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## Editorial

**Ioan-Gheorghe Rotaru**

*Associate Professor PhD.Dr.Habil*

*'Timotheus' Brethren Theological Institute of Bucharest*

*dr\_ionicarotaru@yahoo.com*

Concerned about societal problems, Christian moralists have come to elaborate a theory of society, a theory that supposed that society should be founded not on its own right, but on freedom, thus having in view the issue of religious freedom, property issues and the problem of slavery, issues that have preoccupied the minds of Christian thinkers. Concerned about freedom, which, according to their thinking, should form the foundation of society, Christian moralists first supported the principle of religious freedom or conscience for all people. Athenagoras states, referring to Christians, that “we only ask our own right, we ask not to be hated and persecuted because we are Christians” (Fouillee 2000, 198, note 29). Lactant said that religion is the only thing where freedom has found its place. This, being above all, voluntary, no one should ever be obliged to adore what he dislikes or what does not correspond to his desires” (Fouillée 2000, 198, note 30).

Tertullian, in his turn, talking about man’s freedom of thought, freedom of conscience or religion, said that by forbidding man to choose his divinity, by not allowing him to adore and glorify who he wants, being compelled to bring glory to a divinity he desires, precisely by the fact that his right to freedom of religion is taken away, is why unbelief is favored. He said that no one should be constrained in matters of consciousness (Fouillée 2000, 198, note 31).

After passing through the harsh times of persecution in the first centuries, the Christian Church, through its prominent representatives, spoke in favor of freedom, of individual freedom, but especially freedom of thought, freedom of conscience and expression. Thus St. Augustine said: “My most important opinion is that no one can be forcefully forced into the unity of Christ, that it must be acted upon only by word, that unbelief must be countered only through discussion, that we must overcome only with the help of reason” (Fouillée 2000, 199, note 32).

Doctors of Christianity of the first centuries, although they have religiously highlighted the injustices of certain social institutions, nevertheless have not considered that these injustices should be yet eradicated from this Earth. They set up their ideal of the citadel in the Divine Fortress or the Celestial Citadel, or as St. Augustine called it, *De civitate Dei*, but with all the ideal, the Earth should be the place where justice can be right, thus Earth also becoming the City of Law (Fouillée 2000, 200).



## **The US and High Health Care Spendings: A Comparative Case With OECD on the Three Prominent Factors**

**Seksiri NIWATTISAIWONG**

*Division of Health Research, Lancaster University, Lancaster, United Kingdom  
s.niwattisaiwong@lancaster.ac.uk*

**ABSTRACT:** Attaining state of good health and accessing to decent health care are desirable for human beings. The access to health care has been enshrined in several human rights declarations, notably the Article 12 of the International Covenant on Economic, Social and Cultural Rights. The Article recognises the right to health and role of governments to create and ensure universal coverage to healthcare. An indication of a good standard of health is measured through having equal care access at an affordable price. In reality, the health statistics from the Organization for Economic Cooperation and Development (OECD Health Statistics, 2018) indicated that the health expenditures in many developed countries are relatively high in comparison with their Gross Domestic Product (GDP). This paper starts out by attempting to find an explanation as to why the U.S. health care spending is high relative to its OECD counterparts. The review on existing literatures found that all OECD members have rising healthcare and the United States is indeed the highest of all.

**KEYWORDS:** health care expenditure, health care spending, high spending factors

### **Introduction**

Attaining state of good health and accessing to decent health care are desirable for human beings. The access to health care has been enshrined in several human rights declarations, notably the Article 12 of the International Covenant on Economic, Social and Cultural Rights. The Article recognises the right to health and role of governments to create and ensure universal coverage to healthcare. An indication of a good standard of health is measured through having equal care access at an affordable price. In reality, the health statistics from the Organization for Economic Cooperation and Development (OECD Health Statistics 2018) indicated that the health expenditures in many developed countries are relatively high in comparison with their Gross Domestic Product (GDP). In 2017, the United States had the highest annual healthcare expenditure at 17.2% of its GDP or USD 9,111 per capita, which was much higher than the expenditures of its OECD counterparts, which was at 8% of their GDP or USD 3,368.10 per capita (Table 1 and Figure 1). However, the growth rates of all OECD countries' healthcare expenditures were similar (Figure 2).

Table 1. Current expenditure on health on all functions, 2017  
(Share of gross domestic product; %)

Year 2017					
Country	%	Country	%	Country	%
Australia	9.1	Iceland	8.5	Poland	6.7
Austria	10.3	Ireland	7.1	Portugal	9.0
Belgium	10.0	Israel	7.4	Slovak Republic	7.1
Canada	10.4	Italy	8.9	Slovenia	8.0
Chile	8.1	Japan	10.7	Spain	8.8
Czech Republic	7.1	Korea	7.6	Sweden	10.9
Denmark	10.2	Latvia	6.3	Switzerland	12.3
Estonia	6.7	Lithuania	6.3	Turkey	4.2
Finland	9.2	Luxembourg	6.1	United Kingdom	9.6
France	11.5	Mexico	5.4	United States	17.2
Germany	11.3	Netherlands	10.1		
Greece	8.4	New Zealand	9.0		
Hungary	7.2	Norway	10.4		

Source: OECD Health Statistics

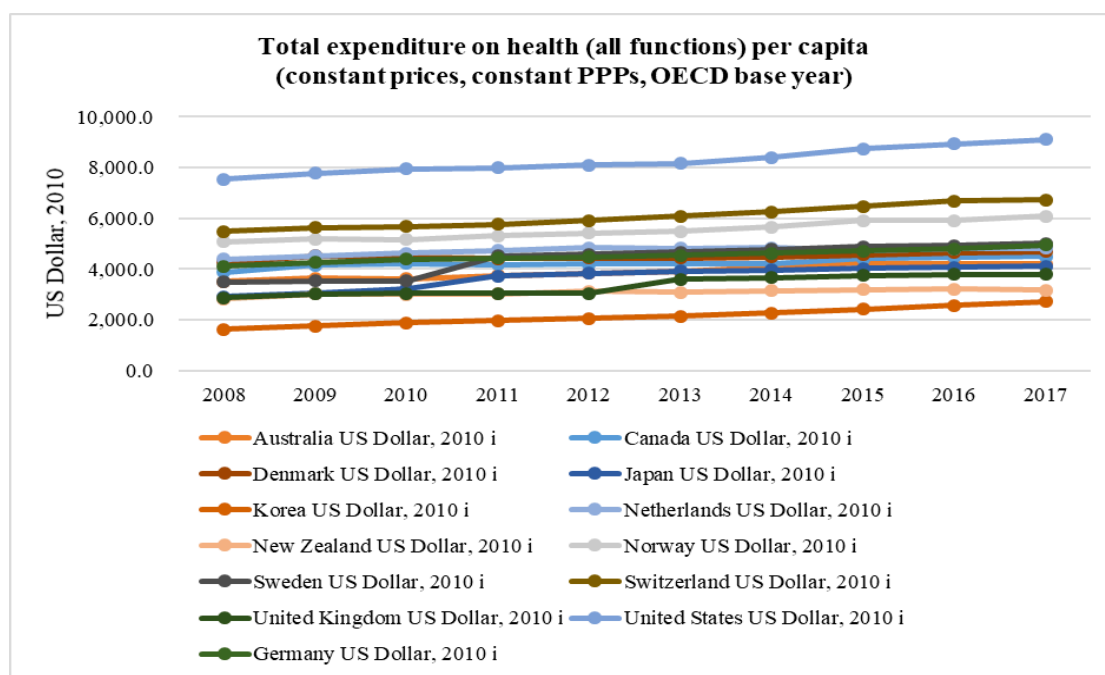


Figure 1. Total Expenditure on Health per Capita in selecting OECD countries, 2008 – 2017

Source: OECD Health Statistics



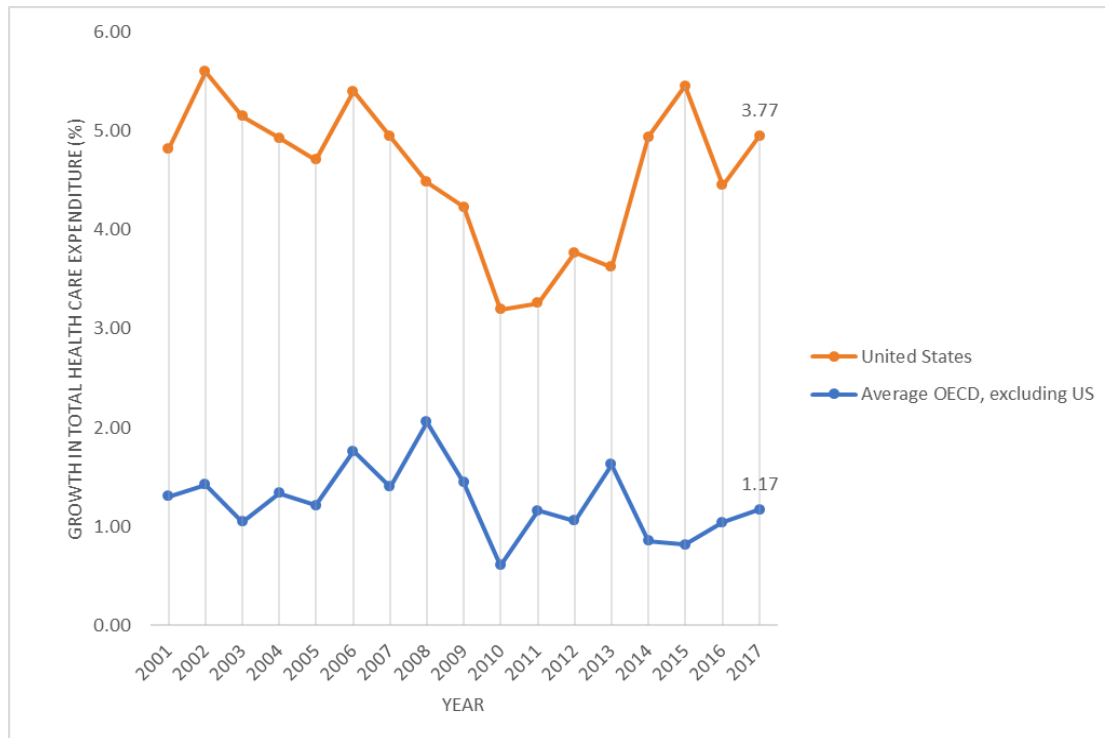


Figure 2. Growth Rate of Total Expenditure on Health in United states and on Average OECD Countries from 2008-2017

*Source: OECD Health Statistics*

For the United States, the high and increasing cost of healthcare is not a new issue, but the topic still receives a lot of attention because of the country's rising healthcare spending which has direct negative impacts on the nation's economy and its population's quality of life (Alliance for Health Reform 2012). For example, the government receives its funding for public health spending from tax revenue. Thus, the increased healthcare spending requires increased taxes. Furthermore, there is an implication on the private sector as well. The increased cost of healthcare means that the unemployment rate will increase because employers are responsible for paying their employees' insurance premiums. Also, higher rates of unemployment could result in lower national output along with the quality of life and increased public health costs due to sickness benefit payments (Kuhn, Lalive, & Zweimüller 2009). In the 1940s, healthcare represented only 5% of the United States per capita income growth whereas the figure had risen to 90% during the 2000-2009 period. (Alliance for Health Reform 2012). The implication is that the majority of earning from income growth is directed toward health care leaving just 10% on other spending. The overall trend goes in the same direction; the proportion of the U.S. national health expenditures in the U.S. GDP raised from 5% in 1960 (Getzen 2017) to 17.9% in 2016 (National Health Expenditure Accounts, Centers for Medicare & Medicaid Services 2018).

### **Main Factors in the High U.S. Healthcare Expenditures**

#### ***Factor 1: High Price of Prescription Drugs***

At present, the per capita prescription drug spending in the United States is USD 1,208.40, which is higher than the average of the other OECD countries at USD 539.63

(Table 2; Pharmaceutical spending, OECD Data 2016). Prescriptive drug spending was valued at USD 329 billion or 1.77% of the U.S. GDP and approximately 10% of the U.S. healthcare spending in 2016 (American Academy of Actuaries, 2018). Furthermore, the price increase of specialty drugs<sup>1</sup> exceeds Consumer Price Index growth. It was predicted that, by 2017, the country will spend up to 44% of its overall drug spending on specialty drugs (America's Health Insurance Plans 2015; Express Scripts 2016). In addition, the international health policy survey by Commonwealth Fund (2013) found that among 11 studied countries, the U.S. and New Zealand had the highest adult drug consumption rate (2.2 drug per adult) whereas the average rate of the remaining nine countries were at 1.47 drugs per adult.

Table 2. Pharmaceutical Spending (Total, US dollars/capita, 2016 or latest available)

<b>Country</b>	<b>Per Capita Pharmaceutical Spending (US dollars)</b>	<b>Country</b>	<b>Per Capita Pharmaceutical Spending (US dollars)</b>
Australia	639.98	United Kingdom	475.69
Austria	631.12	Greece	594.76
Belgium	683.59	Hungary	565.70
Canada	832.84	Ireland	676.21
Switzerland	1,080.40	Iceland	487.59
Costa Rica	171.02	Israel	314.71
Czech Republic	432.59	Italy	606.96
Germany	777.47	Japan	873.93
Denmark	335.22	Korea	573.09
Spain	620.99	Lithuania	540.99
Estonia	378.22	Luxemburg	554.45
Finland	516.06	Latvia	451.82
France	662.67	Mexico	231.81
Netherlands	405.96	Slovak Republic	565.62
Norway	470.86	Slovenia	507.17
Poland	368.99	Sweden	524.44
Portugal	418.97	United States	1,208.35
Russia	375.45	Average, excluding United States	539.63

*Source: Pharmaceutical spending, OECD Data*

As a consequence of high health care spending in the U.S. in comparison with its OECD counterparts, there have been many studies that attempt to identify the actual cause and give explanations of the major factors affecting the high cost in the U.S. In this essay, three major factors commonly reported in the existing literatures are discussed: the high price of prescription drugs, the high-cost diagnostic technology, and the high rate of chronic diseases.

This essay identifies two prominent causes of the high drug prices in the United States. Firstly, the U.S. patent system grants monopolistic power to pharmaceutical firms in drug pricing (Kesselheim, Avorn, & Sarpatwari 2016; Parente 2018). As a

<sup>1</sup> Specialty drugs are defined as high-cost, high complexity and/or high touch drugs.

result, all pharmaceutical companies that develop new drugs can price the products without outside interference, and other off-patent pharmaceutical companies are not allowed to compete during the patent period.

The new drugs that receive patent approval are called brand-name drugs or original drugs. The advantage of granting monopolistic power is to encourage pharmaceutical companies to develop new drugs which, in turn, will improve the population's quality of life. In 2017, Brand-name drugs account for approximately 10% of the total number of drug prescriptions in the United States. However, they account for 77% of total drug spending (Association for Accessible Medicines 2018). Moreover, the price index of brand name drugs has been rising since 2008. The prices of brand-name drugs had increased by 208% from 2008 to 2016, whereas the generic drug prices dropped by 74% during the same period (Association for Accessible Medicines, 2017). However, there is no evidence to prove that the high prescription drug prices significantly motivate drug development (Kesselheim, Avorn, & Sarpatwari 2016). Furthermore, the pharmaceutical companies spend twice as much money on promotions of their drugs compared to their research and development (R&D; Gagnon & Lexchin 2008).

This monopolistic power with its implication on pricing is less pronounced in other OECD countries—such as Australia, Canada, Germany, and the United Kingdom—where the national health insurance systems are applied, and drug prices are negotiated by government representatives. These representatives are also able to refuse to cover several drugs, resulting in lower drug prices in the abovementioned countries (Kanavos, Ferrario, Vondoros, & Anderson 2013).

The use of generic drugs can solve the problem of the expensive prescription drugs given their much lower prices. There are, however, questions on the differences in the effectiveness between the original drugs and generic drugs. According to the U.S. patent regulations, the pharmaceutical companies must disclose the ingredients of the patented drug, but are not required to reveal their manufacturing processes. Consequently, the undisclosed manufacturing processes lead to a possibility that the generic drugs can be less effective than the original drugs. The U.S. government resorts to addressing the effectiveness issue through drug content and bioequivalency assessments (Harvard Women's Health Watch 2018). In fact, generic drugs may not always be an answer as Kesselheim, Avorn and Sarpatwari (2016) found that the cost of approximately 400 generic drugs had risen by 1,000% during the 2008–2015 period.

Secondly, the results of supply-induced demand from doctor's prescription decisions. The patients often do not have sufficient information regarding the effectiveness of the drugs options for their treatments and therefore doctors have to make the decision on patient's behalf. It is believed that doctors who prescribe the new drugs receive commission fees from the pharmaceutical companies and thus might be compelled to prescribe the new drugs more often than necessary. Nevertheless, the literature still lacks empirical evidence to confirm whether this belief is true (Ornstein, Tigas & Jones 2016).

## **Factor 2: High-Cost Diagnostic Technology**

Diagnostic technology has progressed at a fast pace, particularly in developed countries. An example is the diagnostic imaging technologies, which provide highly accurate results but at a high cost (Squires & Anderson, 2015). These technologies include computed tomography (CT) scanners, magnetic resonance imaging (MRI), and positron emission tomography (PET) scanners. Great amounts of money were spent on the R&D of such technologies. For example, it was found that, spending on medical technology

development in Germany in 2017 was as high as EUR 3.24 billion (Germany Trade & Invest 2017), whereas an estimated USD158.7 billion was spent on medical and health R&D investments in the United States in 2015 (ResearchAmerica 2016). Furthermore, it is anticipated that the growth rate of medical technology R&D budgets worldwide will be approximately 5.4% per year (Iversen & Grünfeld, 2012), which is relatively high. The implication is that the resulting technology will also be expensive to acquire and operate. According to the International Federation of Health Plans (2015), the average U.S. commercial MRI fee is USD 1,119, and the average fee for a computed tomography scan of the abdomen is USD 844. These fees are much higher than those of other OECD countries, which have average MRI fee around USD 579.25 and average CT scan fee approximately USD 433 —with the exception of the fee for the computed tomography scan, which costs more in the United Kingdom (Table 3).

Table 3. Average Diagnostic Imaging fees in selecting OECD countries, 2015  
(US dollar)

	<b>MRI</b>	<b>CT Scanner</b>
Australia	215	-
Switzerland	503	383
New Zealand	811	483
United Kingdom	788	860
United States	1,119	844

*Source: International Federation of Health Plans*

A number of studies indicate that technological progress is considered one of the main factors for high healthcare expenditures and the growth of healthcare expenditures (Alliance for Health Reform 2012; Catlin & Cowan 2015; Department for Professional Employees 2016; Sorenson, Drummond & Kahn 2013; Squires 2012; White 2007). A paper by Xu, Saksena & Holly (2011) found that studies using cross-sections models yield similar conclusions to those using time series models.

In addition to the higher cost of technological applications compared to other diagnostic methods such X-rays or traditional diagnostic methods, OECD Health Statistics (2018) showed that these expensive technologies' frequency of use in the United States is significantly greater than that in other countries. Furthermore, a positive correlation between the MRI units available per million people and the frequency of use of MRI examinations per 1,000 people was found; however, the same correlation could not be found in other countries. It was also found that the units available and frequency of use in the United States were higher than the average frequency of use in other OECD countries. Such a correlation might be the consequence of medical practice patterns or cultural trends in using new technologies for treatment (Kamal & Cox 2018).

Although these diagnostic imaging technologies offer relatively accurate diagnoses, they also result in high expenditures in healthcare. The situation gives rise to questions regarding cost-effectiveness (Anand, 1996; Institute of Medicine, 1991; Skinner 2013) and the quality of healthcare services. The OECD Health Statistics (2018) shows that the U.S. healthcare is not better than that of other OECD countries, despite its higher frequency of technological applications.

### **Factor 3: High Rate of Chronic Diseases**

Chronic disease is another cause of higher spending in the U.S. compared to other OECD countries (Alliance for Health Reform 2012; Department for Professional

Employees 2016; Squires 2012; Thorpe 2006; Table 4). An example is the case of Medicare which is the American's national health insurance programme for the disabled and elderly. It was reported that five following chronic diseases are the major causes of high Medicare spending: diabetes, arthritis, kidney disease, hypertension, and mental disorders (Alliance for Health Reform, 2012). The expenditure is higher than other EU countries; the average Medicare spending on chronic diseases in United States is equivalent to USD 1.1 trillion or approximately 6% of U.S. GDP (Waters & Graf 2018) whereas the average of health care spending in other EU countries are EUR 115 billion or approximately 0.8% of GDP (OECD-EC report, 2016). The notable feature of chronic diseases is that they require lifelong treatment; accordingly, Medicare spending will continue to rise. It also means that chronic disease patients require lifelong drug consumption, the aforementioned high cost of prescription drugs exacerbate the problem further. In 2010, it was found that the spending on brand-name prescription drugs in the United States was approximately 5%–198% (Kavarnos, Ferrario, Vadoros, & Anderson 2013) higher than in other OECD countries.

Table 4. Chronic Diseases (Diabetes, arthritis and hypertension) in the selected OECD countries, 2017 or the latest year (Share of adults; %)

	<b>Diabetes</b>	<b>Arthritis</b>	<b>Hypertension</b>
Netherlands	4.6 <sup>a</sup>	10.9 <sup>f</sup>	17 <sup>e</sup>
United Kingdom	4.2 <sup>a</sup>	13 <sup>f</sup>	25 <sup>g</sup>
United States	9.4 <sup>b</sup>	23 <sup>c</sup>	33.2 <sup>d</sup>

*Source* <sup>a</sup> IDF Atlas, 8th Edition, 2017

<sup>b</sup> American Diabetes Association

<sup>c</sup> Arthritis Foundation

<sup>d</sup> National Center for Chronic Disease Prevention and Health Promotion

<sup>e</sup> OECD/European Observatory on Health Systems and Policies (2017)

<sup>f</sup> Models of Care in Arthritis, Bone & Joint Disease

<sup>g</sup> Public Health England

Furthermore, it was found that the spending on end-of-life treatment is very high. According to Medicare reports, it was suggested that spending on chronic diseases was responsible for around 32% of total Medicare spending during the last 2 years before death (The Dartmouth Atlas of Healthcare 2013).

Apart from chronic diseases, the lifestyles and behaviours of the population have direct impacts on health. It was found that high sugar and high fat consumptions are prevalent in the United States. Americans' eating habits are the major cause obesity (Schembre et al., 2012). The Centers for Disease Control and Prevention (2018) defined any person whose BMI range is equal to or over 30 as being obese. Based on the statistic retrieved from OECD data, 71% of Americans aged 15 years and older are considered obese. The number of clinically obese in the United States is greater than those in other OECD countries, except in Chile and Mexico (Overweight or Obese Population, OECD Data 2017). The average percentage of people in obese populations aged 15 years and above in other OECD countries is 52.12%.

Obesity leads to many chronic diseases such as cardiovascular diseases, diabetes, and cancer, which require high spending on Medicare treatment (Wang, McPherson, Marsh, Gortmaker & Brown 2011). It is forecasted that about 65 million people in the U.S. population will become patients with obesity in 2030, which will result in a greater number of patients with other chronic diseases, such as diabetes, stroke, and heart

disease. Thus, the annual government spending on Medicare is anticipated to be about USD 48 billion – USD 66 billion more by 2030 (Wang, McPherson, Marsh, Gortmaker & Brown 2011). Another study indicated that medical costs on obesity treatment in the United States almost reached 10% of all medical spending in 2008 (Finkelstein, Trogon, Cohen & Dietz 2009).

## **Discussion**

This paper found that many other studies have been conducted to identify the cause of higher healthcare expenditure in the United States compared to that of the rest of the world. All studies reported in this essay employed secondary data published by international organisations and local government agencies. It must be noted that some of the data is incomplete; for example, the OECD Health Statistics Database. Also, in some countries where English is not the official language, such as Japan, the information available in English might not be accurate or up-to-date.

The methodologies for these studies can be divided into two main approaches, the graphical and trend depictions and regression models. The first approach explains the cause of the situation by visualising and interpreting the graphs to provide an overall picture of different health aspects. These studies can provide some clues to identify the factors which might be related to healthcare expenditure; however, they are unable to examine the causation and cannot prove each factor's significance. The strength of this type of research is that the reported trends can be used as a basis for identify potential factors to be included in regression models.

For the regression model approach, its strength lies that the fact that the methods has to have a sound theoretical underpinning or empirical evidence before running the model. The numerative nature of the results makes it easier to understand and quantify.

The limitation of the regression approach is that the researchers have to selected a limited number of factors across the whole range of possible factors, thereby leaving some factors unaccounted for. Such factors may be logically trivial but may be proven to be a significant factors had it been included into the models. Additionally, the issues on correlations within the independent variable were not robustly examined.

This study have also found a number of factors that yield inconclusive results such as income per capita and aging population. The conclusion made by Das and Martin (2010) and by Gerdtham et al. (1991) regarding per capita income stated that per capita GDP impacts healthcare expenditure; in contrast, according to the research conducted by Squires (2012), high income is not the factor that contributes to rising medical costs. It is possible that the cause of different conclusions is related to a newer set of data. As time progresses, the factors surrounding this might affect the data and the results indirectly. Also, each paper applies a different regression model according to the type of data that the researcher used.

Apart from the three factors discussed in this essay, there are other dominating factors in the domain of high U.S. healthcare expenditure, such as unsuitable fiscal policy in the United States since healthcare system began (Parente 2018), the growing aging population in the United States (White 2007), the extremely high administrative cost (Department for Professional Employees 2016), and rising costs of insurance premiums (White 2007).

## **Conclusion**

This paper starts out by attempting to find an explanation as to why the U.S. health care spending is high relative to its OECD counterparts. The review on existing literatures found

that all OECD members have rising healthcare and the United States is indeed the highest of all. The available studies reveal three commonly discussed cost-implicated factors: the significantly higher costs of prescription medicines as a result monopolistic power granted through the U.S. patent system, the high cost of diagnostic technologies which is a by-product of high R&D cost and the U.S. medical practice that favours the more frequent use of such technologies, and lastly, the higher rate of chronic diseases, including obesity owing to the American's health behaviours. There are also other factors that are, by intuition, should contribute to the high cost but the empirical evidences are inconclusive such as high income per capita and aging populations.

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## **Social Purpose and Administrative Contentious Matter in Romania**

**Alina Livia NICU**

*University of Craiova – Faculty of Law, Craiova, Romania  
nicu1940ion@gmail.com*

**ABSTRACT:** The present work has been elaborated in view of pointing out the fact that – as the social practice has demonstrated – the procedure of administrative contentious matters is understood in Romania as a real instrument able to protect the legal rights and the legitimate interests of the subjects of law (individual and moral persons). As a formal element of the social purpose this procedure has become a modality through which justice does come to be materialized. In order to sustain this conclusion we have made use of the statistical data concerning the administrative causes which have been stated upon by the sections of contentious administrative matters which do pertain to a few appeal courts from Romania as well as by the Section of Contentious Administrative and Fiscal Matters from the High Court of Cassation and Justice of Romania. The respective decisions have been issued from 2001 till 2017. We have studied the concepts of social purpose and respectively of contentious administrative matter understood as being naturally correlated. In order to justify the attitude held by the subjects of law towards this procedure we have elaborated a presentation of its assets and of its successive steps. We have as well included to the present work a few elements of comparative law which do concern the courts which are competent to solve the litigations upon contentious administrative matters. We have also analyzed the contribution brought by the Justice Court of the European Union to the solving of administrative contentious matters through the mechanism of the taken “preliminary decision”.

**KEYWORDS:** administrative contentious matter, social purpose, juridical order, justice, legal right, legitimate interest

### **1. Introduction**

Should it be within a micro- or a macro-group the living together of individuals does suppose the existence of a complex aggregate of relationships of types individual-individual and individual-group. The shape of these relationships is determined by social, political and economical matters. In order to avoid the appearance of dysfunctions within these relationships which would require for the stepping into the knowledge zone of their pathology so that they could be removed for each of the individuals it is necessary to make him feel that he does indeed belong to the group, that he is indeed a part of it. The immediate consequence of this perception is the adoption of an attitude of conformity in respect to the exigencies – rules for living together – which have been defined inside of the group by its members. The acknowledgement of the respective rules does mean the fact that the individual – in order to be able to fulfill some of his own aspirations – does as well give away certain defining features of his own self because he does become aware of the fact that – should it be necessary – this is the only way through which he might be able to impose some conditions of his own to the other members of the group. From the concept of human inter-conditioning we

therefore come to the one of „normative behavioral order.” (Alexandru, Cărașan, Bucur 2005, 14). The history of the human society does illustrate the process of evolution from the existence of some random behavior rules here and there towards a law system which could discipline the behavior of all of the citizens, foreigners and stateless persons who do live within a state as well as the elaboration process in what does concern the rules of international law. Yet the evolution of social relationships has nowadays brought worldwide attention upon the constitution of some macro-collectivities of supra-state size and bearing integrating intentions such as the European Union. For them it has been necessary to define certain juridical norms of a special kind since the social relationships which these are meant to rule over do indeed have some features of their own.

Another social, political and economical phenomenon which has been historically determined and thereby meant to have a strong impact upon the respectively form, contents and juridical strength imparted to juridical norms but simultaneously upon the spiritual assets which do indeed define the human personality is the phenomenon known as globalization (Rotaru 2014, 532). Due to such an impetuous evolution of the current social relationships and to the consequent and continuous process of their re-defining there are some questions which do naturally arise: how does the relationship between on one side the personal aspirations held by each of the group's members and on the other side the collective aspirations of the group itself understood as a collective? Or respectively the relationship between on one side the personal aspirations held by each of the group's members and on the other side the individual aspirations of each of the other fellow members? In order to bring an answer to such issues it is necessary to study the contents held by the concepts of individual welfare, public welfare respectively social goal.

## **2. Concept of social goal**

As it has been as well demonstrated in the specialized literature (Nicu 2007, 13) should the reality that each human being does assume as his own objective the fact of materializing his own aspirations be taken into consideration the social actors which are involved into the process of defining the modality of social organization within the state as well as the social values which could be worthy of being enforced through juridical norms have had to face the challenge of providing an answer to the question: „how the problems of all of the members of society could be solved so that the solutions found should not be embarrassing for anyone or at least for most of them?”

The models of social organization which have been conceived and implemented by starting from the point of view that the supreme political and social objective should be the common welfare did not succeed in proving practically the fact that they do indeed own the quality of being the optimal pattern for a social organizing because they have led the society towards a totalitarian shape. On the other side to consider the individual welfare as the absolute political and social objective instead of the common welfare is wrong because this perspective could lead to alterations of the social relationships. As a consequence the issue to find the theoretical and practical solution through which individual welfare could be achieved as correlated to and simultaneously with general welfare has risen as a primordial necessity. This is how the concept of „social goal” has been created. In order to realize individual welfare upon the background of correlatively and simultaneously achieving general welfare throughout the history of the human society an infinite number of patterns have been experienced under the tangible forms of various social organizations. This process has started with the primitive family and has come to the state-shaped formations. The newest of such

shapes is in our own days the one of supra-state integrating organizations the pattern of which is represented by the European Union.

In specialized literature (Dănișor 1998, 52) it has been demonstrated that in the action of defining the concept of social goal we should start from "the specific nature of society itself" and should continue with the analysis of the differences which do exist between "the nature of individuals" and "the specific nature of society itself". In order to understand the specific nature of society we should take into consideration the fact that the concept of society does suppose the existence of a heterogeneous mixture of individuals among whom are to be established some social relationships. Though the existence of society does suppose the existence of individuals as well as their interaction we are due to imperatively underline the fact that human society is an entity which does have an individuality of its own which is different from the ones of each of the individuals in it. Therefore it does own a nature and existence which are intrinsic and different from the ones of its composing elements.

Insofar the human individual is concerned: in most of cases he is not preoccupied by the matter of the "materiality and corporality of the society, of a psychical life of it materialized, among other things, through a system of law" due to the accelerated rhythm of his own life (Nedelcu, Nicu 2002, 10). The human individual is first of all preoccupied to estimate as accurately as he could if and at what extent he could or not be able to materialize his own aspirations. It is barely as a subsidiary matter that some among people are trying – with more or less competency to do so - to understand what have been the causes which have determined the modality through which society has responded towards the individual issues and to verify if or not their own aspirations are the same as the ones of other people or if or not the problems they do meet in materializing their own aspirations have been encountered by other members of the group. For example, religious freedom is one of the most delicate aspects of human rights (Rotaru 2015, 595).

The necessity of defining the concept of social goal is thereby outlined: the specialists ought to provide an answer to the question if social goal does or not mean simultaneously the individual welfare as well as that type of common welfare which is to be identified through the fact that once it has been defined it is immediately assumed by the human individual as his own goal. According to an opinion (Nedelcu, Nicu 2002, 12) the social purpose is: "that concept which does refer to the common welfare ensured through the preservation of the social order and through the accomplishment of justice – by common welfare understanding the welfare of society as a trans-individual entity. Let us mention that when defining the contents of the common welfare it ought to be considered at whatever moment as simultaneously correlated to the individual welfare that is to say the social purpose is due to own the quality of being able to allow for the concrete individual goals the possibility of materializing themselves as soon as it has been assumed by the individual as his own purpose".

### 3. Concept of administrative contentious

#### 3.1. Significations sustained in doctrine

The concept of administrative contentious matter does own a *lato sensu* meaning as well as a *stricto sensu* one (Vedinaș 2017, 394). *Lato sensu* administrative contentious does mean the totality of the litigations which do come to be created between the public authorities on one side and the individual or moral persons on the other side when they do consider themselves as being prejudiced in their legal rights or in their legitimate interests through illegal administrative acts the authors of which are the respective public authorities. Such litigations are solved upon the ground of a regime of public

power ruled by the frame law enforced in view of this matter and which pertain to the competency of judicial courts for administrative contentious matters (Ciobanu, Kund 2008, 214).

### 3.2. *Legal definition*

The Law nr.554 of December 2-nd 2004 – known as the Law on contentious matters - currently updated does define in its art. 2 par. (1) letter f) the administrative contentious as being: "the activity carried on by the judicial courts for administrative contentious matters which are competent for it in virtue of the organic law of resolving the litigations into which at least one of the sides is a public authority and the conflict has arisen suiting the case due to the issue or closing of an administrative act understood in the sense held by the present law or either due to not having resolved it within the legal term or due to an unjustified refusal of solving a request which does concern a right or a legitimate interest". The law does as well define the kindred concepts of administrative act, prejudiced right, legitimate public interest and legitimate private interest. To seize the essential and intrinsic meaning of the concept of administrative contentious does depend upon their correct understanding. In its art. 2 par. (1) letter o) the law does precise the fact that by prejudiced right has to be understood as: "whatever right stated by the Constitution, by the law or by other normative act to which prejudice would be brought through an administrative act". In the text of the Law nr. 554/2004 currently updated in its art. 2 par. (1) letter p) we find out that a legitimate private interest does mean: "the possibility to require a certain behavior in view of taking into consideration the realization of an anticipated, future and predictable subjective right" while into the same Law the article 2 par. (1) letter r) does precise the fact that a legitimate public interest is: "the interest which does aim towards the order of law and the constitutional democracy, the warranting of the fundamental rights, liberties and duties of the citizens, the satisfaction brought to the needs of the community, the achievement of held competencies by the public authorities".

For a rigorously exact perspective upon the juridical institution designated as administrative contentious it is necessary to precise the fact that it does hold a tradition in Romania. Presently this matter is ruled by the Constitution of Romania through its articles 52 respectively 73 paragraph (3) letter k) under its revised form of 2003 and by an organic law – the Law nr. 554/2004 published in the *Monitorul Oficial al României* Part I nr. 1154 of December 7-th 2004 and further modified inclusively through the Law nr. 138/2014, through the Law nr. 207/2015 respectively through the Decision of the Constitutional Court of Romania nr. 898 of December 17-th 2015 concerning the exception of non-constitutionality raised by the dispositions of the Law on contentious administrative matters nr. 554/2004 in its art. 24 and art. 25. In what does concern the tradition held by the juridical institution of administrative contentious we are due to precise the fact that it has appeared in 1864 when the Romanian legislator has founded the State Council in the frame of the executive power of the state suiting by this the model of the French legislation. In 1866 the abdication of the reigning prince Alexandru Ioan Cuza has occurred and the State Council has been ultimately dissolved.

The competencies pertaining to administrative contentious matters have been imparted to the judicial courts. Administrative contentious has therefore become shaped as an indirect control through the modality of the exception of illegality. The sides could raise this exception at whatever court of justice versus any of the administrative acts which could pertain to the causes imparted to the respective courts. The High Court of Cassation has been organized through successive laws in 1905, 1910 and 1912. These laws have offered to the sides the possibility to make use of a direct action in view of resolving the litigations in administrative contentious matters. The professional probity

and impartiality demonstrated by the magistrates who were usually the members of judicial courts and especially of the High Court of Cassation and Justice have brought the development and consolidation of the juridical institution of the administrative contentious. As a result the citizens have come themselves to increasingly trust it (Negoiță 1992, 81). In 1923 the Constitution of Romania has enforced as a constitutional principle the necessity of a judicial control to be exerted upon the legality of all of the administration's acts. The acts of governing and the ones of the military command were the only administrative acts exempted from this control. The above mentioned constitutional principle has been further developed through the Organic Law on the administrative contentious from 1925. This law has ruled over the procedure issues which were raised within the resolving of the litigations which pertained to the administrative contentious. Because of the fact that the Constitution of Romania in 1948 had enforced as a constitutional principle the policy that judicial courts were entitled to verify the legality of administrative acts only when this prerogative had been explicitly stated by the law the juridical institution of the administrative contentious has come to be dissolved in 1948 in virtue of the Decree nr. 128/1948.

The Constitution of Romania from 1965 has enforced as a constitutional principle the requirement of legality for the administrative acts. As its consequence on July 26-th 1967 has been enforced the Law nr. 1 concerning the statement by tribunals upon petitions submitted by persons of which the rights had been prejudiced through illegal administrative acts. This law has produced its effects until after the events of December 1989 that is to say until the enforcement of the Law nr. 29 of November 7-th 1990 – the Law on administrative contentious matters. The superior quality of the regulations by it stated is irrefutable. For example a positive issue is the fact that – in spite of the fact that it has still contained a lot of exceptions from the judicial control over the administrative acts – the Law nr. 29/1990 modified through the Law nr. 59/1993 has yet allowed the use of the administrative contentious procedure for the verifying of the legality of a larger number of categories of administrative acts and this is mostly a consequence of the fact that a new policy has been applied in what does concern the administrative act since the administrative jurisdictional acts have been included to the category of administrative acts which are submitted to the control through the administrative contentious procedure.

### *3.3. Features of the administrative contentious procedure*

From the regulations which do refer to the administrative contentious procedure its following main features do result (Vedinaș 2017, 406-414):

a) in what does concern the type of its contentious procedure it is a full jurisdiction one;

b) in what does concern the object of its litigations the distinctive fact is the one that the administrative contentious procedure is a direct control, through the modality of a lawsuit having as its object the proper administrative acts or the ones assimilated to them (Petrescu 2004, 363);

c) in what does concern the quality of the litigating sides:

- the quality of accused person is held by the public authorities the acts of which are attacked in court or of which the unjustified refusal of resolving a request is criticized in court with the purpose of convincing the court to oblige the accused authority to solve the request and to repair the subsequent prejudices caused through the respective refusal;

- the quality of claimant is held by the following categories of subjects of law: 1. Whatever person which does consider herself as being prejudiced by the public

authority through the administrative act or through the unjustified refusal; 2. A third side in respect to the administrative act - ;third side which is prejudiced through the contested act; 3. The People's Attorney as a consequence of exerting his control prerogative should he appreciate that the illegality of the act could be removed only through the court of law - case in which he may notify the court for administrative contentious issues from the domicile of the author of the petition through which the People's Attorney has been vested with the authority of performing the control; 4. The Public Ministry under the circumstance when as a consequence of exerting its specific prerogatives it should appreciate that the source of the infringement of rights, liberties or legitimate interests is constituted by some individual unilateral administrative acts issued through an excess of power by the public authorities – in this case the prior agreement of the prejudiced persons is necessary before promoting the lawsuit – or under the circumstance when it should appreciate that an administrative act is bringing prejudice to a legitimate public interest; 5. The public authority which has issued the administrative act in the case when it could no more revoke the act because it has already entered in the civil circuit and it has produced some juridical effects; 6. The National Agency of Public Servants; 7. The subjects of public law;

d) the procedure act of formulating a prior complaint is compulsory – the exceptions from it are precisely and restrictively ruled;

e) the competency of solving the litigations which pertain to contentious administrative matters is imparted to the sections for contentious administrative and fiscal issues situated at the respective levels of the tribunals, of the Appeal Courts and of the High Court of Cassation and Justice;

f) the administrative jurisdictional acts may as well be attacked in the administrative contentious court;

g) should indemnifications be requested through the lawsuit for the caused prejudice or for the occurred delay the lawsuit could be as well formulated: "personally versus the person who has contributed to the elaboration, the issue or the closing of the act or suiting the case versus the person who is guilty for the refusal of solving the request that refers to a subjective right or to a legitimate interest" (Vedinaş 2017, 411);

h) the existence of some procedure guarantees which do concern the solving of the causes which pertain to administrative contentious issues and to the effective execution of the definitive and irrevocable judicial decisions.

### *3.4. Issues concerning the stages of the administrative contentious procedure*

#### *3.4.1. Issues concerning the prior procedure*

According to the dispositions of article 7 of the Law nr. 554/2004 corroborated with the dispositions of article 2 of the same normative act whatever person which does wish to make use of the administrative contentious procedure is due at first to pass through the prior procedure which does consist in the formulation of a prior complaint. The person which does consider herself as being prejudiced in a legal right or a legitimate interest through an individual administrative act concerning herself or through an individual administrative act addressed to another subject of law is due to formulate this complaint before addressing to the judicial court. The Law nr. 554/2004 in its article 2 paragraph (1) letter j) the precision is brought that a prior complaint does mean a request through which to the public authority which has issued the concerned act or either to the authority which is hierarchically superior to it - should this latter exist suiting the case – is demanded the re-examination of the administrative individual or normative act aiming to the final purpose of – suiting the case – to modify the concerned act or to totally or partially revoke it. The due term within which the prior complaint has to be

formulated is of 30 days since the date when the act has been communicated under the circumstance when the contested act is an administrative individual act addressed to the author of the prior complaint. Should it be an administrative individual unilateral act addressed to another subject of law the due term for the formulation of the prior complaint would be of 30 days since the moment when the prejudiced person has become aware – in whatever way – of the contents of the concerned act. An exception might occur in the case of unilateral administrative acts should irrefutable reasons exist for it. The prejudiced person which does bear the quality of being the recipient of the act does benefit from the possibility of a larger term stated by the legislator as: "not later than 6 months since the date when the act was issued." The term of 6 months is a prescriptive one. Should it be a prior complaint which does refer to an administrative individual unilateral act addressed to another subject of law the prejudiced person would benefit from the possibility of a larger term precised by the legislator as being: "not later than 6 months since the date when she has become aware – in whatever way – of the contents of the concerned act". The term of 6 months is a prescriptive one. Should the prior complaint concern a normative act there would be no time limit and the prior complaint could be submitted at any moment during the period when the respective act is enforced.

#### *3.4.2. Issues concerning the procedure within the judicial court*

An important feature of the procedure – thought of by the legislator in order to avoid tiresome trips to the sides – is the fact that the Law on administrative contentious issues has established an alternative territorial competence. The side is therefore entitled to choose where to sue: at the judicial court from his own domicile or either at the one from the domicile of the accused. In what does concern the material competency according to the dispositions of article 10 of the Law nr. 554/2004: the tribunals are primary courts for the essence of the causes which have as their objects the administrative acts issued or closed by the local and departmental public authorities as well as the administrative acts which do concern taxes and duties, contributions, custom claims as well as their accessories up to the value of 1.000.000 lei; the appeal courts are deciding as primary ones upon the essence of the causes which have as their objects the administrative acts issued or closed by the central public authorities as well as the ones which do concern taxes and duties, contributions, custom claims as well as their accessories beyond the value of 1.000.000 lei respectively the causes which have as their objects the administrative acts issued by the central public authorities which have as their objects pecuniary sums which do represent the non-reimboursible financing received from the European Union no matter what might be their respective values.

Through its article 17 the Law on administrative contentious issues does rule over the urgency feature of the lawsuit understood as a modality of protecting the sides in the sense that the incertitude concerning the existence or not of the prejudice suffered due to the action or to the lack of action chosen by the public authorities should last the less time possible. The above mentioned legal text does bring the precision that: "The requests addressed to the judicial court are to be decided upon under an emergency regime and usually within a public session by the panel established by the law" while "The decisions are to be elaborated and motivated within at most 30 days since their issue." Insofar procedure is concerned the admissibility conditions of the lawsuit on contentious administrative issues do present a particular interest. Before submitting its request to the judicial court whatever side ought to verify if the admissibility conditions are or not fulfilled in order to avoid an useless deed. These admissibility conditions are (Vedinaş 2017, 416):



- the attacked act has to be a proper administrative act or an act assimilated to an administrative one;
- the act has to be issued by a public authority;
- the attacked act has to cause a prejudice to a subject of law in what does concern a right acknowledged by the law or a legitimate interest;
- the prior procedure has to be fulfilled;
- the legal procedure terms have to be respected.

The organic law concerning the administrative contentious issues does state a few exceptions from the legality control exerted by the courts for administrative contentious issues. These are precised in its article 5: - the administrative acts issued by the public authorities which do concern their relationships with the Parliament as well as the military command acts respectively the administrative acts for the modifying or annulment of which another judicial procedure is stated by an organic law;

- "The administrative acts issued in order to apply the regime of the state of war, of the siege state or of the state of emergency, the ones which do concern the national defense or security or the ones issued in order to restore the public order as well as for the removal of the consequences brought by natural calamities, epidemics and epizooties" could be attacked only for the motive of excessive use made of power.

### *3.5. Considerations concerning the entities which are competent to solve the litigations pertaining to administrative contentious issues in various law systems*

Several systems have been instituted worldwide in order to solve the litigations which might appear between the private persons and the administration (Iorgovan 2005, 469). In France, until the Revolution of 1789 have existed some administrative organs bearing a jurisdictional role known as the so-called "system of the administrator-judge". Nowadays in France does function "the French system of special and specialized courts vowed to the administrative contentious, of the administrative tribunals ahead of which does stand the State Council as the supreme court for administrative contentious issues". In the Anglo-Saxon system the litigations which pertain to administrative contentious issues are decided upon by the common law courts. In Belgium, Finland, Germany, the Netherlands or in Luxembourg the joint system is enforced (Grigoraş 2014, 13). It is the one in the frame of which the competency does belong "as well to "the ordinary courts as to the administrative and fiscal ones" (Vedinaş 2017, 393).

### *3.6. Relationships of national courts with the Justice Court of the European Union*

Romania has acquired the quality of member state of the European Union. This fact has brought to the Romanian citizen who has thereby become a citizen of the European Union a new reality: The Justice Court of the European Union is entitled to interact with the national courts in what does concern the interpretation which ought to be given to the community's legislation which does now act upon the Romanian citizens complementarily with the internal law. The Court which is formed of two courts – the Tribunal and the Court of Justice – does help the member states to understand and to apply in an unitary way the norms of the community's law. More exactly under the circumstance when a court from a member state does wish to verify if a legislative act or a national practice is or not compatible with the law of the European Union or when the respective court does have its own doubts in what does concern the sense towards which a community's normative act ought to be interpreted or about the validity of such an act it is entitled to make use of the mechanism of the preliminary decisions.

The competency in this matter does belong to the European Justice Court which is as well competent to solve certain annulment lawsuits and certain recourses. Insofar the administrative contentious is concerned an example is edifyingly illustrative about the role held by the Justice Court and by the preliminary decisions towards the Romanian citizens. It is the Court's Decision C-586/14 of June 9-th 2016 in the Budişan cause. Through this decision an answer has been provided to the questions raised in the frame of the preliminary envoys by the Appeal Court of Cluj in what did concern the accurate interpretation of the article 110 TFUE as a consequence of the existence of a litigation between on one side Mr. Vasile Budişan and the Department's Administration of Public Finances from Cluj on the other side about a tax which Mr. Budişan has been due to pay in order to immatriculate in Romania an already made use of auto vehicle the provenience of which had been from another member state. As it does result from the text of the Decision issued on June 9-th 2016 that we have consulted upon the site [curia.europa.eu](http://curia.europa.eu) the Court has declared that „The article 110 of the Treaty concerning the Functioning of the European Union ought to be interpreted in the sense that:

- it does not oppose to the fact that a member state could institute a tax upon auto vehicles which would be applied to the imported and already made use of on the occasion of their first ever immatriculation in the concerned member state as well as to the auto vehicles which are already immatriculated in the respective member state on the occasion of the first ever transcription of the ownership right upon them which does occur in the same state;

- it does oppose to the fact that the respective member state could exempt from this tax the already immatriculated vehicles for which a tax which had been enforced before but which had in the meantime been declared as incompatible to the European Union's law has been paid but has not been restituted.” The practical importance held by this preliminary decision does reside in the fact that due to it the Romanian legislator has come to modify the national legislative frame in order to eliminate the tax which had generated the concerned litigation. It had been officially named as "the environment stamp".

#### **4. Statistical data concerning the use made of the administrative contentious procedure**

The administrative contentious procedure does include as first stage the prior request. In its frame part of the petitions submitted by the citizens do indeed receive favorable solutions but the statistical ratio of such cases is impossible to be exactly found because the requests coming from the citizens are not public matters and therefore there are no statistical reports concerning this issue. Yet at the level of the judicial courts reports are elaborated concerning the number of lawsuits which do currently exist upon the rolling lists of the courts for administrative contentious matters and from their analyses some interesting conclusions may be drawn.

Table 1. Statistical data concerning the number of files on contentious administrative issues which have been submitted on the rolling list of the High Court of Cassation and Justice during the time period going from 2001 until 2017

Year	Number of files submitted on the rolling list at the Section of Administrative and Fiscal Contentious Matters
2017	13884 of which 7812 on the rolling list at January 1-st 2017 and 6072 new
2016	11496 of which 5772 on the rolling list at January 1-st 2016 and 5724 new
2015	9816 of which 4707 on the rolling list at January 1-st 2015 and 5109 new
2014	9555 of which 4792 on the rolling list at January 1-st 2014 and 4763 new
2013	11655 of which 6316 on the rolling list at January 1-st 2013 and 5339 new
2012	11761 of which 3407 on the rolling list at January 1-st 2012 and 8354 new
2011	9596 of which 3038 on the rolling list at January 1-st 2011 and 6558 new
2010	8834 of which 2424 on the rolling list at January 1-st 2010 and 6410 new
2009	8376 of which 2338 on the rolling list at January 1-st 2009 and 6038 new
2008	7171 of which 1674 on the rolling list at January 1-st 2008 and 5497 new
2007	6575 of which 1949 on the rolling list at January 1-st 2007 and 4626 new
2006	6631 of which 1715 on the rolling list at January 1-st 2006 and 4916 new
2005	7741 of which 3473 on the rolling list at January 1-st 2005 and 4268 new
2004	12586 din care 3886 on the rolling list at January 1-st 2004 and 8700 new
2003	8526 of which 2702 on the rolling list at January 1-st 2003 and 5824 new
2002	6619 of which 3275 on the rolling list at January 1-st 2002 and 3344 new
2001	7504 of which 2913 on the rolling list at January 1-st 2001 and 4591 new

We have analyzed the statistical data which we have found on the site of the High Court of Cassation and Justice of Romania (2019, scj.ro) on April 1-st 2019 - data which we have as well presented in Table 1 and thereby we are entitled to ascertain the fact that from 2001 until December 31-st 2017 the number of files which have been submitted on the rolling list of the Section for Contentious Administrative and Fiscal Matters from the High Court of Cassation and Justice has increased. This fact may be interpreted as a positive result from two different points of view. On one side this increase does demonstrate that the general level of juridical culture has increased since the citizens have become better informed in what does concern this modality of juridical procedure. On the other side the reaching for the judicial courts does stand as a proof of the fact that the involved persons not only are well informed but as well they do trust the juridical process, that they are convinced that the judicial court is indeed able to help them in eliminating the prejudices that they invoke and even in obtaining material and moral indemnifications when the legal requirements for their granting are reunited. The number of lawsuits is, of course, small when compared to the number of persons which are placed under the jurisdiction of the High Court of Cassation and Justice of Romania. This total number does rise to a level of millions of individual and of moral persons but this fact is a positive one in the sense that the small number of litigations which do pertain to the contentious administrative issues does prove that in most of cases the action exerted by the public authorities is a correct one and that – consequently - the

principle of legality understood as a fundamental principle of the public administration is respected.

Table 2. Statistical data concerning the number of files on contentious administrative issues which have been submitted on the rolling lists of the Court of Appeal Bucharest and of its subordinated judicial courts

Year	Number of files submitted on the rolling list at the Section for Contentious Administrative and Fiscal Matters from the Court of Appeal of Bucharest and at its subordinated judicial courts			
	Essence	Appeal	Recourse	Total
2017	16.469	7.937	343	24.749
2016	23.787	11.887	8.369	44.043
2015	26.418	7.274	9.825	43.517
2014	27.238	4.190	14.455	45.883
2013	29.832	380	15.995	46.207
2012	24.176	0	10.820	34.996
2011	22.549	0	10.705	33.254

We have performed our second analysis in what does concern the activity of the sections for contentious administrative and fiscal matters of the Court of Appeal of Bucharest and of its subordinated judicial courts that is to say the Tribunals of: Bucharest, Călărași, Giurgiu, Ialomița, Teleorman. We have also analyzed the statistical data which we have found on the site of the Appeal Court of Bucharest (2018) - data which we have presented in Table 2 and thereby we are entitled to ascertain the fact that from 2011 until 2016 the number of litigations has proven to increase while in 2017 the number of files has decreased under the level recorded in 2011. This evolution does indicate a status of normality in what does concern the respect of the principle of legality as well as insofar is concerned the making use by the citizens of the contentious administrative lawsuit as a modality for removing the illegal issues from the practice of the public administration.

The Court of Appeal of Craiova has as its subordinated judicial courts the Tribunals of: Dolj, Gorj, Mehedinți and Olt. Alike the Court of Appeal these courts do contain sections for contentious administrative and fiscal matters. We have as well chosen to study the data concerning the litigations upon contentious administrative issues from this court because, according to the statements from the document entitled "Analysis of the activity performed by the Appeal Court of Craiova in the year 2018" and published upon the site [www.curteadeapelcraiova.eu](http://www.curteadeapelcraiova.eu) at the level of this Court: "according to the Statis records at the level of the year 2018 a number of 190.410 newly registered files were recorded with a total accumulation of 258.377 causes upon the roll list" which corresponds to the real fact that in respect with the volume of its activity: "The Appeal Court of Craiova does preserve the second rank in the hierarchy of the appeal courts at national level after the Appeal Court of Bucharest" and as well "does hold a ratio of 8,6% from the total number of newly registered files upon the roll lists of the similar courts throughout the country".

Table 3. Statistical data concerning the number of files on contentious administrative issues submitted upon the rolling lists of the Appeal Court of Craiova.

Year	Number of files submitted upon the rolling list at the Section for Contentious Administrative and Fiscal Matters from the Court of Appeal of Craiova (without its subordinated judicial courts)		
	On the rolling list at January 1-st	New files	Total
2018	824	4588	5412
2017	1029	9765	10794
2016	1404	3967	5371
2015	1051	4698	5713
2014	2591	7982	10573
2013	4481	18016	22497
2012	2906	15420	18326
2011	6078	28096	34174

We have analyzed the statistical data which are presented in Table 3 and thereby we are entitled to ascertain the fact that at the Appeal Court Craiova the number of causes pertaining to the competency sphere of the Section for Contentious Administrative and Fiscal Matters has reduced during the period from 2011 till 2018. The smallest number has been recorded in 2016 – 5371 files as well as in 2018 – 5412 files. This is a pleasant fact because it demonstrates that within the territorial area of competency held by the Appeal Court of Craiova the personnel from the public sector has increased the quality of performance in its activity. The number of the alleged infringements of the law which might have justified the promotion of lawsuits at the court for contentious administrative issues has thereby proportionally decreased.

## Conclusions

The practice of the judicial courts has demonstrated the fact that the administrative contentious procedure has become a real instrument of social regulation which is successfully used in order to accurately apply the principles of the separation, equilibrium and reciprocal control of the powers within the state as well as for restoring the status of legality when some individual or moral persons do estimate that within the public administration the legal norms have been infringed bringing as results some prejudices to the legal rights and the legitimate interests held by the respective persons. The statistical data do point out the fact that – in respect to the population from Romania – the number of litigations which pertain to contentious administrative issues is relatively small. This fact means that a small percentage only among the Romanian citizens do consider themselves as being prejudiced in their legal rights and legitimate interests due to the action of the public servants whose aim is to materialize practically the enforced legislation. Such a status of the practical facts does correspond to a healthy status of the social relationships which is due to the fact that the principle of legality understood as a fundamental principle of the state of law is indeed duly respected.

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## **The Impact of Globalization and Trade on Africa**

**Samuel Akpan BASSEY**

*Department of Philosophy, University of Calabar, Nigeria  
samuelbassey15@yahoo.com*

**Mfonobong David UDOUDOM**

*Social Science Unit, School of General Studies, University of Nigeria, Nsukka  
mfonobong.udoudom@unn.edu.ng*

**Timothy Adie OKPE**

*Department of Philosophy, University of Calabar, Nigeria  
timothyokpe3980@gmail.com*

**ABSTRACT:** The phrase globalization grasps the attention of everyone and especially economic development researchers. However, in spite of the prior prosperity promises of globalization, trade and the benefits of an information accessing society, the subsequently benefits arguably have not been said to universal and global inequality has increased. Some studies reveal that globalization has widened the gap between rich and poor countries in its persistent progression while others are uncertain about its effect. Although the idea of globalization had steadily been developed since the Second World War, its impact gained energy in the early 1990s; Africa has not been spared from the implication of this experience. The purpose of this article is to examine the impact and salient issues concerning globalisation and trade on African countries. Despite liberalisation of trade which has many negative issues as well as the positive ones. This paper is of the opinion that and controlled liberalisation must be seen as the only way forward.

**KEYWORDS:** African countries, globalization, Trade

### **Introduction**

When we consider globalisation, we would see that many trading arrangements have had the aim of increasing trade by reducing barriers and making the flow of goods simpler. This is usually accompanied by an increased awareness and practice of capitalistic policies, such as the liberalisation of the markets. However, when we look at how this may be seen as effecting the less dominant economies, we can argue that the effects are not all advantageous. In nations where there are strong consumer pressures and the way business is perceived can be seen as a market force, good practices may be followed. However, in the ever continuing need to cut costs, find new suppliers and change markets, originations have been entering third world countries, such as those in Africa, taking advantage of their need of hard currencies, and trading in manners that would not be acceptable in other countries. We can argue that this is a direct effect of liberalisation of markets, both in foreign countries and in the African nations, as well as the phenomenon of globalisation. This changes the social structure of the countries that are developing, reducing the rural populations and concentrating them where the development is taking place, somewhat akin to the developments of the industrial revolution in the west, where the landscape of the country was completely changed. The

aim of this paper is to critically look at the globalization and trade from African perspective, This paper looks at both the positive and negative part of the story.

### **Liberalisation of markets**

The liberalisation of the markets is generally seen as a good move, opening up to competition so that consumer may benefit from the increased pressure on businesses to provide good services at a lower price or to a higher level of service or quality. The impact often creates differentiation and a better environment for the consumer (Porter, 1980). This may also be seen as increasing the pressures on the natural environments whilst improving the commercial environment. The liberalising of markets means that there are fewer rules and regulation constraining the way the companies undertake there trade. Despite this negative tendency, liberalising liberalisation of the markets also has a positive impact for many African countries, both those developing and those not. The aspect of the need for protectionism can be seen if we look at two basic models of business and place them in the context of a liberalised economy.

In an economy where liberalisation is not yet achieved then it is likely there will be protectionism policies in place. Often these will be manifest in the way monopolies exist, especially for utilities. These are also likely to be more rural economies, with less in terms of pollution and industrialised buildings. However, there will also be the ability for the company to behave as it wants to, including creating higher levels of waste, with no comparison locally it will be hard for consumers and local resident to complain by making a comparison. In a pure monopoly, there is only one company in the sector, there is no competition and therefore the service or product is unique. Also differentiation standardisation won't be an issue as there is only one product or service available (Thompson 1998). This single company control means that market forces will mean very little as the monopoly is often in an industry where there is elasticity of a company is below 1 and as such is an essential service, therefore there is a large amount of power with the supplier and as such there are many problems with a monopoly.

If a competitor wishes to enter that market they may not be able to as their entrance will be blocked (Thompson 1998). The competitive environment here is nonexistent, and the commercial environment leaves the consumer as having little choice on tier choice of supplier. This type of market is becoming less popular due to the problematic nature of the market where no competition leads to high prices, low investment levels and little if any progress, therefore it is not in the interests of either supplier or competition to have a monopoly. The commercial environment is increasing popular as an operational framework for a strong economy. To appreciate the difference in an economy where there is complete liberalisation then we need to consider the opposite model; pure competition.

### **Pure Competition**

Pure competition is seen as a state of many industries as it often results in the lowest prices for the consumer. It is also worth noting that the model of pure competition is unlikely due to the way in which it operates. In a situation of pure competition the only determining feature is that the setting of price and supply will be the basic model of supply and demand (Thompson 1998). There will be no barrier to entry or exist as a limiting factor of the industry, therefore there are no external influences such as regulation or price controls (Thompson 1998). Here there may also be additional pressures brought to bear, such as the need to cut costs. In areas such as Asia and Africa, where many companies have moved their operations, this may mean practices that will create more waste in the environment, effecting the water table and the quality



of food and development. This is allowable due to the lower levels of legislation. There will also be the phenomenon of the move from rural to urban areas to find work.

One of the best examples of this may be seen in an agricultural market where there are many stalls selling the same goods, if one stall is selling carrots at a price below the others then it will be the stall that sells the most the rest of the stalls will have to reduce their prices to compete if they want to sell any products. This is also determined by supply and demand, where the demand for carrots is greater than the supply the suppliers can out up their prices until an equilibrium is reached, if the supply outstrips the demand then they will have to reduce the price of the carrots. By the same measure, where there is little demand for cabbage, then there may not be a wish to grow cabbage. Then the farmers may stop growing the cabbage, and intensively farm the carrots. Therefore, agricultural diversity may be reduced, and the land could suffer from a lack of rotation. In turn this will mean that there will need to be the use of fertilisers and other chemicals to safeguard the crop. This may also effect the local ecosystem, creating an environment very different from the past, meaning that some insects may lose their natural predators, whilst others become more endangered. The balances will shift, and if a keystone in the ecosystem is affected then the entire chain may collapse. There can also be a problem where market forces are not strong enough to attract competitors, such as in areas where a profit may not be forthcoming or as great in other areas. The continent of Africa has many sectors where there are needs, but since there are not potential profits as large in other continents the sectors are not served. The market forces may also not need the farmers to protect their land, consumer indifference may result in over farmed land.

One example of this may be seen as the drug industry, where even with discounts governments often argue that they cannot afford to buy the drugs that individuals need. Had there been a state set up system and drugs manufactured by state controlled companies, then this would not be such an issue. Indeed, on many cases there have been problems over the manufacture of generic drugs and claims of TRIPP's agreement's being broken and licensing agreements ignored.

## **Discussion**

However, in other aspects we can argue that the liberalising of the markets has enabled countries to develop at a much faster rate than would otherwise have been possible and also vice versa. The continent of Africa can be seen as one of the areas where there is a huge potential for the future expansion of the computer industry. In Nigeria, Ghana and Cameroon there is a liberalised industry, and there is wide access to the internet compared to other African countries. Access to the Internet was launched in 1992 it was officially launched in 1998. For Cameroon, coverage is over the whole country, but in reality there is only a good coverage of six of the countries ten provinces (Nyeck 2001). The two biggest cities of Douala and Yaounde have 90% coverage but in the provinces it is at a lower rate, with some areas only have one or two people connected (Nyeck 2001). This has resulted in a lack of development and investment, also demand not seeing a positive influence for the sale of computers as the Internet and the uses of computers are not yet as the same level of perceived needs as seen in other countries.

The demand may therefore be seen as proportionally higher in terms of institutions as compared to individuals, but severely limited in overall terms compared to the total number of the countries citizenry. The current and future economic conditions are likely to have an extreme influence. The ownership of computers can be seen as correlated strongly with economic conditions. It is unlikely that those on a low income will choose to buy a piece of technology when they are still seeking to provide a

subsistence level for their families. As the economic condition improve so will the marketplace.

The strongest parts of the market are in government organisations as mostly commercial interests in the country where there is internal investment. In terms of geographical locations these have already been stated with the internet figures as Douala and Yaounde (Nyeck 2001). In an attempt to increase the imports of computers and make them more popular in this price sensitive market the Cameroonian President has reduced import taxes on computers. This can be seen as a move that increases liberalisation, and as a result the liberalisation is allowing the country to benefit from the technical advances of other nations, buying it, rather than having to develop it. The learning curve may be steeper, but it is undertaken more quickly. The way in which the market is driven may also be seen as very fragmented. Like most areas there is a dominance of Microsoft products. This is especially true in the Internet market on the PC, where internet explorer is free. Here we see the effect that liberalising is having globally, with the dominance of a single company extending into many countries, and able to compete in ways the local companies do not have a chance to. This may also be seen as unfair creating an uneven environment.

In many African nations, the import of all of these goods may be seen as limiting their own development. Importing as a result of the lower barriers, they are not manufacturing or creating, they may also be seen to create a scenario that will mean that internal investment is shunned in favour of the import of goods to the country. This will also have an adverse effect on the nation's balance of payments. It also means that the technology is not being learned by the nation, and as a result they are not really advancing. However, some nations may also benefit by finding a niche market that would not otherwise be available.

In terms of market growth the potential is still focuses on the cosmopolitan cities. Those who are most likely to buy are still those with a higher disposable income. This is increase as the economy condition in the country increase, with more 'middle class' targets. This also shows how liberalisation may induce the negligence of some areas of a market where a product or facilities are required, but not seen as profitable enough.

However, as a sector develops more initiatives will be followed and it will usually increase in its' efficiency as more competition enters and the market matures. This can be seen in the formation of multiple channels of distribution. The development of these may be able to realise reductions in costs as well as increases in the economies of scale as the market increases. The channels if developed, may also increase the amount of computer that can be brought into the country and the accessibility to the more rural areas. There may also be a more efficient operation of the market, reducing the amount of capital that needs to be tied up in terms of proportionality. If we look at the liberalisation of the telecom industry in these countries we can also see how it helps the free flow of information and have helped stimulate other markets. When we look more deeply we can see that liberalisation does bring benefits, even where it is initially thought to be only bringing imports and having a negative effect on the balance of payments. In the case of this industry, these Nigeria, Ghana and Cameroon may never be a major supplier to its' own people of computers, but their availability has stimulated other sectors of the economy, creating more jobs and more economic growth as well as bettering social conditions. In other industries we can argue there is a need for some control, however here we may also consider the case for controlled liberalisation. In this there may be seen a degree of protection, and markets may be prepared before being opened. In countries where there are harsh conditions, there are also some very strong reasons for government controls to remain in place.

If we wish to see one area where there has been liberalisation in a controlled manner we can look at the aviation industry. The global 'Open Skies' agreement is relevant to Africa. The continent does not have great resources in many of the sub Saharan nations (McLymont, 1999). Therefore, the increasing number of carriers that are allowed to operate in a controlled manner can be seen as facilitating trade in other areas as well as bringing in the needed aid (McLymont, 1999).

There are also some favourable side effects, as international trade increases there is often an increased understanding between the nations government. When we consider Europe, the European Union was brought about in order to bring peace to a continent where there had been two major wars in a single century (Weixler 1994). The ties of economic commerce are greater than those of political diplomacy as they create interdependence, and as such may help the political stability of the area and create new alliances between different governments (Nellis and Parker 2000).

The liberalisation operate in this way intercontinental as well as within the single continent, with greater levels of global integration being achieved (Adler and Webster, 1999). However, governments need to be careful of the pace at which liberalisation is introduced (Kaplinsky and Morris, 1999). Where this occurs the result can be the reduction of jobs and harm to the economy with the pressures of change forcing local competitors out of the market (Kaplinsky and Morris 1999). There may also need to be some policies that may be seen as favouritism to the local companies, such as grants and aids to help the companies compete in the new market. This may be to gain more information due to an asymmetry, or to upgrade facilities to compete more effectively (Kaplinsky and Morris 1999). In the short term this may place a greater economic pressure on the government, but will safeguard an industry in the long term. The cost may be partly mitigated, or reduced by the control of the liberalisation, to allow time for the change, or to increase the costs to the new entrants to protect the market. Although often seen as a negative way of trading, under these circumstances we can appreciate when it is a suitable transitory policy. This may also help to reduce potential poverty that could be seen to occur due to increased competition in an industry (Kaseke 1998).

## Conclusion

In considering the above discussion, it appears that controlled mostly this has been a positive aspect of liberalisation. However, there are some parting thoughts that can be considered by the reader. In some countries where there is hunger and poverty, there are agriculture facilities growing grains, not for their own use, but for export. If liberalising did not exist then we may argue the production may not be as effective, but it is more likely the grain would be used in the country where it was grown. The transportation of this may also be seen as damaging the environment, a result of liberalisation of the international markets. Therefore, when considering this, it needs to be recognised that there are many negative issues as well as the positive ones that have been considered, and controlled liberalisation must be seen as the only way forward, if there is a need for liberalisation, and the benefits of some barriers should be understood and always remembered!

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## **Theoretical Aspects Related to Social Practices of Adolescents on Social Media**

**Gabriel-Constantin NICOLA, PhD (c)**

*University of Oradea, Romania  
gabi.nicola@yahoo.com*

**ABSTRACT:** In the proposed article, starting from some theoretical considerations, we will reflect on the influence of online social networking on adolescent social attitudes and practices. At the same time, we will touch on some aspects of current trends in adolescents' preferences for the online communication space, as well as their prosocial behavior on social media. Many studies have highlighted the negative effect of using online social networks by children and adolescents. It is worth exploring, however, the positive impact of these practices. Adolescents' social relationships online are supported by the element of reciprocity in the exchange of positive messages, and this effect also reflects in real life.

**KEYWORDS:** social media, teens, online social practice, prosocial behavior, online interactions

### **Introduction**

Much has been written and it will be written about the influence of using online social networking on adolescent behaviors, practices and attitudes. Paradoxical seems an inexhaustible search term, and perhaps what makes this subject always interesting is that studies are barely resolving to keep pace with the rhythm at which technology is developing.

Although, over the years, many studies have highlighted the negative effects of social media use, recent research on the effects of online communication shows that it generates high social involvement among children and adolescents (Valkenburg and Piotrowski 2018, 9).

Starting from the above statement, we intend to look at how the prosocial practices and attitudes of adolescents are influenced in online interactions. If in real life personal exposure between peers generates closeness, does the same happen in the online media? Does social media promote self-disclosure? If so, does this social practice strengthen relationships between adolescents, causing prosocial behavior in the online and day-to-day life, in the long run? (Rotaru 2011, X, 5).

When we study the practices and attitudes of adolescents in relation to social media, it is important to have an interdisciplinary approach in which our fundamental theories and knowledge of different fields: sociology, psychology, communication sciences. From a sociological perspective, we are interested in studying the teachings of adolescent culture and their behavior on online social networking. Accessing online social networks is a bracing practice for more and more people. There are currently hundreds of online social networking sites where we interact to learn, exchange ideas, messages, or simply, want to know what has happened.

### **About Social Networking Theory**

Social networking theory in social sciences has origins in sociometry, which has attempted to quantify social relationships. This method is considered to be a major contribution to increasing the functionality of the groups. (House et al 1988, apud Oşvat 2012, 44).

Mark Granovetter has expanded the use of social networks to explain social phenomena in real life. The social structure is composed of social networks that are in different relationships with one another, being interested, creating common points, overlapping. Their role is very important in the lives of individuals.

The term network refers to "individuals (or, rarely, communities or roles) that are linked by one or more social relationships, forming a social network" (Marshall 2003, 489, apud Oşvat 2012, 43). Unlike other traditional sociological theories, in the sense of this theory, the attributes of individuals are less important (the individual represents only one point) than their relationships and relationships with other individuals within the network. (Grosbeck 2007, VIII, 42)

### **Social networks in virtual space**

The development of information and communication technology has led to an essential change in general lifestyle. Most of us, in order to adapt to evolution and progress, choose to transact most of our day-to-day activities using personal or service computers, the latter becoming more and more monopolizing our time, having the right consequently creating a dependence on virtual space.

The need people and teenagers in general, especially when interacting with each other, is that to inform each other, to exchange information and messages. In fact, at the basis of the social groups and the society, there was this need that generated the intercommunication relations.

Accessing online social networks is a bracing practice for more and more people. There are currently hundreds of online social networking sites where we interact, whether we learn, exchange ideas, messages, or just want to know what has happened. (Livingstone and Brake 2010, 80).

The appearance of online social networks has significantly changed the way we use the internet, but also how we stay connected with everything that happens online. Often, our online activity runs simultaneously with offline (online is in concordance with offline).

### **Adolescence and social media consumption**

In order to understand the social media correctly in relation to the adolescent culture mechanism, assuming attitudes, practices, behaviors, it is important to consider their age peculiarities as well as different theories about social media consumption. Recent specialist studies show that adolescents spend an average of 9 hours a day in social media today (Rideout 2015, apud Valkenburg and Piotrowski 2018, 11).

Although many hypotheses agree that the postmodern world, dominated by social media, generates a generation of superficial thinking that is unable to deepen the content, there is not enough scientific evidence to support this statement (Carr 2008, apud Valkenburg and Piotrowski 2018, 250). It is true that, for example, intense multitasking practice is associated with a diminished concentration of concentrated attention. However, this deficit is not generated by the social media itself, but by a specific way of using social networks.

Although strongly mediated, the causal relationship between social media use and the diminishing of intelligence in adolescents or the predisposition to digital dementia is not scientifically supported (Huebner 2012, 26).

There are studies that, starting from contextual variables and mediation, concluded that social media use has a positive impact on adolescent sociability. (Strasburger and Wilson 2016, 39). For instance, long-term consumers experience more social contacts than those who use these social channels in the short term. Also visible is the difference in the positive impact that online social networking has on social integration capacity.

### **Trends of Teenagers in the Digital Era**

The "digital natives", named by Tapscott's "net generation" (Tapscott 1998, 9), succeed in their online interactions of working and rapidly transferring the information they receive. Although we don't deal with a direct relationship, but with one intermediated by the device, adolescent interactions generate interpersonal relationships, whether if we are talking about communicating with a few emitters / receivers, or talking on a larger scale, about virtual communities that are in the virtual sphere. These communities are called "social aggregates" by Howard Rheingold, and result from virtual interactions "when enough people have long enough public discussions with enough emotional involvement to constituted interpersonal networking networks in virtual space" (Lenhart and Madden 2007, apud Grosseck 2007, VIII, 43).

At the base of the preferences of adolescents for virtual space, there are motivations for the need to communicate and optimize their communication skills, the desire to receive feedback from third parties, about the perception of one's own person, the chance to experience different identities . (Valkenburg and Piotrowski 2018, 35).

Regarding the latter, the reasons why adolescents engage in virtual space in identity experiments (such as pretending to be someone else) are also varied: self-discovering (testing the reactions of others), social compensation (overcoming shyness) and social promotion - facilitating socialization (Pabian and Vandebosch 2016, 160).

The youngest of the social networking users are those who have access to the latest applications, gadgets, information, but they are also the ones who easily synchronize with the rapid pace of social-media changes, always looking for the next cool thing.

According to Raport within the EU Kids Online project in February 2019, Velicu & all found, in a study conducted between 2013 and 2018, the teenagers' meeting to phase out (progressively) the Facebook online socialization platforms in favor of the instant messaging like WhatsApp and Snapchat, or media sharing like Instagram (Velicu, Balea and Barbovski 2019, 19).

Specifically, this does not mean that they're starting to give up definitively on Facebook by wiping their accounts, but their engagement rate is lower, because they use other online tools; they want to expose their thoughts, photographs, etc. only in front of a smaller online group, things that Facebook can not offer anymore.

### **Good social media relations means better relationships in real life?**

Preserving the already existing social relationships of adolescents is today greatly facilitated by social media. Recent studies on the effects of online communication show that this type of communication generates a high, rather than low, social impact (Valkenburg 2014, in Valkenburg and Piotrowski 2018, 247).

Some longitudinal studies suggest that social media encourage adolescents to share with real-life friends about things they would not have the courage to communicate face to face. Just like real-life personal exposure, personal exposure in the online space between friends provokes proximity, trust, so thus strengthens friendships. The principle is simple: when we confess something personal to a friend, we challenge him to share something personally with us. (Rotaru 2011, XI, 5).

This mechanism of reciprocity applies both online and offline (Reich, Subrahmanyam and Espinoza 2012, 368 ). Some studies have led to conclusions according to which the virtual activity of young people is in close connection with real life and influenced by it directly or indirectly, the relationships that it is creating them in the online media, sometimes following patterns in reality, both animated priority of socialization and belonging to a group.

### **Social attitudes and practices on Social Media**

According to Tőkés Gyöngyvér, referring to the results of the 2012 report of the Eu Kids Online report, launched in 2010, young people form their own online media repertoire ("media repertoire"), which includes some media usage habits, which are relatively constant over time, indicating the role of the internet in structuring the daily activities of children and young people. (Hasebrink Domeyer 2012, 758, apud Tőkés Gyöngyvér 2014, 55-57).

It is quite difficult to have a clear picture of our own media repertoire because it is not only a summation of the various media activities but rather a complex structure and focusing on objectives according to each individual's needs. As a structure, this is the sum of several specific components, like: the daily use of the Internet, the type of online activities, the particularities of the content accessed, the motivations that make the Internet being used, the way of integration in the daily activities as well as the subjective interpretation using the Internet.

Practicing of multitasking has undergone large changes in recent years among adolescents. If in the 1990s, 16% of adolescents used multiple means of communication simultaneously, after the advent of web 2.0 technology, increased very much, almost doubled, according to Valkenburg and Piotrowski (2018, 251). Among adolescents and beyond, it's a frequent practice to use multiple devices, communicating with people, listening to music, or commenting on various posts. The great amount of information we are assaulted with, and the major changes in the media landscape, force us to disclose this practice.

A relevant example in this respect is the practice of video games, where gamers perform more operations at the same time, are mindful of many visual information. Whether we are talking about media tv or social media on the internet, designers create products that demand distributional attention. The Wired Magazine is called "console entertainment", the steady stream of bit entertainment that comes through social media (Instagram, Youtube, Messenger and which we ingest instant without realizing that we are actually exploiting our need collective consumption of increasing amounts of information and entertainment (Miller, 2007, apud Valkenburg and Piotrowski 2018, 251).

According to the public data provided in February 2019 by Digital Lives, for Romania, within the EU Kids Online Project 2018, adolescents use the internet for a variety of practices, even if the uses of information (search news), creative (creating video content or audio to share with others) or participatory (discussing political or social themes). The same source found an evolution in Internet use for the homeworks, increasing it in teenagers aged 13-17. As regards accessing online news, there is an increase for all age and gender categories. As the data show, social access to the group of friends is one of the main motivations for children and adolescents to use the internet, over three quarters using the internet to communicate with friends and family (Velicu, Balea and Barbovschi 2019, 19).



### **Prosocial online behavior from the perspective of social exchange and generalized reciprocity**

Although it started from economic explanations (loss and gain), the theory of social exchange has come to a different shade, including factors that are not related to the economic sphere. So the theory of social exchange, in sociology, explains social life through the method of rational choice.

Emerson is the first to define social exchange as a theory (Voicu 1998, 142-162). The American sociologist uses in his approaches both the term "social exchange theory" and the "exchange approach". The value of exchange, in its view, is theorized in terms used by economists to define usefulness, but discovers the sphere of exchange and relationships whose benefits are not necessarily of economic, material nature.

The one who manages to theorize the issue of social exchange, bringing it closer to the field of sociology, is Peter Blau. He argues that "the mutual exchange of extrinsic benefits among agents may be absent or incomplete, such as where power relations are exerted" (Blau 1964, apud Oşvat 2012, 37)

The theory of social exchange had a strong echo in the 50s and 60s, represented by G. Homans. It starts from behavioral psychology, examining social behavior as a "change of activity, tangible or intangible and, more or less advantageous or expensive, between two persons" (Lallement 2007, 246, apud Oşvat 2012, 37)

The reproach that this paradigm has received has aimed at exaggerated reductionism, it implies that the relationship exists under the conditions of an advantage for both parts. From the point of view of interpersonal relationships, this theory starts from the idea that "interactions between people, their associations, are by virtue of an exchange of goods and services (material or symbolic)." (Iluţ 2009, 26). The concept of "exchange" remains attentive, but we are talking about a social change, which is much more complex than the economic one.

### **Reciprocity in online communication from the perspective of the Social Exchange Theory and the Theory of Generalized Reciprocity**

Prosocial behavior online is a voluntary behavior that targets the benefits of others or the promotion of harmonious relationships (Van Rijsewijk et al. 2016, apud Erreygers, Vandebosch, Vranjes, Baillien, De Witte 2018, 2).

Erreygers (2018, p.4) say that there are two explains for these findings: The theory of bounded generalized reciprocity (Yamagishi et al., 1999, apud Erreygers, Vandebosch, Vranjes, Baillien and De Witte, 2018) and findings: the reinforcing spirals model. People's prosocial behavior in social interactions in groups is influenced by their expectations of positive and reciprocal behaviors from other group members. So according with the theory of bounded generalized, when peoples are treated positively by others they will have at themselves a prosocial behavior. This phenomenon is happening in online media too in different context and members groups. (Erreygers, Vandebosch, Vranjes, Baillien and De Witte 2018, 4).

The norms of reciprocal prosocial behavior may quickly develop in online social networks, when peoples changes reciprocally positive messages. Some authors concludes that this process may even be more widespread online than offline, because online actions have the potential to reach a wider audience and to be witnessed long after they have actually taken place, compared to offline actions, which can only be witnessed by the people present at that particular place and time. (Lai and Turban 2008, apud Erreygers, Vandebosch, Vranjes, Baillien and De Witte 2018, 8).

They were distinguished two forms of reciprocity: direct and indirect reciprocity (Rankin and Taborsky 2009, Roberts 2008, apud Erreygers, Vandebosch, Vranjes, Baillien and De Witte 2018, 8 ). Direct reciprocity perspective means “paying it back”: returning a favor after having received one.

In indirect or generalized reciprocity entails “paying it forward”. Returning a favour to someone who did a favour at itself. Some authors demonstrated that generalized reciprocity also occurs online (Lauterbach et al., 2009; McLure Wasko and Faraj, 2000; Nelson and Rademacher, 2009, apud Erreygers, Vandebosch, Vranjes, Baillien and De Witte, 2018). In the research on cooperative behavior in the specific context of video game playing had concluded that playing violent video games cooperatively may increase later helping and cooperative behavior (Greitemeyer and Cox, 2013, apud Erreygers, Vandebosch, Vranjes, Baillien and De Witte, 2018, 4).

Moreover, research on cooperative behavior in the specific context of video game playing has reported that playing violent video games cooperatively may increase later helping and cooperative behavior (Velez et al. 2014, 626).

## Conclusion

Preserving the already existing social relationships of adolescents is today greatly facilitated by social media. The virtual activity of adolescents is closely related to real life, influencing each other, directly or indirectly. Relationships created in the online environment often follow patterns in reality, both of which are animated by the desire to socialize and belong to a group.

Adolescent preferences for certain online social networks change over time, depending on interests and relationships. According to the theory of bounded generalized, when people are treated positively by others, they will have a prosocial behavior. This phenomenon is happening in online media too in different contexts and member groups.

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## **Effects Of Capital Flight On Exchange Rate In Nigeria: 1986-2015**

**Olanike Rose ALABI**

*alabirose2017@gmail.com*

**Ishmael OGBORU**

*Department of Economics, University of Jos, Nigeria*

*ogborui@yahoo.com*

**ABSTRACT:** The study presented a critical examination of the effects of capital flight on exchange rate in the Nigerian economy over a period of 30 years (1986-2015). An Ordinary Least Square (OLS), Augmented Dickey-Fuller unit root test and Co-integration tests were adopted to carry out an extensive analysis of such variables as Gross Domestic Product, Capital Flight and Exchange Rate. The results revealed that the variables have a significant effect in the positive direction with a coefficient of 0.007421 and probability value at 0.05. This implies that capital flight encourages increasing demand for foreign currency which tends to exert pressure on exchange rate at 0.74 percent, thereby increasing the rate, among other factors. Based on the empirical findings, the study recommended that decayed infrastructure and utilities should be rehabilitated; monetary authorities should seriously regulate the activities of premium currency marketers; and foreign firms should be encouraged to make use of local skills and raw materials available in the domestic economy, rather than importing them. This will save foreign exchange, improve technical skills of Nigerian citizens, reduce unemployment and limit the flight of capital from the economy.

**KEYWORDS:** Capital flight, exchange rates

### **1.1. Introduction**

The magnitude in which capital flight negatively affects resources needed for development all over the world cannot be overemphasized. This therefore, calls for an attempt to control the outflow of capital which impedes development as a result of scarcity of capital in developing countries. (Paul, Kalu, Joseph and Hyacinth, 2015).

The study of capital flight and its adverse effects in economic development in any economy is of great importance to developing countries because of the critical role external assets play in economic growth when allowed to perform their function in the economy. (Khan 1989).

According to Ajayi (1995), government officials who siphon money to foreign countries and private businesses that seek a safe place for their capital due to fear of economic recession have contributed to the flight of capital, which have led to increase in the interest rate, thereby making credit expensive. This, according to him, would lead to a loss of revenue, especially if the government predominantly determines the rate of exchange in the economy.

Capital flight from developing countries such as Nigeria, leads to insufficient resources meant for development as well as a fall in economic growth. According to Pastor (1990), the reduction in economic growth is because investible funds have been taken to a foreign country and also because incomes generated from imports are, in most cases, not taken back to the country. In corroboration of this fact, Ogboru (2006)

has asserted that the value of the US dollar per naira has continually been high. For example, one US dollar is exchanged for 360 naira. The reason for the persistent rise of the dollar against the naira is that Nigerians prefer to patronize imported products from overseas. And as a result, they will need to pay much more for the foreign goods with the domestic currency. This, according to him, depletes the foreign reserve of the country, and thus, negatively affects the economic growth and development of the country.

Nigeria is regarded as one of the developing countries with high levels of poverty and has a debt burden that is so large that the country cannot take on additional debt to finance its future projects due to the large outflow of capital meant for development in the country. The issue of capital flight is therefore, of great importance to the nation. However, little attention has been paid to the causes and consequences of capital flight with a focus on its effects on the exchange rate in the economy. It is to this end that the paper would investigate empirically how capital flight affects exchange rate in Nigeria. The study is structured into six sections. Section one is the introduction which discusses the background of the study, Section two examines the conceptual, theoretical and empirical literatures. Section three addresses the main issue of the paper. Section four deals with the model specification and analysis. Section five analyses the empirical results and discusses the findings. Section six concludes with a summary and proffers some recommendations.

## ***1.2. Objectives of the Study***

Capital flight encourages an increase in the demand for foreign currency in developing countries, for example Nigeria, which tends to increase the exchange rate between the Naira and the US Dollar. The major objective of this study, therefore, is to examine the effect of Capital flight on exchange rate in the Nigerian economy. The other objectives include to:

- i. Identify the consequences of Capital Flight on Exchange Rate in the Nigerian economy.*
- ii. Examine the relationship between Capital Flight and Exchange Rate in the Nigerian economy.*
- iii. Suggest measures to curb capital flight in the Nigerian economy.*

## **2.1. Conceptual Framework**

### ***2.1.1. Concept of Capital Flight***

Saheed, Zakaree and Ayodeji (2012) have viewed capital flight as a diversion of domestic savings away from financing domestic real investment in favour of foreign financial investment. According to them, capital flight encourages increasing demand for foreign currency, which tends to exert pressure on exchange rate, thereby increasing the rate of the Naira against the U.S Dollar. Adetiloye (2012) has asserted that capital flight occurs when all actual entries are added up and the resulting total amount of money calculated (which is done by adding all deposits and subtracting all the money paid out or spent) will show the total amount of money remaining in a cash account of an account holder or the total amount of money owed by an account holder to the bank when the account is overdrawn. The result of the differences in values between the debits and credits in the current and capital accounts is known as errors and omissions, which is referred to as 'statistical discrepancy' in Balance of Payment accounting.

According to Cuddington (1989), as cited in Paul, Kalu, Joseph and Hyecinth (2015),

Capital flight is short-term capital outflows made up of hot money which responds to political or financial crises, unexpected taxes, an expected adverse capital control or domestic currency devaluation and possible rising hyperinflation.” (Paul, Kalu, Joseph and Hyecinth 2015, 4).

From the above concept, therefore, capital flight is referred to as the movement of money or assets outside an economy which consists of the flow of funds or capital from one country to another as a result of political or economic instability in order to earn short-term profit on differences in interest rate or expected changes in exchange rate. These unanticipated capital outflows are as a result of undesirable circumstances resulting from political or economic instability. The flight of assets occurs when foreign and domestic investors sell off their assets in a particular country because of perceived weakness in the nation’s domestic currency, excessive and uncontrollable increases in the prices of goods in the economy and thus seek better opportunities that exist abroad.

### **2.1.2. Concept of Exchange Rate**

Countries normally engage in international transactions with one another. These transactions, which are mostly economic, are made among individuals, firms, organisations and government. Most times, economic agents involved in international transactions do not use the same national currency. Obadan (2012) has, therefore, noted that exchange rate is made up of key currencies, most especially the U.S. dollar, because it plays a central role in international currency markets, which are generally accepted for the settlement of international trade transactions and other external obligations. He maintained that the exchange rate is determined by the forces of demand and supply in the foreign exchange market. To Saheed, Zakaree and Ayodeji (2012), exchange rate is the price at which domestic currency is exchanged for foreign currency. Thus, it is the rate at which one currency is exchanged for another currency. For the purpose of this paper, exchange rate is viewed as the rate at which one currency is exchanged for another currency for the purpose of moving large amount of these monies out from a developing economy to an advanced country and for the settlement of external debts.

## **2.2. Theoretical Framework**

### **2.2.1 Theory of Capital Flight**

#### **a. The Tax- Depressing Thesis**

This theory postulates that capital flight leads to potential loss of revenue because wealth held abroad is outside the control of the government and therefore, such wealth cannot be taxed. If tax rates are expected to be high in the future, it will discourage private investors from investing in the economy and unexpected increases in tax rate may raise investment risk, thereby leading to lower domestic investment. The fall in government revenue thus, makes the task of political and economic transformation in promoting economic growth and development difficult to attain. The outcome of this is the reduction in the ability of the government to pay its debt obligations. This in turn increases the debt burden, which impedes economic growth and development. (Ndikumana and Boyce 2002).

#### **b. Austerity Thesis**

This theory focuses on the poor in severely indebted countries, as a result of the negative impact of capital flight. According to the theory, the poor suffer more because the resources that could otherwise have been used on the expenditure of such basic necessities of life as: the provision of basic healthcare facilities, affordable educational services, good roads, portable water, stable electricity and other essential services are

illegally taken out of the country (Kapoor 2007). In the same vein, Pastor (1990) revealed that capital flight reduces the amount of taxable income and assets by the government which invariably lead to unequal distribution of wealth amongst the rich and poor in the society. Hence, poverty in developing countries reduces the poor to a state of impoverishment, resulting to over-dependence on foreign aid, thereby, widening the gap between rich and poor countries. Furthermore, the tax that the poor can afford to pay is relatively small. This inhibits government from raising sufficient resources to promote economic growth and development meant to combat the problems of poverty. Consequently, a vicious circle of external debt, capital flight and low economic growth is created.

### **2.2.2 Theory of Exchange Rate**

#### **a. Monetary Approach to the Balance of Payments**

The monetary approach to the balance of payments stresses the fact that the exchange rate is the relative price of two currencies. According to this approach, an imbalance occurs if the demand for money differs from the amount supplied by the monetary authorities. In the basic monetary model with fixed exchange rates, such an imbalance gives rise to an adjustment process which redistributes the world's capital stock between the two countries until a new stock equilibrium is achieved. In the flexible price monetary approach under which exchange rates are determined by the forces of demand and supply, such a disequilibrium results to an immediate adjustment of the exchange rate to equate the demand for and supply of money. This approach indicates that the domestic currency depreciates if the money supply increases and appreciates if the income level increases.

#### **b. Mundell-Fleming Model**

The Mundell-Fleming model was developed by Fleming (1962) and Mundell (1963), which was formulated by Robert Mundell and Marcus Flemming, who made a simultaneous analysis of the Balance of Payments in open economies in the 1960s. The framework of their analysis is known as the IS-LM-BP models, which is an extension of the IS-LM model. They are the goods market, financial market and the balance of payments markets respectively. The Mundell-Fleming model indicates that the behaviour of an economy depends on the exchange rate system it has adopted. The model was first developed in order to understand how different exchange rate systems work and how the choice of exchange rate regime influences monetary and fiscal policies. Firstly, the model assumes that the economy operates with a floating exchange rate. That is, it is assumed that the central bank allows the exchange rate to adjust to changing economic conditions. The model also examined how the economy operates under an exchange rate system whereby government determines the rate of exchange. The Mundell-Fleming model describes the market for goods and services similar to the IS-LM model, but it adds a new term for net exports. According to Martin (2010), the Mundell-Fleming model can have different implications under different exchange rate regimes. For instance, under a fixed exchange rate system that allows private funds to move freely across countries without restrictions, monetary policy becomes ineffective. Hence, an expansionary monetary policy resulting in an outward shift of the LM curve would in turn make capital flow out of the economy. The central bank under a fixed exchange rate system would have to intervene by selling foreign currency in exchange for domestic currency to depreciate the foreign currency and appreciate the value of the domestic currency. This would reduce real balances in the economy until the LM curve shifts back to the left, and the interest rates come back to the world rate of interest.

However, the Mundell-Fleming model is accompanied with its shortcomings. According to Jhingan (2011), their analysis failed to put into consideration the situation

of unemployment and inflation in both developed and developing countries. Secondly, monetary and fiscal policies operate under certain economic obligations, in which he asserted that due to political reasons, some governments may be unable to follow a rigid fiscal policy and a monetary policy of high interest rate, hence, they become unsuccessful because capital flows may not be responsive to interest.

### ***Review of Empirical Literature***

Capital flight through the foreign exchange market is possible under a relatively free payments system. Thus, in the absence of capital or exchange controls, residents simply transfer funds abroad at the prevailing exchange rate in the form of foreign or domestic currency, travelers' cheques or other cheques. The availability of foreign exchange therefore facilitates the sale and purchase of foreign currencies and the transfer of funds from one country to another by residents, which have made the massive outflow of capital possible. It therefore, becomes imperative to study the effects of capital flight on exchange rate. In specific terms, this paper focuses on the Nigerian economy.

According to Obadan (2004), capital flight takes place through various channels, among which are through the foreign exchange market, presenting false or forged documents of exported or imported goods by overvaluing or undervaluing the prices of such goods, the black or parallel foreign exchange markets, precious metals and collectibles.

Saheed, Zakaree and Ayodeji (2012) have examined the relationship between capital flight, exchange rate and economic growth in Nigeria. According to them, capital flight encourages increasing demand for foreign currency, which tends to exert pressure on exchange rate, thereby increasing the rate. Their study adopted the segregation approach to examine the impact of capital flight on exchange rate and economic growth (GDP). They found a positive effect of capital flight on economic growth compared to previous studies observed in their study. They therefore, suggested that parts of the capital outflow were used for the importation of industrial or capital goods, which are then used domestically in the process of production. They also found capital flight has a positive and statistically significant impact on exchange rate.

In a similar study, Adedayo and Ayodele (2016) presented an empirical analysis of the impact of capital flight on the Nigerian economy between the period 1980 and 2014. Ordinary Least Square (OLS), Augmented Dickey-Fuller unit root test and Co-integration test were adopted to carry out an extensive analysis of the adopted variables which included Gross Domestic Product, Capital Flight and Exchange Rate. The results revealed that the variables have a significant effect in the positive direction. This implies that as capital flight inflow increases into the economy, it in turn increased the exchange rate, causing a positive influence on the Nigerian economy within the period considered. In another study, Paul, Kalu, Joseph and Hycenth (2015) examined the Impact of Capital Flight on Economic Development in Nigeria. They asserted that the situation of diversion of public funds and the movement of human capital out of Nigeria have retarded economic growth in Nigeria. In terms of methodology, Paul et al. employed the Augmented Dickey Fuller (ADF) and Phillip Perron (PP) unit roots tests to test for the time series properties of the model variables. The study covered the period 1980 to 2011. They found that capital flight has a negative but significant impact on economic development in Nigeria. They also found that the exchange rate has a positive and significant impact on economic development in Nigeria. This, according to them, is in line with "a priori" expectation validating the Mundell-Flemming rule which states that depreciation in exchange rate increases export, and hence increases the output of a country.



### 3.1 Effects of Capital Flight and Exchange Rate in Nigeria

Some studies done on the relationship between capital flight and exchange rate in Nigeria include: Saheed, Zakaree and Ayodeji (2012), Okoli (2008) and Otene and Richard (2012). The study undertaken by Saheed, Zakaree and Ayodeji (2012) demonstrated that the continuous demand for foreign currency especially the U.S. dollars caused by capital outflow tends to put pressure on the exchange rate; that is, the amount of dollar that can be purchased by a unit of Nigeria's currency. Therefore, the desire to invest abroad becomes so great that investors willingly pay extra charges to secure their investments abroad. These investors sell their local currency holdings at even greater discounts. This makes the domestic currency to fall, while imports become more expensive. This leads to inflation, which further erodes confidence in the domestic economy.

To buttress the above assertions, Okoli (2008) cited two observable trends in less developed economies which are consistent with the effect of capital flight. First, she asserted that since the domestic currency has been discounted, there is preference in conducting business in U.S. dollars in such an economy. Secondly, the loss in confidence in domestic currencies is so great that the change in the exchange rate would surpass the inflation rate. Hence, those able to invest abroad are captivated by the attractive prosperous economy of the developed world, and therefore, will have less confidence in the local currency; while those who cannot afford investing abroad have little or no choice but to operate in the domestic economy. Otene and Richard (2012) have empirically examined the impact of capital flight on the Nigerian economy using the two-stage least square technique for the period 1970 -2008.

In the estimated model, capital flight reported a negative and significant impact on economic growth and real exchange rate (REXR) measures. They found that the price of other currencies has a positive relationship on Gross Domestic Product (GDP), and Capital Flight (KF) which is a proxy for net flows shows a negative impact on exchange rate and Gross Domestic Product (GDP). Hence, they concluded that the non-performance of domestic resources can trigger capital flight. They therefore, recommended the maintenance of a stable financial and macroeconomic environment which would allow foreign capital inflow so as to boost private domestic investment.

Capital flight is considered an observable occurrence that should be avoided because of its negative consequences on the Nigerian economy. From the examination of the effects of capital flight on exchange rate in Nigeria, this study has identified the following as the negative consequences of capital flight: reduction in economic growth potentials, damage of exchange rate, and effects on current account balance.

#### ***I. Reduction in Economic Growth Potentials***

Any amount of money siphoned to a foreign land cannot contribute to domestic investment, which implies capital flight is a diversion of domestic savings away from domestic real investment. As stated by Ajayi (2007), when these resources are kept away from the economy, they become unavailable for the importation of equipment and materials that are necessary for the growth of the domestic industry and the economy. Not only does capital become unavailable, but the credit it could produce through the multiplier effect is also eroded. For example, profits from selling oil for export will not stimulate domestic economic growth since it is not refined locally. In addition, political officials who hold public offices take advantage of their offices to siphon money abroad which further depletes the investible funds in the domestic economy. Hence, money supply becomes unstable. This instability is much higher than that which is experienced in developed countries and leads to making monetary policies ineffective. As a result,

the level of productivity and profitability of business enterprises reduces. Therefore, capital flight leads to a net loss in the resources of a country meant for investment.

## *II. Damage of Exchange Rate*

Capital flight prevents capital accumulation which limits exchange rate mechanisms of Less Developed Countries (LDC). The damage in exchange rate mechanism comes as a result of the urgency by the wealthy in developing countries to invest capital abroad in the form of cash. These capitals which are sent overseas are in both local and foreign currencies, usually in U.S. dollars. Hence, these accumulated capitals which are in local currency must first be converted into the currency of the developed country. Thus, a large number of those seeking to invest abroad in such manner demand less of the domestic currency. This results to further loss of confidence in the domestic economy.

## *III. Effects on Current Account Balance*

Capital flight constitutes perhaps a large part of a country's export income and more than four times the payment needed to service external debt. This situation negatively affects the current account balance. When capital flight affects the current account balance negatively, it could become a major factor behind potential currency devaluation and budget deficits. It is therefore pertinent to state here that the consequence of capital flight goes beyond mere accounting financial losses. Capital flight represents a real loss to the productive capacity of workers in an economy. Besides the loss in potential output, such an economy will experience a loss in its social welfare. Capital flight is regarded as a threat to the economy and the populace; and as such, progressive economic policies must be put in place in order to curb and reverse the incidences of capital flight which can be crucial to achieving full employment and sustainable development.

Table 3.1. Trend in Capital Flows in Nigeria, 1980-2015

Year	Net Capital Inflows (\$)	Net Capital Inflows (% of GDP)	Net Capital Outflows(\$)	Net Capital Outflows (% of GDP)	Net Capital Flows(\$)
1980	(738,870,000)	(1.15)	455,200	0.01	738,870,000
1981	542,327,300	0.89	8,225,000	0.01	(542,327,300)
1982	430,611,300	0.84	(27,000,000)	(0.05)	(430,611,300)
1983	364,434,600	1.03	861,000	0.00	(364,434,600)
1984	189,164,800	0.06	1,501,000	0.01	(189,164,800)
1985	485,581,300	1.68	1,847,000	0.01	(485,581,300)
1986	193,214,900	0.93	14,411,000	0.07	(193,214,900)
1987	610,552,100	2.53	(7,890,000)	(0.03)	(610,552,100)
1988	378,667,100	1.63	5,061,000	0.02	(378,667,100)
1989	1,884,250,000	7.78	797,748,200	3.29	(1,884,250,000)
1990	587,882,900	1.91	414,600,000	1.35	(587,882,900)
1991	712,373,400	2.60	411,500,000	1.50	(712,373,400)
1992	896,641,300	3.06	260,100,000	0.89	(896,641,300)
1993	1,345,369,000	8.52	532,700,000	3.37	(1,345,369,000)
1994	1,959,220,000	10.83	328,200,000	1.81	(1,959,220,000)
1995	1,079,272,000	3.78	191,753,400	0.67	(1,079,272,000)
1996	1,593,459,000	4.55	597,184,600	1.71	(1,593,459,000)
1997	1,539,446,000	4.30	102,972,800	0.29	(1,539,446,000)
1998	1,051,326,000	3.28	158,801,000	0.50	(1,051,326,000)
1999	1,004,326,000	2.80	172,817,600	0.48	(1,004,917,000)
2000	1,140,138,000	2.46	168,938,500	0.36	(1,140,138,000)
2001	1,190,632,000	2.70	93,883,560	0.21	(1,190,632,000)
2002	1,874,042,000	3.17	172,161,500	0.29	(1,874,042,000)
2003	2,005,390,000	2.96	167,321,400	0.25	(2,005,390,000)
2004	1,874,033,000	2.13	260,755,100	0.30	(1,874,033,000)
2005	4,982,535,000	4.44	14,635,080	0.01	(4,967,899,000)

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2006	4,854,417,000	3.34	319,622,800	0.22	(4,534,794,000)
2007	6,034,971,000	3.63	867,529,700	0.52	(5,167,441,000)
2008	8,196,606,000	3.94	1,501,590,000	0.51	(7,145,016,000)
2009	8,554,841,000	5.05	1,525,140,000	0.90	(7,029,701,000)
2010	6,026,232,000	1.63	911,716,700	0.25	(5,114,515,000)
2011	8,841,114,000	2.15	816,764,600	0.20	(8,024,349,000)
2012	7,069,934,000	1.53	1,530,129,000	0.33	(5,539,805,000)
2013	5,562,874,000	1.08	1,227,438,000	0.24	(4,335,436,000)
2014	4,655,849,000	0.82	1,601,233,000	0.28	(3,054,617,000)
2015	3,064,200,000	0.43	1,435,200,000	0.21	(1,629,000,000)

**Sources:** *International Monetary Fund (IMF), Balance of payment Statistics Database, United Nations Conference on Trade and Development (UNCTAD) Statistics, Foreign Direct Investment (FDI) database (www.unctad.org/fdistatistics), National Bureau of Statistics and Index Mundi (Internet database).*

Table 3.1 above indicates capital flows in Nigeria for the period 1980 to 2015. According to the International Monetary Fund (2011), total capital inflows are defined as net non-resident investment in Nigeria, while total capital outflows are defined as the net investment of Nigerian residents abroad. As such, the values taken on by both concepts can either be positive (increase in liabilities or assets or negative (decrease in liabilities or assets). The table shows that capital inflow range from (US\$738,870,000) representing a negative contribution of 1.15 percent of GDP in 1980 to \$US 485,581,300 or 1.71percent contribution to GDP in 1985, while capital outflow rose from \$US 455,200 in 1980 to \$US 7,890,000 in 1987 representing a negative contribution of 0.03 percent to GDP. The year 1986 recorded a decline in capital inflow representing about 0.93 percent contribution to GDP as against 1.68 percent in 1985, while capital outflow of the year 1986 recorded a massive outflow of capital by residents amounting to \$US 14,411,000 which became higher compared to the capital flow recorded in 1985 amounting to \$US 1,847,000. The trend however, changed in 1989 when capital inflow hit about \$US 1,884,250,000 representing 7.78 percent contribution to GDP, while capital outflow of the same year increased substantially from \$US 5,061,000 to \$US 797,748,200 between the periods 2011 to 2014. The inflow of capital fell substantially from US\$8,841,114,000 or 2.15 percent of GDP to \$4,655,849,000or 0.82 percent of GDP, while the outflow of capital increased from US\$1,530,129,000 in 2012 to US\$ 1,601,233,000 in 2014, representing a fall in GDP from 0.33 percent in 2012 to 0.28 percent in 2014. However, the inflow of capital fell from US\$4,655,849,000 in 2014 to an estimated sum of US\$3,064,200,000 in 2015 representing a fall in GDP from 0.82 to 0.43, while capital outflow fell from US\$1,601,233,000 in 2014 to US\$1,435,200,000 in 2015. This fall in outflow of capital could possibly be associated with the anti-corruption and money laundering campaign by the present administration of President Muhammadu Buhari.

According to the United Nations Conference on Trade and Investment (UNCTAD), capital inflow in the form of Foreign Direct Investment fell by 27 percent between the period 2014 and 2015. It is averred that this could be due to the fragile nature of the global economy, volatility in the financial and commodity markets and weak aggregate demand.

In a nutshell, the table shows that the inflow of capital is as a result of borrowed fund that come into the country in the form of foreign direct investment from developed countries, while the outflow of capital by residents is as a result of the political and economic instability experienced in the country, and the obligations of the Nigerian government to pay the debts owed to foreigners. In addition, the total capital flow between the period 1981 to 2015 proved negative values, which indicate incidences of capital flight except for the period 1980, implying that capital flight did not occur.



Table 4.1. Annual GDP (\$m), Exchange Rate (N/\$) and Capital Flight (\$m) for the period 1986-2015.

YEAR	GDP	EXR	CAPF
1986	257.78	1.75	6656
1987	295.09	4.02	1160
1988	256.00	4.54	-149
1989	275.41	7.36	3187
1990	328.61	8.04	103
1991	328.64	9.91	-3608
1992	337.29	17.30	2346
1993	342.54	22.07	3307
1994	345.23	22.00	1405
1995	352.65	21.90	-2576
1996	367.22	21.88	-3484
1997	377.83	21.89	1496
1998	388.47	21.89	-524
1999	393.11	92.34	3337
2000	412.33	101.70	-2006
2001	431.78	111.23	-5
2002	451.79	120.58	5025
2003	459.01	129.22	3591
2004	527.58	132.89	-1508
2005	561.93	131.27	6933
2006	595.82	128.65	8285
2007	634.25	125.81	1493
2008	672.20	118.55	3440
2009	718.98	148.90	372
2010	54,612.26	150.30	1285
2011	57,511.04	153.86	2059
2012	59,929.89	157.50	3351
2013	63,218.72	157.31	5900
2014	67,152.79	158.55	7065
2015	69,780.69	192.44	1678

**Source:** Central Bank of Nigeria (CBN) Statistical Bulletin (various issues), CBN Annual Reports and Statements of Accounts (various issues), Global Financial Report of the World Bank (2015), World Bank International Debt Statistics (various years), International Monetary Fund (IMF, 2016), Global Financial Report of the World Bank (various years) and Index Mundi (internet database) website and Author's Computation (2016).

The table above shows the trend of gross domestic product, exchange rate and capital flight in Nigeria for the period 1986 to 2015. From the table, the year 1992 to 1993 witnessed an increase in EXR from 17.30 to 22.07, and capital flight rose from US\$2346 million to US\$3307 million, GDP rose from US\$337.29 million to US\$342.54million indicating a rise in economic activities within the period. It is also obvious from the table that for most parts of the 1990s, the country experienced incidences of capital flight. For instance, the periods 1990, 1992, 1993, 1994, 1997 and 1999 recorded US\$ 103 million, US\$ 2346 million, US\$ 3307 million, US\$ 1405 million, US\$ 1496 million and US\$ 3337 million respectively.

Using the residual measures of estimating capital flight, negative values indicate capital net flows or capital reversal, while positive values imply that capital flight has taken place. From the table, the periods 1988, 1991, 1995, 1996, 1998, 2000, 2001 and 2004 recorded

- US\$ 149 million, -US\$ 3680 million, -US\$ 2576 million, -US\$ 3484 million, -US\$ 5million and -US\$ 1508 million respectively witnessed a reversal in capital. This capital reversal is due to the reduction or sudden stop in the inflow of capital in the form of foreign direct investment into the domestic economy. The reason for the reduction or sudden stop in capital inflow is related to some domestic conditions within the

economy. This is attributed to the political instability and the economic slowdown that discourages foreign investors from investing in the domestic economy. As a result, the country suffers liquidity crisis in which it uses its foreign exchange reserves to service its debts. This leads to currency depreciation that creates inflation and economic recession. On the other hand, the positive values of capital flight as evident from the table reflect that the country witnessed the outflow of capital from the domestic economy to foreign countries. For instance, the periods 1986, 1987, 1989, 1990, 1992, 1993, 1994, 1997, 1990, 2002, 2003, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014 and 2015 recorded US\$ 6656 million, US\$ 1160 million, US\$ 3187 million, US\$ 103 million, US\$ 2346 million, US\$ 3307 million, US\$ 1405 million, US\$ 372million, US\$ 1285 million, US\$ 2059 million, US\$ 3351 million, US\$ 5900 million, US\$ 7065 million and US\$ 1678 million respectively. This is attributed to the great extent that capital flows outside the domestic economy through investors that take advantage of investment opportunities in foreign countries and the unrestricted access to government funds by corrupt officials, thereby reducing investible funds in the Nigerian economy.

It is also evident from the table that the Naira currency depreciated steadily against the US dollar during the study period. In the early 1990s, the naira fell to approximately ₦10 per US dollar. For instance in 1990 and 1991, the exchange rate was 8.04 and 9.91 Naira currency against the US\$ dollar. The Naira further depreciated in the mid and late 1990s, though the currency became stable within this period. For instance, between the years 1995, 1996, 1997 and 1998, the exchange rate became 21.90, 21.88, 21.89 and 21.89 respectively. This is attributed to the adoption of a fixed exchange rate regime by the military government of General Sani Abacha. By the year 2000, the exchange rate became over a hundred naira to one US dollar. It can thus be observed that in the mid 2000s, the Naira further depreciated. For instance, in 2009, 2010, 2011, 2012, 2013, 2014 and 2015, the Naira fell steadily against the US\$ dollar which stood at 148.90, 150.30, 153.86, 157.50, 157.31, 158.55 and 192.44 respectively. The reason for the further depreciation of the Naira is not far-fetched. Nigerians prefer patronizing imported products rather than produce its indigenous products; and as the country's population increases, the demand for imported goods increases, thereby depleting the nation's foreign reserves and increasing the incidences of capital outflow in the economy.

In addition, the poor infrastructural facilities have discouraged the production of goods in Nigeria. Such infrastructural facilities include: bad road networks and facilities, inadequate power supply coupled with high tax charges on businesses, making it difficult for goods to be produced in Nigeria. As a result, Nigerians depend on other countries to produce goods that should otherwise be produced in the country, thereby increasing the rate of importation. This further increases the outflow of capital already experienced in the country.

The period 2014 and 2015 witnessed a dramatic fall in CAPF from \$7065million to \$1675 million respectively, and a rise in GDP from US\$ 67,152.79 million to US\$ 69,780.69 million. This however, indicates an improvement in the economy and substantial reduction in the fall of capital flight within the period; this could be as a result of the concerted efforts made by the present administration of President Muhammadu Buhari to curb illegal capital outflow by corrupt government officials and the repatriation of such stolen funds into the country to enhance economic growth and development.

## 5.1 Methodology, Analysis and Discussion of Findings

### 5.1.1 Unit Root Test Result

This study applied unit root test to determine if the data is stationary before any analysis can be conducted. It is recommended that the unit root test be conducted to validate the data for analysis. In this case, the natural logarithm of the data is taken to bring the variables to a common base in order to enhance the linearity of the model and a unit root test is conducted. The Unit Root Test Result is presented in table 5.1.

Table 5.1: Augmented Dickey Fuller (ADF) Unit Root Test Result for Model I

Variables	ADF t-statistics	P-value	5% critical value	Order of integration	Conclusion
LOGEXR	-4.9092	0.0005	-2.9719	I(1)	Stationary
LOGCAPF	-4.4056	0.0017	-2.9678	I(0)	Stationary

*Source: Author's Computation using EViews 9*

The result of the unit root test as shown in Table 5.1 indicates that EXR were stationary after first differencing with intercept at 5 percent critical value with probability value (p-value) of 0.0005, while capital flight was stationary at level with intercept at 5 percent critical value and probability value of 0.0017.

### 5.1.2 Ordinary Least Square Results

The results of the estimated model using the OLS method are presented in table 5.3

Table 5.2: The Results of the Estimated Model using (OLS) Method for Model I

Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	68.44173	13.28458	5.151968	0.0000
LOGCAPF	0.007421	0.003639	2.039041	0.0510
R-squared	0.129291	Mean dependent var	83.18833	
Adjusted R-squared	0.098194	S.D. dependent var	64.27226	
S.E. of regression	61.03517	Akaike info criterion	11.12512	
Sum squared resid	104308.2	Schwarz criterion	11.21853	
Log likelihood	-164.8768	Hannan-Quinn criter.	11.15500	
F-statistic	4.157688	Durbin-Watson stat	0.294929	
Prob (F-statistic)	0.050986			

*Source: Author's Computation using EViews 9*

The results of the Ordinary Least Square (OLS) estimates as shown in table 5.2 indicate a positive relationship between EXR and CAPF, which is in line with our *a priori* expectation. Hence, CAPF has a positive relationship of 0.007421. From the OLS results therefore, the simple regression equation becomes:  $\log \text{EXR} = 68.4417 + 0.0074\text{CAPF}_t$

Based on the equation, the coefficient of the constant or intercept is 68.4417, implying that if the explanatory variable was held constant, CAPF would be 68.4417 units. This shows that if the value of the explanatory variable, EXR, remains unchanged, the value of CAPF would be 68.4417 units.

### 5.1.3 Co-integration Test Results

**Table 5.3.** Co-integration Test Results Using Johansen Co-integration Test

Hypothesized No. of CE(s)	Eigenvalue	Trace Statistics	0.05 Critical Value	Prob.**
None *	1.000000	1028.644	15.49471	0.0001
At most 1	0.000468	141.5753	3.841466	0.9086

*Source: Author's Computation Using Eviews 9*

\*denotes rejection of the hypothesis at 5% significance level

Table 5.3 revealed that both the Eigen value and the Trace Statistics tests indicated one co-integrating equation at 5% significance level. This implies that a long-run equilibrium relationship exists amongst the variables specified in the model.

## 5.2. Discussion Of Findings

In order to ensure that the regression analysis on the proposed model does not produce spurious results, it is necessary to analyse the behaviour of the time series in employing preliminary tests by determining the stationarity and the order of integration, I(d). The results of the stationarity of all the variables were determined using the Augmented Dickey Fuller (ADF) test. It was found that EXR was stationary at first difference, while CAPF was stationary at level. The OLS result revealed that a positive and significant relationship exists between EXR and CAPF, with a coefficient of 0.007421 and p-value of 0.05. This implies a unit increase in EXR that led to 0.007421 unit increase in CAPF. However, the p-value standing at 0.05 means it is statistically significant. This result is consistent with our *a priori* expectation and the p-value showed it is significant. This result implies that the continuous demand for foreign currency especially the US dollar resulting from capital outflow tends to put pressure on the EXR. This result is consistent with Saheed et al. (2012) and Ajayi (2008) who found that there exists a positive and significant relationship between EXR and CAPF.

The result is also in line with Akani (2013), who discovered that an overvalued exchange rate leads to increasing expectations of depreciation of the Naira currency in the near future. Hence, the accumulated capitals which are in local currency must first be converted into the currency of the developed country, in most cases, the US dollar. Thus, a large number of those seeking to invest abroad in such manner demand less of the domestic currency and more of foreign currencies. This results to further loss of confidence in the domestic economy, thereby damaging the exchange rate.

The study also found that the coefficient of determination ( $R^2$ ) showed the percentage variations in independent variables that can be explained by dependent variables. The  $R^2$  of 0.129291 or 12.9% of the model showed that over 12% of variations in the explained variable can be explained by changes in the explanatory variable used in the study, while the remaining 87.1% is explained by other variables not included in the model. This means the model does not show the goodness of fit of the model. The Durbin-Watson statistics of 1.939306 showed that the model is free from serial correlation. The study also found that there exists a long-run relationship among the variables used in the model.



## **6.1. Summary, Conclusion and Recommendations**

### **6.1.1 Summary**

This study is an attempt to critically evaluate and provide an insight into the situation of capital flight in Nigeria and its relative impacts on exchange rate. The ordinary least square method of analysis and co-integration methods of analysis were adopted to extensively investigate how the massive outflow of capital affects exchange rate in Nigeria. The study employed the residual measure in computing capital flight figures within the study period.

The study specifically adopted the Mundell-Fleming model as developed by Fleming (1962) and Mundell (1963), which showed the existence of a relationship between capital flight and exchange rate. The study focused on the link between capital flight and exchange rate in Nigeria. Econometric diagnostic tests were carried out using the ADF Unit Root Test to assess the stationarity of the data. The study employed the OLS technique to estimate the model's parameters, and found that exchange rate impacts positively on capital flight in Nigeria, which implies that investors demands more of foreign currency, especially the U.S. dollar, than the local currency, in this case, the Naira. This results to a loss of confidence in the domestic economy, thereby damaging the exchange rate between the Naira and the Dollar.

### **6.1.2 Conclusion**

This study showed that a positive and significant relationship exists between capital flight and exchange rate in Nigeria. In other words, capital flight encourages increasing demand for foreign currency which tends to exert much pressure on exchange rate, thereby increasing the rate among other factors. Based on the findings, the study established that capital flight is detrimental to the Nigerian economy, which makes investors to lose confidence in the economy.

### **6.1.3 Recommendations**

The following recommendations are made based on the findings of this study:

- i. This study recommends the rehabilitation and improvement of the existing and decayed infrastructure and utilities such as power, roads, public transportation system, water and environmental sanitation, with the aim of attracting private foreign resources in the form of Foreign Direct Investment. This will go a long way in encouraging Nigerians in foreign countries to repatriate their capital back to Nigeria for industrial development.
- ii. The activities of premium currency marketers should be seriously regulated by the monetary authorities. This will help reduce the amount of foreign currencies that leave the domestic economy, and would therefore, strengthen the value of the Naira currency.
- iii. Lastly, both private and government institutions should employ workers who are directly involved in the production of goods and services in executing projects within the economy. In addition, foreign firms should be encouraged to make use of local skills, manpower, technology and raw materials available in the domestic economy, rather than importing them. This will save foreign exchange, improve technical skills of the Nigerian citizens, reduce unemployment and limit the flight of capital from the economy.

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## Some Aspects of the Criminalization of Drug Trafficking

**Tiberiu Viorel POPESCU**

*Romanian Academy – Ph. D. in Legal Sciences, “Academician David Davidescu” Center  
for Studies and Research in Agro-Forestry Biodiversity, Bucharest, Romania  
tpopescu2005@yahoo.com*

**ABSTRACT:** Drug trafficking expresses, in a juridical - criminal context, the situation in which an individual or a group of individuals commit acts of non - observance of the legal regime of movement of substances with psychoactive effects under legal control. Trafficking is essentially, but not limited to, the action of some people to produce, transport and/or put into circulation an illicit commodity. The criminological analysis of the way in which drug trafficking is regulated at the international, European and national level reflects the lack of a clear definition of this type of crime, a situation also encountered in other types of crimes such as human trafficking, organized crime or large criminality. There are several ways to address the trends that encouraged incrimination at one point, and legalization at another point of certain drugs, and the analysis of legal instruments offers interesting milestones.

**KEYWORDS:** Criminology, Drug Trafficking, Law, Organized Crime

### Introduction

Under the sign timeliness and practical utility we propose an analysis of drug trafficking in terms of the following aspects (See also criminological analysis in Popescu 2018, 257-263): the evolution from prohibition to legalization of drugs (1), the repressive reaction (2), the criminalization of light drugs (3). *Licit drug* and *illicit drug* terms have been used since the criminalization by law of psychotropic drugs. Illicit drugs are psychotropic substances whose consumption or sale is not incriminated by law. Illicit drugs are drugs whose consumption or sale outside the legal framework entails criminal liability of individuals, constituting offenses. Depending on the laws of different states, the illicit nature of drugs is varied (Buzatu 2015, 9).

### From prohibition to legalization

The analysis of the drug situation shows that the phenomenon is far from being possible to be managed. Priority should be given to understanding and deepening the trends that encouraged incrimination at one point and to legalization at another point. In this regard, within the limit of the available data, we analyze the changes in the circulation system of drugs, namely of cannabis, emblematic in this respect, it and the vision of the legislator and the society that formed the basis of this legislative fluctuations.

Drugs such as cannabis or opium, for example, have not always been forbidden. Repression represented a necessary consequence of marketing and consumption excess, not of cannabis, but of opium. In 1729, Chinese emperor Yung Cheng issued an edict through which opium smoking and his domestic sale was forbidden, except for use as a medicine (Buzatu 2012, 31). In the 18th century, England controlled Indian opium production, which was mainly exported to China. If at the end of the 18<sup>th</sup> century the export to China amounted to 4,000 tons, by the middle of the 19<sup>th</sup> century the export increased to 40,000 tons. In this period, the opium was used as a recreational, analgesic drug or for fever relief. It is therefore about a commodity appreciated as a desirable,

very lucrative commodity, whose beneficiaries were traders and England (Brochu and Beauregard 2017, 131-150). The export was so important that England declared war on China when it closed the gates of import, triggering what had historically been called the “opium wars”.

The “opium war” initiated by England, however, was not the only element that triggered the change of the drug perspective to prohibition. Also in the 19<sup>th</sup> century there have been numerous technical and scientific discoveries such as: morphine and heroin extraction, hypodermic syringes, or extraction of the alkaline substance from the coca leaf. All these innovations have helped to increase the number of users, increase consumption, increase the visibility of the number of addicts, and thus, a change in attitudes towards drugs and consumers has been quickly reached.

The 1909 Shanghai Convention was only the first international document on the prohibition of drugs. In 1925 when the Geneva Convention took place, the fate of opium was followed by cannabis and other drugs that were placed under legal control. Opium and cannabis is among the many drugs that the 1961 Convention, as amended in 1972 and the 1988 Convention, put under legal control. In this way, drug repression has gradually been globalized in order to limit the effects of their use and trade.

The repression applied for a century has had limited effects on consumption and trade. Drugs became over time, despite these measures, more accessible, more concentrated as ever, and cheaper, as evidenced by the statistical data contained in the international and national reports of the specialized institutions. As the repressive reaction did not have the expected effects, a number of countries are turning to alternative policies.

On the American continent, steps have already been taken in this direction. According to the INCB Report in 2015, a law on the regulation of the import, production, storage, sale and distribution of cannabis for therapeutic recreational purposes appeared in Uruguay in 2013. In the USA, as we recalled, four states have legally licensed cannabis for recreational purposes as early as 2014 (Colorado, Washington, Alaska and Oregon). In November 2016 California, Nevada and Massachusetts voted for legalization.

In Canada, the autumn 2015 talks on legalizing cannabis for recreational purpose were materialized by submitting in the spring of 2016 a draft law aiming to legalize cannabis as of the summer of 2017 (Brochu and Beauregard 2017, 131-150). This new orientation has passed the ocean, with several European countries adopting a series of more tolerant policies on drug consumption and trade. In England, for example, the police can send the drug-addicted offender to a treatment unit instead of arresting him. Other countries, such as France, Norway or Malta, provide for the possibility of suspending legal proceedings if the consumer agrees to participate in public awareness campaigns on the dangers of drugs.

Some countries have adopted innovative policies on decriminalization. In the Netherlands it is possible to purchase a quantity of 5 g of cannabis for recreational consumption, which can be bought from the many coffee shops. Portugal has opted to permit possession of a quantity equivalent to normal consumption for ten days. In this country, drug offenses come under the scrutiny of committees consisting of three-member, a lawyer and two members from the medical and social field. Should the person shows signs of drug addiction, the doctor and the sociologist (in the case of primary offenders) direct the person to the treatment services. In the event of a recidivism, choice will be made between a fine and community work.

Policies on illicit drug use and trade adopted in the 20<sup>th</sup> century and the mentioned repressive measures seem to get nuanced at present. In the case of cannabis,

after a century of repression, there is a change of vision that leaves room for a more tolerant attitude.

### **Repressive reaction**

Drug consumption and trafficking have moved from the status of marginal phenomenon to the recognized status of social problem. Awareness of the implications of this phenomenon was of decisive importance in the cohesion of the forces at the international level that have the power to change people's perception about drugs and the dangers associated with them.

The change of the mentalities and the undesirability of drugs has been generated by the aforementioned aspects that have prompted the worldwide ban by adopting international legal instruments in the field since the twentieth century. These are just some of the most important moments of the international developments on the establishment of a common language, especially in the legal field, regarding the phenomenon of trafficking and drug use, the decisions thus adopted being transposed in the legislative and administrative plan by the majority countries, in accordance with local and regional specifics and interests.

Recognizing that drug supply reduction efforts have been limited in efficiency, there is a clear need to step up strategies that can effectively reduce drug-related risks. The analysis of the link between illicit drug use and drug trafficking reflects the implications of the two sides in social terms. Nowadays, illicit drug crime is associated too easily with criminality. Criminality in the matter of drugs can have as its source the illegal nature of drugs (systemic crime), the need of drugs (economic-compulsive crime) or the addiction caused by drugs (psycho-pharmacological crime) (Labrousse 2004).

The criminological studies that approached this issue started from the relationship that can be established between drug use and drug related crime (Brochu 1995). Starting from criminogenic risk factors that may favor drug use and ultimately drug trafficking and related crime, the quoted study highlighted that the relationship of drugs to crime cannot be reduced to a straightforward linear relationship, since most drug users only commit the crime of purchasing the drug on the illicit market. The analysis puts into question an integrative model of intervention that proposes a conceptual break with the positivist paradigm that previously proposed a set of reductionist theories. In this context, there are proposed political-judicial interventions on the relativisation and nuancing of drug criminalization, on the one hand, and psycho-socio-sanitary, curative and preventive interventions on the other hand.

There is a link between the abuse of psychoactive substances and crime, the exact nature of which has not been elucidated, and the research of the relationship between them goes through a paradigmatic crisis (Brochu 1997, 303-314).

By reviewing the occasional consumer, the consumer who uses drugs in current manner and the problematic drug consumer (drug addict) the quoted study concludes that the relationship of the drug with crime is not easy to understand as it would seem at first glance, this *being a triangular relationship between a person, a product and a behavior*.

The issue cannot be exhausted by reducing the analysis of the relationship between illicit drugs and crime only to the examination of general public statistics. Although the association between alcohol and illicit drug use and crime is frequently made, drug use needs to be seen differently: it can take the form of occasional intoxication - which can be circumscribed to the psychopharmacological model, or the form of drug addiction or substance abuse - which is the economic compulsive model. The first model combines intoxication with the diminishing of the cognitive and control

functions that can result in the release of aggressive and even violent impulses, a model explained by the theory of disinhibition. The second model refers to an economic need encountered by a drug addict who engages in a criminal activity to obtain the money needed to acquire drugs from traffickers (Brochu 1997, 303-314).

We notice a connection between drug use and drug trafficking: in the first case, to the extent that drugs that cause intoxication come from the illicit market and in the second case, where the users reach, by any means, to purchase drugs for their own consumption from the illicit market, or to resale drugs to finance their own consumption. Although the legal instruments have regulated the licit system of producing, distributing selling and using drugs, illicit trade has continued, as evidenced by the upward trend of the phenomenon that can currently be described as a world system parallel and opposed to licit trade (Boivin 2010, 93-114).

The explosion of drug trafficking has had consequences both at macro-social, micro-social level and individual level. Negative effects have manifested itself on those who, for various reasons, have made the decision to engage in drug trafficking and on those who, taking advantage of the availability of drugs on the illicit market and falling prey to the persuasion of vendors, have become consumers and ultimately drug addicts, and implicitly victims of trafficking.

The problem of drug trafficking control is complex and involves many obstacles. Currently, one of the viable measures refers to prevention of the destructive consumption of risk and high risk drugs, as well as to preventing illegal trade, which are the causes that generate serious social, health and economic problems.

Destructive drug use is drug abuse that ignores the risks involved. The researchers' error lies in the belief that the products are responsible for the motivation of consumption and that it would be necessary to dispose of the product in order to solve the problem. This reasoning reverses the motivation of drug use by presenting the harmful effects, avoiding the discussion of living conditions and social norms that animate some people towards self-destruction through drug use for example. Ultimately, they prefer to consider consumers as delinquents (Beauchesne 2007, 13-14). Sometimes the harmfulness of the product is exaggerated, and the effects are not correlated with the frequency of consumption, ingested quantity or with the environment. It is true that a cannabis joint is three times worse than a cigarette, but the joint is not usually smoked as intensely or as often as a cigarette. Thus, even regular tobacco consumption can become problematic.

### **Disincrimination of soft drugs**

The explanation of criminal behavior, at least with regard to criminal associations offering illegal goods and services such as drugs, seems to be similar to the behavior encountered in the case of any legal businessman. If legal possibilities to provide these goods and services would exist, the political corruption on which this type of crime is based would become useless.

When they pronounce themselves for the disincrimination of soft drugs, the followers of this trend do not challenge the hard drugs. Soft drugs are products foreign to the economy that have been banned, not products more dangerous than the legal drugs. The question is why legal drugs, sometimes more dangerous, are not prohibited. The foregoing results in a classification of drugs based on concentration and harmfulness regardless of type of consumption. Harmfulness comes from bad use contrary to health and from a lifestyle related to excessive consumption. In this context, the classification of drugs after harmfulness becomes subjective and useless (Beauchesne 1989, 67-83).

Having in mind that the drug use is treated as an abnormal behavioral, the intervention mechanisms to restore normality can be medical, psychological, social or legal, ultimately criminal, according to the principle of minimal intervention (Streteanu 2008, 48-53). According to this latter principle, criminal law can be used when other means of regulating social conflicts are insufficient or ineffective. So far, no objective reasons were identified for prohibiting cannabis, when alcohol is legal and sometimes cause more serious consequences. On the contrary, maintaining the cannabis illegal will not allow consumers to know the quality, the correct price, the appropriate dose or the consequences of a possible abuse.

Bans on cannabis use, though still valid, have become increasingly discredited in the media. Arguments that cannabis is less harmful than alcohol and a presumed minimum dependence, represent a powerful advertising which increased the consumption and the pressures for its legalization.

As shown in the statistical data, the repressive reaction on drugs did not decrease the number of consumers; more than that, it has led some consumers to commit crimes to get the money they need to pay a high price on the black market. Corruption and violence are effects that accompany illicit drug trafficking that generates substantial costs, all of which are borne by society. In order to prevent these shortcomings we are analyzing here the general aspects of the decriminalization of cannabis cultivation for personal and commercial purposes.

*Cultivation for personal purposes.* The criminalization of cannabis cultivation for personal or commercial purposes are two topics to be analyzed, considering the steps taken by some states in this respect. From the beginning it should be noted that the desincrimination of cannabis conflicts with the three international legal instruments. This is why this issue was discussed at the UN Assembly on 20 April 2016 in New York. The attitude of the participants was not like the one they had in 1988, when the assembly adopted an action plan based mainly on drug criminalization. However, regarding the vision of desincrimination of cannabis, the assembly recommended the advocates to deeply reflect on it.

Authorizing cannabis crops for personal purposes is not a measure taken in all states where cannabis has been legalized. In Colorado, for example, cannabis is associated with several shortcomings such as smuggling, pesticide use, or other hazards related to inappropriate production conditions. In Canada, the sale of cannabis is only allowed to adults, the control in this country being made with difficulty with respect to the compliance with rules regarding own production, as this production does not require a special permit.

*Cultivation for commercial purposes.* Legal cultivation of cannabis for commercial purposes has the effect of creating a legal market. The legal market is in competition with the illegal market. The adhesion of the customers to the legal market will be based in particular on four aspects that have to be analyzed: the price, the THC - tetrahydrocannabinol concentration, the variety of products available and, last but not least, the availability (Brochu and Beauregard 2007 131-150).

*a) The price.* Based on the analysis of the statistical data and according to the quoted study (Beauchesne 1989, 67-83), the price depends on the supply-to-demand ratio and the level of taxation. The quoted study mentions that, initially, the drug production, i.e. the offer on the legal market, did not cover the demand, which led to the price increase. A few months later, with the increase in supply, the price dropped by half, it being close to the black market price. Taxation is a major issue for all governments that predict drug decriminalization. Taxes are the way of reimbursing the expenses inherent to the regulations, but it is also used to feed the state budget. It should be noted that high taxes can generate traffic as in the case of alcohol and

tobacco. The “legalized” soft drugs would have to be taxed by the State according to its effects, mode of consumption and concentration. This mechanism would have to provide for a system of taxation proportionate to health risk.

At the same time, the state would have to not encourage consumption, hoping to increase the proceeds from taxes on the sold products. Additionally, the adoption of drug marketing laws should prioritize consumer information through precise labeling. The counterpart must be a minimum selling price in order not to encourage the irresponsible consumption. Setting a price based on the THC concentration also falls in the same logic.

b) *THC concentration*. The THC level of products on the legal market being known and engraved on the packaging attracts consumers to this market. The level varies depending on the plant type, soil, production technique etc. The legal market offers a quality product obtained in optimal conditions and without pesticides or fertilizers harmful to health.

c) *Variety of products*. Variety also influences market and consumption. Traffickers will invest in covering the poorly covered sectors of the legal market. It can be considered that the ban on the sale of products will favor traffic. These various cannabis-containing products, such as biscuits, chocolate, fruits with chocolate, etc., in the legal market have already gained popularity in the States of Colorado or Washington. It is hard to believe that a state that has decriminalized cannabis can continue to ban this type of trade without favoring illicit trade.

d) *Availability*. The ease with which the product is accessed is an element to be considered. It is important to ban the opening of cannabis shops near schools, kindergartens, social care centers or detention facilities. Product availability on the market should therefore be considered in the context in which we refer to vulnerable groups that are prone to abuse (young people in schools, recreation areas or imprisoned people).

Also, the location of this type of shops in residential ensembles should be avoided. At the same time, it should be noted that an increased density of these trading venues may encourage excessive consumption. Consumers must be forced to come personally to buy such products, which is why the development of courier services for the delivery of this type of product cannot be accepted. Under no circumstances should the sale of such products be accepted for minors.

Appropriate drug education is a poorly studied issue, as knowledge in this area is deficient. In principle, drug studies come from the medical area and, although they concern institutionalized people in most cases, they tend to generalize the effects and conclusions. Preventive education and information on consumption could provide the best control of it.

Correlatively, there could result a critical examination of the right to social intervention that has contributed to the ban on cannabis. Last but not least, legalization would require the commercial dynamics of drugs redefining (Beauchesne 1989, 67-83).

## Conclusions

Awareness of the danger of drug abuse and the emergence of international legal instruments as a social reaction against the dangers posed by the development and consequences of illicit drug trafficking all allow us to draw some conclusions.

Drugs have always been present in society, they being initially of plant origin and they have been viewed as any other product and perceived as desirable, with a functional and utilitarian role, with no harmful effects. Medical utility is undeniable especially in the case of opium derivatives, but consumption has evolved into abuse and drug



dependence. These two effects favored the use of psychoactive substances beyond the legal framework and represented at the same time a lucrative opportunity for traffickers. In our opinion, conferring a functional character on the soft drugs such as alcohol and cannabis is an error, as their contribution to socialization is illusory. Functionality can only exist in the medical field, drugs such as morphine, contributing to the development of surgical medical acts and, in some cases, to the reintegration of patients into the community.

Drugs have become a problem when the consumption burst. In order to meet the market demand, chemical synthesis and production have taken place, which has generated stronger products, with potential for addiction and more harmful effects to consumers, which has imposed their classification according to the degree of risk. The natural consequence of the emergence of the danger of strong, risk and high-risk drugs was the authorities' response to community protection by putting these products under legal control.

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## **The Church – A Model for Society**

**Cristian Marius MUNTEANU, PhD (c)**

*Babeş-Bolyai University Cluj-Napoca, Romania  
General Conference of the Seventh-Day Adventist Church,  
Inter-European Division, Bern, Switzerland, Education & Chaplaincy Director  
marius.munteanu@eud.adventist.org*

**ABSTRACT:** The church was placed by God at the confluence between men and God to promote the interests of Heaven in favor of the earthlings. As these two elements, which are defining for the human existence, are becoming more and more estranged from each other, as a result of the influence of current human ideologies, the Church is becoming increasingly limited in options and is forced to choose between cultural accommodation and spiritual revolution. For the same reasons, the Church has also been deprived of the image potential it used to enjoy, as its means of expression have been limited. The aim of this article is to prove that the audience to whom the Church is addressed, which is overwhelmingly influenced by postmodernism in its various forms of manifestation, might have the opportunity to opt again for different divine approaches to life. This might happen only to the extent to which the Church is willing to assume a brave and responsible role on the ideology market, while also providing a life model promoted by the genuine Christian lives of its members. Despite all the challenges posed by Christianity, Postmodernism can give the Church the opportunity to be revived.

**KEYWORDS:** church, postmodernism, culture, society, community

### **Who is the Church for?**

People all around the world, ask the same questions about the causes of suffering, the inability of the Good to limit the effects of evil, the search for credible and satisfying sources of spirituality, the trust in the Church and the place of man in the universe. David Horton states that "the new millennium brings a radical shift in economic trends, political uncertainty, all-encompassing technological innovations, and fundamental changes in values that have been around for ages in the social, ethical and religious worlds" (Horton 2006, 576) and continues with the following list, which describes what happens in the present times: the spread of civilization and cultures, the proliferation of persecutions, the expansion of secularism, the generalization of postmodernism, the deepening of the gap between the rich and the poor, the mass spread of incurable diseases, the increase in the number of children at risk, the effects of the widespread migration, the growing number of Christians in countries with other religious mores, missionaries coming from countries without a tradition in this area. In this article, we will be looking into some of these, as they are represented in the reality of people's daily life, both among the Church members, and among those whom they must approach.

#### ***1.1. The precarious economic situation***

Rapid social changes have led to the obvious detachment, in the negative sense of the word, of those who live below the limit of subsistence, a feature that affects many other personal aspects that are conditioned by the economic situation: earning a living, housing, health care, or other aspects of community integration - access to education, culture and, unfortunately, access to religious life mediated by certain religious

institutions. If the Church does not change the way it relates to the poor, it will not be able to address this category.

### ***1.2. Hedonism***

At the opposite pole, there is a totally different reality as a higher, unprecedented living standard level has been achieved, especially in the Western world. Starting from the modernist focus on work to the detriment of rest and leisure time, Western postmodern man has come to talk more about ways of spending rather than saving money. Therefore, if the world keeps going in this direction, the Church must intervene and speak outright against the reversal of the values scale. Hedonism considers pleasure equivalent to the purpose of life and mass media propagate this idea, liberalizing biblical standards of integrity (interpersonal relations, couple relationships) and reducing all searches to achieving pleasure at all costs. The advertising industry speculates this weakness of human nature in its favor and proclaims filling the daily agenda with pleasurable activities. "Recently, Christian hedonism has gained ground, supplementing the truth that God promises His children joy and pleasure in the relationship with Him, both here and in His kingdom to come, with the addition that He actually fulfills his promise here and now." (Packer 2006, 400). The author believes that this expression is improper to Christianity, as it wrongly implies that the search for pleasure at any cost would be a priority of Christianity. Conflicts between these points of view - the hedonistic behavior and the religious dedication - have always been present, pleasure being considered a means of immunizing the present against the omnipresent pain. The Church must discover ways to address those are "lovers of pleasure rather than lovers of God" (2 Timothy 3:4) who are not necessarily in favor of the suppression of any external power but who simply want to prove their full authority over their own program, budget and future. As some hedonists live a double reality (they are people who are deeply committed to work on working days and completely focused on fun at the weekends), the Church finds it even more difficult to come up with a solution. Which side of the personality should it address first, the one which is working or the one which is having fun? Perhaps, when approaching this category, the Church must add something else to its many roles, besides the traditional ones of irreprouchable salvation commander and imposer of the standard holiness standard (Rotaru 2017, 57-76).

### ***1.3 Attachment to tradition***

In this context, by people attached to tradition, we mean those who are pleased with the place they are in, the stage of life they go through, the ideals they cherish, the goals they pursue and the very few aspects which they would like to change. These people do not necessarily fit exclusively into a well-defined economic or social category (since they have no survival problems and are scattered on multiple levels). Their concern is to prolong the current state of affairs characterized by a certain degree of comfort and balance and to continue unhindered the foreseeable course of life. Any challenge bothers them because it takes them by surprise. They are faithful to the values of the traditional family, to their occupation and work, to their political affiliation and to the currents of thought they have once embraced. As far as church programs are concerned, they are little influenced by the insertion of the new and again, what really counts is peace of mind and predictability. This category - the traditionalists - cannot be neglected, as long as it is present and has potential that can be used constructively.

#### ***1.4. Attachment to spirituality***

Those represented by this category have not exactly lost touch with reality, but are more focused on the search as a process in itself rather than on the actual result of their search. Their concept of life is that reason has a limited, exclusively practical role and that true fulfillment comes from the discovery of unseen things. This may be the consequence of being enrolled in local churches that promote a non-target spirituality that only creates impressions without an evident transformational result. They feel good in the postmodern world, always looking for something from the outside which becomes objective and more important than the result they actually achieve along this journey. They cannot be distinctly assigned to a certain age category, but it is easy to get them involved in all sorts of initiatives, which idealistically promote certain concepts or currents. The Church is no longer attractive to them, especially since formal religion dominates the programs. The church no longer meets their expectations, influenced by a torn society, which is still intolerant of certain ideas and lifestyles. Instead, they are open to all kinds of versions of spirituality, which they assimilate as a result of costly pilgrimages, participation in spiritualization programs, and reading books that exclusively promise a new spiritual dimension. The Church must provide clues for a meaningful life and the Biblical certainty of continuous spiritual growth through initiatives and programs that involve the animation of the mind, the dedication of the heart, and the mobilization of the body.

#### ***1.5. Secularism***

Since we cannot fully analyze this trend of separating religion from life, which characterizes the modern age, we will only present some of its practical implications. We can recall the lack of inclination towards any religious suggestion. As a rule, secularized people belong to that category of population, which is educated and has access to public decisions (Rotaru 2006, 251-256). Due to their contempt for anything related to religion and the institutions that promote it, they condemn any church initiative, any inclination to spirituality someone might have and seek to destroy the Christian faith. According to the World Values Survey (WVS) 2010-2014, the question asked was "If science and religion are in conflict, is religion always right?" Of all the answers, 10.3% fully agree that religion is always right (25.8% in Georgia, 0.7% in Slovenia, 19.6% in Romania), 19.6% agree that religion is always right (32.9 in Georgia, 8.4% in Slovenia, 30.6% in Romania), 34.8% answer that they disagree with the idea that religion is always right (50.0% in Poland, 24.5% in Georgia, 29.3% in Romania), 22.8 % categorically reject the supremacy of religion (43.8% in Estonia, 5.5% in Georgia, 11.9% in Romania), and 12.4% did not respond. By adding the number of those who agree and strongly agree that religion is always right we have a total of 29.9% and the number of those who disagree and do not categorically agree with the idea that the church is always right we will have a total of 57.6%.

#### ***1.6. Indifference***

This category is made up of those who are not concerned about topics related to the purpose of existence, having a direction in life, or a reason for living. Their life unfolds linearly, according to patterns they have predetermined without unwanted interference from outside their circle, and is generally crowded with things which lack perennial value. Of course, they also have to cope with the repercussions of factors they cannot control, but these syncopes neither disturb their apathy nor change their direction. They try to avoid anything coming from the outside, they do not get involved in any action whatsoever, they do not have any expectations, and they have a tendency especially

notice the unpleasant side of things. Those familiar with the church atmosphere can talk about the presence of indifference both outside the Church and among its members.

### **1.7. Generation Z**

Following this succinct representation of population by age (sociologists divide the current generations into four categories: Baby Boomers: born 1946-1963, Generation X: born 1964-1979, Millennials: born 1980-1994 and Generation Z: born 1995-2010), White (White 2017, 53-73) introduces his own description of that category population, which will soon be the most numerous and which the Church must address. According to the author, Generation Z is:

a. Influenced by the economic recession

Having witnessed the economic crises from 2000 and 2008, and having been burdened by the horrendous predictions regarding the times that are coming, which exacerbate their anxiety, the members of this generation are determined to fight for their economic security and to make a difference wherever they may go.

b. Defined by Wi-Fi

Apart from being skilled at using electronic devices, this category of population is defined by the excessive time it dedicates to the media, by the smart gifts they have received since they were kids, and the technological universe in which they spin. "While Baby Boomers cannot imagine a world without TV, and Millennials cannot remember what the world used to look like without a computer, Generation Z cannot live in a world without constant, immediate and convenient access to the internet." (White 2017, 54).

c. Multiracial

Massive population movements at a continental and an intercontinental level have given Generation Z members the opportunity to know, adapt to, and accept multiracial diversity, with all its costs, risks and benefits.

d. Sexually instable

Generation Z is the most exposed to same-sex marriages and the rights of transgender people. This does not imply that they are victims of these trends but live under the impact of these significant social changes and consequently, they value individual freedom.

e. Post-Christian

"The more recent the statistics, the higher the percentage of those who fall into the category of no religion people," (White 2017, 73) since the Christian context does not influence them in any way, the level of religious literacy is high and there are no models around them.

Does the Church have the necessary resources to meet all these needs? Can it reach all these population categories? Should it specialize in answers it can offer to one or the other category of people? Can it avoid being accused of dealing only with those who are in favor of religion?

## **2. Who could be interested in the services of the Church?**

The philosophical changes that society has been through have deprived the Church of the image potential it used to enjoy in the past, it limited its possibilities of expression, and left the believers disappointed and lacking perspective (Rotaru 2005, 33.446).

However, society is in great need of exponents of Christianity willing to go 'the extra mile' beyond their postmodern concerns and limitations, as Coleman put it: "The world is desperately looking for someone to follow. There is no doubt that eventually, everybody is going to end up following somebody, but will that person be someone who

walks in Christ' footsteps, or will there be someone who seeds darkness in the garden of their heart and mind and leads deeper and deeper into it? " (Coleman 1998, 21).

One of the main features of human existence, to which modernist individualism has not found a solution, is estrangement. This was the price that the life model devised by the Enlightenment had to pay, whenever it encouraged a human being to be independent, as detachment from others inevitably led to estrangement from them. (Gay 1998, 193). However, it is increasingly emphasized that human existence is defined by the balance between the individual and social life of the individual. As postmodernism became dominant, it was claimed that people want to be independent, but in a community environment.

According to the biblical teaching, community relationships are structural elements when learning about the church. Newbigin notes that "the human being in the Bible only exists in relationship to other people and only as part of the created world ... The Bible invites us to regard our genuine human life as one of shared relationships in a world of living creatures and created beings." (Newbigin 1995, 69). "As individuals, we find the meaning of life only in relationships, especially in relationships that offer love. Our peculiarity and distinctiveness are preserved only through and for interpersonal relationships." (Hiebert 2008, 287). Postmodernists are looking for a genuine fellowship experience of believers that goes beyond gender differences (Galatians 3:28), race (Acts 15: 9, Romans 10:12, 1 Corinthians 12:13) and social rank (Colossians 3:11). "This is what makes relevant the rediscovery of the church as the Body of Christ and of the Christian mission as the mission of a community for those who share a common destiny." (Bosch 1991, 362).

Due to the fact that in the context of Postmodernism, external aspects of human life are no longer determinant of human identity, individuals understand that they are equally created as an integral element of mankind. They also begin to understand that they belong to a continuous presence of God on earth. Blauw underlines that "This means that the church, since it replaced Israel, represents the salvation that came through Christ, just like in the Old Testament, Israel could, by anticipation, represent the salvation of the world." (Blauw 1962, 80).

Amaladoss outlines the existence of the Church through a perpetual mission, which promotes targeted action. "As Christians, we anticipate a world with "a new heaven and a new earth" (Revelation 21: 1), because we believe that God is active in the process of transforming this world. This is the hope that sustains us and makes us more creative, so that we give our best." (Amaladoss 1995, 317). Rusu believes that the church must take both conceptions, depending on the context: sometimes "Christ against culture," in other domains "Christ the Transformer of culture" (Rusu, 2016, 422-442).

Another element that postmodernists look forward to discovering, understanding and eventually following, is the relationship that God maintains with those He created. Our existence is defined by the relationship with God, and this implies more than depending on Him for existence, nurturing respect for an authority outside us, a relationship described in the most comprehensive biblical meta-narration: the history of mankind, before and after the fall.

Understanding this "storyline" is capital to the human being, as the individual gets to understand the role they play in this whole scenario. As MacIntyre notices: "I can answer the question, 'What should I do?' only when I have answered a previous question, 'What is the story I am the main character in?'" (MacIntyre 1984, 216).

Even if they generically reject meta-narrations, postmodern individuals must know the context they live in, in order to become aware of their redeeming route and in order to be able to choose the "narrative" they can identify with, from a wide range of possible "scenarios." Postmodern individuals have three options: they can understand

everything as being the result of an agglomeration of religious understandings launched by impersonal realities, they can believe there is no other reality beyond what is seen in the natural world or they can admit that there is a cosmic confrontation between Good and Evil, which influences both their identity and their journey through life. This third possibility, which sees history as the sum of all events starting from the rebellion against God in heaven (Revelation 12:7-9) and ending up with the renewal of all things (Revelation 21:1-6), gives every common postmodern individual the opportunity to understand God's nature (Genesis 1:26-27, Matthew 3:16-17, 28:18-19) and to meet an embodied God (Isaiah 7:15, John 1:14) and His descendants grouped in a community (Romans 12:10, 15:7, Galatians 5:13, Ephesians 4:32, Colossians 3:16, 1 Thessalonians 5:11, Hebrews 3:13, 10:24, 1 Peter 1:22, 3:8, 4:9, 1 John 3:11, 3:23, 4:7, 4:11-12).

## Conclusions

The extent to which the Church and its leaders still believe in the unique purpose and distinct mission they have received will be seen in the wise and responsible way of interpreting the context and preparing appropriate responses. Updating and adapting the approach to different population categories, providing solutions that take into account the significantly changed parameters of interest or respect for spirituality, and, last but not least, focusing on dialogue with the young population, should be the priorities of the Church. A shattered, selfish, and estranged society needs a balanced, fellowship-oriented, and visionary Church, as well as exponents of Christianity that go beyond their postmodern limits, and share the ultimate value of a rediscovered, upgraded and updated relationship with God.

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## **The Concept of Trust in Criminal Law – The Need for a Standard**

**Camil TĂNĂSESCU**

*"Dimitrie Cantemir" Christian University of Bucharest, Bucharest, Romania  
camiltanasescu@gmail.com*

**ABSTRACT:** Confidence, as the theme of interpersonal relations, business relations, relations between state institutions and citizens, must always be under the protection of the law. Considering that, anywhere in the world, confidence is affected and jeopardized by misleading, misleading, abusive behavior, States have an obligation to adopt common measures to defend this safety need by setting limits within to whom people manifest themselves freely. The freedom of the will of persons is reflected in their actions, which must not exceed the standard adopted and imposed by the states. Thus, trust must be recognized as a value protected by criminal law, becoming a special object of facts that exceed the accepted limit, leading to the adoption of a conduct as a result of sanctioning the changes and actions to the contrary.

**KEYWORDS:** abusive manifestations, business relations, need for safety, sanctions, trust

### **Introduction**

By attributing merits, qualities, skills, skills and habits that they do not actually possess, the offender individualises and singles out the victim who will be subjected to deception. By multiplying the motivation to participate in an activity, the perpetrator offers to provide the characteristic material, absolutely indispensable to the victim, and the promise of obtaining a profit.

In order to gain confidence in the safety of the action mode, the scammer offers to reduce the expenses or the time required to complete the act, proposing types and forms of action, depending on the variety of concrete needs of the participants, it will singularize the mode of operation on which repeated it continuously.

As he adopts an exaggerated and false image, he considers himself to be a man and a man of knowledge, the routine activity being carried out not as the result of a special intelligence, but of the indifference of the victim to try to obtain something in a clandestine, advantageous or illicit way.

### **The scammer - a more and more prevalent typology**

His entire concern, singular or group, expresses the will to attract and obey the victim to an absolute, concrete interest pursued by the whole community. The offender, following a concrete type of victim, associates with it, putting it in the shadow, progressively, through the intentions, the amplitude of firmness and docility in the execution of the mournful plan. Valorising the qualities that the victim possesses, the conqueror is left to dominate, and seems to be faithful in engagement, by contributing to the sudden, total change of the victim's ideas, and to the taking over of the particular way of thinking (Di Tullio 1940, 76).

The system of relationships and interests that it invokes in reality is limited to the hidden link with another crook or simply to a person who does not understand the meaning and meaning of disinterested acts.



Aggressive individual behaviours distance themselves from the unitary conception of the community, the committed acts having a significance that, although it can be understood (confirmed), will not be accepted and will not remain unanswered.

Human acts are determined and conditioned by political, ideological, economic, religious arguments that fit into the social fabric. In knowing the reality, individuals have the ability to understand and evaluate the non-unitary, complex social dynamics to integrate into a social ensemble, affirming or denying the viability of concrete social coordinates (Tănăsescu 2014a, 108).

The behaviour of the individual is directly related to the social phenomenon through the system of means appropriate to the achievement of an individual, concrete purpose. In the individual assessment of social behaviour, every person tends to amplify their importance, in their positive participation in the pursuit of an activity, pursuing an interest or an ideal.

Any human activity is based on the instinctual sense or the rational idea that urges to choose from the many possibilities, either the idea of self-preservation or the idea of self-affirmation, by accepting the privilege of the interests of others towards their own interests. The influence exerted by the environment is decisive in adopting individual behaviour, in limiting or not the freedom in relation to the individual's existence. The eighth of the dictated act of consciousness on reporting and acceptance of morality indicates the degree of social assessment of the way individual concentration on external stimulus responses.

Behavioural occurs as a result of the ability to understand, interpret and determine the meaning of an individual motivation imposed by proven competence in the experience of performing activities, acts, deeds, actions. The need to integrate individual behaviour into the social one is created by the concrete living conditions and aims to highlight the natural association of individuals, to ensure human existence (Butoi 2006, 234).

Relationships between individuals are the result of an improved and conditional adaptation to the social environment in which they live. Apart from dependence and adaptation to the environment, behaviour will be subjected to concrete assessment in a determined, social context. Relationships between individuals and societies or individuals integrated into a particular environment will be acceptable, perpetuating, aggressive, punishable.

The overcoming of difficulties arising from the identification of conflicts is based on primary pulses, on rational verifications and confrontations, on compliance with moral and legal norms. All norms of social behaviour are predictable and argue the concrete means of perfection, of all attitudes of the individual, which ensures both the most significant and the most common moments, progressively making the essential connection of man to society.

The alteration or degradation of this report by abandoning individual morality triggers the use of diversified principles of responsibility, applied in accordance with the consequences of individual action. In any conflict situation, the behaviour of those involved must be integrated into the social strategy, even if it appears to be restrictive and punishable.

The formation of rules that determine the behavioural stability of individuals is a complex process of permanent mediation of relations with society. Any behaviour involves a cause of action - individual inaction, imposed and executed by a particular thought, into a certain social reality, the act being the result of an uninterrupted process, consisting of repeated material acts, which interact permanently.

### The relationship between the aggressor and the victim regarding the perception of aggression

The relationship between the aggressor (offender) and the victim also depends on the existing social structure that requires the mutual agreement between the independence of wills, the autonomy of morality, and the spontaneous agreement to adhere to the behavioural model rigorously, according to social conformism.

The complexity of the act can minimize the shock of aggression if the victim concerned engages in affirming the non-existence of the aggressive report. Therefore, in general, the person who has been victimized will say that the acts committed are aggressive, the aggression exists everywhere (the principle of ubiquity), and the person who has committed certain acts will find that they are not aggressive, but have the purpose defending one's own interests (Brehm 1992, 65).

By aggression, the individual sees himself as facing the victim directly, so that, as a result of incompetence, lack of necessary force, inconsistent effort, lack of fierceness, fails to overcome the victim. The initiation of aggression does not always lead to its favorable completion. And in this area, skill is needed. Avoiding the prejudice or defeat of the aggressor begins with the abandonment of the aggression plan (*iter criminis*), the victim's resolute opposition or the intervention of other opposition factors, attempts to reduce the severity of victimization by allowing for return to acts, correcting or changing their meaning.

Reassessment of activity is a necessity that the relatively absolute social requirements impose on human acts. This is not mandatory, so it can become extremely damaging to the aggressor confused by the change in the meaning of the committed acts, which will have to resort, through imitation, to known action models and improvisation, without elucidating the external contradictions and contradictions and without succeeding in detaching himself. There is a goal in any human activity, but perfect crime requires a behavioural equilibrium leading to austerity, which involves the removal of all incidental acts that may intervene (Palmiotto 1994, 205).

The state of aggression will impose a hierarchy of acts subordinated to the conflict, simultaneous interventions of the participants, forcing them to adopt the most appropriate acts to remove any oppositions, oppositions. The perception of the influence of aggression is different for the aggressor and the victim, being determined by the effects caused: the state of domination, for the aggressor and the defeat, for the victim. Aggressiveness, as an activity, becomes a process of restructuring inter-individual and collective relationships.

The social experience of the individual is objectively reflected in the aggressive act, stabilizing a certain authority, an individual practice, which by its singularity exacerbates the destructive capacity of the aggressor. If there is a conflicting report of dominance between the aggressor and the victim (the victim becomes subordinate), the rapporteurship is opposing between the aggressor and the authorities. The character of the aggressor is also formed in the face of hardening sufferings, so that he, in making harmful, illicit, injurious acts, has guilt in what he does.

Violent behaviour differentiates individuals into culpable or intentional aggressors. The targets pursued by the aggressors are different, as they committed the act to produce a certain result, accepted and pursued, or believed that following the engagement in an activity, harmful effects could be avoided through increased diligence. Negligence, imprudence, inaccuracy in the performance of an activity affects the ability to control behaviour in the sense that the option to act in a certain way is the factor that produces aggression, harm from fault.

The error of reason (error, incomprehension, rush) is not determined by ignorance or misunderstanding of the rules, but by the interest in exercising activity in any way

and under any circumstances (Stancu 2004, 197). The constants of error in action generate conflicts as a result of the fact that it is caused by a mistake, of delusion, in the realization of the normal order of things, the effects of which are obvious.

The aggressive tendency derives from the brief analysis of reality without adequate motivation for the competitive action process, so that the aggressor manifests his or her personal choices inappropriately or imperfectly. Without being able to correct the activity, which will cause harm to the victim, the culpable abuser abandons any criterion or restriction that would have led to the harmonization of the activity with the public interest (Cioclei 1999, 201). From the social point of view, the culpable act is considered inappropriate, immoral, being fought by the intervention of any person capable of adopting such a position, and of the state, which establishes and unites all forms of coercion and deprivation.

Most human acts are accomplished by constantly reporting to social restrictions, so that when the injury occurs, one or more people have a preponderance of penalizing, to restore as far as possible the previous situation. The violating act of guilty or intentional nature can not constitute a dominant form of manifestation of the individual's desire in relation to socially agreed acts, for the simple reason that the state protects the socially comfortable social requirements and interests without being subordinated to other interests or powers. Ensuring the rule of law is an important function of the state, which stimulates the regulation and self-regulation of private behaviours. Temporary, family or social dysfunctions cannot defeat the general, fundamental, tendency of individuals to impose a criminal policy of controlling and sanctioning aggressive behaviours (Reuchlin 1992, 54).

Aggressive aggression, even if it is frivolous or lethal, must be sanctioned by society if the aggressor is responsible for his acts. The victim, who has chosen his own oppression, is sometimes unable to avoid scandalous behaviour, harmful to cohabitation, damaging to public order (Tănăsescu 2014b, 67). Exercising power by the aggressor of the coercive power of family members has the purpose of causing them to give up the goals they are aiming to achieve and allow acceptance of the behavioural plan proposed by the aggressor. Physical strength creates vulnerability, and privatizations imposed by the offender determine behavioural discomfort. The aggressive instinct indicates to the individual what is worth to be considered from the social reaction to aggression. Aggressive specialization relieves the individual from reflecting on the destabilizing family and social role of serious acts.

The conscious intention of endangering the survival capacity of other family members requires the attacker to confront, expose and sanction the assailant to ensure their existence and to avoid serious social consequences. The aggressor has some influence from his power, which means he can direct or cancel the efforts of the victims by imposing his own interests that do not identify with the public interest. Choosing the aggression procedure is only appropriate for the aggressor, depending on the victim's reaction mode, which, for fear, helps stabilize aggressive behaviour.

## **Conclusion**

The aggressor naturally seeks to influence the environment that he otherwise would have dominated. He intends to impose restrictive behavioural norms for the victims by removing by opposition or opposing threats any opposition, opposing attitudes, gaining control over others and annihilating competitors. These manifestations are appropriate means by which the aggressor tends to ignore, dominate and create supremacy over the victim's interests.

The aggressor remains faithful to the origin of the conflict, assigning a subsidiary role to participation in triggering the incident and its practical effectiveness. Aggressive

behaviour in the family can remain without a visible sanctioning effect, because sometimes a sudden re-assessment of the conflicting motivation by the victim produces an act with aggressive, deconcentrated and inhibiting effects for the aggressor. The uncertainty ascertained when responding to the aggressiveness of the victim and the advantageous conditions of his / her benefit determines the solidarity of other persons (the handicap of forces), the aggressive response of the victim accompanied by the collective judgment, will result in the stabilization of the conflict, under the conditions accepted by the majority individuals.

The high degree of aggression can be overcome by state intervention in the sense of imposing control and sanction on persons guilty of breaching behavioural safety. Acceptance of aggression by the victim becomes as dangerous as the constraining act, but it can be prevented, traced, and through the intervention of the authorities, restoring the general public interest in maintaining the lawfulness.

The imposition of certain individual or group interests, to the detriment of the victim, must be a form of manifestation of the act or of the conflicting activity. Exercise of the aggressor's control may also result from explanations in favour of aggression, from predictions expressed, and from possible warnings of serious consequences. The position of the aggressor as an agent of the conflict report is also based on the victim's disinterest in what can be achieved through aggression. Intuitively, the aggressor emanates apparently realistic threats, inspired by his fantasies, in favour of or at the expense of harmful ideas, capable of leading to obedience to the victim and the environment in which he lives (Dobrinioiu, Conea, Romitan, Tanasescu, Neagu and Dobrinioiu 2004, 88).

Aggressors constraints affect the victim's freedom of thought and action, even if there is no indication of how aggression will occur. The evasion of the aggressor's dominant behavior by removing attention from his concrete influence can be reflected in creating a behavioral uncertainty in the reduced use of individual initiatives in the low level of adaptation to social requirements otherwise than would be ideal.

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## **African Environmental Ethics**

**Joseph Nkang OGAR**

*Department of Philosophy, University of Calabar, Cross River State*

**Samuel Akpan BASSEY**

*Department of Philosophy, University of Calabar, Nigeria  
samuelbassey15@yahoo.com*

**ABSTRACT:** For decades now, experts have studied and documented the severe environmental and land degradation across Africa. However, the nature of the problem has now been ratcheted up by mounting and undisputed scientific evidence demonstrating a clear causal link between tropical deforestation and global climate change. The external observers of the deteriorating African landscape continue to watch in alarm, sometimes heralding a concerted global response. The African environmental “crisis” that once was framed solely in the context of the direct effects of desertification, deforestation and land degradation on African ecosystems, economies and societies, is now in fact unhinged from the location of rapidly advancing desertification and deforestation to a much broader, world-wide crisis. There is now a rapid need for an effective environment ethic hinged on socio-cultural substance which recognize indigenous people, further shape their association with natural habitat. The thrust of this paper is to have a look at African environmental ethics.

**KEYWORD:** Africa, Environmental ethics, ecosystems

### **Introduction**

The Western environmental movement is identified in history with new ways of thinking that emerged in literature, science and public discourse, bringing to awareness the environmentally destructive path on which her civilization had embarked in the name of industrialization and modernization. Environmental philosophy provided the justifications and rationale behind the western environmental awakening. This article asks and attempts to answer this questions with respect to Africa: To what extent has Western environmental ethic direct import into the African context and what is the value of philosophy that comes out of Africa itself—of an ethic from within? What, if any, are the dominant African environmental ethics and why have these philosophies failed to mobilize the African political machinery towards the protection of the African ecosystem? Is such an ethic sufficient to begin to address deforestation—one of Africa’s (and the world’s) most critical environmental issue?

J. Baird Callicott (1994) observed that finding some environmental ethic (or ethics) consonant with the African experience and ideas was a dire necessity, driven by the unique context-specific nature of the assault on the environment in Africa. Baird’s concern about Africa begins with an observation that the continent has some unique and endemic environmental problems. But equally unique is the set of moral and cultural experiences shape and determine the relationship between man and nature. Perhaps the ethic with the potential to rescue Africa’s environment lies in the richness of African cultures. The environmental ethics of Africa would therefore not come from Western philosophy. Neither would their root be extra-territorial. African environmental ethics would be embodied in the traditions of African people, a sort of *ethics from within*.

### African Environment and Tropics

While all life on our planet is affected by environmental problems, and few of the world's ecosystems have not been disturbed from their natural state of flux, Africans and their environment experience these impacts very directly. The relationship between the African people and their environment is much like the two sides of a coin—inextricably connected yet in constant opposition. The people, one side of the coin, live in close dependence on the service-value of natural resources. On the other side of the coin is the environment: the land, climate, water resources which are so intimately connected in a physical and metaphysical sense to the African people. This interdependence manifests itself in a love-hate relationship; love—because the land and the people are connected in a historical song-dance, meshed in the traditions that make the people “African” and identify the land as African soil; hate—because the intimacy of the relationship and connectedness of the African people, their economies, their politics, their religion, to their natural environment brings to the fore the inadequacies of the dominant partner, embroiling the couple in moral wars labeled “slash-and-burn,” “soil erosion,” “famine,” and “deforestation.”

Four types of environmental degradation are among the worst of Africa's environmental problems (Mathieu 1999).

(1) *Desertification*, the transformation of productive land to wasteland, is estimated at 36,000 square kilometers every year (Mathieu 1999). The factors creating conditions conducive to this rapid desertification are: localized population density pressure, the migration of many able rural workers to the cities, over-cultivation, overgrazing, and inadequate land/forestry management (Mathieu 1999).

(2) *Deforestation* in Africa is extreme, primarily driven by economic pressure to move onto additional farming land to sustain cash crop production (Mathieu 1999). The demise of Africa's forests is both externally and internally driven. The rise in wealth in parts of the world like China and India, and the continued need for food security in western countries are working together to raise commodity prices and increase pressure on agricultural lands across the developing world, who tend to be natural resource wealthy—especially in land resources. Internally, the direct use of forests for timber and for domestic energy uses accounts for a significant loss of Africa's forests. There have been remarkable efforts at reforestation, but reforestation is only replacing about 10% of the annual loss (Mathieu 1999). To put these numbers into perspective, it is estimated that in the 1980s alone, Africa lost 7% of its forests.

(3) *Pollution* of land, water and air in Africa can be blamed on a whole host of causes, but toxic dumping by Western multinational corporations, especially due to operations in African oil fields is most notable (Savaşan 2017).

(4) the *disappearance of wildlife* is unprecedented in Africa. Population pressures, poaching, and the tradition of separating wildlife from human populations have resulted in the loss of vast numbers of Africa's wildlife (Morris 2001). A stark picture is presented in the case of Kenya, where the elephant population dropped from 165,000 to 16,000 between 1970 and 1990 (Morris 2001).

Both deforestation and desertification, regardless of where in the world they occur, contribute significantly to global warming. When forests are cleared, carbon stored above and below ground in leaves, branches, stems and roots is released to the atmosphere. As a consequence, forest clearing, especially in the tropics, is a major source of CO<sub>2</sub> to the atmosphere. One estimate shows that land use change, primarily deforestation, releases about 5.9 GtCO<sub>2</sub> (gigatons or billion metric tons of CO<sub>2</sub>) annually, about 17% of all annual anthropogenic GHG emissions. The Africa Summit report placed the lion's share of the blame for Africa's environmental issues on new technologies and population growth (Ahmed & Hanson 2011). Technology has

generated an increase in solid mineral mining and oil exploration, an increase in the number of plants and factories, and an overall upsurge in the application of manufacturing tools. Irresponsible industrialization, characterized by explosions, chemical and radioactive contamination, and other technological incidents increase the direct harms inflicted on the environment by Africa's technological advancement trajectory. The results include reduced quality and richness of terrestrial, freshwater, and marine environments, air and land pollution.

On the other hand, rapid population growth and its companion problems have placed the African natural environment in jeopardy. Globalization also places greater demands on land to produce cash crops for export, which facilitates economic growth but blazes the trail for environmental degradation (Ikegbu & Bassey 2018). With an increasing global population, natural disasters are resulting in damage, loss of life and displacement of populations. Human-induced changes to the environment have reduced its capacity to absorb the impacts of change and to deliver the goods and services to satisfy human needs.

African economics suggest an unconsciously anthropocentric view of man's relationship to the natural environment. Ogungbemi (2008) observed that modern day Africa has benefitted from Western civilization and industrialization even as the West has in turn benefitted from the exploitation of Africa. However, he posited that, because of the desire to develop like Europe and the US, African governments (often in conjunction with international corporations) have engaged in mass destruction of ecosystems. The drive to develop has led to wholesale abandonment of traditional practices and values of forest land management as if development and modernization were incompatible with conservation of forest and protection of trees. But the economic trajectory of Africa is not evidence of wanton disconnection from environmental stewardship. With populations burgeoning, African governments are faced with the insurmountable burden of feeding the millions on disproportionately small budgets. As societies industrialize and achieve middle-class lifestyles, they tend to use more resources and produce more pollution, resulting in more environmental degradation. This economic reality has naturally forced a shift from subsistence farming to mechanization, often accompanied by the loss of traditional land management practices.

However, viewing African economic development with rose lenses terminates the analysis prematurely. Although it is true that population growth has forced the switch from traditional subsistence to the use of technology, African consumerism has contributed to the Western-like trajectory of development. Ogungbemi puts it more bluntly: "...[M]odern Africa does not want to eat and drink only what is produced locally; it has been infected with a desire for the Western lifestyle, and to cope with this modern lifestyle it has to import goods from industrialized nations" (Ogungbemi 2008). The increase in imports forces an increase in the domestic production of Africa's export goods: coffee, tea, cocoa, rubber, oil, mineral ore which can only be accomplished efficiently through technological advancement.

The development economics rationale of the environmental situation in Africa has been inadvertently christened by the United Nations Framework Convention for Climate Change (UNFCCC). The convention recognizes the need for African governments to develop their national economies by affirming that developing countries have a right to development, defined by the UNFCCC in Article 3(4) as "a right to... sustainable development" requiring each Party to "tak[e] into account that economic development is essential for adopting measures to address climate change" (United Nations 1992). Further, Article 3(5) states that the Parties to the UNFCCC should cooperate to achieve "sustainable economic growth and development in all Parties" (United Nations 1992). A major concern for developing countries was that efforts to

address climate change would overlook the fact that limiting the carbon emissions of developing countries would impede efforts to develop their economies. African governments do not perceive of an economic development trajectory that does not involve fossil-fuel driven technology and squarely bill the cost of development by alternative technologies on the West. All these signs point to a develop-or-die attitude, shrouded in a deeply anthropocentric man-nature relationship.

In fairness to the African development trajectory, an important and unanswered question is what is the alternative? Can a developing civilization avoid the environmental crises witnessed in the developed world by developing using renewable energy, for example? What would it cost? Or is it simply a matter of smarter use of the same technologies that have invaded our natural environment and destabilized its future? Is renewable energy not by default accessible only to the developed world because it requires high technology, research and development and capital investment? All these questions would need to be answered concretely before the anthropocentric African development trajectory can be regarded as a wanton march towards environmental apocalypse.

### **Multiplicity of Factors Aggravated the State of the Environment**

In addition to the dominance of economic development on the African agenda, at least four other factors contribute to environmental degradation in Sub-Saharan Africa: (a) the subjugation of environmental interests during the colonial period and its continuing legacy; (b) the conundrum of predominately agrarian economies which locks people into a dependence on arable land and rain patterns; (c) abject poverty; and (d) totalitarian political structures that limit the African's access to democratic mechanisms to protect the environment.

Africa's current environmental problems cannot be unhinged from their historical context, particularly the impact of colonization on land and other natural resources. According to the *Oxford Encyclopedia of African Thought*, mining and cash crop farming were the two most significant environmental changes Africa experienced under colonization (Biodun and Irele 2010). Europeans restructured the way Africans traditionally farmed or otherwise used the land. Further, Africans were forced to overuse land as Europeans restricted them to areas with poor soil in the name of conservation and sport hunting. Colonialism also gave private companies a foothold in Africa, allowing for the growth of multinational companies who exploited natural resources such as diamonds, oil, forests, animals, gold and mono-cultural cash crops (Biodun and Irele 2010).

Most detrimental to the success of sustainability principles, the legacies of colonialism led to overdependence on single-drivers of government funds without any wide-scale diversification of the economy for the people. Sub-Saharan Africa is acutely vulnerable to threats to agricultural existence. Consequently, land is the backbone of Sub-Saharan economies. Agriculture contributes about 40 per cent of the regional gross domestic product (GDP) and provides livelihoods to about 60 per cent of the population (SAIIA 2005). Yet, arable land is not an abundant resource. Only 21 per cent of Africa's land is suitable for cultivation (SAIIA, 2005). Millions of hectares have been lost to soil degradation. Africa contains the world's largest expanse of drylands, covering roughly two billion hectares of the continent, or 65 per cent of Africa's total surface area (SAIIA 2005).

At the core of identifying and understanding the state of the Sub-Saharan environment is recognizing (political lenses off), that vulnerable groups lack the ability to adapt to, and cope with, change brought about by environment degradation. Adaptation requires resources in labor, technology, and capital. People in developing



countries, particularly the least developed countries (LDCs) have less capacity to adapt to change and are more vulnerable to environmental threats and global climate change. Conversely, poverty remains the main cause and consequence of environmental degradation and resource depletion without significant improvement in the living conditions and livelihoods of the poor (SAIIA 2005). Further, poverty is an important cause of vulnerability to environmental threats. The poor tend to have much lower resource capacities, and therefore bear a disproportionate burden of the impact of disasters, conflict, drought, desertification and pollution.

The political structure of a society is a key determinant of the people's ability to control their natural environment. The vulnerability of Africans to environmental impacts is further exacerbated by such communities having little to no political power. Governing regimes control the political processes to thwart democracy, leaving the poor with no voice in the decisions that impact their natural resources (Oshita 2000). Participatory democracy is a vital prerequisite for the upgrading of the environment, enabling people to reclaim control and to hold authorities accountable for the communities they purport to serve. With these four unique factors muzzling the environmental agenda, Africa is ripe for a paradigm shift grounded in morality - that rational choice guided and constrained by something deeper than law.

### **Articulating African Environmental Ethics**

Philosophical ethics is a process of stepping back to reflect on our decision making. African philosophers agree that environmental philosophy is meant to articulate the rights, duties and responsibilities of man to the environment and vice versa. Environmental philosophy exposes the environmental ethic of a group and helps to explain the choices structured societies make concerning the environment. The process of defining existing philosophies raises the kind of awareness that either confirms the shared ethic of society, or exposes its flaws in such a way that society rallies behind a change in course. According to H. Odera Oruka (2012), philosophy is the base upon which all social practices are built. When we are forced to justify our lives, to justify our political system, to justify our legal system, to justify our marriage system, in the end the ultimate justification will have to be philosophy. The central question is whether western environmental ethics are pragmatic ways for Africans to relate to their environment, or whether universalism in environmental ethics is limited by the specific character of a civilization. The anthropocentric man, in whose company we have so far identified African development economics, sits at the other end of the spectrum, forlorn and shunned by the enlightened world of predominant western environmental ethics. Anthropocentrism is a kind of baseline against which Western environmental thinkers distinguish and measure the various theories. Each environmental ethic deviates from anthropocentrism to varying degrees based on the respective flaw it identifies. For example, eco-feminism contrasts itself from anthropocentrism by attacking the *structure* of domination that is common to man's treatment of woman and man's control over nature; animal rights theorists defend the animal's worth for moral consideration based on its capacity to feel pain—undermining a central rational behind elevating humans above other species in an anthropocentrically motivated desire to increase the comfort of man. In short, societies want to be viewed as superior, having evolved beyond anthropocentrism. In the world of environmental philosophy, to be anthropocentric is equal to being primitive, barbaric, torturing, rapists. The victim of the rampaging cave-man is not just nature, *she* is sensing, alive, multifaceted, and pleading for a revolution that would free her.

So why identify a particularly "African" environmental ethic? After all, the dominant philosophies on the environment seem robust enough, spanning from the

rudimentary anthropocentric views of man to the movement-like tenets of deep ecology. Moral philosophy is the systematic endeavor to understand moral concepts and justify moral principles and theories. Moral philosophy seeks to establish principles of right behavior that may serve as action guides for individuals and groups. However, moral philosophies are particular to their historic and cultural contexts, so while Western environmental philosophies served (and continue to serve) as vehicles towards establishing higher moral relationships between man and the natural world, such philosophies have limited direct application in other parts of the world. Environmental ethics are unique to the experiences of specific cultures and are ineffective when imported wholesale into civilizations foreign to the philosopher's history and culture. The articulation of an African environmental ethic, therefore, is crucial for two reasons: first, Africa's environment is in a qualitatively unique crisis, one that must be considered with exactitude to its context. Second, even with globalization and the creation of the "global village," Samuel Huntington's clash of civilizations thesis still holds in support of the notion that we are not "one world." An African environmental philosophy is necessary to define how Africans ought to live in relation to the environment—an African environmental ethic is the moral canvas upon which Africa itself may advance its own response to African ecological problems, and in turn address its role in deforestation and land degradation.

A search for articulations of African environmental philosophy can be frustrating if one is expecting robust formulations that represent a body of knowledge shining light into the moral reasoning of the African. Callicott (1994) describes the seeming absence of African environmental ethic as a paradox. According to John S. Mbiti (1979), the philosophical systems of the different African peoples have not been formulated, but some of the areas where these can be found are religion, proverbs, oral traditions, ethics and morals of the society concerned. While it complicates the process of articulating environmental ethics, this gap is not entirely insurmountable. Callicott (1994) noted that it is possible to study moral philosophy in the absence of the traditional sources of evidence, such as the writings of philosophers. Studying *societal structures and values* may also be instructive. Societal characteristics held in common across Africa may provide the clearest window into the African view of man's responsibility and obligations towards nature. This bottom-up view studies the primary themes of African society with the goal of gleaning environmental ethics from rudimentary practice. Two characteristics of "Africanhood" are fundamental to the inquiry: traditional African religion and culture (particularly the culture of communitarianism).

In the conclusion to his essay, *African Biocommunitarianism*, Callicott wrote of the San, the south-central African people more commonly known as "bushmen:"

"The ecological significance of [the San] rock paintings, of Dogon and Yoruba sculpture, of the African drum and the African dance are beyond the philosopher's power to state and illuminate (at least beyond this philosopher's power to do so). One sees, hears, and feels in these nonverbal modes of human expression an attunement of African peoples to Africa's timbres and rhythms. What potential have they for an African environmental ethic? How much of Africa's human responsiveness to the land and care for its creatures is implicit, habitual, lived, rather than explicitly codified? In the unspoken and unthought realm of human knowing, there may repose African resources for an indigenous environmental conscience that other researchers using very different methods many one day disclose" (Callicott 1994, 172).

While pointing to *something* deep, Callicott's observations provide little guidance as to which aspect of African culture this organic environmental ethic may be derived. How could he? Of the 54 countries of Africa, each contains multiple ethnicities, each

ethnicity defined by a culture that is in many ways unique. Yet, the idea that culture illuminates an ethic concerning the African's relationship to her natural environment is not an abstraction when the role of religion in the African context is appreciated. In proposing an analysis of African philosophy, John S. Mbiti (1979) pointed to religion as a crucial marker of the general African ethic. Religion is indispensable to the articulation of a practical African environmental ethic because it deeply pervades and influences the African psyche. Mbiti wrote:

“Because religious traditions permeate all departments of life, there is no formal distinction between the sacred and the secular, between the religious and non-religious, between the spiritual and material areas of life. Wherever the African is, there is his religion; he takes it to the fields where he is sowing seeds or harvesting crops... if he is a politician, he takes it to the house of parliament” (Mbiti, 1979: 2).

The bottom-up view of African morality therefore centralizes the pervasiveness of religion in identifying a uniquely African environmental philosophy.

Yet, reducing African culture to its identification in religion does not immediately solve Calicott's paradox. Mbiti (1979) estimated that there are as many as 3,000 African tribes, each adhering to its own religion. It is therefore useful to focus on unifying themes in an attempt to glean even a surface appreciation of indigenous African religions. A resounding feature of traditional religions is that they are not practiced for their personal or individual benefit, but for their community significance. African traditional religion is shared by each member of that community and is the thing that defines the community and gives it its character. In fact, Mbiti gives the community notion of religion an even more fundamental position by claiming that in Africa, to be human is to belong to the whole community, and to do so involves participating in the beliefs, rituals, ceremonies and festivals of that community. This communitarianism in the practice of religion leaks into the common culture of African societies. Placide Tempels wrote in 1956:

The Bantu cannot conceive of...the human person as an independent being standing on his own. Every human person, every individual is as it were one link in a chain of vital forces: a living link both exercising and receiving influence, a link that establishes the bond with previous generations and with the forces that support his own existence. The individual is necessarily an individual adhering to the clan (Okafor, 1982: 87).

Despite the pervasiveness of religion in African life, the problem with incorporating religious practice and norms into the articulation of an environmental ethic is that there is no “there” in African religiosity. Acknowledging the common hybridization of Catholicism with the many different traditional African religions, Joseph Ratzinger, for example stated: “[O]ne must say that the longed-for *theologies africaine* or African theology is more a program than a reality at present” (Dieter 2018). Judeo-Christian and Islamic influence on environmental ethics is easier to identify because the immutable texts that form the pinnacle of such religions also provides the manuscript by which adherents practice. Religious text has a pervasive and powerful norm-generating effect on its adherents and those over which primary adherents exert influence. As a result of this force, environmental ethics have for decades been associated with the dominant religion of civilizations. African religion, on the other hand, is passed down from generation to generation by the speech and conduct of adherents. Yet, its power to generate concrete norms is nevertheless salient: it requires no conversion, just birth; it cannot be opted out of; and it is not objected to by the modern-day African “state” in the same way that Western religion is, at least formally, wholly excluded from the governance in developed nations.

The centrality of traditional religion to the African psyche suggests that an African environmental ethic must be somehow rooted in religion. However as Part IV, *infra* demonstrates, emerging articulations of African environmental philosophy surprisingly do not always ascribe a primary role to religion in forming African morality.

### **Practical African Environmental Ethics**

In contrast to the centennial of Western environmental philosophy, an African theory of environmental ethics was only advanced as recently as 1997. Segun Ogungbemi (2008), a Nigerian philosopher, examined the nature of the environmental crisis in Africa and provided some moral and practical suggestions. He identified three principal factors contributing to the African ecological crisis: (1) ignorance and poverty; (2) misuse of science and technology; and (3) political conflict, including international economic pressure. These factors themselves suggest that the root causes of environmental degradation in Africa differ in character and magnitude from those that may be identified in the west. Western environmental philosophy arose out of the need to curb environmental problems caused mainly by industrialization. Being on the frontiers of science, the West has not failed the environment out of a lack of knowledge. Instead, western environmental philosophies have thematically blamed the anthropocentric domination of nature driven by western capitalism. Ogungbemi's suggestion that the misuse of science and technology have contributed to the environmental problems in Africa support a notion that Africa is on the same historic trajectory as its Western counterparts, with the primary difference being that Africa now has the benefit of the West's unattractive environmental history to take lessons from (Ogungbemi 2008).

For Ogungbemi, Africans have departed in practice from who they are at the core. He states that in modern Africa, the way in which land has been exploited goes contrary to African traditional philosophy:

Modern usage of our land by our society does not reflect a similar degree of awareness of the importance of forests and trees for the maintenance of environmental values. The drive to develop has led to wholesale abandonment of traditional practices...as if development and modernization were incompatible with conservation of forest and protection of trees. The consequence of this has been a break-down in environmental stability... (Ogungbemi 2008, 332).

Ogungbemi's notion of traditional philosophy is something he calls the *ethics of care*. The ethics of care derives from the African traditional relationship with nature where men and women recognize the importance of water, land and air management, particularly the traditional ethic of not taking more than you need from nature. According to Ogungbemi, this is a moral code to "keep a reasonable balance among the various resources constituting the ecosystem." (Ogungbemi 2008, 330). However, even Ogungbemi admits that the concept of an ethics of care is not unique to traditional Africa. Indeed, his formulation of an African environmental ethic seems to strongly point to some important external applications, even if it is not entirely universal. Yet, if Africans practiced the ethics of care, forests would not be disappearing. Neither would deserts be advancing at the rate at which they are. Recognizing this parallelism between African practice and values, Ogungbemi takes a giant leap from traditional ethics of care to a formulation he believes is more applicable to Africa's contemporary situation. His contemporary *ethics of nature-relatedness* is a reformulation of the ethics of care. Key to the ethics of nature-relatedness is that it completely divorces itself from religion. Nature-relatedness has three basic elements: reason, experience and the will. The claim of the ethic of nature-relatedness is that our natural resources do not need man for their existence and functions. It is an ethic that "leads human beings to seek to co-exist

peacefully with nature and treat it with some reasonable concern for its worth, survival and sustainability” (Ogungbemi 2008, 332).

The second attempt at articulating an African environmental philosophy once again seeks to divorce environmental morality from purely religious foundations. Lawrence Ogbo Ugwuanyi (2011, 5), another Nigerian philosopher does not purport to have identified specific theories of the environment. Rather, he suggests a “fresh basis on which alternative theories of environment from the African worldview could be explored.” He advances three iterations of African environmental ethics—secular environmental ethics (one from the *bioethical principles* of the African world and the second from African *morality*) and an environmental ethic derived from African traditional philosophy and religion. Ugwuanyi proposed a bioethically based theory, grounded in the African theory of life.

Africans have a deep reverential deference for life. Its beginning is elaborately celebrated in pregnancy, birth, naming and initiation ceremonies. Its growth and continuity is leashed in adulthood, and adolescence rites, family rites and communal festivities. Its end is buoyantly celebrated in death rites, and funeral rites (Ugwuanyi 2011, 6)

However, African personhood or individuality is inextricably linked to the community. One is only human because he is part of the kin network. From this observation of the relevance of measuring and locating human life in the context of other things, Ugwuanyi (2011, 6). then formulates an ethic that “ought” to be in Africa: “The environment in Africa ought not to be seen and understood as an economic item only, but where and why to locate the significance and relevance of life itself.” The natural environment, under this derived ethic inherently possesses social, metaphysical and ancestral worth.

The second strand of Ugwuanyi’s secular environmental ethics is derived from the African moral world (as contrasted with the first strand which is bioethical), in particular the claim that morality in Africa is grounded in a form of communitarianism. Communitarianism is a theory of shared identity and good-will. From communitarianism flows Africa’s core values: co-operation, consensus, reconciliation, and commonality (Ugwuanyi 2011, 5). Based on this claim, Ugwuanyi declares that a relationship with the environment that generates discord or factions among humanity cannot be permitted by the African moral principle of communitarianism. The African concept of “other,” as applied to the environment means that promoting environmental well-being leads to a greater shared identity and goodwill.

Most cognizant of the omnipresence of traditional African religion is Ugwuanyi’s third formulation of an African environmental ethic derived from African traditional philosophy and religion. His basis for claiming that *traditional philosophy and religion* are a third source of environmental ethics is the observation that, for traditional Africans, religion is a complete way of life. African religion is not textually preserved—rather it is captured everywhere through myths, legends, songs, dance, painting, carving, adages, symbol, sculpture, language. Lending support to the notion of environmental communitarianism, the practice of traditional religion itself is communal. The individual is identified with the religion of his community. An important distinction made in identifying the ethics grounded in traditional African religion is that these traditions have no pioneer, saint, or central proponent:

Unlike other world religions, African traditional religion has no founder. Hence its origin is hardly taken as a subject of interest. It is believed to have evolved slowly through many centuries as people responded to the situation of their lives and reflected upon their experience. Some of the factors which have contributed to the development of his religion include the universal human longing for the infinite;

the quest for origin and source of things; the problem of evil, suffering and natural disaster, etc. Man reflected on all these and in search for answer (sic) he discovered that there is a supernatural, superior and living being who is greater than (man) and who controls and maintains the universe (Ugwuanyi 2011, 7).

In his essay *Some African Reflections on Biomedical and Environmental Ethics*, Godfrey B. Tangwa (2007), a Cameroonian philosopher and the third voice speaking down the sparse well of African environmental ethics, described the traditional African environmental ethic as *eco-biocommunitarian*, i.e. the metaphysical recognition and acceptance of interdependence and peaceful co-existence between earth, plants, animals and humans. According to Tangwa (2007), traditional Africans were more cautious in their treatment and attitude towards plants, animals and inanimate things and the various invisible forces in the world. This observation is best explained by Ugwuanyi's description of the traditional personification of natural forces and phenomena, in which he states that whatever (African) people believe to be the home of sacred spirits, that thing becomes sacred: hills, mountains, rocks, trees, thick forests. Foundational to Tangwa's eco-biocommunitarianism is the "slim and flexible line" that exists between "plants, animals, and inanimate things, between the sacred and the profane, matter and spirit, the communal and the individual" (Tangwa 2007, 387).

The theories proposed by Segun Ogungbemi and Godfrey Tangwa, as well as the ethical and moral foundations laid by Lawrence Ugwuanyi do not easily collapse into one simplified single rule but what is clear is that each of the theories speaks to something that is both traditional, "of old," or "prior to modernization" *and* absent in the western experience. The point is most vividly demonstrated by Tangwa's eco-biocommunitarianism, which encompasses the African bioethic (celebrations of the sacredness of *all life*), the African's *whole* existence in his religion and its practice (the blurry line between the matter and spirit), and African communitarianism (nature being a part of the collective reason, will and experience).

## Conclusion

Even though the power of traditional religion and culture in Africa suggest an environmental ethic that is enlightened, home-grown and uniquely African, the practical effect of African development economics forces a Western-style anthropocentrism which cannot easily be substituted with the more enlightened rudimentary and traditional philosophies. The result is a dual morality: a uniquely African environmental ethic located in the religion and culture of Africans, with its potential to reverse the African environmental crisis subdued by the anthropocentric trajectory of development economics.

The following recommendations may be useful in narrowing the gap between what is and what ought to be in African environmentalism: First, environmental philosophy should become a priority in African environmental discourse. Theorizing in ways that bring to the surface the dangers of pursuing economic development while philosophically stagnated in anthropocentrism is a threat to the future of the African environment. Second, the rift between what is and what ought to be may be successfully narrowed by riding the wave of nationalism that was renewed in the 1990s in Africa. African nationalism, in its most useful form, seeks to promote indigenous values by validating a return to cultural values and norms. Such a policy could potentially evoke the religious and cultural traditions that once defined the African human relationship to nature. Third, and most difficult given the current development trajectory, Africans as a group would need to adopt the principle behind the *ethics of care* (not taking more than one needs) by curbing consumption patterns. This process presents the enormous challenge of changing the very traditions that promote overpopulation.

The ideal is for the continent to find a way to collapse African traditional environmental philosophy, particularly the seed formulations of Ugwuanyi, Ogungbemi and Tangwa, into practice. After all, as Godfrey Tangwa (2007, 387) wrote: “In the domain of morality, correct practice without theory is preferable to correct theory without practice.” Harnessing the old morality, a seemingly gigantic feat for any civilization, is probably the only way that Africa can begin to reverse the demise of its natural landscape.

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## **Gheorghe Tașcă. Romanian Capitalism and Cooperation -Past and Present-**

**Otilia MANTA, PhD**

*Romanian Academy*

*"Victor Slăvescu" Center of Financial And Monetary Research, Bucharest, Romania*

*otilia.manta@rgic.ro*

**ABSTRACT:** Personality of the period 1907-1951, born on January 30, 1875 and deceased under severe conditions on 12 March 1951 in the prison in Sighet, Maramureș County. A law graduate in 1899 with the work entitled "On the evolution of rural property in Romania", he began practicing in the lawyers' bar in Ilfov County, as well as his collaboration with the political economy teacher Nicolae Basilescu. After several years of practicing lawyer he decides to pursue doctoral studies in law in Paris and in 1907 he holds the thesis "La question agraire. Commentaire critique of rural legislation in Roumanie, Angleterre, Ireland, Allemagne" (Tașcă 1926, 4). Upon returning to the country, he earned the lecturer's lecture at the Department of Political Economy of the Faculty of Law. Motivated by the fact that a law doctor does not entitle him to teach economics and determined by this reasoning, Gheorghe Tașcă returns to Paris to attend the doctoral school in economics, and in 1910 he holds the thesis "Les nouvelles reformes agraires en Roumanie" Doctor of Economics. In 1925 he was elected and became a correspondent member of the Romanian Academy. The term political economy in Gheorghe Tașcă's concept covers the whole spectrum of economic sciences: "The political economy deals with the research of the norms by which goods that are necessary for the satisfaction of human needs are produced, circulated and distributed." Involved in the economic scientific and political life, Gheorghe Tașcă had a particularly active activity especially in the development of the cooperative system. This research paper is an improved and updated English version of a study presented at the *International Conference "Agriculture and Rural Development in a Regional Perspective,"* 2016, Bucharest, Romania, organized by the Institute of Agrarian Economy of the Romanian Academy.

**KEYWORDS:** Romanian capitalism, co-operation and social inclusion

**JEL Classification:** G41, P13 and Q13

### **Introduction**

Through the conference "*Romanian Capitalism and Cooperation*" held by Professor G. Tașcă at the Amphitheater of the Carol I Foundation, it brings to the fore all the elements related to the legislation and functionality "of the credit, consumption and production co-operation in Romania", and which continues to confirm the functioning model of the integrated cooperative system with a direct orientation towards meeting the needs of peasant households in Romania (at present, the structure of agricultural holdings in Romania, according to the census of the National Institute of Statistics is almost identical to from 1921, ie about 2.5 million peasant farms subject to the current phenomenon of economic, social and financial inclusion). In the aforementioned conference, G. Tașcă recalls some of the successful examples of cooperatives in the world, starting with December 21, 1844, when the Society of Equitable Pioneers (G.J. Holyoake, Isa Nicolson, Catherine Webb) was founded in Rochdale, presenting credit



copiers Schultze-Delitzsch and Raiffeisen (Franz Standinger "Dei Konsumgenossenschaft, Leipzig, 1908), continuing with the presentation of the Danish agricultural cooperatives, models that influenced at that time the decades to create the Romanian integrated cooperative model, as well as a very serious cooperative literature and very instructive.

### ***Research methodology***

In order to base the research methodology on the project, we used classical observation and examination instruments, research methods based on the basic principles of scientific research, respectively: "competence, objectivity, truth, methodical, demonstration, correlation, evaluation of results, utility and psychomorphism" (Ristea and Franc 2013). We used procedures based on factual analysis, intensive documentation at the level of internal and international literature, using the databases and the scientific material existing in the endowment of libraries of specific institutes in Romania and internationally.

The methodology of the paper has as direct instruments the collection of data and information from the literature and from the existing practice in public and private institutions, but especially scientific articles published on specialized research networks (ResearchGate, Academia.edu, etc.), articles published in various journals, relevant books in the field of reference, legislation, analyses and studies, official documents of various tax bodies, tax documents and interactive database of the National Bank of Romania, other relevant sources identified in the libraries: CCFM, Academia Romanian, INCE, IEN, BNR, National Library, INS, etc. Moreover, we analysed the documents using the comparative, analytical, descriptive method, the no participative and participatory observation, and the use of a set of informational sources, the collection of financial data in the established databases.

The information support of the research was provided by the monographs, books, scientific articles, materials of the scientific conferences, the balance sheets of SMEs during 2008-2017, as well as other materials, which are presented in the scientific papers and publications displayed on the official pages of the national and international research institutes, international financial institutions (research centres), etc.

### ***Research results***

The idea that Professor G. Tașcă vigorously advocates at the conference is "*the idea of associating the forces for solving social problems*" (Tașcă 1926, 3), which is now confirmed in the work of the UN General Assembly and the Fourth P at global level: people, planet resources, prosperity and peace, all of which are sustained by solving social problems through sustainable associative forms. Preserving the institution of capital both in the interwar period and nowadays we do not do it as Professor Tașcă mentions "*for the sake of a tradition*" (Tașcă 1926, 3), but because it is a social and useful necessity for the society as a whole of its needs.

At the conference, the attention that in 1924, in a presentation he had at the Social Institute, mentions relevant aspects of the restoration of Europe "can not be done as long as we do not put this restoration on something new for the workers: Optimism we would only be circumstantial and full of superficiality if we were not placed on social justice. Work has so far been dressed and obeyed. This is not her role. Capital is past work, dead work, crystallized in things. This past work has led, for a century, the living work, the present work. It is unimportant work to be done to work. Work is to be subjected to labor, not labor. But this curious thing lasted throughout the 19th century.

This paradoxical fact is due only to the fact that man was still soaked with old and medieval ideas about work. The twentieth century raised the work to its due. Work is no longer the curse thrown by the God of Man to earn his bread in the sweat of his forehead. Work is the good word that raises man to the height of the creator "Financial Situation, in vol. Foreign Policy of Romania p. 125 (Tașcă G. 1926, 4).

I must admit that these above-mentioned aspects are found to be extremely current in the current context of social inclusion at European level, and Professor Tașcă is even more surprised at his lecture on social issues, the issues of greed of capitalism, the slave-level individual at the level of the leader, the emancipation of labor, the creation of capital-free societies, aspects of the correct division of goods that contribute to "a whole economic order, a whole social order and threaten a whole civilization" (Tașcă 1926, 4).

In the interwar period, joint stock companies are increasingly developing into a common production mode of capitalist society. In these societies, ownership is no longer individual but collective (Rotaru 2009, 5-17). Private property is becoming more and more abstract, the whole property is summed up as it is nowadays according to Updated Law 31/1990, only in the form of a legal title, an action, and most of the times as it was in the interwar period "*the master of action does not even know the thing whose property he is*" (Tașcă 1926, 4). As production was developed in association (collectively) and property became a society.

In pure socialist doctrine, Professor Tașca points out that "*closeness*" can not become collective except in the situation where production would become collective, but if production was collective, it would not become social. Often, "collectivists" made and abused words when they derived socialist society from the cooperative production system, they generalize and say that collectivization replaced the individual in production, and at that time society was taken as a synonym for the collectivity. The property thus harmonizes on the basis of capitalism to the current form of production adapted to new modern concepts. Fourier has foreseen this development since the early 19th century and has shown, with an admirable predictable power, that the future social organization of the world will be cooperative.

In capitalist production, the association has a determining role. Producers unite their forces, stop believing in their own forces, but in the role of the associative force, which supports the joint place of production, assured outfits, facilities for purchasing inputs and production financing instruments, price formation and knowledge mechanisms and the rules for fixing them, the necessary guarantee for accessing the credits necessary for the optimal development of the activities at the level of the association. They are only part of the facilities of association as seen in the interwar period and are still confirmed.

This explains the enthusiasm with which the great economists of the interwar period received the cooperative movement. In the current context, where about 500 million family farms provide more than 50% of the nutrition needed by the Globe population, we need to reconsider the concepts of inter-war cooperatives and adapt them to our current needs by jointly optimizing Earth resources in supporting global food safety and security (Bălan and Vasile 2010, 177–188).

Another aspect mentioned was that through the vision of Professor Tașca, capitalist society as now seeks to maximize benefits, seeking to sell the product at the highest price it would be able to obtain. However, this can have a detrimental impact on the consumer. The competition law that had a direct impact on cost reduction, protect the consumer from exploiting capitalist output, was removed by monopolistic cartels. At the time when consumers joined in associative forms, the capitalist threat disappeared. Also, capitalism pursuing the maximum benefit, asked the worker the maximum work

and paid the minimum wage. As Professor Tașcă mentioned, he “*made the capitalist throughout the nineteenth century*” (Tașcă 1926, 6).

The most affected in the capitalist production in the state of inferiority were the craftsmen, the small industrialists from the cities and the agricultural producers in the country, who were surprised without organizing, without information about the place of sale, etc.

The messages posed by Professor Tașcă are confirmed and at present “we have to make people understand that a poor man joins a weak man, do not make two weak people but a physical force; that a poor man joining a poor man does not make two needy people, but a financial force” (Tașcă 1926, 6).

Given that there were many ideological changes related to state intervention at that time, something new was needed, and then the concept of “*Capitalless capitalist societies*” emerged.

In the economic thinking of Professor Tașcă, the cooperative society is “an economic movement whose purpose is to organize a production system in which the capitalist structure and the individual property are kept to achieve a better and equitable sharing of goods” (Tașcă 1926, 416).

In the interwar period, as in the present, there have been more currents in this area. Thus, at the conference held at the Social Institute on February 7, 1926, D. Zeletin stated: “the cooperative aims at the abolition of capitalism and thus the elimination of the conflict between capital and labor” (Tașcă 1926, 416).

“We believe, according to Mr. Vandervelde, that the best way to conceive, in a tangible and concrete way, the mode of socialist production is to assume, according to the model of Belgian societies, for example, a gigantic cooperative with the right associate all citizens of a country, possessing as a social property all the productive equipment of all major industries and in which all members, manufacturers and consumers would choose their managers and produce all the utilities needed to meet their needs” (Tașcă 1926, 417).

Kautsky affirms his image of socialism “What a picture we can make of the social republic of the future, such as those of an immense consumer cooperative, but which would at the same time be a cooperative of production” (Tașcă 1926, 417).

Starting from these ideologues and corroborating with today's situation, as Professor Tașcă shared with us, and Professor Fourier about organizing future societies, we can say that private economic activity in the future will be governed by social power, as was our society at that time and how today is the structure of the population excluded from the financial point of view (about 5.5 million people), the cooperative (associative) society, being one of the solutions for the many and the poor. At that time, Prof. Zeletin said that “*our popular banks are capitalist associations, not workers who would struggle to abolish capital interests*” (Tașcă 1926, 414-415). This conclusion is also generated by the statistical situation at that time, respectively, in 1923, there were 876,000 members in the cooperative associations, and among them about 234,000 members own  $\frac{3}{4}$  of the total value of the social capital.

The transition from the destructive capital to this period to the constructive one took place at the time of the establishment of the Land loan. The elements that in the interwar period defined the attributes of establishing a cooperative, namely to establish a cooperative and be successful with it, requires “*courage, energy, initiative spirit, will power, great love of people. Those who devote themselves to cooperative ideas must be true heroes and they must have both bodily and soul health. The cooperative can be based on poverty, but it can not rely on material and moral misery. On poverty can be supported the associated work, the cooperative; of misery deals with mutual assistance*” (Tașcă 1926, 14-15).

All the above-mentioned aspects are reconfirmed in the profile of the possible initiator of a cooperative association nowadays, and more so as the illustrious Teacher of Difference between misery and poverty, which although very close to judging by quantity, maintains the same abyss can not be passed. For this reason, it can be said that a cooperative can not be born in the midst of a misery (the miserable lives in the midst of misery), but it is born on the energy of the poor and thrives under that impulse of poverty. Co-operation can not be born in the midst of the rich, but it is based on moral and intellectual energy, through the power of labor, the dedicated will of the members, the love of people of all the most representative in the local community. The model was, and then is, the cooperative must include the landlord or the entrepreneur and worker, priest and mayor, teacher and small craftsman, and the objective of co-operation remains to solve local problems with local resources adapted to local realities. As Professor Tașcă said, "the cooperative is not only an economic movement but also a moral movement" (Tașcă 1926, 15) and "the cooperative is an association of energies and wills not one of beggars" (Tașcă 1926, 16).

In Romania, the cooperative movement was the first upward movement, and all those involved in the Spiru Haret settlement process and until the time of the conference held in 1926 by Professor Tașcă, the State representatives did not seek to impose, but more to listen to the wishes of the co-operative initiators involved mainly by their social determination.

On a global scale, we are increasingly witnessing the formation of these forms of cooperative association aimed at social, economic and financial inclusion of those in need and the poor.

Between 1919 and 1924, the Romanian co-operation progressed, namely both the number of members and the number of consumer cooperatives, namely:

Table no. 1: Situation of consumer cooperatives 1919-1924

Companies	Members	Shed capital	Net benefit
2.593	236.713	89.747.033	22.340.775

Source: Prof. G. Tașcă, *Romanian Capitalism and Co-operation*, Conference held by Prof. G. Tașcă on 31 January 1926, 11 am In the Amphitheater of the Carol I Foundation, p. 21 and Prof. G. Tașcă, *Economic and Financial Issues*, Edited by A. TH. DOICESCU, Bucharest, 1927, p. 434

According to weather statistics, on December 31, 1924, "out of the 843 companies founded over 19 years of existence, there were 468 cooperatives with 57-646 members, with nearly 79 million capital out of which 52 million paid out, with 21 million benefits during 1923." (Tașcă 1926, 434).

Professor Tașcă in the paper "Economic and Financial Issues" shares some of the measures we should take regarding the setting up of rural associations and which I believe is being reconfirmed today for small farmers in local communities, namely: "it is safe that the reorganization of agricultural production can not be done only by the State. But it is also so certain that no private initiative alone can achieve any result. The opera is so great and so heavy that only by joining individual efforts with those of the State we can reach an appreciable result.

The state must help set up agricultural unions. These unions or agricultural associations will be set up in the communes. All growers in the commune, whether small or large, will have to be part of them. The big owners will have to be at the head of the trade union movement. There is nothing more erroneous than the idea that our great owners do about property. This misconception led them to pass into the latter

times in great difficulties. Big and small landlords should not leave the idea of a property right. The owner does not have the right to dispose of his property, but has the obligation to give the Company the largest quantity of goods; on this obligation and on the belief that only the owner is in a position to give to the Society a large quantity of goods, the right of the owner to exercise that social function is forgiven. The owner must therefore do everything in its power to increase productivity. However, productivity gains can only be brought about by uniting farmers and the large owner must work for the formation of these associations.” (Tașcă 1926, 440-441).

Moving from the way of thinking of Professor Trașca, we come back to the aspects reflected in the current legal regulations, namely recently Law no. 164/2016 amending and supplementing the Law on Agricultural Cooperation no. 566/2004, as well as for the establishment of measures for its implementation. The law in question establishes the legal framework for the organization and functioning of the agricultural cooperative, the agricultural cooperative being an autonomous association of natural and / or legal persons, as the case may be, a private legal person constituted on the basis of the free consent expressed by the parties, operates according to the provisions of this law. Thus, the agricultural cooperative is an autonomous association with an unlimited number of members, with variable capital, exercising an economic, technical and social activity in the private interest of its members.

With the advanced proposals, the definition of agricultural cooperatives of 1st degree includes natural persons, authorized natural persons, being introduced here, for clarification, the individual enterprises and the family enterprises defined according to O.U.G. no. 44/2008, provided that the basic regulation concerns the conduct of economic activities by authorized natural persons, individual enterprises and family enterprises, as subsequently amended and supplemented. Agricultural cooperatives of second degree are, in the new vision, legal entities constituted from natural persons, authorized individuals, and individual enterprises and family enterprises defined according to O.U.G. no. 44/2008 and legal persons, as the case may be, for the purpose of the horizontal and vertical integration of the economic activity carried out by them and authorized in accordance with the provisions of Law no. 566/2004 ([www.legestart.ro](http://www.legestart.ro), accessed 24.02.2019).

According to Art. 6, the agricultural cooperative includes cooperatives, legal entities by fields and branches of activity, such as: a) agricultural cooperatives of services, which provide cooperative services for small producers; b) agricultural cooperatives for purchases and sales, which organize both purchases of materials and technical means necessary for agricultural production, as well as sales of agricultural products; c) agricultural cooperatives for processing of agricultural products, which provide typical, branded products with permanent presence; d) agricultural and small-scale agricultural cooperatives; e) agricultural cooperatives for the exploitation and management of agricultural, forestry, fishery and livestock plots; f) agricultural cooperatives for financing, mutual assistance and agricultural insurance; g) agricultural cooperatives of the aforementioned types and of other types which will be constituted in compliance with the provisions of the present law.

The agricultural cooperative carries on commercial activities, producing goods and services in agriculture, pursuing for this purpose:

- a) ensuring the conditions for obtaining the economic advantages by all cooperating members;
- b) ensuring the requirements of the cooperating members in supplying with the necessary means for the agricultural production;
- c) the acquisition of agricultural, vegetable, animal and fishery goods, according to market standards;

d) creation of conditions for the processing of agricultural products of vegetal, animal and fish origin, obtaining of finished products for the quality of market and consumption standards;

e) valorisation of the produced production;

f) economic and social development of rural space.

Agricultural cooperatives are based on the following cooperative principles:

a) the principle of voluntary and open association;

b) the principle of democratic control of cooperative members within the cooperative;

c) the principle of economic participation of cooperative members;

d) principle of autonomy and independence of agricultural cooperatives;

e) the principle of education, training and information of co-operating members;

f) the principle of cooperation between agricultural cooperatives;

g) the principle of concern for the sustainable development of communities.

We can firmly affirm that only a correlation between the two periods gives us the same approach to the association of small and large farmers in Romania, which would lead to uniting the forces in obtaining the necessary productivity for our consumption as well as for others in need.

According to the estimates of the great agronomists of the moment, Romania's agricultural production capacity could still feed another 15-17 million people over our population, thus contributing to both our welfare and global welfare.

### ***The cooperative movement in Romania - short history***

The Romanian co-operative movement has an old tradition, our country being, together with co-operative organizations from England, Belgium, Italy and France, founding member of the "International Cooperative Alliance (ACI)". A precursor was Spiru Haret (1851-1912) who initiated in 1899 a bill on the establishment of popular banks, the involvement of teachers in cooperative activity, the constitution of municipalities, the organization of consumer co-operation, and others. After the First World War, a representative of the cooperative ideas was Gromoslav Mladenatz (1887-1958), who graduated in Germany, finalized by obtaining a doctorate in economics with the thesis "The Cooperative Concept". Professor at the Academy of Advanced Commercial and Industrial Studies, between 1929-1951, he is the author of the "Cooperative Treaty" (1933) and the book "History of Cooperative Thinking" (1935). In his book "The History of Cooperative Doctrines" (1931), the cooperative was "a free association of a number of small producers or consumers, who set up a joint venture to organize an exchange of services between associates." The first forms of association in the rural area of Romania appeared with the introduction of the principles of modern co-operation materialized by Ion Ionescu from Brad (1818-1891), economist, statistician, agronomist, outstanding representative of Romanian agricultural sciences. He expressed his views on various types of associations in the well-known publication "The Romanian Peasant." Thus, the first associations of economy, credit and mutual aid were established in the county of Bistrita in Transylvania in 1851; in the city of Braila in 1855; in the village of Brad in the county of Roman in 1860; in Rășinari commune in Sibiu County in 1867 and in Bucharest in 1870 (Băcescu 2009).

The cooperative was, in the sense of time, a collective economic unit that addressed socio-professional categories with little economic potential: small agricultural producers, craftsmen, employees. The purpose of the cooperative's activity was to satisfy the needs of the associated members and to obtain benefits from this activity. Thus, the cooperative system did not abolish property and freedom, but made them

available to the masses as producers and consumers, widening the social basis of a democratic society. Agricultural co-operation, as an associative form of joint work, was, according to Mladenatz, the only form of social economic organization through which the peasant combines individual ownership of the land with collective ownership of modern agricultural inventory. In the conditions of falling prices of Romanian agricultural products on the international market during the economic crisis of 1929-1933, he recommended the involvement of cooperatives in the grain trade in order to remove the intermediaries and adopt a more efficient production structure. The establishment of agricultural producers in associative forms was appreciated by opening new opportunities for economic development by attracting local, regional or regional advantages and using collective power in order to increase the prosperity of their members, their families and the respective community. (Băcescu 2009)

### ***The beginning of the cooperative movement in Europe***

The consumer cooperative of the small English town Rochdale (established in 1844) is considered to be the first modern cooperative, based only on its own members, without outside help. It started as a consumer cooperative and evolved into a cooperative with multiple goals, with social and economic activity. The leaders of the modern cooperative in England were Robert Owen (the promoter of self-subsistence of workers - consumers suggesting them to create associations) and William King (who supported the voluntary nature of cooperatives and their political and religious neutrality) in France Charles Fourier, Philip Bsan (the founder of the first production cooperative) and Louis Blanc (he proposed replacing the free competition with co-production), in Germany Victor Aimé Huber (precursor of consumer cooperatives) and Ferdinand Lassalle (he supported the freedom of cooperatives and independence from the state). In Germany, for the first time, credit cooperatives for farmers were created, with Friedrich-Wilhelm Raiffeisen as initiator (1864), (Alexandrescu and Mihalache 2011).

### ***Agricultural cooperatives in the European Union***

Since the creation of the CEE, cooperative structures have undergone mutations by organizing producers in the form of local, regional cooperative unions, federations on industries and products, integrating cooperatives with national companies or multinational corporations (Zahiu 2003). In EU countries, agricultural cooperatives are in forms and types that vary from country to country, based essentially on the same principles of organization and functioning that are based on Directive no. 67/532/25 July 1967 of the European Council and which refers to agricultural cooperatives. Through this directive, "cooperatives are entities that are named as such in the law of the Member State but are based on cooperative principles". In the EU, agricultural cooperatives are organized on three levels, as follows:

1. At primary level, farmers are associated in simple forms of associations which are called first-class cooperatives in the European Union for the joint achievement of the following objectives: farm work; the joint exploitation of the earth; the sharing of production capacities; or to invest in various areas.
2. At secondary level, associations of primary agricultural cooperatives, which are referred to as second-class cooperatives, are set up and are aimed at upstream and downstream investments in agriculture for the collection or processing of agricultural products (Muscă 2000).
3. Third-level cooperatives are organized at tertiary level, by region or even at national level, through the participation of second-class cooperatives that form strong

financial, commercial and industrial groups. These include networks of cooperative factories that provide processing and marketing of products or banks by pooling experience and resources in a particular region or region. It is noteworthy that in the EU Member States no agricultural cooperatives were set up to produce the land and work on the common land, following the model of the former communist states. An exception is made by East Germany, where a large number of production cooperatives of over 1500 hectares have been maintained. The lands of these cooperatives belong to the rightful owners. They hold about 38% of the agricultural area of the East German provinces (Muscă 2000). Agricultural holdings, especially small farms, are developing cooperative and integration ties with large agri-food companies that take over agricultural raw materials on a contractual basis. The Western European agri-food system promotes cooperation in all forms of social organization of farmers: small, medium and large farms, agricultural cooperatives and cooperative societies, national or transnational agri-food firms.

In Western European countries, the specialization of agricultural holdings is an important feature of the production structure, driven by technical and technological modernization and deepening the division of labor. The specialization requires the development of cooperation among agents along the agri-food chains, starting from the supply of inputs, the production of agricultural raw materials, storage, processing and marketing of the products.

*The principles underpinning the cooperation relations of the European Union's agriculture are:*

- the principle of freedom of choice for the form of cooperation;
- the obligation of members to contribute capital and participate in the economic activity of the cooperative by delivering products, respecting the technologies for producing agricultural raw materials delivered to the cooperative;
- the principle "one man-one vote" in the decision-making made at the cooperative level regardless of the capital contribution;
- the principle of receiving dividends under the statute;
- the principle of "territoriality", respectively limiting the area of action of a cooperative to a given community.

At the level of the European Union, agricultural cooperatives are represented by national organizations and are oriented and supported by the Community bodies: the General Cooperative Agricultural Committee (COGECA), the Agricultural Producers Committee (COPA) and the International Cooperative Alliance (ACI).

### ***Case studies***

**FRANCE** - There are 21,000 cooperatives in France, which include about 75% of French farms. It appears that 3.5% of the economically active population is part of agricultural associations. In addition to production, French co-operatives also offer advice to its members. Thanks to their long experience, they come with valuable advice on agronomy, economics and strategic planning. It is worth mentioning that they also actively contribute to the development of environment-friendly agriculture. Cooperatives also invest in innovation, expanding their sphere of activity and finding new sources of income. An example is investment in biofuels. Farmers' associations also use different management tools to keep price developments on agricultural products under control. That does not mean that their members are reprofiling, agriculture, however, remains their core area. Credit co-operatives also come to their aid. For example, in 2013, Crédit Agricole co-operative bank reported the largest revenue in the system. Two other associations in the same sphere, Groupe BPCE and



Groupe Sédit mutuel, ranked third and fourth in this rating. French cooperatives have been constantly changing, adapting to the economic environment. They started by gathering together the harvest, after which they gradually became cooperative groups. If at some point, someone in the group wants to increase their profits, they only have to create strategic alliances. Alliances allow them to cut their expenses, share experience, and strengthen their leadership positions in the sector. Since French legislation restricts the activity of cooperatives to a certain territory, they have had to develop their own structures to expand and compete. Respectively, although the number of cooperatives fell as a result of mergers and acquisitions, their revenues were instead on the increase.

**SPAIN** - About 15% of the population is in co-operative organizations, most of them being set up under regional, not national law. Compared to other European countries, the number of Spanish cooperatives is above average. At the same time, they are quite small, with only 39% of them having over one thousand members, which prevents them from earning higher profits. As numerous, so different: from modest local cooperatives to cooperatives with industrial deliveries. There are also large cooperatives processing the products to sell them to retailers. However, about 75% of the turnover reported by Spanish cooperative societies is in the hands of a quarter of the cooperatives due to mergers and takeovers.

**ISRAEL** - About 70% of Israel's agricultural land is processed by cooperative members. The association is voluntary and exit from the cooperative is not forbidden. The people at the head of the unions are democratically elected, as a rule, among their members. Sometimes people from outside come to the fore, but they must have experience in managing cooperatives or be members of other agricultural cooperatives. In close association with each other, Israeli agricultural cooperatives are organized on two levels: local and regional. The local or grade one is divided into three types: village-level unions, plugs and moshavuri, the last two being the largest. The distinction between these three forms of organization is how cooperatives control production and consumption. For example, in the dumplings the community decides how much each family needs to live, and in moshavuri it is a private matter. Chibuts and mossavas are cooperative production, where household decisions are taken collectively. In the dumplings, the land belongs to the community as well as the agricultural machinery, and the economic activity responds to the chosen leadership. Members of the bunch are not allowed to have the parcels that they can process individually. In moshavuri the land belongs to each household, as well as the buildings on their plots or the agricultural technique, and the decisions are taken by each family. It can be said that the members of moshavuri are, in fact, individual producers working for their own farms. They appeal to village-based cooperative services for: supplying farms collectively, collectively harvesting and transporting merchandise to local traders, and also maintaining machinery and workshops for their shared use. These unions can also book accounts or harvest the production of other customers. Second-tier co-operative organizations operate at the regional level, and include local chickens and mosses, not individual farmers. They deal with the sorting and packaging of harvested produce and are responsible for warehouses, combined fodder plants, elevators and cotton gins - cotton ginning machines. They also deal with plant processing. Second-level cooperatives are also part of the procurement organization. They provide unions with professional consultations and deal with data processing. Most importantly, it plays the role of financial intermediaries between farmers and banks, helping the former to obtain and share loans.

**US** - There are fewer cooperatives than in other countries, only three thousand in number. Instead, most American farms are part of them. Thus we distinguish cooperatives for sale, transaction termination, supply and credit. Sales cooperatives are

engaged in the processing and marketing of agricultural products. Virtually everything that grows and produces the US is managed by these cooperatives. They also provide jobs for the majority of rural residents. To help farmers who are not able to negotiate, the specialist trading cooperatives come to help them get reasonable prices for the goods they produce. Farming supply cooperatives are engaged in the production, sale and distribution of indispensable products for good household management, such as fuel. Credit co-operatives include banks and associations from the lending system in agriculture. In addition to credits, they support farmers in other operations, such as export financing. Depending on the merchandise delivered to each farmer, one percent of the Union's sales are reliant, depending on which farmers' profits will be calculated. More specifically, after processing, processing and marketing of cereals or other commodities. The affairs of the cooperative are entirely in its hands or, more precisely, in the hands of a board of directors elected by its members. It should be noted that each member is entitled to one vote and all votes are equal, as opposed to joint-stock companies or other forms of business (<http://agrobiznes.md/>).

### Conclusions

Along with the concepts of Romanian capitalism and the co-operation of Professor Tașcă, as well as the aspects related to reflecting the present situation of the cooperatives, the organization of the credit for agriculture led to the formation of cooperative associations. Once constituted from a legislative and organizational point of view, the associations once established began organizing the credit for agriculture. "Nothing will bind the members and will not strengthen the association as this organization of the credit. The biggest gap in small culture is lack of credit." (Tașcă 442-443). This is something we still encounter today, the small farmer being largely excluded financially and without any form of credit. Which means that today, we should re-establish those Rural Credit Institutions, given that Romania currently has around 2.5 million rural households that administer about 4 million hectares.

Before the agrarian reform in the interwar period, the large culture used more than half of the entire volume of rural credit at the level of the whole country, which is still confirmed.

The rural credit model function was initially functional by reorganizing the construction of credit cooperatives, setting up syndicated credit institutions along with popular banks, organizing the credit itself is the support of the trade union organization.

The structure of the village bank, through Tașcă's teacher's conception, must be "a serious institution with a competent and energetic director and not a shaky bank, such as the country's popular banks. These could remain for the continuation of the type of credit cooperatives. The syndicate's banks, however, must be anonymous societies quite strong enough to be able to group together the economic elements of the value of the villages." (Tașcă 1926, 444).

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## **Kairopraxis or Opportunity in Deterring Domestic Violence**

**Claudia FRĂȚILĂ**

*University of Oradea, Romania, Major: Sociology  
claudia@usv.ro*

**Anca URSACHE TCACIUC**

*University of Suceava, Romania, Major: Philosophy Ethics  
anca\_ursaketcaciuc@yahoo.com*

**ABSTRACT:** The domestic violence, the main activity in the social work, is a global public health problem and overtakes infectious diseases as main cause of morbidity and premature death. This social virus stops the evolution of humanity, in the 21<sup>st</sup> century representing a social threat to human rights, in so far as it has negative consequences on health, on the right to life and the right of every person to be treated with respect. Many events are organized in the context of activism campaigns against domestic violence, wanting to make prevention more affective in society, but also at procedural measures used in these situations of aggressivity. The conscious involvement of community consisting in social workers, lawyers, police officers, teachers and important civil anonymous contributions represents a concrete social proof of kairopraxis in the misappropriation of domestic violence; deviating in the sense of constructing assumption of the human factor through education available for the victims and aggressors, too: for victims in the context of collecting signs of violence in the early stage and for aggressors to avoid their loss in society. *Kairopraxis*, intellectual property concept. The kairopraxis is based on the ancient greek notions of *praxis* which is *activity, action*; and *Kairos*, the divinity of Ancient Greece that symbolized *the opportunity*, the right moment to intervene in the field of temporality in order to strengthen the well target of action. The kairopraxis defines, qualifies those intentional actions developed in accordance with the moral laws; it validates the good in its pure essence, whether it bears the form of a professional conduct, faithful to a deontology in question, or it is made anonymous in small steps in every day life in terms of meritorious acts, simple gesture of compassion, kindness, eliminating altogether that interest in the reprehensible sense of the term, these actions sum up the responsible and defining trajectories of the people in the evolution of society. (Ursache Tcaciuc 2017).

**KEYWORDS:** domestic violence, prevention, activity, social work, measures, education, kairopraxis

### **1. Social Services in European context**

Over the course of time, societies have suffered important changes regarding values and also the normative frame of social life. According to different times and social constructions, taking on the account suppositions and prejudices, relating to the vision upon the world and mankind, History, a truthful witness to so many realities, has given different interpretations to beauty and ugliness, good and evil, these inherent dimensions of passing destinies that animate with their act the quiet harmony of God.

The frequency and insistence of economical patterns gaining a superior place on the hierarchy of values, transforms everything in monetary conversion, where everything can be bought and sold, in this way, consumerism convinces the average man that money is the means to achieve all the other values. On top of that, the incompetence of the politicians, which directly generates social crisis, their lack of

integrity and the fact that they prioritize personal interest, all these factors combined with economical downfall are meant to shake the foundations of our society. On this note, Jean-Claude Mignon, the Chairman of the Parliamentary Assemblée of the European Council (APCE) has declared just before the European Day: "Europe is going through a period of major uncertainty. Citizens don't trust politicians, they feel disorientated, meanwhile unscrupulous leaders take advantage of this weakness in order to gain political prominence, encouraging hate speech and promising miracles that undermine all the social, economical and political achievements of our continent. In a period of uncertainty we are in need of a bigger Europe- the Europe of universal values...Today we are asked more than ever to consolidate the democratic values, to reaffirm the importance of the fundamental values stipulated by the European Convention of Human Rights" (Mignon 2018).

An important factor that increases the interest for the study of values is represented by the globalization process which influences all societies and their main areas of activity including the social services. The intercultural transfer between different people, nations and ethnicities in the context of globalization, implies a series of issues related to the necessity of a permanent comparison with the others, of identifying the differences and similarities between cultural, axiological, epistemological, ontological patterns etc. At the same time with a strong tendency towards integration at all levels, in the last decades we can notice an increased interest towards international social services (Bulgaru 2012, 54-87), which, according to N. Ahmadi, being of a comparative nature, "can and must play an important role in consolidating democracy and social justice and implementing the international conventions referring to human rights, eliminating discrimination against women, children's rights and other issues, as well as preventing conflicts and maintaining peace by promoting a global culture" (Lyons, Manoin, and Carlsen 2006, 13). The global interdependency that we acknowledge today brings about the necessity for social workers to review the local knowledge and practices through the lenses of international events and perspectives, in order to become more professionally qualified in implementing their activities, which obviously will have an intercultural dimension especially if we take in the account the intensified trends of migration, that in the current context brings about a significant cultural heterogeneity. In the same context, mutual understanding and acceptance of the values shared by each people, ethnicity or professional group can help to improve communication and peaceful relations.

Each legislative structure begins with elaborating a set of principles as fundamental elements for the construction of a scientific theory, a political or judicial system, a behavioural norm- a rule or a norm about how to act, to behave, to appreciate, etc., which an individual or a social group obeys or should obey. As such, any profession has a system of values that gives a particular nuance to their social mission and leads the activity of those professionals into the right direction. On this matter, B. Brown declares: "no other area of activity, except maybe philosophy, is more profoundly concerned with the problematic of values, as it is the area and generally speaking, the profession of social services" (Loewenberg, Dolgoff 1985, 12). The notion of *values in social services* is used in a broad meaning, referring to "a series of deep held beliefs about what is considered to be of dignity and value in the context of social services: general opinions about the nature of a good society, general principles about how to obtain this outcome through action, through desirable qualities and abilities of the specialists" (British Association of Social Workers 2010).

Domestic violence, a main segment of activity on the agenda of the Institution for Social Services, constitutes a worldwide problem when it comes to public health and is situated above contagious diseases as a cause for morbidity and premature death. This

social virus hinders the evolution of humanity in the XXI century, representing a serious threat to human rights as it has negative consequences for the health, the right to life and respect that every individual deserves.

Every year, more than two million people die as a result of injuries caused by violent acts. An even greater number of people survive the attacks to be left with permanent physical and emotional disabilities. In many countries, violence between individuals is endemic and represents the third cause of death for the population with ages between 15 and 44. UNICEF sources estimate that the damage caused by violent acts represent 14,5% in the developed countries and 15,2 in the developing countries.

Besides the effects that we mentioned, violence can cause a variety of other health issues such as mental issues, sexually transmitted diseases, unwanted pregnancies, eating and sleeping disorders, temporary work incapacity as well a high consumption of drugs and other health services.

Domestic violence transgresses societies, cultures, generations, causing disorders and aggressiveness in communities, a threat that must be firmly stopped.

## **2. Domestic violence at the national level**

Unfortunately, Romania occupies one of the first places in the top of manifested domestic violence, having a legislative system with sufficient shortcomings. Real situations have also demonstrated that we have a lot of incompetent employees recruited on a nepotism rule, a fact which makes it harder for the responsible employees to manage their activity with success.

In her endeavour to become a member of the European Union, and afterwards in adopting a legislation compatible with other European countries, Romania has offered the Institute of Social Services a set of normative acts such as legislation, strategic rulings and deontological codes which are open to permanent modification; this is due to a number of socially active individuals that are dedicating their time to projects in which they believe, to associations, federations and foundations. We do not count among them a series of mafia-like organizations established in the shadow of the central institutions and controlled by those corrupted politicians and public managers whose main objective is to use public funds for personal interests. One can not deny the existence of honest high officials and public employees, but numerous anti-corruption strategies, a parade of public figures detained by DNA and an insistence to make public political decisions transparent are a few elements that help to rehabilitate the image of the Romanian society.

Therefore, the deficit of functionality is present in all areas of the system: from chronic indifference in the public administration to the lack of celerity when it comes to establish normative acts or to emit the right judicial rulings; from the mockery of non-governmental administrations being paradoxically more eligible for non-refundable grants to the cvasi Sisyphic-like work of the individuals that strive for a progress in our society. Even more concerning is the lack of education manifested in the traditional mentality revealed by sayings such as "Spare the rod and spoil the child," "The kick of the dam hurts not the colt," "I gave birth to you, i can kill you, too," "I beat him to make a man out of him" and so on; in the dominant patriarchal structure of our culture; in the classical concept of education that totally lacks a holistic approach towards life. Implementing the educational curricula in such a formal way makes it impossible for domestic violence (Rotaru 2011, 7) issues to be presented, discussed and ameliorated at school level.

### 3. Kairopaxia in deterring domestic violence

Our society needs to become aware of the phenomena that are responsible for the progress of the humanity in general, and of the necessity of eliminating domestic violence in particular.

To determine the community to become aware and involved in relation to this issue is a combined effort of social workers, lawyers, advocates, police officers, teachers and all the other numerous and anonymous members of the civic society that implement active campaigns against domestic violence and it represents a material proof of *kairopaxis* in deterring aggressiveness in familial contexts; *deterring* is viewed as exerting a constructive influence on the human factor (both the aggressor and the victim) through education in order to be able to notice the signs of violence at an early phase and to avoid losing the ability of the potential aggressors to redeem themselves as valuable members of the society.

Kairopaxia is the opportunity to validate the good in its purest essence (Ursache Tcaciuc 2018, 1), this opportunity means a chance to humanize temporality (Moutsopoulos 2011, 12) through actions intended to objectify rational, legit, moral values (Moutsopoulos 1981, 24-26). Opportunity does not mean opportunism materialized through superficial actions or the possibility to misappropriate multiple resources from different funds and through questionable accounting, as a result of which the needy, our main concern, are most of the time left with the impossibility to benefit from real help. Either "it takes the form of professional conduct, loyal to a deontology, or it takes the form of anonymous daily acts of kindness and compassion that have nothing in common with a shameful personal interest, all these dynamic acts of consciousness validated by kairopaxie are responsible and determinant trajectories made by the people for the progress of the society" (Ursache Tcaciuc 2018, 1).

The change starts with each of us through education, tolerance and gratitude: "education is the highest form of moulding character and personality" (PF.Daniel 2015) and "because of this reason it has to be the fundamental priority of every society that desires spiritual progress and wealth" (Romanian Orthodox Church - PF. Daniel 2015) ingredients that are missing from a broken home.

Ethical principles are not only an element of procedure from the job description or a mechanical and unconscious approach to our daily life, they exist *a priori* and *sine qua non* to our temporality.

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## **The Causal Link between Functional Disorder of the Orbitofrontal Cortex, Disorder of Moral Reasoning and Aggressive Sexual Behavior**

**Gabriel TĂNĂSESCU**

*University of Craiova, Craiova, Romania  
gabrieltanasescu@gmail.com*

**ABSTRACT:** This article describes the causal link between aggressive sexual behavior, including pedophile behavior, moral reasoning disorder and orbitofrontal cortex dysfunction (sometimes a tumor located in this area). The criminological analysis is also justified by the studies published by Charles Choi (2002) in *New Scientist* where the case of a 40-year-old man whose brain tumor suffered from sudden pedophilia and an uncontrollable obsession for sex, as well as the studies published by Giuseppe Sartori (2016) and collaborators explaining the functional disorder of the orbitofrontal cortex, a brain region responsible for behavioral inhibitions, emotional comprehension, and moral responsibility. From the legal point of view, the criminal responsibility is analyzed in the situation where the discernment is affected by the physiological determinism. In this sense, brain imaging plays an important role.

**KEYWORDS:** aggressive sexual behavior, brain imaging, orbitofrontal cortex dysfunction, criminal responsibility, pedophilia

### **Introduction**

Pedophilia is characterized by sexual activity with a prepubertal child less than 13 years of age, the age difference between pedophile and its victim should be greater than 5 years and the pedophile should be 16 years of age or older (DSM-IV-TR, 2003). The Romanian penal code criminalizes in art. 220 sexual intercourse with a minor. Sexual intercourse, oral or anal intercourse and any other vaginal or anal penalty committed with a minor between the ages of 13 and 15 shall be punished by imprisonment from one to five years (Article 220 (1) of the Penal Code ). The same act, provided in par. (1) committed against a minor who has not reached the age of 13 shall be punished by imprisonment from 2 to 7 years and the prohibition of the exercise of certain rights. The Criminal Code does not make any reference to the age difference between the victim and the aggressor, nor does it specify issues related to the sexual maturity of the perpetrator. The minor who has not reached the age of 14 is not criminally liable (Article 113 paragraph (1) of the Criminal Code). The perpetrator aged between 14 and 16 years is criminally liable if it proves to have been discerned (Article 113 (2)). After the age of 16 the minor will be held liable according to the law.

### **Dysfunction of the orbitofrontal cortex**

In his book on the rules of the brain, John Medina presents the case of a Phineas Gage man who suffered an accident when working on the construction of the railways (1848). After an explosion, the prefrontal cortex was damaged (a 90-cm rod penetrated just below the eye), but the man survived (Medina, 2017). After the accident, the male's social behavior has changed. He abandoned his family sometimes aggressive and irresponsible, living all his life through different cities, under the impetus of his

primitive instincts. Deterioration of the prefrontal cortex caused inhibition of emotional impulses and causing abnormal social behavior.

In a recent article (January 2019, *The Anatomical Record*), Jose Luis Trejo emphasizes the importance of cranial nerves in coordinating the individual's social activity. "Cranial nerves carry the information from the sensory organs to the brain, and the instructions for the muscles of all these organs in the face, neck, heart, and abdomen" (Trejo, 2019). Our presence in society is also described by how we manifest, how we act in certain situations, as we display; gestures and body movements are important in the relational process. Cranial nerves helps us control smile, eyesight, balance of senses, facial expressiveness, body posture. Deterioration of the orbitofrontal cortex can affect behavioral actions, the individual becomes incapable of learning from his own mistakes, and at the same time he does not realize the severity of the committed deeds. The healthy physical and mental social man has the ability to correct the mistakes made and to limit the damages caused by his actions (Tănăsescu, 2012a).

Neuroimaging studies find that areas of the orbitofrontal cortex are activated by pleasant touch, painful touches (violent acts), by taste, by smell, by affecting feelings and abstract states such as winning or losing money (Rolls, 2004). The orbitofrontal cortex is responsible for controlling motivational, emotional, social behavior, and is also involved in decoding and representing primary reinforcement elements such as taste and touch, correction of reward and punishment behavior (Rolls, 2004). "To primates stimuli for sensory systems that influence emotional and motivational behavior through the neural relays to the orbitofrontal cortex" (Rolls, 2004). Antoine Bechara believes that the influence of emotions on the decision-making process is largely ignored. The intellectual factor (discernment, judgment, reflection) is complemented by the affective, emotional factor in decision-making. The amygdala, the somatosensory / insular cortex and the peripheral nervous system are structures which, along with the orbitofrontal cortex, help and mediate the will to make decisions (Bechara, Damasio and Damasio, 2000). Ventromedial lesions (including the orbitofrontal sector) of the prefrontal cortex interfere with the normal processing of emotional somatic signals (Bechara, 2004). Any injury to the orbitofrontal cortex, as well as other damage that affects the sensory system stimuli, is a functional disorder of moral reasoning.

Moral judgment, when judging and assessing the moral value of the individual's behavior, is based on both the moral intuition (which uses both the pulses of the unconscious and the wishes of the conscious Ego) as well as certain cognitive and affective mechanisms. The role of moral reasoning is to anticipate the consequences of immoral actions, to prevent and prevent the triggering factor. The quality of decisions in the individual's social life depends on intellectual, affective and emotional health. Orbitofrontal cortex lesions may compromise judgment, some cognitive and moral processes being affected criminal responsibility must be determined according to the complexity of the discernment. Professor Kent Kiehl considered cerebral imaging as important as DNA samples. "Neuroscience and brain imaging will transform the whole philosophy of punishment, these things will change the way we decide who and how we punish."

In March 2003 Jeffrey M. Burns and Russell H. Swerdlow published in *Jama Neurology* a "Right orbitofrontal tumor with a pedophilia symptom and constructional apraxia sign" describing the case of a 40-year-old man who is due to an egg-sized tumor has suddenly changed his social behavior, being unable to control his deviant sexual pulse with pedophile preferences. Cancer was located in the right lobe of the orbitofrontal cortex, which is known to play an important role in decision-making, impulse control and social behavior (Burns, Swerdlow, 2003). This area deals with moral reasoning, "here we are talking about neurology of morality"; the area does not affect physical health, sometimes doctors do not realize the gravity of the situation

(Burns and Swerdlow, 2003). The patient's life before being affected by the orbitofrontal cortex was normal. The man was married, never committed crimes and respected social rules being a school teacher. After the onset of the brain tumor, the patient began to be obsessed with child pornography, began to solicit prostitutes in massage rooms, and make sexual advances to young children; the situation worsened and began to make subtle sexual advances to her prepubescent daughter (Burns, Swerdlow, 2003). He was found guilty of molesting children and was forced to carry out a rehabilitation program. In the program, she continued to show her deviant sexual behavior; sexual impulse affected her moral balance and social activities (sexual arousal could not be controlled, she suggested to women in the program to have sex with him). Before a prison sentence a medical assessment (due to severe headache), an MRI scan showed that the patient had a brain tumor in the egg-sized orbitofrontal cortex that affected her sexual instinct's behavior and control. "Orbitofrontal cortical abnormalities are associated with low impulse control, deviant sexual behavior and antisocial personality" (Burns, Swerdlow, 2003). After the tumor resection the patient recovered, the moral and social function was restored; this allowed her to return home and have a normal and professional social life.

In 2016 and 2018, Sartori et al. present similar studies in which he finds that dysfunction of the orbitofrontal cortex is responsible for inhibiting behaviors, understanding emotions and other abilities related to moral reasoning (Sartori, Scarpazza, Codognotto, Pietrini, July 2016, in the *Journal of Neurology*). In their article "An unusual case of acquired pedophilic behavior following compression of the orbitofrontal cortex and hypothalamus by a Clivus Chordoma" is reported the case of a man (a 64-year-old pediatrician married over 40 years) with frontal and temporal lobe injuries, the symptom of a Clivus Chordoma, a rare, slow-growing neoplasm originating from the bone at the base of the skull that compressed the hypothalamus and the orbitofrontal cortex. The man was caught while molesting a little girl in a nursing home. At the time of arrest, the pedophile appears to be absent, lacking moral and social function, and is unaware of the seriousness of his behavior and the legal consequences of the illicit deed (Sartori, Scarpazza, Codognotto and Pietrini, 2016).

In *Frontiers in Neuroscience* Scarpazza, Pennati, Sartori is presented the analysis of the case of a man over 70 years old (he was married for 40 years, had three children, a former trader) who was arrested for inappropriate sexual behavior. The old pedophile had sexual preference male boys and adolescents. Prior to retirement, during his professional activity, the family characterized him positively as a responsible father engaged in social projects, moral reasoning not being affected. Over time, health has worsened, retirement has triggered a major depression for the man. After the arrest, psycho-legal forensic expertise confirmed the existence of fronto-temporal dementia, the defendant having a cognitively impaired profile (he did not understand the value of money, bought expired food, became verbally aggressive and hypersexual to his wife, impulsive behavior with kleptomania, impulse inhibition). Neurological examination and cerebral imaging (MRI) revealed atrophy of the bilateral frontal lobe (Scarpazza, Pennati and Sartori, 2018). In another case like a 60-year-old man (married over 30, had two children) was arrested and brought to court for inappropriate sexual behavior. The man had a pedophile behavior and was molesting the children in public space. "Medical data suggest that the defendant's sexual deviance, which began about a year before his arrest, coincided with the achievement of a critical mass of tumor volume in his brain. The meningioma was large enough to compress the front lobes and produce a significant mass effect with the inter-hemispherical change of median structures" (Scarpazza, Pennati, Sartori, 2018).

David Eagleman in his book “Brain Our Story” portrays the case of a 23-year-old man (Ken Parks, married, having a five-month-old daughter) experiencing financial and marital problems, but also gambling addiction. Although well understood with his wife's parents, one night (May 23, 1987) he wakes up, runs 23 km by car to their house and kills them (by kneading the man by stabbing the woman). After the murder, he surrendered to the authorities saying he had just killed someone (Eagleman, 2018). In detention Roger Broughton (professor emeritus of neurology and neuroscience ) measured the killer's EEG signals while sleeping at night; the resulting result led to the conclusion that the 23-year-old man was affected by sleepwalking (Eagleman, 2018). The investigations found that several members of his family had trouble sleeping. A year later, the man was acquitted. Brain activity, judgment, cognitive and moral reasoning can be affected by sleepwalking, a sleeping behavior disorder. Recent studies show that 25% of sleepwalks dreams of escaping a disaster, but 75% of subjects with sleep-disorder (RBD) counterattacked when attacked (Uguccioni, Gollmar, de Fontreux, Semenescu, Brion and Arnulf, 2013).

### **Psychological aspects**

Individuals with paraphilia seek to satisfy their sexual fantasies, the aggression drive and sexual impulses involve suffering or humiliation of the victim, non-human objects or children or other persons who do not consent. “Paraphilic stimuli are mandatory for erotic excitement and are always included in sexual activity” (DSM-IV-TR 2003). In the case of pedophilia, the will of the social ego is affected, the inner moral court (Superego) fails to censor the sexual instinct. Fantasies and sexual pulsations impair social behavior, causing interpersonal problems about emotional freedom and individual actions. Sometimes unaccustomed sexual intercourse with a child can turn into sexual sadism, the perpetrator obtains sexual satisfaction by experiencing and becoming aware of the suffering caused to the victim; holding control, humiliating and forcing the minor offers pleasure to the tensions and needs of the Id. Sexual sadism may occur at the beginning of the adult period, sadistic acts may involve rape, beating, whipping, serious bodily injury; when sexual sadism is severe, especially when associated with antisocial personality, the aggressor can seriously injure or kill victims (DSM-IV-TR 2003).

When the victim is frightened, with fear and pain, his face that transmits an obvious pain, his general anxiety, and panic gestures, he excites the aggressor sexually and stimulates his the aggression drive. For sexual fantasies, the perpetrator can appeal to a sexually consensual partner (sex masochism, adult victim accept sadism, body injuries), or force the vulnerable victim to endure sadistic sex acts, for which he will be penalized the severity of the situation. “Sexual offenses against children constitute a significant proportion of all reported sexual offenses, and individuals with exhibitionism, pedophilia and voyeurism constitute the majority of sex offenders arrested” (DSM-IV-TR,2003). Usually uncontrollable sexual behavior adversely affects the life of the individual, causing distress and difficulties in managing relationships with a life partner (if any), social isolation interrupts ties with family and friends in his or her professional world. There are situations when individuals with pedophile behavior feel guilty after committing the illicit act and experience distress, state of restlessness and confusion (Tănăsescu 2012b). But many pedophiles do not experience significant distress and continue to have sexual fantasies with children, pursue pedophile pornography, and seek opportunities to get satisfaction through deviant sexual behavior. Some individuals prefer boys between the ages of 11 and 13, and others prefer older girls from 08 to 10 years old (DSM-IV-TR 2003). The rate of relapse is two times higher for pedophiles who prefer boys. There are pedophiles who have erotic fantasies and are sexually attracted to children, cannot otherwise touch the state of sexual arousal;

there are pedophiles who also prefer to have sex with adults, sexual preferences are not limited to pedophile behavior. Individuals with pedophilia can aggress the children of their own family or expand their sexual activity and seek out casualties from the community. In order not to be caught by the authorities they threaten their victims and try to hide their deviant behavior through various techniques. In some cases the pedophile marries a woman who has an attractive child or tries to gain the mother's trust; the pedophile may participate in the commercialization of children with other pedophile individuals, or may kidnap children from foreigners (DSM-IV-TR 2003).

### **Psychoanalytic aspects**

In the Compendium of Psychoanalysis, Freud considers that the Id is listening to the authoritarian principle of pleasure; separated from the outside world has its own perceptual world (Freud 2014). Primary processes and organic drives, including sexual drive and the destruction drive, originate in the darkness of the unconscious in the dark Id, which through another instance (the Ego) succeeds in satisfying their needs and keeping in touch with the reality of the outer world. Superego, the moral court, is the one who censors unscrupulous satisfaction of organic drives. His active presence sometimes exhausts the Ego (the complex of inferiority, low self-esteem appears) and pushes him to avoid unpleasant experiences. "It is certain that self-perceptions - general affections and pleasures - pleasure dominate the processes of Id with a despotic force" (Freud 2014). The principle of pleasure cannot be suppressed; it can only be modified or tempered; in essence, he calls for diminishing or extinguishing the tensions of organic needs. The ego has developed from the "cerebral cortex of the Id" (Freud 2014) and lies through perceptions in direct contact with reality. Conscious of the importance of self-preservation, the Ego checks the requirements for the satisfaction of the drives and decides to execute or repress them, depending on the danger this satisfaction creates. In the case of direct dissatisfaction with the drive requirements, the Id must find another alternative substitution. The original pulse goal can be weakened and desexualized, substitution satisfying depends on the way the Ego participates in the cultural world and manifests itself in the outside world. If the Ego fails to overcome sexual arousal, the lag behind the development of the Ego in the development of libido creates the essential condition of neurosis (Freud 2014).

In the case of rapist pedophile, we can sometimes speak of the existence of an ego cleavage. In the anamnesis, the perpetrator knows that in reality the victim is injured, sexual intercourse is carried out by force, the cruelty of the report is obvious, the pedophile knows the reality of the situation and accepts the child's state of affliction; but the other psychic attitude, under the influence of the sexual drive, breaks down the Ego of Reality (Freud 2014) and considers that the victim has consented to violent sexual intercourse, that the victim caused it and wanted sexual intercourse, that he felt at the touch of the victim the attachment, and affection. The two attitudes can coexist in the life of the individual without influencing each other, two mental attitudes in place of one, the one that pertains to reality. By this means, the Ego defends itself from the exigency of the outside world, felt like a aggressive world (Freud 2014).

### **Conclusions**

Freud believes that a stronger addition to the sexual aggression factor makes the boyfriend a violent assassin, and a sharp decline in the aggressive factor makes a loved one a shy or impotent individual (Freud 2014). Justice needs to check the health of the people they condemn. Justice has an important role to play in establishing the truth in the criminal process, to find legal ways for victims of violent crimes to be fully compensated for the material and moral damage caused by the perpetrator, to determine

the punishment and the manner in which sanctions are enforced by the victim sentenced; to prevent crime, justice also has the role of applying carceral treatment best suited to those in detention. The healing of the illness of prisoners affected by certain brain malfunctions, if scientifically and physically feasible, would become a moral and necessary act to prevent relapse (Dr. Daniel Amen, psychiatrist, supports an intensive brain rehabilitation program). The research must be justified and positive, both for the benefit of the condemned and useful to the social system, because after the medical treatment the patient will be able to reintegrate more easily into the community, having a normal and balanced emotional life without deviant sexual behavior. Recurrence is no longer possible unless the cerebral affection (tumor) is also recurrent. Restoring the brain affected by the disease contributes to the restoration of the behavior.

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