that are fully accessible for adaptation in traditional business models. The digital approach is a new business philosophy that assumes the presence and continuous development of feedback between business entities on the development of the economy, driven by innovative technologies⁹.

Paradoxically, however, digitalization is not about the complete introduction of technology, but about the deep transformation of business strategy. This is a complete update of the current business model and, therefore, a rethinking of the mission of activities, processes, tools and means.

OBJECTIVE 4.

To develop roadmap of digital transformation of business

Digitalization aims to update the way business structures operate, change the approach to competitive relations, adapt business to trends and factors of market development. Digital transformation cannot be an item in the plan of changes - it should be a full-fledged strategy that covers the entire organizational structure of the business. The digital initiative is the beginning of global change, the "point of no return" for business, and the transformation of the enterprise into a digital economic unit involves the formation of basic principles, operational procedures, technological upgrades, which will collectively direct the personnel to follow digitization strategies without managerial asymmetry. Achieving the goal of digital transformation is possible with the development of a roadmap, which should outline the main tasks, potentials, opportunities, limitations and benefits of change that will allow the modernization at the right scale, pace, taking into account available resources (Figure 2).

⁹ Rogers D., *The Digital Transformation Playbook: Rethink Your Business for the Digital Age* / D. Rogers. – Columbia University Press, 2016, p. 296.

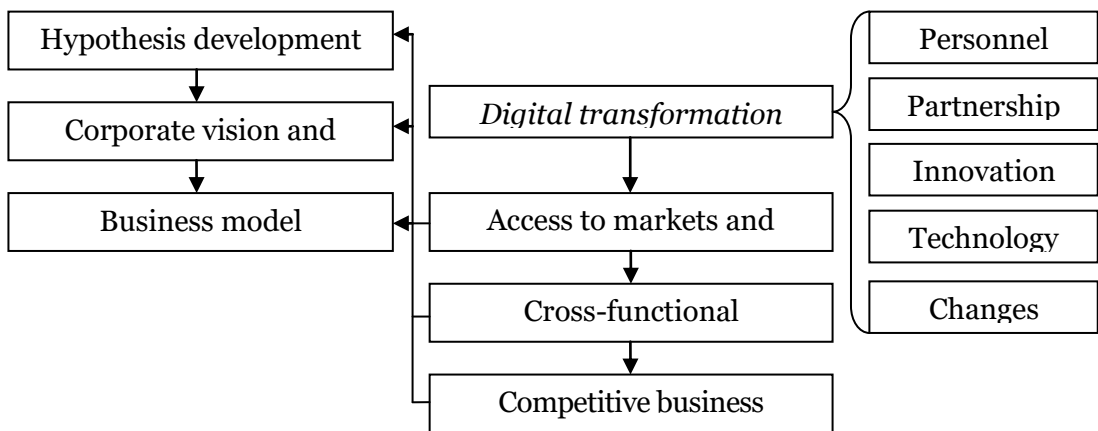


Figure 2. Roadmap of digital transformation of business (developed by the authors)

The digitization strategy is based on three basic parameters (See Figure 2): focus on personnel; forming partnerships; learning new technologies.

Personnel are a key asset of a company that cannot be replaced by a virtual resource. The personnel are endowed with professional competencies, which is the most important element of a transformation project with any scale and expected result.

Digital transformation should be based on cross-functional teams, which are distinguished by an emphasis on achieving a common goal without individualizing functional responsibilities, and through teamwork.

Cross-functional teams are distinguished by self-regulation and horizontal character of leadership influence with aspiration for continuous development of professional competences with acquisition of digital skills.

The following teams are necessarily assigned roles: initiator (incentive to develop change project and propose innovations); coordinator (transformation regulation and relationship between team members) analyst controller (evaluation of the reality of the project and control of each stage of its development and implementation). Other professionals take on the role of specialist executives who are tasked with step-by-step make changes.

A cross-functional team should develop a digital startup, evaluate its weaknesses and strengths and conclude that resources are sufficient to implement it.

When developing a new strategy, it is necessary to establish a culture of continuous learning of technologies, which makes opportunities to

combine digital tools and solutions with services of the enterprise activity, and therefore, allows adapting quickly to the trends and requirements of the external economic environment.

The digital environment is a full-fledged ecosystem with different levels of communication and partnership. Promoting partnerships is one of the tools for generating business value, as it enables to borrow from better experience and to develop an advanced business model. An enterprise should abandon stereotypes about business individualization and constantly learn from the experience of market leaders, considering their organizational models from the point of view of digital business rebooting, considering the risks and limitations.

A hallmark of the roadmap of digitalization is the refusal of step by step evaluation of business areas in favor of real change without undue analysis. This approach is more effective because the continuous study of aspects of a business allows getting a detailed picture of it, but such information quickly loses its relevance, and therefore has no positive impact on change. The roadmap allows exploring through real mechanisms and tools for change with the proposal of an effective model that is innovative and based on key enterprise resources – personnel, assets and technologies. In this case, the core competencies of the enterprise acquire digital character and involve the formation of a new personnel strategy and culture that is consistent with the technological basis of modernization.

In each country, business develops according to specific rules and principles that are determined by the general order of the national economy. Accordingly, the directions of digitalization for each country will be different. Thus, for Ukraine, the main obstacles to the development of the digital economy can be identified the impact of both formal and informal regulators. Among other things, there is a lack of regulation of the rules and standards for the creation and maintenance of databases; insufficient level of data protection and cyber security; initial level of development of professional digital competencies (digital knowledge and skills); lack of awareness of the importance and need for digital transformation for business. In addition, the Ukrainian economy has all the prerequisites for the development of the digital economy, in particular, the availability of industries that can be digitized, high potential for training young professionals, the prospect of job creation.

OBJECTIVE 5.

To propose an alternative digital development scenario for the Ukrainian economy.

For Ukraine has identified two digital economy development scenarios – inertial (evolutionary) and targeted (accelerated), which are characterized by polar approach. Considering the significant differences and fundamental differences in approaches, we consider it possible to propose an alternative scenario – balanced (step-by-step) (Table 3).

Table 3. Scenarios for Development of the Digital Economy of Ukraine (compiled by¹⁰)

Inertial (evolutionary) scenario	Target (accelerated) scenario	Balanced (step by step) scenario
<p>Adherence to non-technological development traditions with a certain leveling out of technological development prospects and emphasis on human resources as the only productive resource for economy dynamics. Such scenario is inefficient in terms of compliance with the conditions of the competitive environment, which will negatively affect the overall indicators of both economic and social development. Inconsistency technological activity of the world economy will negatively affect the state of the Ukrainian economy</p>	<p>Under the target scenario, Ukraine's key digitalization strategy should be to focus on advanced digital platforms, and key initiatives should be to convince economic entities of the importance and need to move to digital tools. It also defines the task of developing the internal market for consumption of information and communication technologies and digital technologies</p>	<p>The gradual transition to a digital platform for economic and social relations. The focus of institutional regulators on digital change. The stimulation of digitalization of the economy by explaining the prospect of such changes at all levels of leadership impact. Identification of motivational regulators for awareness and acceptance of change. Step-by-step changes are most acceptable because they allow adapting to transformations without the need for principal transformations, which is more correct given the new order of economic relations</p>

The digital development of the Ukrainian economy is supported primarily at the legislative level, in particular by the adoption by the

¹⁰ Fishhuk V., Matyushko V., Chernyev Ye., Yurchak O., Lavryk Ya., Amelin A., *Ukrayina 2030E – krayina z rozvynutoyu cy`frovoyu ekonomikoyu* [Ukraine 2030E is a country with advanced digital economy] [Electronic resource]. – Access mode: <https://strategy.uifuture.org/kraina-z-rozvynutoyu-cifrovoyu-ekonomikoyu.html>.

Cabinet of Ministers of Ukraine of the Concept of Development of the Digital Economy and Society of Ukraine for 2018-2020 dated 17.01.2018 № 67-p¹¹, which provides measures to implement appropriate incentives for digitalization of the economy, public and social spheres, awareness of the challenges and tools available for developing digital infrastructures, acquisition of digital competences by citizens, and identifying critical areas and projects for digitization, promotion of the internal market for the production, use and consumption of digital technologies.

The next step in the digital transformation of the Ukrainian economy is the signing in September 2019 of a memorandum on the creation of the Ukrainian National Digital Coalition "Digital Transformation Coalition", which includes 46 state and private institutions and organizations, educational institutions, public organizations.

The Coalition's activities are aimed at consolidating and coordinating the initiatives and efforts of all partners in the field of digital development and integration of Ukraine into the European Digital Space (EU Digital Single Market). In the framework of cooperation provided for:

- dissemination of information about modern digital technologies and their practical using;
- creation and development of appropriate infrastructure for acquiring and improving the digital skills of youth and society in general to increase employment rates and the effective use of digital opportunities;
- Harmonization with the Digital Agenda and the Digital Single Market of the European Union;
- improving access to digital infrastructure and the Internet;
- integration of digital technologies into production processes or the digitalization of industry;
- promotion of digital development of settlements and regions;
- digitalization of science, development of Ukrainian e-infrastructures;
- promoting the development of creative industries, cyber security systems and other areas of Ukraine's digital transformation.
- development of international cooperation in the field of development of digital technologies and digital skills.

Thus, today, all the preconditions for the development of the digital economy have been created for Ukraine, which should be accompanied by radical transformations in all sectors and spheres of economy. It is also necessary to take into account the likely losses, especially in the area of

¹¹ Cyfrova adzhenda Ukrainy, (2020), («Cyfrovyj porjadok dennyj» – 2020). Konceptualni zasady (versiya 1.0) [Digital Agenda of Ukraine - 2020 (Digital Agenda 2020). Conceptual foundations (version 1.0)] [Electronic resource]. – Access mode: <https://ucci.org.ua/uploads/files/58e78ee3c3922.p>.

jobs, if professionals do not adapt their professional competencies in time to the requirements of digitalization. First and foremost, measures should be taken at the state level to promote and foster a culture of digital transformation and innovation. Partnerships between states and leading business entities should also be established to foster a culture of digital change.

Important scientific and practical task to identify trends in the development of digital economy in Ukraine, the development and presentation of the latest concept of digital transformations of business is solved in the article that defines the development of the fundamental provisions of the management process based on the introduction of digital innovations. The main conclusions and the results obtained in the scientific research are as follows:

1. The essence of digitalization as a complex system is substantiated, elements of which has technical or technological nature, and also the behavioral aspect of the object and subject of business management, thus prompting conceptual changes in the economy and society respectively.

2. Parameters of digital business development are defined with a proposal of conceptual change of model, organizational structure, processes of enterprise, which is collectively implemented in the formation of digital culture of entrepreneurship. Principles of digital business transformation are develop which made it possible to implement configuration of methodological aspects of activity with the achievement of a balance between management subsystems, which is achieved through the proper integration of the operating structure, organizational model and digital foundation of processes.

3. The roadmap of digital transformation of business is proposed for activation (initialization), designing and integration of digital processes for their combination with the general model of business development as a new direction of development, which provides stimulation of digitalization of Ukrainian economy. Proposed balanced (step by step) scenario of development of the digital economy of Ukraine is designed for optimal implementation of key initiatives of technological transformation of business with its adapting to changes without the need for principal transformations, which is more correct given the new order of economic relations.

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MANAGERIAL TOOLS USED TO REGULATE OF THE STATE BUDGET RECOURSES IN CONTEXT OF HUMAN RIGHT TO SOCIAL PROTECTION

Lesia Marushchak, *

lesyamar@ukr.net

Olha Pavlykivska, **

olga.i.pavl@gmail.com

Kilyar Oleksandra ***

kilaroleksandra@gmail.com

Abstract: *Strenth and healthy comminity is the result of a well-balanced state budget. Most of each state funds come to cover public assistance, medical and children's health insurance program, roads, transportation and high education. The state budget is the biggest source of low-income families' support. But spending veries from countries to countries and in some cases this variation is significant. Theoretically, human rights must be realized through government budgets. But realization of all human rights requires some additional resources. And many countries do not have enough funds to realize all human needs appropriately and that could be implemented only by successful government fiscal policy. Seeking of eective financial resources is cardinal tasks for many governments. Despite the availability of all necessary funds for satisfying people needs many govnrments share financial rsources in unappropriate ways and people got only small portion of their social benefits. Countries with the largest budget deficit show that people get the low and lower middle incomes and their social rights are not protected enough. The main reason is an absence of appropriate tools for evaluate the effectiveness in usage of state resourses. Evaluation is fulfilled only leaning on general economic results and an inappropriate mechanism of budget financing can become the main cause of impossibility to predict the future gaps in financial needs. So, usage of managerial tools is very useful for control and monitoring processes of the state budget effectiveness.*

Keywords: *budget, funds, human needs, expenditures and policy.*

* Department of the accounting and audit, Ternopil Ivan Puluj National Technical University, Ukraine.

** Department of the accounting and audit, Ternopil Ivan Puluj National Technical University, Ukraine.

*** Department of the accounting and audit, Ternopil Ivan Puluj National Technical University, Ukraine.

Introduction

The fact that a state budget is a heart of government social policy could not be deny by nobody. It is also economic and social phenomena. A government budget also could be defined as a tool in a process used by country's athorities in struggle with poverty. Many scientists try to find an interconnection between community welfare and the state budget policy. However, there is not direct connection between increasing in government's budget and in growing people's welfare. Simply, the budget is a complex system intended to deside how much money to spend and which amount of budget funds could be spend on different aims and ways how to raise the money. But the main aims of the state budget are achiving of economic stability and protection of social rights however it is not so easy to obtain. To make balance between receipts and disbursements of a government budget it is important to use different managerial tools such as fiscal resilience and budgetary control.

Literature review

The richness of country depends from its effective budgetary system. There has been a fair amount of researches in the economic literature who looks at the effect of social spending and the main source of its forming – the state budget. In the world literature there are many approaches to explain a term 'state budget'. Prof. S. Gale Lowrie has emphasized a state budget as the fiscal plan of the government (Lowrie, 1915)¹. Specialists of OHCHR summarized that each state has obligations under international human rights law to respect, protect and fulfill human rights. They have to fulfill their human rights obligations through human rights-based policies, plans, programmes and budgets (OHCHR, 2017)². Encyclopedia Britannica gives next explanation to this term: 'budget is derived from the old French *bougette* – 'little bag' (Encyclopedia Britannica). The state budget was explained as a financial plan (programmes and work plans) as well as social and political documents; in economical words – a document with words and figures (Carmine Rustin and Neil Nel, 2011)³. The same authors (Carmine Rustin and Neil Nel, 2011) indicated: 'The budget has also been defined as a process consisting of a series of activities relating

¹ Lowrie Gale S., The Proper Function of the State Budget. *The Annals of the American Academy of Political and Social Science*. Volume: 62 issue: 1, 1915, p. 47-63.

² Realizing human rights through government budgets, 2017. OHCHR. New York and Geneva. Available at:
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³ Carmine Rustin and Neil Nel, 2011, *Budget analysis manual*, Parliament of the Republic of South Africa. Available at:

<https://www.parliament.gov.za/storage/app/media/BusinessPubs/BudgetAnalysisManual.pdf>, Access on: 04.06.2019.

expenditures to a set of goals, or as a process through which public expenditures are undertaken'. The essential part of any state budget is a budget balance, which shows how the government can fulfill its obligations before citizens. Claver Gatete stressed that the government's budget is the people's budget (Gatete, 2015)⁴, since it is formed from taxes and fees they always pay. Even country gets loans and grants from international organizations, citizens have to repay it. In many societies the governments are not able to collect enough money to do all what people need. Scientist T. Kovaleva determined the term 'budget' (Kovaleva, 2016)⁵ as: 'a quantitative picture of the plan characterizing incomes and expenses within a certain period, and equity which needs to be attracted to achieve planned goals'. More complicated economical definition to term 'state budget' or 'national budget' was given in 'The economic times': 'a government budget is an annual financial statement which outlines the estimated government expenditure and expected government receipts or revenues for the forthcoming fiscal year' (The economic times, 2019)⁶.

But there are not always enough financial resources to gain all social needs, so it is necessary to seek for additional options to compensate all gaps or control the effectiveness of budget expenses. Well financial planning is primarily to determine the need for financial resources of the state budget which nation needs in the future (Cretu C. and others, 2010)⁷. But many governments orientate only for financial calculations and they do not use appropriate management tools to increase effectiveness of the budgets recourses.

Methodology

Authors have chosen monitoring and evaluation that must become the main tools in improving the structure of the state budgets and prioritizing their expenses. In the process of investigating defined problem the researchers also focused on the analysis of cases described an ineffective usage of budget funds. Evaluations as a method of analyses has been

⁴ Gatete C., 2015, *The National Budget*, Available at: http://www.minecofin.gov.rw/fileadmin/templates/documents/Fiscal_Decimalisation_Unit/Budget_Citizen_Guide/2015-2016/2015-2016_Budget_Citizens_Guide_-_English_Version.pdf, Access on: 04.06.2019.

⁵ Kovaleva T., 2016, *The Budgeting Mechanism in Development Companies*, International journal of environmental and science education, 17, vol. 11, 7726-7744. Access on: 04.06.2019.

⁶ What are the three types of government budgets? (2019), *The economic times*, Available at: <https://economictimes.indiatimes.com/budget-faqs/what-are-the-three-types-of-government-budgets/articleshow/67466774.cms>, Access on: 04.06.2019.

⁷ Cretu C., Gheonea V., Talaghir L.-G., Manolache G.-M., *Budget – Performance Tool in Public Sector*. Proceedings of the 5th WSEAS International Conference on Economy and Management Transformation, Timisoara, Romania, Vol: 1, 2010, p. 360-368.

grounded on general results and special groups of indicators. To evaluate the effectiveness of state budgets there were chosen several criterias; adequacy – evaluates whether financial recourses were spent for the goals which were set by state programmes, plausibility – evaluation of funded programmes by the state recourses and effects detection of measures on national welfare caused by such programmes, probability – future control and monitoring of the true effects from financing of the national needs and protection of people rights. Methodology used for evaluation could be also based on instrumental or conceptual approaches. A choice of metrology elements may vary depending from many external and internal factors.

The state budget as the economic tool for redistribution of the state income

The state (government) budget is a central policy document of government, showing how it will prioritise and achieve its annual and multi-annual objectives (OECD, 2014)⁸. Many scientists prove that budget is reflection of GDP. At first, budget must be transparent and flexible. At second, budget must represent the current position of national welfare. All budgets show different figures and they depends how much states authorities give off state financial resources for different social aims. Theoretically all budgets must satisfy social community needs (fig. 1).

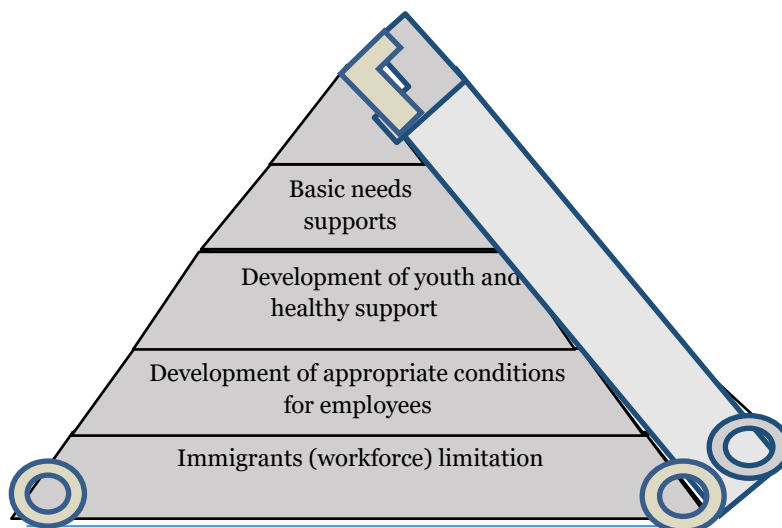


Figure 1. The role of the state budget (made by authors)

⁸ OECD, 2014, *Public governance and territorial development*, Available at: <http://www.oecd.org/governance/budgeting/Draft-Principles-Budgetary-Governance.pdf>, Access on: 24.06.2019.

The biggest challenge for budget authorities involved in it – is the forecasting of its expenditures and revenues for a financial year. In the 20th century a budget system became the main storage of compartment between different levels of budget (state, federal, local). The effectiveness of budget policy has a direct impact on economic policy. Budget policy may be one of the main methods for economic fluctuations reducing. The state budget policy allows the governmental authorities to regulate investment, tax and expenditure. It also gives the possibility to decrease economic disparity. Well planned state budget can improve country position on the world arena. So, the impact of the state budget on economy overall could be defined from its functions, procedures and budget principals (fig.2).

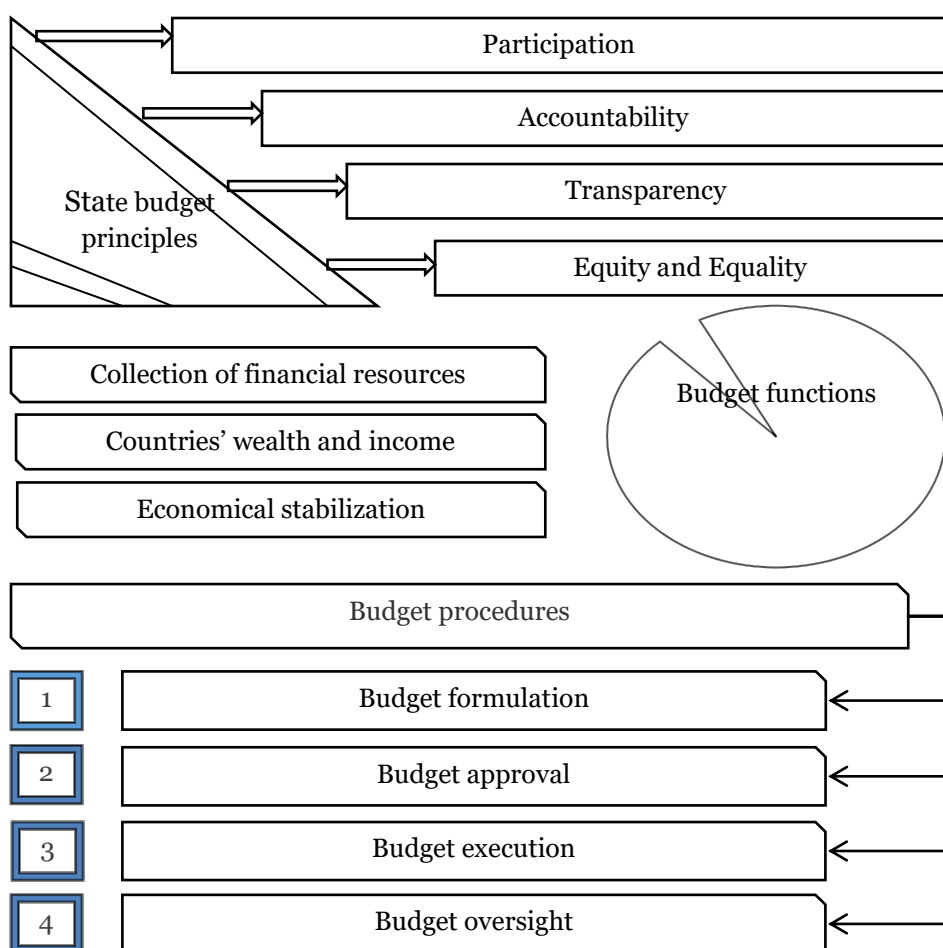


Figure 2. Functions, procedures and the budget principals⁹

⁹ IBP, The 4 stages of the budget process, Available at: <https://www.internationalbudget.org/wp-content/uploads/MODULE-2-Defining-the-Problem.pdf>, Access on: 24.06.2019.

The main function of the state budget is not only raising revenue but redistribution of income. The certain activities also must be encouraged by a budget policy. State budgets could have two forms of influence on economic activity: first – national budgets are separated from provincial and local budgets (decentralized model) and have minimum influence and another one – all revenues are accumulated by the state budget agencies and distribute to the local budgets according to elaborated local programs (centralized model). It was proved (Y. Markuts, 2018)¹⁰ that: ‘the country’s budget is planned according to available opportunities to attract financial resources and the necessary direction of financing expenditures’.

Government spending tendency on the social needs around the world

Two basic components of each state budget are the revenues and expenses (fig. 3), and they have direct influence on people protection and satisfying their basic needs.

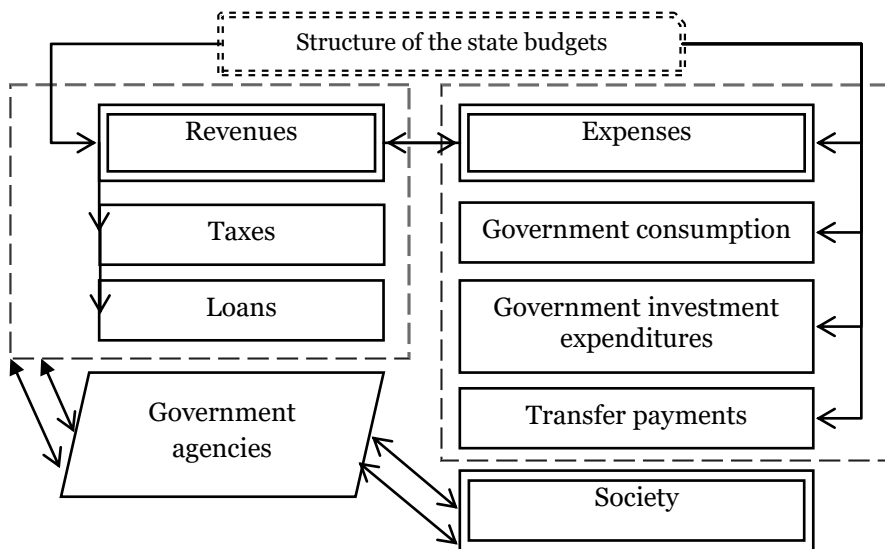


Figure 3. The structure of the state budget (made by authors)

The world practice shows that most of governments’ spending has a negative economic impact. Many state budgets have a deficit status. The other ones have an inappropriate mechanism of financing. The evidences show that some governments spend too much for social protection and

¹⁰ Markuts Y., 2018, *Consolidated budget as a social development tool*. Available at: file:///C:/Users/User/Downloads/144256-311509-1-PB%20(1).pdf, Access on: 24.06.2019.

small amount of finance for economic development. Nowadays the collected dates indicate that public spending increased remarkably in the 20th century (Max Roser, 2019)¹¹, as the governments started spending more resources on social protection, education and healthcare. Spending from the state budgets could be measure to per capita and share of GDP. Expenditures in the high-income countries have tendency to be higher for social protection then in the medium-high income countries but there are enough exceptions. Countries with the law income level have a tendency to spend much money for social programs. A surplus is the main feature characterized the state budget for monitoring an effectiveness of the government programs. A surplus can be defined as difference between the national government revenues and expenditures. The positive numbers show that the revenues exceeded the expenditures and the countries budgets have a surplus. Nevertheless, the negative numbers show that countries have a budget deficit which influences negatively for social protection. Statistics show (World finance, 2019)¹² that only 47 out of 222 countries worldwide are not in a fiscal deficit and five countries have the largest fiscal one (fig. 4).

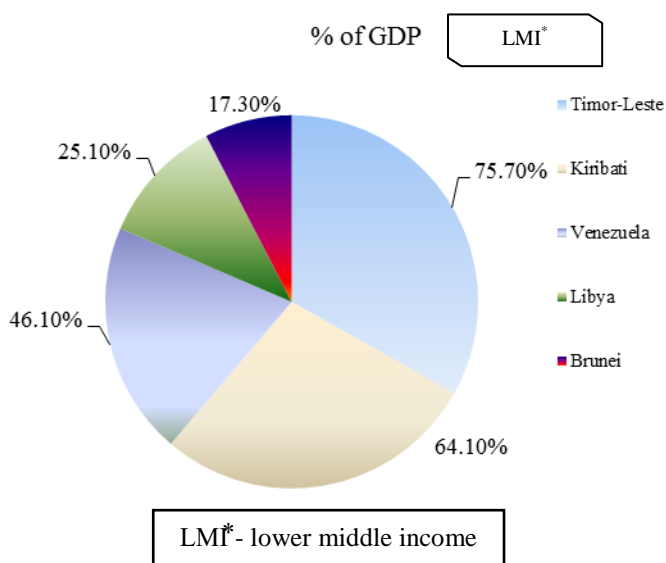


Figure 4. Countries with the largest deficit of budgets (World finance, 2019; Index mundi)

¹¹ Roser M., *Government Spending*. Our World in Data. Available at: <https://ourworldindata.org/government-spending>, Access on: 27.06.2019.

¹² Top 5 countries with the largest fiscal deficits, (2019), *World Finance*. Available at: <https://www.worldfinance.com/markets/top-5-countries-with-the-largest-fiscal-deficits>, Access on: 27.06.2019.

Statistic date (Index mundi)¹³ also show that countries with the largest deficit have the lowest level of citizens' incomes and threat of the poverty. In Timor Leste – population is below poverty line (Countries of the world, 2018)¹⁴ and reached to 41,8%, (2014), budget surplus – (-)13,43 % in 2014 (Country economy)¹⁵, but this rate increased up to (-18,67%) in 2017; in Kiribati – one in four people lives below the basic needs poverty line (The borgen project, 2017)¹⁶; statistics (The borgen project, 2018) show nearly 90 percent of Venezuelans live in poverty. The similar situation is observed by scientists in last country. In Libya, 40% from 6,4 million people live below poverty line despite fact that Libya has the largest oil reserves in Africa and the ninth largest in world (The national world, 2011)¹⁷. Brunei has 5% of its population living under poverty (unofficial date) but local authorities prove that there were taken all measures to prevent poverty among the citizens.

Social protection plays a pivotal role in forming the budgetary system in each country. Social protection in the contact with state budget expenditures could be define as helping those who are poor and vulnerable, such as children, women, older people, people living with disabilities, the displaced, the unemployed, and the sick. Despite the established fact that many nations have the rich welfare, their state budgets are completed ineffective and do not count all necessary measures to protect people rights. According to the survey (ILO, 2017)¹⁸, 4 billion people worldwide are left without social protection. Ryder G. stressed that: 'The lack of social protection leaves people vulnerable to ill-health, poverty, inequality and social exclusion throughout their lifecycle. Denying this human right to 4 billion people worldwide is a significant obstacle to economic and social development' (ILO, 2017).

¹³ Index mundi, Available at: <https://www.indexmundi.com/>, Access on: 29.06.2019.

¹⁴ Population below poverty line (%)Country Ranks, Alphabetical, 2018, *Countries of the world*. Available at: https://photius.com/rankings/2018/economy/population_below_poverty_line_2018_1.html, Access on: 29.06.2019.

¹⁵ Country economy, Available at: <https://countryeconomy.com/deficit/kiribati>, Access on: 29.06.2019.

¹⁶ Tripti S., 2017, *What are the causes of poverty in Kiribati?*, The borgen project. Available at: <https://borgenproject.org/causes-of-poverty-in-kiribati/>, Access on: 29.06.2019.

¹⁷ Poverty persists in Libya despite oil riches, 2011, *The national world*, Available at: <https://www.thenational.ae/world/africa/poverty-persists-in-libya-despite-oil-riches-1.384738>, Access on: 29.06.2019.

¹⁸ 4 billion people worldwide are left without social protection, 2017, *ILO*, Available at: https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_601903/lang-en/index.htm, Access on: 29.06.2019.

While many countries have come a long way in strengthening their social protection systems, major efforts are still must be taken to ensure that the right to social protection becomes a reality for all. And the main problem consists in an absence of the worked out programs for people protection. The weak state budgets and low budgets implementation execution became a major concern across all social protection programs around the world. Even the high indicators of GDP show an existing possibility for increasing people protection, but the current situation reflects the opposite results. The social progress index (SPI) (Speiser, 2015)¹⁹, created by Michael E. Porter showed that countries with similar levels of GDP can have very different levels of social progress. The highest levels in 2018 took the well developed countries and the lowest ones – countries with poor economies (fig.5).

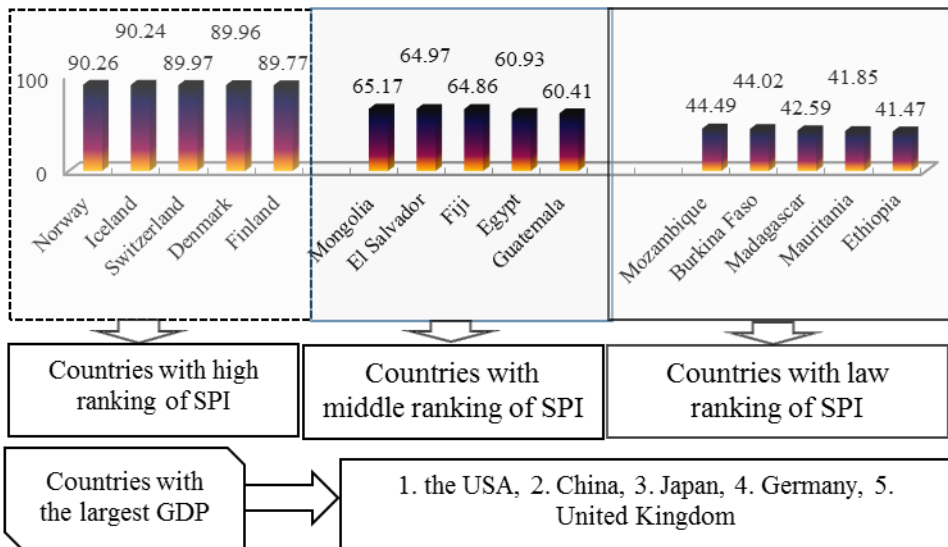


Figure 5. SPI rankings – low, middle and high countries groups (Social progress²⁰, 2018; Statistics Times, 2018²¹)

¹⁹ Speiser M., *The 16 most socially advanced countries in the world*, WEF, Available at: <https://www.weforum.org/agenda/2015/04/the-16-most-socially-advanced-countries-in-the-world/>, Access on: 30.06.2019.

²⁰ 2018 social progress index. Executive summary, (2018), *The Social Progress Imperative* Available at:

<https://www.socialprogress.org/assets/downloads/resources/2018/2018-Social-Progress-Index-Exec-Summary.pdf>, Access on: 30.06.2019.

²¹ List of Countries by GDP (Nominal), 2018, *Statistics Times*, Available at: <http://statisticstimes.com/economy/countries-by-gdp.php>, Access on: 30.06.2019

Figure 5 shows the levels of requirements satisfaction of different social groups as the number of: poor households receiving cash transfers, households receiving food assistance, people with disability accessing rehabilitation services, children received educational support, grants for social development programs, donations for medical treatment programs and people received minimum package of social services.

Comparing countries with the highest budget expenditures on social protection and list of countries with the highest GDP, there must be made an inference that level of citizens' protection does not depend directly from GDP and budget revenues. There also could not be find the correlation between a country's wealth and the share of the budget expenditures for social protection. In the European countries (Eurostat, 2018)²² the ratio of government social protection expenditure to GDP varied from less than 10% in Ireland (9.9%) to over a quarter in Finland (25.6%). Meanwhile, Finland, France, Denmark, Austria, Italy, Greece, Sweden and Belgium devoted at least 20% of GDP to social protection, but Ireland, Lithuania, Romania, Latvia, Malta, the Czech Republic and Bulgaria, each spent less than 13% of GDP on social protection.

The most value elements in social protection system for many countries are healthcare and pensions. Each of areas has required the real increases in budget expenditures during many years.

State and social budgets: empirical results

We checked time series characteristics of the state budgets expenditures of many countries on social protection in contrast with the level of GDP. Most budget expenditures for social protection are directed for such aims as: family and children care, pensions and old people help, survivors, sickness, disability and unemployment decreasing. But only a few government institutions in many countries, involved in budget process, can evaluate a true amount of financial funds necessary for satisfaction the basic people needs.

As there was mentioned above, most of the world countries have the state budgets which accumulate revenue and distribute financial resources between state programs and considerable percentage of population from different local territories get them. Herewith, the budget policy is not well settled in many countries. At first, institutions involved in the budget process, must recognize a social protection as a **human right. And these rights have to be taken into consideration by different organizations from fiscal agencies to fiscal analysis**

²² General government expenditure in the EU in 2016, 2018, *Eurostat*, Available at: <https://ec.europa.eu/eurostat/documents/2995521/8725251/2-09032018-AP-EN.pdf/c60aed76-c37b-413e-9f99-58a8370foea6>, Access on: 30.06.2019.

subdivisions. At second, many countries need to review their state budgets Acts and budget Strategies which were developed for some suitable economic period and they were not reviewed for many years. Some of them must be also totally changed.

Currently, 596 953 577 (7,9%) of all world population live in extreme poverty (World poverty clock, 01.07.2019)²³. These dates prove again that many countries do not pay enough attention to protect their separate groups of population or budgetary policies are ineffective for some economic systems or need the special review process to correlate economic changes with demands of human rights protection in current period of time. For some countries it is necessary to review even the principals of the state budget strategy. Other countries need better social protection programs. Even low-income countries must prioritize the budget planning and choose the appropriate social protection programs. Governments also have to form a platform for other participants to take part in a budget forming process; it is the main managerial tool which allows public to be involved in the state budget execution.

In general, social protection programs are being created only taking into account an availability of financial resources for defined period of time which cover such category as social assistance for separate groups of population. But other categories belonged to social protection programs of human rights are rarely counted – social insurance to help cover people against risks and vulnerabilities, and labor market programs that generally help people secure employment in both the short- and long-term (Santos, 2016)²⁴. This element of managerial tools is protective measures from future economic risk that might be a danger for many people.

It is necessary to stress that many famous scientists tried to solve problematic aspects and nuance on comparison and relationship between government social spending and confidence of people in their human rights (Haile and Niño-Zarazúa, 2017, Spilimbergo and Wachtenheim, 1998; Filmer and Pritchett, 1999; Dreher, Nunnenkamp and Thiele, 2008)²⁵; other researches proved that social spending does positively impact on welfare outcomes of societies – Baldacci, Clements, Gupta and

²³ World poverty clock, 2019, Available at: <https://worldpoverty.io/index.html>, Access on: 30.06.2019.

²⁴ Santos, L.A., 2016, *Why countries need better social protection programs – rich or not*, Devex, Available at: <https://www.devex.com/news/why-countries-need-better-social-protection-programs-rich-or-not-88543>, Access on: 30.06.2019.

²⁵ Haile, F. and Niño-Zarazúa, M., 2017, *Does Social Spending Improve Welfare in Low-income and Middle-income Countries?* Wiley online library. Available at: <https://onlinelibrary.wiley.com/doi/full/10.1002/jid.3326>, Access on: 30.06.2019.

Cui, 2008. To modern scientists could be attributed Rajkumar and Swaroop, 2008; Rodrik, Subramanian and Trebbi, 2004. But rational correlation between government spending on social protection and national welfare was not completely explained. The main reasons lie in: a weak possibility for prediction of financial amount for social needs covering, ineffectiveness of social spending, limited dates, influential role of bureaucratic institutions on budgeting process, different social priorities, absence of social policy on human development, different perception of basic consumption necessity, corruption aspect and vulnerability to foreign factors.

Creation of the social budget is the main possible decision for human rights protection. It could be parallel to the state budget – a document which describes in details counted sum of financial resources necessary for satisfaction of basic citizens needs in full to prevent increasing of a poverty level. The social welfare budget will play a role of an aggregator in accumulation process of financial funds for overcoming the level of poverty. As a result of novation governments have the possibility to expect and conduct the structural changes in all fiscal and budget policies. The main task of such novation is creation of social welfare Fund. So, the social budget also can be an appropriate tool in the effective management by state budgeting policy.

Another factor which has the direct influence on human right protection is a country's economic structure which is reflected in the share of budget expenditures for social protection in GDP. Budgetary policy of each country has been elaborating for many years and requirements to change some components also must take some period of time including all procedures. A new budget needs using sophisticated econometric methods for calculation the necessary financial resources. It must be counted a widely known fact that each budget can not satisfy all requirements of separate groups of population. Appropriate decision to this task could be a share of social protection from the state budget to the local budgets partly and granting the local institutions by possibilities to manifest own initiatives concerning development the new programs and searching available sources of financing planned actions to protect social needs of citizens in context of providing the human rights.

Almost all state budgets are formed on basis of financial indicators and current evaluation of economic situation. So, people are protected partly only in current period of time. State budgets have absence of such element as capital accumulation for future protection from economic risks. Managerial tools which include fiscal policy, creation of platform for other social participants and parallel social budgets (or social insurance Funds) can minimize and prevent population of separate country from increasing

level of poverty. A lot of scientific studies were focused on short-term revenue forecasts supported by historic growth trends without possible long-term prediction taking into account economic uncertainty.

Summary

While the state budget of each country accumulates and allocates financial resources to implement the necessary programs for social protection, the considerable share of the world population lives below the line of poverty. And this proportion has the fluctuation character. Scientific researches, dedicated to solve problematic gaps in correlation between country welfare and budget expenditures for social protection of basic human rights, show different results. According to economic theory, countries with the high income should distribute a larger portion of revenues on social protection programs than countries with the middle and lower middle income levels. It is correct assumption to seek the correlation between the state expenditures for social protection and the rate of GDP. Obtain result proves a theoretical approach partly, as countries with the largest deficit have the lowest level of citizens' incomes and a threat of the considerable level of poverty and countries with the high level of national welfare do not distribute enough financial resources to prevent unprotected human basic rights. Many countries with the middle income level spend more finance for social protection than richer countries because of the absence in economic growth priorities. Redirection, reformatting or creation of the parallel social budget is the main approach to possible solutions of the defined task.

It would be useful for future studies to elaborate theoretical and methodical backgrounds, principals and approaches in creation **Performance Management and Spending Transparency** Department which should be organized as control organ for the state budget performance. Simultaneously scientific studies must be conducted in the sphere of improving the state revenue forecasting methods.

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ECO-PRAGMATICS: THE STATE OF THE ART

Nataliia Kravchenko*,

nkravchenko@outlook.com

Tetiana Pasternak**,

tanya.pasternak@gmail.com

Tetiana Davydova***

tatianadavydova@i.ua

Abstract: *The paper focuses on the current state of research in the field of eco-pragmatics as the interdisciplinary branch of ecolinguistics, which studies multifaceted pragmatic devices of eco-values' manifestation. Based on the epideictic discourse the study has reached two major groups of findings. First, eco-pragmatic devices are rested on two types of eco-centric values. The first ones, represented by concepts of "solidarity" and "compassion", rely on the positive politeness strategies of showing concern, accepting conditions and desires of others as well as the maxims of generosity, modesty and approbation. The second type of values, embodied by the concepts of "non-imposition" and "deference", are manifested by the negative politeness strategies of keeping politically correct "face", creating positive and comforting atmosphere for interaction, showing respect to others' freedom of opinion as well as the maxim of tact and the conversational implicature to mitigate "dispreferred" information. Second, positive politeness pragmatics is based on linguistic markers of empathy, emotional involvement, in-group identity, "encouraging" directives and other types of optimistically connoted speech acts. Negative politeness pragmatics relies on the means of mitigation, apologizing, passivation, nominalization, and other means of indirectness aimed at enhancing the audience's face at any cost even at the expense of the speaker's own "face".*

Keywords: *eco-centrism, eco-linguistics, eco-pragmatic strategies, epideictic (rhetoric) discourse*

* **Dr. in Philology, Full Professor, Kyiv National Linguistic University, Kyiv.**

****Associate Professor, National Academy of Security Service of Ukraine, Kyiv.**

*** **PhD. in Philology, Sumy State Teacher Training University named after A.S.Makarenko, Sumy.**

Introduction

The development of modern scientific thought inevitably moves towards the ecologization of human consciousness. There is a gradual transition from the anthropocentric model of scientific research, at the center of which was a person as a measure and criterion of values in relation to other objects of study, to the ecologization of all aspects of human existence. The ecologization of scientific knowledge is the natural process in the formation of ecological mindset that means the deliberate correlation of human activities with the laws of nature.

Withing eco-centric approach the human does not appear as “the owner” or “the ruler” of nature but its full-fledged coexistent. Thus, ecocentric consciousness presupposes the freedom from hierarchical world order in favor of its diversity and harmonious coexistence of all its variants; development of a new ethic of “non-dominance” and “ethics of care”; reevaluation of nature and the earth, belief in the “wisdom of natural life”; concern for environmental justice; enlightenment.

One of the key impetuses for the formation and development of eco-centric sciences and practices like eco-economics (van den Bergh¹, Cato², Schmidt³, Jacobs⁴, Yablokov⁵), ecopolitics (Wall⁶, Burchell⁷, Mulvaney⁸, Leiss⁹); ecolinguistics (Stibbe¹⁰, Harré¹¹) and others was the emerging “ecological” crisis in society, as a result of which the axiology of nature protection arose that contradicted the anthropocentric worldview. The

¹ Jeroen C.J.M. van den Bergh, *Ecological Economics: Themes, Approaches, and Differences with Environmental Economics*, *Regional Environmental Change*, 2(1), 2001, pp. 13-23.

² Scott Cato, M., *Green Economics*. Earthscan, London, 2009, pp. 1-211.

³ Schmidt, C., *On Economization and Ecologization as Civilizing Processes*. *Environmental Values* 2, 1, 1993, pp. 33-46.

⁴ Jacobs, M., *The Green Economy: environment, sustainable development, and the politics of the future*. London. 1991, pp. 1-287.

⁵ Yablokov, A.V., Ostroumov, S.A., 1991, *Need for Ecologization of Society's Activities. Conservation of Living Nature and Resources*. Springer, Berlin, Heidelberg, pp. 157-184.

⁶ Wall, Derek, *The No-nonsense Guide to Green Politics*. *New Internationalist*, 2010, p. 132.

⁷ Burchell, Jon, *The Evolution of Green Politics: Development and Change Within European Green Parties*. Earthscan, 2002, pp. 1-173

⁸ Mulvaney, Dustin, *Green Politics, An A-to-Z Guide*. SAGE Publications, 2011, p. 536.

⁹ Leiss, W., *The Limits to Satisfaction*. London, 1976, p. 160.

¹⁰ Stibbe, Arran, *Ecolinguistics: language, ecology and the stories we live by*. London: Routledge, 2015, p. 210.

¹¹ Harré, R., Brockmeier, J., Mühlhäusler, P., *Greenspeak: a Study of Environmental Discourse*. London: Sage, 1999.

principles of ecological ethics aimed at human survival turned out to be much more relevant than the ideas of anthropocentrism. Such principles are aimed at developing new value priorities and reshaping common human activities from ecological or ecolinguistic point of view.

In the framework of ecolinguistics over the last years various ecocentric fields of study have arisen such as ecosemiotics (Wąsik¹²; Frayne¹³; Zhang & Lin¹⁴; Maran & Kull¹⁵; Lundy¹⁶; Nöth¹⁷), eco-discourse studies (Alexander & Stibbe¹⁸, Yuniawan¹⁹ et al., Wu²⁰), ecopoetics (Ronda²¹, Wells²², Zhykharieva²³), etc. Several years ago, a new ecocentric direction – eco-pragmatics was introduced into the scope of linguistic research, designating its focus of research as the mechanisms of functioning of discourses in terms of eco-values, eco-pragmatic strategies

¹² Wąsik, Zdzisław, Wąsik, Elżbieta, A report on the conference “Ecosemiotic Paradigm for Nature and Culture”. *Sign Systems Studies*. 46, 2018, pp. 617-629.

¹³ Frayne, Craig, An Ecosemiotic Critique of Heidegger’s Concept of Enframing in advance. *Environmental Philosophy*. 15 (2). 2018, pp. 213-236.

¹⁴ Zhang, Ying & Lin, Wenjuan, *Study on Ecosemiotics from Russia to China*. Conference: Proceedings of the 6th International Conference on Education, Language, Art and Inter-cultural Communication (ICELAIC 2019). Available at: <https://www.atlantispress.com/proceedings/icelaic-19/125934351>

¹⁵ Maran, T., & Kull, K., Ecosemiotics: Main principles and current developments. *Geografiska Annaler: Series B, Human Geography*. 96(1). 2014, pp. 41-50.

¹⁶ Lundy, J., Ecosemiotics and the Creation of Metaphor. In *Semiotics*. 1997, pp. 288-299.

¹⁷ Nöth, W., Ecosemiotics and the semiotics of nature. *Sign Systems Studies*. 29(1), 2001, pp. 71-81.

¹⁸ Alexander, R., Stibbe, A., From the analysis of ecological discourse to the ecological analysis of discourse. *Language Sciences*, 41 (A), 2014. pp. 104-110.

¹⁹ Yuniawan T., et al., The Study of Critical Eco-Linguistic in Green Discourse: Prospective Eco-Linguistic Analysis. *Humaniora*, 29, 2017, pp. 291-300.

²⁰ Wu, Y., Ecological Discourse Analysis. *Advances in Social Science, Education and Humanities Research (ASSEHR)*, vol. 181, 2018, pp. 646-649.

²¹ Ronda, M., Affect and Environment in Contemporary Ecopoetics. In A. Houen (Ed.), *Affect and Literature* (Cambridge Critical Concepts, 2020, pp. 337-354). Cambridge: Cambridge University Press.

²² Wells, Grace, Culture and Nature: The Roots of Ecopoetics. *Women’s Studies*, 47(2), 2018, pp. 147-159.

²³ Zhykharieva, O.O., The structure of English-language biblical ecodiscourse. *Science and Education a New Dimension. Philology*. Vol. 38(138), 2017, pp. 72-76.

and tactics, as well as the means of their realization (Kravchenko²⁴, Kravchenko & Pasternak²⁵, Pasternak²⁶).

At the same time, the conclusions and results of eco-pragmatic research are based mainly on the material of written institutional discourse, which, expectedly, limits the verification base and the objectivity of scientific findings. The current relevance of this study is to overcome the abovementioned restrictions by expanding the evidence base with a new direction by attracting spoken speech, in particular, epideictic (rhetoric) discourse. Accordingly, the purpose of the article is to identify and describe eco-pragmatic strategies of epideictic (rhetoric) communication, defining specific features of their implementation.

Data and methods

The analyzed data have been collected from epideictic (rhetoric) discourses with the involvement of certain presentation speeches. The corpus of material has been selected on the basis of availability of (a) linguistic markers of emotional involvement, empathy, “encouraging”, positive evaluation by the addressee, in-group identity and “common ground” creating associated with eco-centric values of “solidarity”, “unity” and “compassion” with “the other”; as well as (b) the means of mitigation, hedging and keeping politically correct face, associated with the concepts of “non-imposition” and recognition of the right of “others” to be different.

With the view of comprehensive study, the material has been divided into three main groups, respectively, based on such conceptual-target criteria of the selected speeches as: (a) acceptance and generosity; (b) correctness and cooperation; and (c) optimization of interaction.

The integrative research methodology relies on the set research methods: the Face, Politeness and the Politeness Principle theory to identify and specify the strategies and maxims of politeness associated with eco-centric pragmatics (Arundale²⁷; Brown and Levinson²⁸; Brown²⁹;

²⁴ Kravchenko, N.K., 2018, Linguistic ecocentrism as a metadiscursive principle of functional paradigm. *Visnyk Kyivskoho natsionalnoho linhvystychnoho universytetu. Serii: Filolohiia*. 21(2).pp. 44-51. Available at:

http://nbuv.gov.ua/UJRN/Vknl_u_fil_2018_21_2_6

²⁵ Kravchenko, N., Pasternak, T., Institutional eco-pragmatics vs. anthropo-pragmatics: problems, challenges, research perspectives. *Cogito*. Vol. XII (2), 2020, pp. 24-39.

²⁶ Pasternak, T.A., *Ecopragmatic dimension of politeness strategies in contemporary discourse studies*. International journal of philology. Kyiv, NUBIP. 10(3). 2019, pp. 80-88.

²⁷ Arundale, R.B., Face as relational and interactional: A communication framework for research on face, facework, and politeness. *Journal of politeness research*, vol.2, no. 2, 2006, pp. 193-216.

Leech³⁰, Leech³¹); explanatory tools within the framework of Grice's and neo-Gricean inferential pragmatics to infer discursive implicatures aimed at mitigating or eliminating face-threatening effects (Grice³²; Bach³³); analysis provided by speech acts theory (Asher & Lascarides³⁴; Kravchenko³⁵, Kravchenko³⁶; Levinson³⁷; Searle & Vanderveken³⁸) to identify indirect speech acts in the function of eco-pragmatic devices, enhanced with the analysis based on the concept of pragmatic attraction and correlation between different pragmatic phenomena, integrated by the single cognitive (here – eco-values') basis (Kravchenko & Blidchenko-Naiko³⁹; Kravchenko & Zhykharieva⁴⁰; Kravchenko & Pasternak⁴¹; Kravchenko & Pasternak⁴²; Kravchenko & Pasternak⁴³).

²⁸ Brown, P., & Levinson, S.C., Politeness: Some Universals in Language Use. In D. Archer, & P. Grundy (Eds.) *The Pragmatics Reader*. London: Routledge. 2011, pp. 283-304.

²⁹ Brown, P., Politeness and Impoliteness. In Y. Huang (Ed.), *Oxford Handbook of Pragmatics*. Oxford: Oxford University Press. 2017, pp. 383-399.

³⁰ Leech, G., *The Pragmatics of Politeness*. Jericho: Oxford University Press, 2014.

³¹ Leech, G., 2016, *Principles of Pragmatics*. London & New York: Longman. Available at: <https://doi.org/10.4324/9781315835976>

³² Grice, H.P., Logic and conversation. In: P. Cole and J. L. Morgan, eds. *Syntax and semantics 3*. New York: Academic Press, 1975, pp. 41-58.

³³ Bach, K., Saying, Meaning, and Implicating. In K. Allan, & K. M. Jaszczolt (Eds.), *The Cambridge Handbook of Pragmatics*. New York: Cambridge University Press. 2012, pp. 47-68.

³⁴ Asher, N., Lascarides, A. Indirect Speech Acts. *Synthese*. 128, 2001, pp. 183–228.

³⁵ Kravchenko, N., Illocution of direct speech acts via conventional implicature and semantic presupposition. *Lege artis. Language yesterday, today, tomorrow. The journal of University of SS Cyril and Methodius in Trnava*, vol. II, no. 1, 2017c, pp. 128-168.

³⁶ Kravchenko, N., Indirect speech acts' via conversational implicatures and pragmatic presuppositions. *Cognition, communication, discourse. International on-line journal*, no. 14, 2017a, pp. 54-66.

³⁷ Levinson, S.C., Speech Acts. In: Y. Huang (Ed.), *The Oxford Handbook of Pragmatics*. Oxford: Oxford University Press. 2017, pp. 199-216.

³⁸ Searle, J.R., & Vanderveken, D., *Foundations of Illocutionary Logic*. Cambridge: Cambridge University Press, 1985.

³⁹ Kravchenko, N. & Blidchenko-Naiko, V., Multifaceted Linguistic Pragmatics of Justification (Ukrainian Speech-Based Study). *Open Journal of Modern Linguistics*, 10, 2020, pp. 11-22.

⁴⁰ Kravchenko, N. & Zhykharieva, O., Sign-like Pragmatic Devices: pro et contra. *Studies about languages*. no. 3, 2020, pp. 71-84.

⁴¹ Kravchenko, N.K. & Pasternak, T.A., 2018a, Pragmatic attraction: Setting the problem and introduction of the term. *Visnyk KNLU. Philology*, vol. 1, no. 17, pp. 18-26.

⁴² Kravchenko, N. & Pasternak, T., Claim for identity or personality face: The Oscar winners' dilemma. *Lege artis. Language yesterday, today, tomorrow. The journal of University of SS Cyril and Methodius in Trnava*, vol. 1, no. III, 2018b, pp. 142-178.

Eco-pragmatic strategies of epideictic (rhetoric) interaction

We have supposed that eco-pragmatic values are realized by means of certain eco-pragmatic strategies in various types of communication – written, spoken, monologue, dialogical, institutional, and conversational due to these values' prototypical nature. Since the paper does not aim at analyzing all these types of communication, it will focus on epideictic (rhetoric) discourse, which is a spoken, mostly monologue form of communication, to confirm and illustrate our hypothesis.

Rhetoric eco-pragmatics comprises those universal-typological strategies and maxims of politeness, as well as the maxims of cooperation and conversational relevancy that overcome ego-centrism in favour of eco-centric interaction by sacrificing the Speaker's personal and communicative interests in favor of his / her audience's needs and comfort (figure 1):

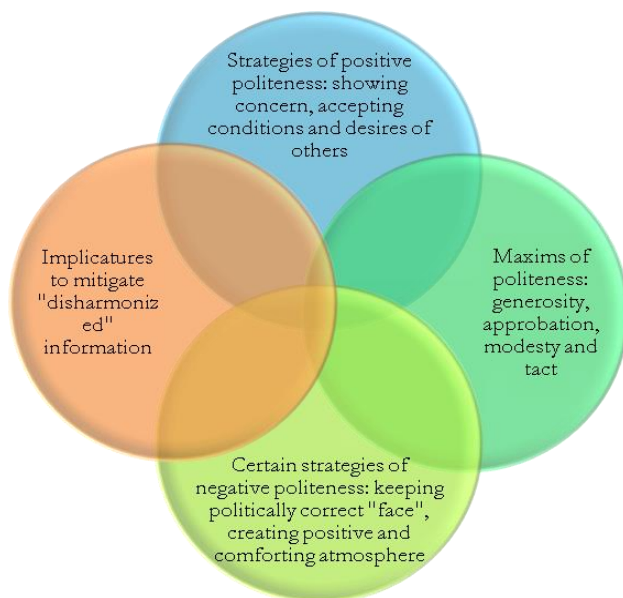


Figure 1. *Eco-pragmatic strategies in Epideictic (Rhetoric) Discourse*

The findings have shown that the most eco-centric (in terms of harmonizing the ecology of relations among people) are the strategies of positive politeness (as the politeness of trust and unity) and the part of the strategies of negative politeness associated with the concept of “respect”

⁴³ Kravchenko, N. & Pasternak, T., Multifacet pragmatics of Russian post-soviet jokes. In: A. Sover, ed. *The languages of humor: Jokes caricatures and slapstick*. Bloomsbury Publishing Plc., 2018c, pp. 120-136.

and “non imposition”, while the other negative politeness strategies of “distancing” and “protecting own autonomy” remain inherently anthropocentric.

Eco-pragmatic strategies of positive politeness

The strategies of positive politeness basically embody the eco-centric value of “solidarity”, “unity”, “compassion” and meaningful participation as exemplified by 1a and 1b.

(1a). “But know this, America – they will be met; And so to all other peoples and governments who are watching today, from the grandest capitals to the small village where my father was born: know that America is a friend of each nation and every man, woman, and child who seeks a future of peace and dignity, and we are ready to lead once more; We, the people, still believe that every citizen deserves a basic measure of security and dignity; My fellow Americans, the oath I have sworn before you today ... was an oath to God and country, not party or faction; You and I, as citizens, have the obligation to shape the debates of our time; Let us, each of us, now embrace with solemn duty and awesome joy what is our lasting birthright. With common effort and common purpose, with passion and dedication, let us answer the call of history and carry into an uncertain future that precious light of freedom; The time has come to reaffirm our enduring spirit; to choose our better history; to carry forward that precious gift, that noble idea, passed on from generation to generation: the God-given promise that all are equal, all are free, and all deserve a chance to pursue their full measure of happiness; We will harness the sun and the winds and the soil to fuel our cars and run our factories” (Obama⁴⁴);

(1b). “We will not fail. Our country will thrive and prosper again; You will never be ignored again” (Trump⁴⁵).

Using the strategy of positive politeness, the Speaker shows his concern, admits his Hearers’ conditions and desires by employing:

- inclusive personal pronouns “we” and “our” as in-group identity markers to unite the speaker with his audience; the pronoun “you” in combination with “I” denotes the community, embodied by the concept of “citizens”; the possessive pronouns “my” employed in transposed function (that is with regard to someone not belonging to the speaker), which gives to the statement the emphatic positive connotation of emotional

⁴⁴ Obama, B., 2009, *Obama inaugural address*. Available at: <http://obamaspeeches.com/>

⁴⁵ Trump, D., *President Trump’s inaugural address*. Special series. Available at: <https://www.npr.org/2017/01/20/510629447/watch-live-president-trumps-inauguration-ceremony>

connection between the speaker and his audience – “We, the people; our generation’s task; You and I, as citizens; My fellow Americans”.

- metonymic in-group identity address, in particular in combination with indirect commissives: “But know this, America – they will be met” (here the Speaker (president Barack Obama) promises to overcome numerous real and serious challenges addressing all citizens of the USA), “And so to all other peoples and governments ... know that America is a friend of each nation”;

- “encouraging” directives, including both parties involved: “Let us, each of us, now embrace”;

- lexical markers of “common ground”: both lexicalized and implicated by reference to the consolidating universal values of justice, equality, dignity, freedom, etc.: “With common effort and common purpose, with passion and dedication”; “all are equal, all are free, and all deserve a chance to pursue their full measure of happiness”;

- optimistically connoted indirect commissives: “We will not fail. Our country will thrive and prosper again; You will never be ignored again” This speech act is deprived of the formal-structural markers of commissive illocutionary force. However, it meets a set of felicity conditions inherent to commissives: the condition of propositional content relating to the future act (thrice repetitive “will”); the condition of possible act’s performance by the Speaker (is presupposed by the audience background knowledge about his status as the President of the country); the condition of sincerity emphasized by (a) inclusive pronouns “we” and “our”, implying agreement between the Speaker and the audience (that is, the authorities and the citizens of the country) and postulating the right of the President to speak on behalf of the people; (b) inclusive and generalized pronoun “you”, simulating the personal address; emotionally connotive abstract words “thrive”, “prosper”, “be ignored” (emphasized by “never”) appealing to the audience’s feelings;

- numerous expressive means evoking the feelings of the common emotional elation, i.e. syntactical stylistic devices based on the redundancy of the syntactical pattern (ordinary repetition: “all are equal”, “all are free”, “and all deserve”; enumeration, polysyndeton: “We will harness the sun and the winds and the soil”, emphatic constructions: “to all other peoples and governments who are watching today”), as well as figures of combination (the synonyms-specifiers “With common effort and common purpose, with passion and dedication”; “to reaffirm, to choose, to carry forward”; antithesis – both foregrounded by the antonymic lexemes “from the grandest capitals to the small village” and context bound “an oath to God and country, not party or faction”), figures of substitution (epithets

“solemn duty and awesome joy”, “precious light of freedom”, “enduring spirit”, “precious gift, noble idea”), etc.

As a rule, the eco-pragmatic interaction is characterized by the simultaneous incorporation of the few positive politeness markers: “The thing that counts the most with me is the friendships and the love and the sheer joy we have shared making movies together, my friends.” The cited example contains the means of the establishing the common ground (references to the previously shared feelings while making movies); indexing solidarity (adverb “together”) as well as informal appeal (“my friends”).

Eco-pragmatic strategies of negative politeness

Together with the positive politeness means, the epideictic acceptance speeches contain certain eco-pragmatic strategies of negative politeness, primarily associated with the concepts of “non-imposition” (of the own opinion on the audience), recognition of the right of “the other” to be different, acceptance of the other in all the diversity of his/her personal characteristics, needs and interests as exemplified by 2a.

(2a) “I’m sorry I’m not with you tonight. My absence is out of respect for the people in my country and those of other six nations whom have been disrespected by the inhumane law that bans entry of immigrants to the U.S. Dividing the world into the ‘us’ and ‘our enemies’ categories creates fear, a deceitful justification for aggression and war. These wars prevent democracy and human rights in countries which have themselves been victims of aggression”.

In these extracts the Speaker keeps politically correct face and avoids precision, which is typical of negative politeness. Linguistically it is marked in the above snippet by:

- apologizing (“I’m sorry”);
- passivation combined with the structural complications due to the complex sentence with subordinate attributive clause (“whom have been disrespected”);
- nominalization by means of gerund (“Dividing the world into the “us” and “our enemies” categories creates fear”);
- bookish words, i.e. the empty signifiers with an abstract meaning: (“inhumane law”, “a deceitful justification”, “categories”, “victims of aggression”, “prevent democracy”).

In terms of conversational analysis, the negative politeness (embodied by concepts of non-imposition and respect of others’ freedom of opinion)

correlates with a tactic of softening the non-preferential speech moves as in (2b)

(2b) “Let begin by saying that although this has been billed as an anti-war rally, I stand before you as someone who is not opposed to war in all circumstances” (Obama⁴⁶).

Those parts of “negative politeness” strategies, which embody the concept of “distance” (which, in our opinion, differ from the negative politeness concepts of not-imposition and respect of others’ freedom of opinion), remains anthropocentric since it defends the Speaker’s face by implicitly shifting the focus of responsibility on others. In particular, in (2c) the Speaker defends his own face by justifying and transferring the responsibility for security and prosperity concerns to certain “forces”:

(2c) “A shrinking world, growing inequality, demographic change, and the specter of terrorism. These forces haven’t just tested our security and our prosperity, but are testing our democracy as well” (Obama⁴⁷).

Maxims of politeness

In addition to the politeness strategies the eco-pragmatic means in epideictic discourse involve the maxims of politeness. For example, in the acceptance speeches the Speakers follow the generosity maxim, confirming the importance of the other person’s talent and contribution while sacrificing in such a way their own most valuable achievements as in (3a) and (3b)

(3a) “This Oscar, this belongs to all of those people around the world battling ALS. It belongs to one exceptional family: Stephen, Jane, Jonathan and the Hawking children”;

(3b) “And I’m only here really because of the talents and good will of so many people that are impossible to name, but most of all Kenneth Lonergan, who made this part and without this part and without his writing I wouldn’t be here for sure”.

Apart from the generosity maxim the eco-centric rhetoric communication includes the maxims of:

- approbation referring to praising or complimenting someone “Tom, your talent on screen can only be surpassed by your friendship off screen”;
- sympathy, expressing love, understanding, empathy and supportiveness for the other person “I love you dearly”, “They create empathy between “us” and “others”, an empathy which we need today more than ever”;

⁴⁶ Obama, B., 2002, *Speech opposing the war in Iraq at Federal Plaza*. Available at: <https://www.americanrhetoric.com/barackobamaspeeches.htm>

⁴⁷ Obama, B., *President Barack Obama’s Farewell Speech*. Available at: <http://time.com/4631007/president-obama-farewell-speech-transcript/>

- tact “If I may be so honored to have all the female nominees in every category stand with me in this room tonight”. (In this case the maxim is aimed at strengthening the face of those who were nominated for an Oscar award, but were not awarded);

- modesty: “I don’t know what I did in this life to deserve all this. I’m just a girl from a trailer park who had a dream. I never thought this would ever happen, let alone be nominated”. The Speaker downplays the significance of her contribution letting others feel or share pride for the achievement.

Due to their common conceptual background the maxim of modesty is very close to the maxims of generosity and approbation, since depreciating their own compliment or praise is very often accompanied by the recognition of the input of others:

(4a) “And I salute her (Elizabeth Windsor) courage and her consistency and I thank her, because if it wasn't for her, I most, most certainly would not be here;

(4b) “I’m only here, really, because of all the talents and goodwill of so many people; they’re impossible to name. But most of all Kenneth Lonergan, who made this part, and without this part and without his writing I wouldn’t be here for sure”.

The identified maxims and their corresponding strategy of sacrificing own interests in favor of others embody the eco-centric values of unselfishness and justice.

Implicatures and mitigation

The analysis undertaken by our research has shown that in addition to the politeness strategies and maxims, the eco-pragmatic means sometimes involve the conversational maxims’ flouting to mitigate “disharmonized” information through reporting it by implicature, triggered by the maxims’ violation as in (5a).

(5a). “I pray that we can find and build the government that we deserve. And the ones that live in this country, who are part of the latest generation of immigrants in this country, I just pray that they can be treated with the same dignity and respect of the ones who came before and built this incredible immigrant nation.”

In these extracts a particularized conversational implicature (about the latest generation of immigrants in America being suffered the discriminatory treatment) is triggered by a violation of the maxim of the quantity of information, since it is unclear why the awardee must pray that the immigrants can be treated with the dignity, etc. In addition to the functions of political correctness, the implicatures in the epideictic

speeches constitute the tactics of the non-imposition strategy thus correlating with the negative politeness of “non imposition”.

In turn, these pragmatic phenomena often correlate with indirect speech acts, and in the conversational-analytical perspective, with the strategy of creating a positive, comfortable atmosphere, realized by tactic of softening the non-preferential speech move.

In the semiotic framework, the accumulation of different pragmatic means can be iconically motivated by the specifics of a designated situation: the more delicate and vulnerable it is, the more pragmatically (and structurally) complex the utterances referred to it are.

In the cognitive-pragmatic framework, the correlation of various pragmatic phenomena and devices (Kravchenko⁴⁸; Kravchenko⁴⁹; Kravchenko⁵⁰; Kravchenko and Pasternak⁵¹) relies on their common cognitive basis (Kravchenko⁵²; Kravchenko⁵³; Kravchenko & Pasternak⁵⁴; Kravchenko & Pasternak⁵⁵; Kravchenko and Pasternak⁵⁶).

⁴⁸ Kravchenko, N., Cognitive-conceptual properties of dialogue in their formal-conversational and pragmatic manifestations. *Cognition, communication, discourse. International on-line journal*, no. 11, 2015, pp. 45-54. Available at: <https://sites.google.com/site/cognitiondiscourse/o-zurnale>

⁴⁹ Kravchenko, N., Indirect speech acts' via conversational implicatures and pragmatic presuppositions. *Cognition, communication, discourse. International on-line journal*, no. 14, 2017a, pp. 54-66. Available at:

<https://sites.google.com/site/cognitiondiscourse/o-zurnale>

⁵⁰ Kravchenko, N.K., 2017b, *Discourse and discourse analysis: A brief encyclopedia*. Kyiv: Interservis.

⁵¹ Kravchenko, N. & Pasternak, T., Politeness strategies via speech acts and conversational implicatures. *Science and education: A new dimension. Philology*, vol. IV, no. 105, 2016, pp. 60-64.

⁵² Kravchenko, N., Cognitive-conceptual properties of dialogue in their formal-conversational and pragmatic manifestations. *Cognition, communication, discourse. International on-line journal*, no. 11, 2015, pp. 45-54. Available at: <https://sites.google.com/site/cognitiondiscourse/o-zurnale>

⁵³ Kravchenko, N., Illocution of direct speech acts via conventional implicature and semantic presupposition. *Lege artis. Language yesterday, today, tomorrow. The journal of University of SS Cyril and Methodius in Trnava*, vol. II, no. 1, 2017c, pp. 128-168.

⁵⁴ Kravchenko, N.K. & Pasternak, T.A., Pragmatic attraction: Setting the problem and introduction of the term. *Visnyk KNLU. Philology*, vol. 1, no. 17, 2018a, pp. 18-26.

⁵⁵ Kravchenko, N. & Pasternak, T., Claim for identity or personality face: The Oscar winners' dilemma. *Lege artis. Language yesterday, today, tomorrow. The journal of University of SS Cyril and Methodius in Trnava*, vol. 1, no. III, 2018b, pp. 142-178.

⁵⁶ Kravchenko, N. & Pasternak, T., Multifacet pragmatics of Russian post-soviet jokes. In: A. Sover, ed. *The languages of humor: Jokes caricatures and slapstick*. Bloomsbury Publishing Plc., 2018c, pp.120-136.

Conclusion

Specific facet of eco-pragmatics research is constituted by epideictic (rhetoric) eco-pragmatics, based on two types of eco-centric values, embodied, on the one hand, by the concepts of “solidarity” and “compassion” with the addresser and, on the other hand, by the concepts of “non-imposition” and “deference” towards the the addresser.

The first type of values involves the corresponding group of pragmatic devices, which encompass the positive politeness strategies of showing concern, accepting conditions and desires of others as well as the maxims of generosity, modesty and approbation. In the linguistic framework such pragmatics manifests itself with the markers of empathy, emotional involvement, indexes of in-group identity, “encouraging” directives aimed at the audience’s emotional elation, other types of optimistically connoted speech acts, lexical markers of creating the “common ground” with the target collective addressee, reference to “shared” universal human values, means of the addressee’s positive evaluation.

The second type of eco-centric values relies on the negative politeness strategies of keeping politically correct “face”, creating positive and comforting atmosphere for communication and interaction, showing respect of others’ freedom of opinion, recognition of the right of the “others” to be different, as well as the maxim of tact and the conversational maxims’ flouting resulted in the implicature to mitigate “disharmonized” information. From the linguistic viewpoint such multifaceted pragmatic devices are provided by means of mitigating own non-preferential speech moves, apologizing, passivation, bookish words, nominalization, formal complication of the sentence structure and all other means of indirectness aimed at enhancing the audience’s face at any costs even at the expense of the speaker’s own “face”.

The common value basis explains the pragmatic attraction of different pragmatic phenomena to achieve the eco-centric communication balance.

The results of the research will enrich the knowledge about interrelations and attraction of different pragmatic phenomena based on the same value-bound cognitive basis.

It also provides methodological framework for practical implications of eco-centric pragmatic devices in optimization and harmonization of interaction in various discourses.

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THE SPECIFIC OF SYNESTHESIA IN CONTEMPORARY AMERICAN AND ENGLISH POETRY AND ITS IMPACT ON THE READER

Mykhailo Poplavskiy,*

pomm20181326@gmail.com

Yulia Rybinska,**

julialeo1619@gmail.com

Taisia Ponochovna-Rysak***

rysaktaya@ukr.net

Abstract: *The actuality of this article is to consider synesthetic constructions from the standpoint of linguistically oriented theories, in the study of their ability to be represented in the meanings of linguistic units. The purpose of this work is to investigate the linguistic features of the representation of synesthesia in contemporary English and American poetry. The methodology of the survey is based on such methods as semantic analysis, component analysis, comparative analysis, methods of comparative and contrastive linguistics. The study examines various points of view in the nature of synesthesia. Despite the fact that there are practically no statistics for this phenomenon, scientists tend to believe that this phenomenon of perception is quite common. The article explains the content of the term “synesthesia” as a linguistic-psychological phenomenon, and determines its place in the system of stylistic means and metaphor (synesthetic metaphor) as a fundamental language of poetry. The research dwells on factual material – synesthetic combinations, metaphors taken from the works of art of contemporary English and American poetry which help to reveal some patterns, similarities and differences in the representation of synesthesia and explore the use of synesthetic metaphors in poetry of English and American poets. This study shows the implicit relationship between synesthesia and poetry.*

Keywords: *synesthesia, senses, poetic synesthesia, synesthetic metaphor, linguistic units, English and American poetry.*

* Professor, Honorary Rector of Kyiv National University of Culture and Arts, Kyiv, Ukraine.

** Professor, Head of the Foreign Philology Department, Kyiv National University of Culture and Arts, Kyiv, Ukraine

*** Associate Professor, Department of Foreign Philology, Kyiv National University of Culture and Arts, Kyiv, Ukraine.

Introduction

Since the emergence of literature in the life of mankind, it became impossible to imagine our life without it. Works of art reflect the spiritual side of life of the humanity and are passed down from generation to generation. Poetry has been one of the main forms of literature.

Apparently, that more and more linguists are becoming interested in the language of poetry nowadays. The first person who brought the language of poetry to people was Aristotle. Aristotle's unfinished work on the theory of versification had the name "Poetics". In his work, the scientist argued that the main purpose of poetry is to please the reader.

The five senses responsible for a certain sphere of sensitivity – sight, hearing, smell, touch and taste are the main ways to obtain information about the world around us, which allow us to build ideas about objects and phenomena. For a long time, it has been assumed that they work independently of each other. However, modern science understands that there are perceptive mechanisms that are common to many senses.

So, this article is focused on the phenomenon of sensory perception called synesthesia. It is necessary to understand what synesthesia is and how it manifests itself.

Analysis of poetic synesthesia suggests an integrated approach to its research. Appeal to this problem is due to the fact that the study of mechanisms of the formation of synesthetic structures promotes a deeper understanding of the artistic text's specifics and identifying the characteristic features of its figurative-semantic system and structure, as well as processes of its generation and perception, which is considered extremely relevant at the present stage of the development of linguistics.

The concept 'synesthesia' refers to the most interesting linguistic phenomenon. The study of synesthesia has a long history, possibly starting in the 17th century and over a long period of study, various aspects of examining the nature of this phenomenon were developed: physiological, psychological, philosophical, artistic, historical, and philological. This article examines the works of contemporary English and American poets, presenting their use of synesthetic constructions in poems.

Although scientists understand how synesthesia develops, this phenomenon continues to be one of the most complex and poorly studied.

Synesthesia is a neurological condition in which stimulation of one sensory or cognitive pathway (for example, hearing) leads to automatic, involuntary experiences in a second sensory or cognitive pathway (such as vision). Simply put, when one sense is activated, another unrelated sense is activated at the same time. This may, for instance, take the form of hearing music and simultaneously sensing the sound as swirls or patterns of color¹.

¹ Psychology today Synesthesia. Available at:

The purpose of the article

The purpose of this work is to investigate the linguistic features of the representation of synesthesia in contemporary English and American poetry.

Main research material

In Ancient times, synesthesia was a form of perception sought after, as developed both by Pythagoras and by Aristotle. It was a degree of perception sought after for the perception of the divine. It was part of a definite aesthetics because art was supposed to permit access to synesthesia through very precise rules defined by Aristotle in his Rhetoric. Synesthesia was not an anomalous form of perception experienced by some writers only. It was supposed to be induced by certain masterpieces, thus connecting the reader's experience of synesthesia with the writer's².

The earliest recorded case of synesthesia is attributed to the Oxford University academic and philosopher John Locke, who, in 1690, made a report about a blind man who said he experienced the color scarlet when he heard the sound of a trumpet. However, there is disagreement as to whether Locke described an actual instance of synesthesia or was using a metaphor.³

However, synesthesia has fascinated psychologists since the earliest days of the 19th century, when a young Austrian doctoral student named Georg Sachs published the first case study about this unusual phenomenon. Sachs wrote of his own experiences of 'seeing' colors when hearing music, and when thinking about simple sequences such as numbers, days, and letters⁴.

The phenomenon of synesthesia is thoroughly investigated in the works of such leading scholars Baron-Cohen, Wyke & Binnie⁵, Brogaard⁶,

<https://www.psychologytoday.com/intl/basics/synesthesia#:~:text=Synesthesia%20is%20a%20neurological%20condition,activated%20at%20the%20same%20time>.

² The theory of synesthesia according to the Pythagorean tradition and Nabokov's revisiting of Pythagorean synesthesia. Available at:

https://www.researchgate.net/publication/334091168_The_theory_of_synesthesia_according_to_the_Pythagorean_tradition_and_Nabokov's_revisiting_of_Pythagorean_synesthesia

³ Synesthesia. Available at: <https://en.wikipedia.org/wiki/Synesthesia>

⁴ Simner Ju. 2018. In Reference Module in Neuroscience and Biobehavioral Psychology. Available at: <https://www.sciencedirect.com/topics/medicine-and-dentistry/synesthesia>

⁵ Baron-Cohen, S., Wyke, M.A., & Binnie, C., (1987), Hearing words and seeing colours: An experimental investigation of a case of synaesthesia. *Perception*, 16(6), 761–767. <https://doi.org/10.1068/p160761>

⁶ Brogaard, B. 2012. Color synesthesia. In *Cognition & language, encyclopedia of color science and technology*, ed. K.A. Jameson. Springer, forthcoming.

Cytowic⁷, Rich & Mattingley⁸ and others.

Undoubtly, one of the most influential modern scholars who deal with the concept “synesthesia” is Richard E. Cytowic who calls himself the “original synesthesia guru⁹ .”

What Is Synesthesia?

The word “synesthesia” comes from the Greek words: “synth” (which means “together”) and “ethesia” (which means “perception”). Synesthetes can often “see” music as colors when they hear it, and “taste” textures like “round” or “pointy” when they eat foods¹⁰.

Baron-Cohen&Harrison¹¹; Cytowic¹² consider synesthesia as a neurological condition, in which one sensory stimuli causes different sensory physical experiences as a result of perceiving one or more different senses by cross-modal association, which is automatic, involuntary, and irrepressible. In addition to being involuntary, this additional perception is regarded by the synesthete as real, often outside the body, instead of imagined in the mind’s eye.

Besides, Sydorov-Dorso¹³ notes that synesthesia is not a mental illness or pathology, although it can be a symptom of neurological disorders, but it is rather a special form of human perception. Synesthesia can be developed in a variety of ways. According to Carpenter¹⁴ for some synaesthetes, the perception of sounds, smells, tastes, or feelings of pain is accompanied by color images. Some people with synesthesia not only hear music, but also feel its touch. For some, geometric shapes have a taste, but numbers, letters and even individual words have color. There are also owners of the so-called “conceptual synesthesia” who see abstract concepts, for example, units of time, mathematical operations as forms either internally or in their environment and most synesthetes experience more than one form of the condition.

⁷ Cytowic Richard E. 2002. *Synesthesia: A Union of the Senses*. MIT Press. 394 p.

⁸ Synaesthesia: an Overview of Contemporary Findings and Controversies. Available at: <https://www.sciencedirect.com/science/article/abs/pii/S0010945208703368>

⁹ <https://twitter.com/cytowic> (08/04/2015).

¹⁰ What Is Synesthesia? Available at:

<https://www.healthline.com/health/synesthesia>

¹¹ Baron-Cohen, S., Harrison, J., Goldstein, L., and Wyke, *Coloured speech perception: Is synaesthesia what happens when modularity breaks down?* Perception, 1993, 22, 419-426.

¹² Cytowic Richard E., *Synesthesia: A Union of the Senses*. MIT Press. 2002, p. 394.

¹³ Sydorov-Dorso, A. Synesthesia – what’s this? Available at:

<http://www.synaesthesia.ru/whatis.html#4>.

¹⁴ Carpenter, S., 2001. Everyday fantasia: The world of synesthesia. March, Vol. 32, No. 3 Available at:

<https://www.apa.org/monitor/mar01/synesthesia.html>

In general, synesthesia is viewed as a perceptual phenomenon in which stimulation of one sensory or cognitive pathway leads to involuntary experiences in a second sensory or cognitive pathway. It is when you hear music, but you see shapes. Or you hear a word or a name and instantly see a color. Synesthesia is a fancy name for when you experience one of your senses through another. For example, you might hear the name “Alex” and see green. Or you might read the word “street” and taste citrus fruit. People who report a lifelong history of such experiences are known as synesthetes¹⁵.

Thus, synesthesia isn’t a disease or disorder. It won’t harm your health, and it doesn’t mean you’re mentally ill. Some studies suggest people who have it may do better on memory and intelligence tests than those who don’t. And while it may seem easy to make up, there’s proof that it’s a real condition¹⁶. It is one of the most common responses to see letters, numbers, or sounds as colors.

A person might also¹⁷:

- See or hear a word and taste food.
- See a shape and taste food.
- Hear sounds and see shapes or patterns.
- Hear sounds after you smell a certain scent.
- Hear sounds and taste food.
- Feel an object with your hands and hear a sound.
- Feel a touch when seeing someone else being touched. (This is called mirror touch.)

In this respect, it is worth mentioning, that there are several forms of synesthesia that people can possess:

- Grapheme-Color Synesthesia (the synesthete has a natural association of written letters and numerals to colors).
- Ordinal Linguistic Personification (the synesthete perceives ordered sequences such as numbers, letters, days of the week, months, etc. as having inherently distinct personality traits and gender).
- Chromesthesia (known as sound-to-color synesthesia and can simply be thought of as seeing sounds. In chromesthesia,

¹⁵ Synesthesia. Available at: <https://en.wikipedia.org/wiki/Synesthesia>

¹⁶ Synesthesia. WebMD Medical Reference Reviewed by Arefa Cassoobhoy, MD, MPH on July 02, 2020 Available at: <https://www.webmd.com/brain/what-is-synesthesia>

¹⁷ Synesthesia. WebMD Medical Reference Reviewed by Arefa Cassoobhoy, MD, MPH on July 02, 2020 Available at: <https://www.webmd.com/brain/what-is-synesthesia>

sounds heard by the synesthete are associated or perceived as particular colors)¹⁸.

- Spatial Sequence Synesthesia (sometimes referred to as visio-spatial synesthesia and is one of the most intriguing types of synesthesia. In it, sequences).
- Mirror-Touch Synesthesia (the synesthete feels the same sensations as someone else. The mirror-touch sensation can be activated by real-life, in-person situations or by watching someone on a screen).
- Auditory-Tactile Synesthesia (occurs when sounds heard by the synesthete produce a tactile sensation in certain areas inside and outside of the body).
- Number Form Synesthesia (the synesthete involuntarily sees a mental map of any group of numbers they think about).
- Lexical-Gustatory (And Sound-Gustatory) Synesthesia (a person who has lexical-gustatory synesthesia senses words (both spoken and written) as distinct tastes, smells, and textures in the mouth or senses the tastes in their head).

Hence, each form of synesthesia can interact with different senses and affect people differently. Additionally, two people who have the same type of synesthesia will have varying experiences as well. For example, they both see colors in response to other stimuli, but those colors won't necessarily be the same between them¹⁹.

It is obvious that the phenomenon of synesthesia is of great interest for modern researches but it is still not disclosed enough in linguistics. Thus, this article aims to examine linguistic peculiarities of synesthesia in contemporary American and English poetry.

Therefore, synesthesia is of scientific interest not only in psychology and physiology but in poetry too. Poets also contributed to the popularization of synesthesia.

It's not definitively known whether Rimbaud had synesthesia²⁰, but his poem *Vowels* strongly suggests as much, assigning color values to different vowels. It also describes letters and colors as they relate to

¹⁸ Kirkpatrick, N., *The Many Types Of Synesthesia Explained*. Available at: <https://www.betterhelp.com/advice/synesthesia/the-many-types-of-synesthesia-explained/>

¹⁹ Kirkpatrick, N., *The Many Types Of Synesthesia Explained*. Available at: <https://www.betterhelp.com/advice/synesthesia/the-many-types-of-synesthesia-explained/>

²⁰ 12 Famous Artists With Synesthesia. Available at:

<https://www.mentalfloss.com/article/88417/12-famous-artists-synesthesia>

objects, nature, emotion, and all manner of other associations, both synaesthetic and more logical. In any case, it makes for wonderful reading:

A Black, E white, I red, U green, O blue: vowels,
I shall tell, one day, of your mysterious origins:
A, black velvety jacket of brilliant flies
Which buzz around cruel smells

As this study focuses on examining synesthesia as an object of linguistic research it is necessary to reveal existing opinions on its definition in linguistics.

So, in semanticscognitive linguistics, and literary studies, synesthesia is a metaphorical process by which one sense modality is described or characterized in terms of another, such as “a bright sound” or “a quiet color”²¹.

In everyday language, people find many examples of synesthesia, such as the frequently used adjective “cool”. This word is generally associated with temperature. However, in casual conversation, people hear phrases like “cool dress,” “cool color,” or “you look cool,” wherein the visual sensation is blended with the sense of touch²². Moreover, people commonly hear phrases like “loud colors,” “frozen silence,” “warm colors,” and “bitter cold.”

Linguist Ullmann defines synesthesia as linguistic phenomenon in which “a word the meaning of which is associated with one sense organ is used in the meaning related to another sense organ, i.e. a transition is common here, for example, from touch to auditory perception, or from auditory perception to visual perception²³.”

It is worth mentioning that in synesthetic linguistic units we can find not only intersensory transferences but also combinations of sensory sensations with lexical units denoting emotional states and emotional assessments. In this sense, synesthesia is also used to denote thoughts and various abstract concepts.

According to Ullmann’s studies, synaesthetic transfers tend to go from the lower to the higher senses (e.g., cold color, from touch to sight, while the opposite direction – something along the lines of coloured coldness –

²¹ Synesthesia (Language and Literature) Glossary of Grammatical and Rhetorical Terms. Available at:

<https://www.thoughtco.com/synesthesia-language-and-literature-1692174#:~:text=Definition,%22%20Adjective%3A%20synesthetic%20or%20synaesthetic.>

²² Synesthesia. Available at: <https://literarydevices.net/synesthesia/>

²³ Ullmann, S. 1970. Semantic Universals. *New in linguistics*, Vol. 5, pp. 250-299.

would be less likely to occur)²⁴.

As stated by Ward and Cytowic synesthesia and language are related in two broad ways. Firstly, synesthesia tends to be triggered by linguistic symbols such as graphemes, phonemes, and lexemes. Secondly, the types of crossmodal correspondence found in some varieties of synesthesia might be present in us all. Whilst, for most people, these correspondences do not result in overt synesthetic experiences, they may nevertheless manifest themselves as biases in natural language (e.g., on the use of metaphor) or as constraints upon the organization of conceptual knowledge.²⁵

Despite different opinions on the interpretation of synesthesia in linguistics most researchers agree that synesthesia is a kind of metaphor.

According to the Aristotelian account, metaphor is supposed to be unusual, poetic, rhetorical, but here we find it in the most ordinary everyday thought and language²⁶.

It is obvious that metaphor is the fundamental language of poetry, although it is common on all levels and in all kinds of language. Reinhart²⁷ highlights in her article that understanding poetic metaphor involves two distinct procedures. The first, **focus interpretation** which consists of identifying and interpreting the ‘focus expression’ resulting in some literal equivalent of the metaphorical expression. The second, **vehicle interpretation**, involves a process of ‘double perception’.

Therefore, a metaphor is a figure of speech that describes an object or action in a way that isn’t literally true, but helps explain an idea or make a comparison. Pursuant to Underwood²⁸ studies:

- A metaphor states that one thing is another thing.
- It equates those two things not because they actually are the same, but for the sake of comparison or symbolism.
- If you take a metaphor literally, it will probably sound very strange (are there actually any sheep, black or otherwise, in your family?).
- Metaphors are used in poetry, literature, and anytime someone wants to add some color to their language.

²⁴ Ullmann, S., *Style in the French Novel*. Cambridge: Cambridge University Press, 1957.

²⁵ Ward, J., Cytowic R., *Synesthesia and Language*. Encyclopedia of Language & Linguistics (Second Edition), 2006.

²⁶ Lakoff, Gr., *Ten Lectures on Cognitive Linguistics*. Available at: <https://brill.com/view/book/9789004325302/BP000015.xml>

²⁷ Reinhart, T., *On understanding poetic metaphor*. Available at:

<https://www.sciencedirect.com/science/article/abs/pii/S0304422X76900176>

²⁸ Underwood, A., *Metaphors*. Available at:

<https://www.grammarly.com/blog/metaphor/>

Ward states that metaphor is essential to poetry because the subject matter of poetry, the medium of poetic language, even the poet's purpose or view of the world all require it²⁹.

Indeed, with the help of synesthesia, the poet is able to create a kind of new world, different from reality, completely unique images, fill his poetic creation with emotions, and also evoke an emotional response from the reader. He conveys his personal experience to the reader through the language of the senses. Due to the combination of various perceptual modalities, synesthesia contributes to the creation of a more holistic image, and also conveys the entire spectrum of emotional experiences of the author (or lyrical hero).

So, metaphor is the main way of representing synesthetic associations or its special variety – synesthetic metaphor the concept of which is necessary to disclose for practical investigations (analysis of contemporary American and English poetry) of this article.

In this way, synesthetic metaphor is a metaphor that crosses different senses to describe one entity in terms of another. For example, one might refer to a vibrant color as “loud” or a pleasant smell as “sweet.” Synesthetic metaphor specifies a certain sense, but invokes imagery that is linguistically described in terms belonging to a different sense. “Of the various senses, hearing is most frequently expanded and elaborated upon by synesthetic metaphors.” Studies have revealed that colored sounds (“loud” or “quiet” colors) are the most common type of synesthetic metaphor in the English language³⁰.

Synesthetic metaphors, are a verbal phenomenon in which a concept belonging to one sensory domain is referred to in terms taken from another sensory domain. Thus, Keats' ‘heard melodies are sweet’ evokes a clearly auditory concept (*heard melodies*) in terms belonging to the realm of taste (*sweetness*). The expression *a cold light* is another example of a synesthetic metaphor. In this case, *light*, which is linked to the visual domain, is defined in terms of coldness, which belongs to the tactile domain.³¹ In technical terms, the synesthesia *sweet melodies* reflects a mapping process in which the source domain taste is mapped onto the target domain of sound, while the synesthesia *cold light* represents a mapping process whereby a word belonging to the tactile (source) domain is mapped onto a word belonging to the (target) visual domain.

²⁹ Ward, A., *The Unfurling of Entity: Metaphor in Poetic Theory*. New York: Garland Publishing, 1987, p. 2

³⁰ Synesthetic metaphor. Available at: <http://www.fgcnp.org/uhc/linguistics/synesthetic-metaphor>

³¹ Brown, K., *Encyclopedia of Language & Linguistics. Synesthetic metaphors*. Second Edition. 2006. p. 9000.

It is important to note that it is difficult to overestimate the role of synesthesia in poetry from a stylistic point of view. Synesthetic metaphors allow author to create especially vivid images due to intersensual combinations, often quite “unexpected”, and as a result “expand the possibilities of the text, the boundaries of its perception.”

Nordquist³², studying the synsthetic metaphors, cites Geary who states that “Many of the metaphors we use every day are synesthetic, describing one sensory experience with vocabulary that belongs to another. Silence is *sweet*, facial expressions are *sour*. Sexually attractive people are *hot*; sexually unattractive people leave us *cold*. A salesman's patter is *smooth*; a day at the office is *rough*. Sneezes are *bright*; coughs are *dark*. Along with pattern recognition, synesthesia may be one of the neurological building blocks of metaphor”.³³

As this article examines the synesthetic combinations found in contemporary American and English poetry and shows examples of the use of linguistic synesthesia in prose it is necessary to understand the nature of synesthetic transferences i.e. the sense organs which perceive this quality. As it was mentioned before, a person perceives the world through five senses: sight, hearing, touch, smell, and taste. Consequently, any pair of these perceptions can be found in inter-sensory communication. For examining synesthesia in contemporary American and English poetry such models of inter-sensory association were used as: *sight+hearing*, *taste+hearing*, *touch +hearing*, *taste+sight*, *hearing+color*, *color+touch*, *sight+taste*, *smell+sight*, *where*:

Touch³⁴ is considered to be the first sense that humans develop and consists of several distinct sensations communicated to the brain through specialized neurons in the skin. Pressure, temperature, light touch, vibration, pain and other sensations are all part of the touch sense and are all attributed to different receptors in the skin.

Sight³⁵ is the power or faculty of seeing; perception of objects by use of the eyes; vision.

Hearing³⁶ is the process, function, or power of perceiving sound; the special sense by which noises and tones are received as stimuli.

³² Nordquist, R., (2020), *Synesthesia (Language and Literature)*. ThoughtCo, Feb. 11. Available at: <https://www.thoughtco.com/synesthesia-language-and-literature-1692174>

³³ Geary, J., *I Is an Other: The Secret Life of Metaphor and How It Shapes the Way We See*. New York, NY: Harper Collins. 2011, 304 p.

³⁴ Bradford, A., *The Five (and More) Senses*. 2017, October 24. Available at: <https://www.livescience.com/60752-human-senses.html>

³⁵ Sight. Available at: <https://www.dictionary.com/browse/sight>

³⁶ Hearing. Available at: <https://www.merriam-webster.com/dictionary/hearing>

Taste³⁷ is the gustatory sense is usually broken down into the perception of four different tastes: salty, sweet, sour and bitter.

Smell³⁸ is the ability to notice or discover that a substance is present by using your nose.

Thus, speaking of synesthesia as a metaphorical pathway and according to the purpose of this research, works of contemporary American and English poets were used for examining synesthesia in poetry.

Analyzing the poetry of contemporary American classic Tiffany Atkinson, it is worth mentioning, that synesthetic metaphors are used in her poems to create images.

In the poem *Marzipan Blues*³⁹synesthesia is traced even in its name. It is represented by a synesthetic model **taste+hearing**: *Blues* evokes a relaxed atmosphere in the reader's imagination, allowing them not only to "hear", but also to "taste" music strengthening it with the taste element of *marzipan* (sweet), thus, enlarging the feeling of delight and serenity.

Later he tries to explain
The *turquoise joy*, at ten,
Of that first Rangers strip;
His birthday-fingers skidding
On the wrapping's brittle ice.

In the line "The *turquoise joy*, at ten" secondary synesthesia is observed, that is, the combination of an emotional state with an element of visual perception, namely color. In general, giving abstract concepts a color element contributes to the creation of special imagery in a poetic, or any other work. In this particular case, the color *turquoise* is associated with the meanings of calming, serenity, emotional balance, spiritual grounding and is used to describe joy as a feeling of great pleasure and happiness.

Karle Wilson Baker another American poet depicted synesthesia in her poem "Days":

Some days my thoughts are just cocoons- all cold,
and dull and blind,

³⁷ Bradford, A., (2017) The Five (and More) Senses. October 24. Available at: <https://www.livescience.com/60752-human-senses.html>

³⁸ Smell. Available at:

<https://dictionary.cambridge.org/ru/%D1%81%Do%BB%Do%BE%Do%B2%Do%Bo%D1%80%D1%8C/%Do%B0%Do%BD%Do%B3%Do%BB%Do%B8%Do%B9%D1%81%Do%BA%Do%B8%Do%B9/smell>

³⁹ Atkinson, T. *Marzipan Blue*. Available at:

<https://www.poemhunter.com/poem/marzipan-blues/>

They hang from dripping branches in the grey woods of my mind;
And other days they drift and shine - such free and flying things!
I find the *gold-dust* in my hair, left by their brushing wings⁴⁰.

In the above excerpt, the color element is of great importance, because it helped to create a synesthetic metaphor. Gold color has long been associated with magic. It also shares some of the attributes that are linked to yellow and *dust* dry dirt in the form of powder that covers surfaces inside a building, or very small dry pieces of soil, sand, or other substances. So, *gold dust* is used here as the emotional intensity of precious memories.

The term “gold dust⁴¹” is also used as a metaphor for fragility, as well as the emotional intensity of precious memories triggered by sensorial experiences associated with these events. These are memory records events and people in a vivid manner inside a little box in our brains. We can unlock the drawer, as long as our brains still function properly, by exposing ourselves to the sights and sounds and smells and the ambiance of a place we have been at different times, and then feeling what we felt at that particular time.

Another example of synesthesia in American poetry is found in Denise Levertov’s poem “Pleasures”.

I like the juicy stem of grass that grows
Within the coarser leaf folded round,
And the *butteryellow glow*
In the narrow flute from which the morning-glory
Opens blue and cool on a hot morning.

In the above poem, it is observed in the model **taste+sight**. The poet creates an image of a flute using intersensual transference comparing it with *butteryellow glow*. In this case, sound impressions are perceived as sweet melody enhancing the fragility and luminosity of the gentle flute sounds.

Levertov also addresses to synesthesia in “The Rainwalker”:

Increasing rain. The old bareheaded man
Smiles and grumbles to himself.
The lights change: the avenue's
Endless nave *echoes notes of liturgical red*⁴².

⁴⁰ Baker, K.W., Days. Available at: <https://www.poemhunter.com/poem/days-3/>

⁴¹ Partogi, S., Essay: Gold Dust Moments. Art&Culture. Jakarta. 2017March 20. Available at:

<https://www.thejakartapost.com/life/2017/03/20/essay-gold-dust-moments.html#:~:text=The%20term%20%E2%80%9Cgold%20dust%E2%80%9D%20is,experiences%20associated%20with%20these%20events.%20>

⁴² Levertov D. The Rainwalkers. Available at:

In this fragment synesthesia is shown in the model **hearing+color**. Echo notes entwined with the color *liturgical red* underlining man's mood appropriate to a season. In this context *iturgical red* denotes passion. The author depicts man's delight and his relaxed emotional state being in the rain on a calm avenue.

Synesthesia is also traced in Langston Hughes' "The Weary Blues":

Swaying to and fro on his rickety stool
He played that sad raggy tune like a musical fool.
Sweet Blues!
Coming from a black man's soul.
O Blues⁴³!

In the above poem, the author uses an unusual type of synesthetic metaphor according to the scheme of **taste + hearing**, which is a rather rare combination because these sensory modalities are not physiologically interrelated. Taste "*sweet*" is used to describe melody, and thus making the whole phrase brighter and more interesting. In this excerpt "*Sweet Blues*" is viewed as the speaker's exclamations of delight, eliciting cries of rapture and pleasure although the whole poem conveys the suffering and injustice that black people have endured living in a racist society.

Analyzing synesthesia in poetry, it is necessary to mention, that it is traced not only in the works of American poets but also English ones.

Percy Bysshe Shelley was one of the major English Romantic poets, widely regarded as one of the greatest lyric and philosophical poets in the English language applied to synesthesia in his poem "Ginevra⁴⁴":

Alone within the garden now her own;
And through the sunny air, with jangling tone,
The music of the merry marriage-bells,
Killing the *azure silence*, sinks and swells;--

This lyrics is of particular interest to us because representing the synesthetic model of **color + hearing**, the author uses the concept of silence as an auditory lexeme, which implies the absence of sound. However, thanks to the definition of *azure*, it is possible to achieve the image of *silence*, not oppressive and gloomy, but on the contrary, light and, possibly, joyful.

Another poem where synesthesia is traced is "Reflections of Caernarvon" written by Rg. Gregory:

Between the *stone wind*⁴⁵

http://famouspoetsandpoems.com/poets/denise_levertov/poems/18667

⁴³ Hughes L., The Weary Blues. Available at: <https://poets.org/poem/weary-blues>

⁴⁴ Shelley P.B., Ginevra Available at: <https://www.poemhunter.com/poem/ginevra/>

And the wall of stones
I am a hollow
Scooped out by the sun

In the above lyrics intersensory association of synesthesia **touch +hearing** is observed. In this model, the concept of *wind* as an auditory lexeme produces a tactile sensations inside our body. This tactile sensation is perceived by the reader as distracting, uncomfortable and the meaning of *stone* helps to achieve the image of wind – depressing and gloomy. So, in this model a certain artistic effect is achieved – an impression of an oppressive, tense atmosphere created due to the definition of *stone* (hard, solid substance).

In the work “The Onion, Memory” written by a contemporary English poet Raine Craig synesthesia is shown in the model **touch +hearing**:

This is the quiet echo--flesh—
white muscle on white muscle,
intimately folded skin,
finished with a *satin rustle*⁴⁶.

In this poem, the qualities recognizable by tactile sensations are used to define sound impressions emphasizing their calm feelings filled with tranquility and peace.

British poet John Edward Masefield known for his poems of the sea applied to metaphor in “Sea-Fever”:

I must go down to the seas again, to the vagrant gypsy life,
To the gull’s way and the whale’s way where the wind’s like a whetted
knife;
And all I ask is a merry yarn from a laughing fellow-rover,
And *quiet sleep* and a *sweet dream* when the *long trick’s over*⁴⁷.

Using metaphors in the above lyrics *quiet sleep, sweet dream* and the *long trick’s over* the author draws parallel between humble life and peaceful death thus helping the reader better understand general theme of the poem. In this sense, metaphors strengthen emotional tone of the sea and help the reader understand the author’s passion and affection on the sea.

⁴⁵ Gregory Rg. Reflections of Caernarvon. Available

http://famouspoetsandpoems.com/poets/rg_gregory/poems/22572

⁴⁶ Raine, Cr. The Onion, Memory. Available at:

http://famouspoetsandpoems.com/poets/craig_raine/poems/16285

⁴⁷ Masefield. J., *Sea-Fever*. Available at: <https://www.oatridge.co.uk/poems/j/john-masefield-seafever.php>

Another English poet John Drinkwater also appealed to synesthesia in his works. In his poetry, he often related ephemeral imagery to themes of personal growth, war, and natural beauty.

Look rather when the landscapes glow
Through crystal distances as though
The forty shires of England spread
Into one vision harvested,
Or when the moonlit waters lie
In *silver cold lucidity*⁴⁸.

Synesthesia is shown here in the model **color+touch**. The author uses the concept of *cold*, to express feelings, the passing of time and age and which is strengthened by the definition of *silver* in this case, being a mirror to the soul, to achieve the image of mysterious memories and thoughts.

In poems of another influential English poet, William Ernest Henley⁴⁹, a representative of what many critics have said, “The now very public “Invictus”, synesthesia is also traced.

O gracious eve! O happy star,
Still-flashing, glowing, sinking!—
Who lives of lovers near or far
So glad as I in thinking?
The gallant world is warm and green,
For May fulfils November.
When *lights* and leaves and loves have been,
Sweet, will you remember⁵⁰?

This fragment is of particular interest to us because representing the synesthetic model of **sight+taste** the poet uses synesthesia, combining lexical units that express taste, in this example, *sweet* (pleasing, delightful) describes the visual perception by interpreting the surrounding environment using the concept *light* thus, making the whole phrase more vivid and interesting. These lines depict the poet’s attempt to encourage himself when there’s no hope and make readers understand that only **we** have control over our life but no one else.

⁴⁸ Drinkwater, J., *Mystery*. Available at: <https://www.poeticous.com/john-drinkwater/mystery-3>

⁴⁹ Henley, W.E., *The Project Gutenberg eBook, Poems*. Available at: <https://www.gutenberg.org/files/1568/1568-h/1568-h.htm>

⁵⁰ Henley, W.E., *The West a Glimmering Lake of Light*. Available at: <https://www.encyclopedia.com/arts/educational-magazines/henley-william-ernest-1849-1903>

Analyzing another poem “Before” by William Ernest Henley, synesthesia as a stylistic device is found in the form of synesthetic combination *drunken dark*.

BEHOLD me waiting—waiting for the knife.
A little while, and at a leap I storm
The thick, sweet mystery of chloroform,
The *drunken dark*, the little death-in-life⁵¹.

In the above lyrics, a fairly common model of **smell+sight** is represented that helps to achieve a certain artistic effect – an impression of an oppressive, tense atmosphere which is created due to the definition of *dark* (dim, obscure, gloomy) while describing hours of taut anticipation.

Conclusions

Summarizing the above, we can say that the use of synesthesia as a stylistic tool (intentionally or unintentionally) was characteristic in contemporary American and English poetry. Synesthesia is especially appreciated by poets, because it allows them to create deep, polyhedral images, and also open the author’s inner world for the reader.

This study has shown the relation between synesthesia and poetry through metaphor and the role of synaesthetic metaphor in poetry of American and British poets. Works of contemporary American and British poets were used to trace synesthesia. Poems by Tiffany Atkinson, Karle Wilson Baker, Denise Levertov, Percy Bysshe Shelley, Rg Gregory, Raine Craig, John Edward Masefield, John Drinkwater, and William Ernest Henley are presented in the article and were used for examining synesthesia. It is proved that American and English poets used synesthetic metaphor in their works to convey their ideas more vivid to the reader, making reading a poetry appealing and more fascinating to them by ascribing unusual mechanisms of sensory perception to their heroes. In this way, synesthetic metaphors allow author to create especially vivid images due to intersensual combinations, often quite “unexpected”, and as a result “expand the possibilities of the text, the boundaries of its perception.” So, it should be noted that synesthesia is quite common in contemporary American and British poetry. Poets attach great value to the description of feelings, and synesthetic transfers just contribute to their more detailed description, making poetic works deeper and more multifaceted.

⁵¹ Henley, W.E., *Before*. Available at:
<https://www.gutenberg.org/files/1568/1568-h/1568-h.htm#page6>

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