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# SHOULD WE IMPOSE SANCTIONS ON RUSSIA BECAUSE OF THE CRIMEA?

*Robert W. McGee*

Fayetteville State University

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## Abstract

This article examines the view that sanctions should be imposed on Russia because of its involvement with Crimea. Applying sanctions fails the utilitarian ethics test because sanctions result in more losers than winners. The result would be a negative-sum game. Sanctions fail the rights test because rights are necessarily violated by their imposition. It is not in the best interest of the United States to impose sanctions because the United States has little to gain and much to lose by imposing sanctions. It fails the constitutional test because there is nothing in the Constitution to permit it.

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**Keywords:** Sanctions, Russia, Crimea, utilitarian, ethics, secession, human rights, property rights, contract rights, right of association, General Welfare Clause, foreign policy

## INTRODUCTION

Historically, the Crimea was part of Russia. That changed in 1954 when the Soviet Union transferred it to Ukraine.<sup>1</sup> About 58 percent of the population of the Crimea is ethnically Russian; only about 24 percent are Ukrainian, with the remainder of the population being a smattering of Tatars and other ethnic groups.<sup>2</sup>

It would not be inaccurate to say that a supermajority of the people who live in the Crimea would like to be part of Russia. In 1991, a referendum on sovereignty was held in the Crimean oblast of the Ukrainian Soviet Socialist Republic. The proposal to re-establish the Crimean

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<sup>1</sup> Maria Drohobysky, *Crimea: Dynamics, Challenges, and Prospects* (Rowman & Littlefield, 1996);

<sup>2</sup> Crimea. [http://en.wikipedia.org/wiki/Crimea#Crimea\\_in\\_the\\_20th\\_and\\_21st\\_centuries](http://en.wikipedia.org/wiki/Crimea#Crimea_in_the_20th_and_21st_centuries). (visited March 16, 2014).

Autonomous Soviet Socialist Republic passed by more than 94 percent. It became part of an independent Ukraine later that year.<sup>3</sup>

On March 6, 2014, the Supreme Council in Crimea voted to become part of Russia.<sup>4</sup> On March 16, 2014, Crimea held a referendum where the only two choices were whether to become part of Russia or whether to restore the 1992 Crimean constitution, which would allow the Crimean assembly to decide with whom Crimea will establish relations. The option to remain part of Ukraine was not included among the choices. Since the assembly has already expressed a desire to become part of Russia, the two options were really between (1) returning to Russia, and (2) returning to Russia.<sup>5</sup> There was more than an 80 percent turnout for the vote. More than 90 percent of the voters voted to become part of Russia.<sup>6</sup>

The United States and various other countries are against the idea that the Crimea should leave Ukraine and become part of Russia, citing that the move violates the Ukrainian constitution and international law. Russian troops have gone into Crimea and more have moved close to the border. President Obama and various European leaders are considering imposing sanctions on Russia because of its military actions and its support for the return of the Crimea to Russia.

Various sanctions have been proposed, ranging from not allowing certain Russian dignitaries to enter the United States to freezing Russian assets around the world and punishing companies for doing business with Russia.

## WOULD THEY WORK?

When one asks the question, “Would they work?” what is meant is whether the sanctions would be successful in positively altering the behavior of the country targeted with the sanctions.<sup>7</sup> That seems unlikely, since the

<sup>3</sup> Crimean sovereignty referendum, 1991. [http://en.wikipedia.org/wiki/Crimean\\_sovereignty\\_referendum%2c\\_1991](http://en.wikipedia.org/wiki/Crimean_sovereignty_referendum%2c_1991). (visited March 16, 2014).

<sup>4</sup> 2014 Crimean Crisis. [http://en.wikipedia.org/wiki/2014\\_Crimean\\_crisis](http://en.wikipedia.org/wiki/2014_Crimean_crisis). (visited March 16, 2014).

<sup>5</sup> Crimean referendum, 2014. [http://en.wikipedia.org/wiki/Crimean\\_referendum,\\_2014](http://en.wikipedia.org/wiki/Crimean_referendum,_2014). (visited March 16, 2014).

<sup>6</sup> Reuters, *Russia media say Crimea votes 93 percent to quit Ukraine*. <http://news.msn.com/world/about-93percent-of-voters-in-crimea-back-union-with-russia-state-news-agency> (visited March 16, 2014).

<sup>7</sup> GARY CLYDE HUFBAUER, JEFFREY J. SCHOTT, KIMBERLY ANN ELLIOTT & BARBARA OEGG, *ECONOMIC SANCTIONS RECONSIDERED*, 3<sup>rd</sup> edition, Washington, DC: Peterson Institute for International Economics, 2007, hereinafter referred to as Hufbauer, et al., 2007. They said the same thing in the second edition, which contains much valuable information on 116 case studies of sanctions in the twentieth century. See GARY CLYDE HUFBAUER, JEFFREY J. SCHOTT & KIMBERLY ANN ELLIOTT, *ECONOMIC SANCTIONS RECONSIDERED: HISTORY AND*

transfer of the Crimea to the Russian sphere of influence is a fait accompli. If one wants to ignore the facts in this particular case and apply probability theory, one might look to the empirical literature to determine how successful sanctions have been in the past, which could act as a predictor in estimating the likelihood that sanctions would be successful in the future. Hufbauer et al, (2007 & 1990) have examined this historical pattern, and have concluded that sanctions generally are not successful, even if one only defines success as a positive change in the behavior of the target. Some statistical data are provided below.

Only 34 percent of the 204 cases Hufbauer et al. (2007) examined could be labeled as successful. In determining whether a sanction has been successful, they limit their analysis to whether the sanction resulted in a positive change in the target country's policies, behavior or regime.<sup>8</sup> They do not do a full utilitarian analysis, much less an examination of human rights issues. Their formula for a successful sanction is when the cost of defiance exceeds the cost of compliance.<sup>9</sup> Table 1 shows the success rates by policy goal:

**Table 1 Success by Policy Goal<sup>10</sup>**

| <b>Policy Goal</b>                | <b>Success cases</b> | <b>Failure cases</b> | <b>Total</b> | <b>Success ratio (% of total)</b> |
|-----------------------------------|----------------------|----------------------|--------------|-----------------------------------|
| Modest policy changes             | 22                   | 21                   | 43           | 51                                |
| Regime change and democratization | 25                   | 55                   | 80           | 31                                |
| Disruption of military adventures | 4                    | 15                   | 19           | 21                                |
| Military impairment               | 9                    | 20                   | 29           | 31                                |
| Other major policy changes        | 10                   | 23                   | 33           | 30                                |
| All cases                         | 70                   | 134                  | 204          | 34                                |

They did not compare gains and losses and they almost totally ignored human rights issues. However, they did estimate the cost to the target country as a percentage of GDP. Table 2 summarizes their findings.

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CURRENT POLICY, 2<sup>nd</sup> edition (Volume 1), Washington, DC: Institute for International Economics, 1990; GARY CLYDE HUFBAUER, JEFFREY J. SCHOTT & KIMBERLY ANN ELLIOTT, ECONOMIC SANCTIONS RECONSIDERED: SUPPLEMENTAL CASE HISTORIES, 2<sup>nd</sup> edition (Volume 2), Washington, DC: Institute for International Economics, 1990.

<sup>8</sup> HUFBAUER ET AL. (2007), at 7.

<sup>9</sup> HUFBAUER ET AL. (2007), at 50.

<sup>10</sup> HUFBAUER ET AL. (2007), at 159.

**Table 2 Average Cost to Target, by Policy Goal<sup>11</sup> (% of GDP)**

|                                   | <b>Success Cases</b> | <b>Failure cases</b> |
|-----------------------------------|----------------------|----------------------|
| Modest policy changes             | 2.6                  | 1.1                  |
| Regime change and democratization | 3.4                  | 2.3                  |
| Disruption of military adventures | 0.9                  | 2.3                  |
| Military impairment               | 2.1                  | 0.7                  |
| Other major policy changes        | 5.5                  | 0.7                  |
| All cases                         | 3.3                  | 1.6                  |

Their findings show that successful sanctions are about twice as costly as unsuccessful sanctions, on average.

## **WOULD IT MEET THE REQUIREMENTS OF UTILITARIAN ETHICS?**

If one applies utilitarian ethics to the question of imposing economic sanctions, a logical question to ask is whether the gains from imposing the sanctions exceed the losses. In other words, is the result a positive-sum game? The Hufbauer et al. (2007) study does not ask this question. They focus on whether the sanction accomplishes the goal it set out to accomplish without regard to the costs imposed on all sides.

Cortright and Lopez<sup>12</sup> take a similar approach. For them, sanctions are effective if they achieve the goal. In other words, the end justifies the means, which is a utilitarian argument. Gordon believes that economic sanctions cannot be justified on utilitarian grounds because the result is a negative-sum game and they do not achieve their objectives.<sup>13</sup>

One of the structural problems inherent in utilitarian ethics is that it is not possible to precisely measure gains and losses.<sup>14</sup> One may only estimate. Another flaw is that it is not even possible to identify who some of the winners and losers would be, as Frederic Bastiat pointed out in the mid-

<sup>11</sup> HUFBAUER ET AL. (2007), at 170.

<sup>12</sup> David Cortright and George A. Lopez, *Are Sanctions Just? The Problematic Case of Iraq*, 52 ETHICS & INTERNATIONAL AFFAIRS 735-755 (1999).

<sup>13</sup> Joy Gordon, *A Peaceful, Silent, Deadly Remedy: The Ethics of Economic Sanctions*, 13 ETHICS & INTERNATIONAL AFFAIRS 123-142 (1999); Joy Gordon, *Reply to George A. Lopez's "More Ethical than Not."* 13 ETHICS & INTERNATIONAL AFFAIRS 149-150 (1999).

<sup>14</sup> Robert W. McGee, *The Fatal Flaw in NAFTA, GATT and All Other Trade Agreements*, 14 NORTHWESTERN JOURNAL OF INTERNATIONAL LAW & BUSINESS 549-565 (1994); MURRAY N. ROTHBARD, *MAN, ECONOMY & STATE*, Los Angeles: Nash Publishing, 1970.

nineteenth century.<sup>15</sup> However, the fatal flaw in any utilitarian ethical analysis is that it ignores rights violations.<sup>16</sup> For a utilitarian, rights may be violated if the result is a positive-sum game. As Shakespeare would say, “All’s well that ends well.” As many tyrants and politicians would say, “The end justifies the means.”

Imposing sanctions does not meet the utilitarian test because the losers exceed the winners. Both the side imposing sanctions and the target of the sanctions lose more than they gain. The view that the country that imposes the sanctions “wins” as long as they are harmed less than the country that is the target of the sanction is perverse logic. If both parties lose, the result is always a negative-sum game. It is not necessary to be able to precisely measure the degree of harm inflicted on all sides to arrive at this conclusion.<sup>17</sup>

## WOULD IT VIOLATE RIGHTS?

Some philosophers do not even recognize the existence of rights. Jeremy Bentham, the classical utilitarian ethical theorist, for example, has said: “Natural rights is simple nonsense: natural and imprescriptible rights, rhetorical nonsense — nonsense upon stilts.”<sup>18</sup> Perhaps I will punch him in the nose and take his wallet the next time I see him and see if his view of rights has changed since he made that statement.

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<sup>15</sup> FREDERIC BASTIAT, *SELECTED ESSAYS ON POLITICAL ECONOMY*, Irvington-on-Hudson, NY, 1968. See especially his essay, *The Broken Window Fallacy*, which has been reprinted many times, including at [http://bastiat.org/en/twisatwins.html#broken\\_window](http://bastiat.org/en/twisatwins.html#broken_window) and <http://www.econlib.org/library/Bastiat/basEss1.html>.

<sup>16</sup> Robert W. McGee, *The Fatal Flaw in NAFTA, GATT and All Other Trade Agreements*, 14 *NORTHWESTERN JOURNAL OF INTERNATIONAL LAW & BUSINESS* 549-565 (1994).

<sup>17</sup> For more on economic sanctions from an ethical perspective, see Robert W. McGee, *Economic Sanctions and International Relations*, Andreas School of Business Working Paper, Barry University, Miami Shores, FL 33161 USA, January, 2007, reprinted at <http://ssrn.com/abstract=955972>; Robert W. McGee, *MFN Status, Trade Embargoes, Sanctions and Blockades: An Examination of Some Overlooked Property, Contract and Other Human Rights Issues*, Eighth International Conference, International Trade and Finance Association, Atlantic City, NJ, May, 1998., published in Gulser Meric and Susan E.W. Nichols, editors, *THE GLOBAL ECONOMY AT THE TURN OF THE CENTURY, VOL. I, INTERNATIONAL TRADE* (Laredo, TX: International Trade & Finance Association, 1998), 3-13, reprinted at <http://ssrn.com/abstract=87810>; Robert W. McGee, *Trade Sanctions as a Tool of International Relations*, 2 *COMMENTARIES ON LAW & PUBLIC POLICY* 53-127 (2004), reprinted at <http://ssrn.com/abstract=615724>; Robert W. McGee & Yeomin Yoon, *The Takings Clause and Compensation for Trade Sanctions*, 5(2) *APPLIED MANAGEMENT AND ENTREPRENEURSHIP* 161-171 (June, 2000), reprinted at <http://ssrn.com/abstract=242428>; Robert W. McGee, *The Ethics of Economic Sanctions*, 23 *ECONOMIC AFFAIRS* 41-45 (December, 2003), reprinted at <http://ssrn.com/abstract=519208>.

<sup>18</sup> JEREMY BENTHAM, *ANARCHICAL FALLACIES*, Amazon Digital Services, 2011.

Rights violations are very serious things. Property rights, contract rights and the right of association would all be violated if sanctions were imposed on Russia. Punishing businesses for doing business with Russia, for example, would violate all three of these rights. Practically any sanction one might think of would violate at least one of these rights.

One might not get too emotional if Russia's leaders were harmed by the imposition of sanctions. The problem is that many more people besides Russia's leaders would suffer harm as a result of sanctions. The people of Crimea, most of whom prefer to be part of Russia rather than Ukraine, would be harmed if economic activity were prohibited, penalized or made more costly, which would certainly be the case if sanctions were imposed. So would any individual or company that is prohibited from doing business as a result of the sanctions. That includes Americans and American companies.

One must not exclude the issue of attempts to violate Crimean and Russian sovereignty. If both the people of Crimea and Russia want to form an association, punishing them for doing so violates their right of association and their right to have the government of their choice. Whether Crimea might be better off remaining part of Ukraine is irrelevant as far as rights are concerned.

Ludwig von Mises summed up the moral solution to the issue of secession nearly one hundred years ago.

“No people and no part of a people shall be held against its will in a political association that it does not want.”<sup>19</sup>

In other words, the people who live in the disputed area should be the ones who determine what their political affiliation should be. It should not be up to Russia, the Ukraine, the European Union, the United Nations or any other group or organization to determine their fate. If some group believes that their present government does not suit their needs, they have the right to abolish it and form a new government that is more to their liking.

The U.S. Declaration of Independence addresses this issue.

“Governments are instituted among Men, deriving their just powers from the consent of the governed --- Than whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government ...”<sup>20</sup>

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<sup>19</sup> LUDWIG VON MISES, *NATION, STATE, AND ECONOMY* 34 (1983). This book first appeared in German as *NATION, STAAT, UND WIRTSCHAFT* (1919).

<sup>20</sup> U.S. DECLARATION OF INDEPENDENCE, July 4, 1776.

The idea that it is necessary to first obtain approval of someone else is morally abhorrent. If the people of the Crimea wish to secede from the Ukraine, they should be able to do so without first obtaining the Ukraine's permission, just like the American colonists should not need the permission of King George before being able to secede from Great Britain. Likewise, if the people who live in the Crimea want to remain part of the Ukraine, they should be able to do so without interference from Russia or any other country. They should not be required to obtain anyone's permission if they want to establish an independent nation, either.<sup>21</sup>

### **WOULD IMPOSING SANCTIONS BE IN THE BEST INTERESTS OF THE UNITED STATES?**

One might reasonably ask: "Would imposing sanctions on Russia (and Crimea) be in the best interests of the United States? Or Europe? Or Asia? Or any other country that is thinking of becoming part of this coalition to impose sanctions?"

This question should be one of the first questions asked whenever anyone enters into a debate involving United States foreign policy. However, it is seldom asked, and practically never considered as something worthy of serious consideration. The kinds of questions most likely asked by politicians and foreign policy advisors are: "What would the Europeans think of us if we did it?" "How would it affect the balance in the House of Representatives or Senate in the next election?" "How should we do it?"

All of these questions have their place, at least if one is an armchair policy analyst. However, asking whether imposing this policy or that policy would be in the best interest of the United States should be one of the first questions asked.

It is difficult to see how imposing sanctions on Russia would be in the best interests of the United States. Sanctions do not meet the utilitarian test because there are more losers than winners. Both sides lose as a result of the sanctions. From a utilitarian perspective, it does not matter whether one side is harmed more than the other side. The result is always a negative-sum game, which fails the utilitarian test.

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<sup>21</sup> For more in-depth analyses of the issue of secession in general, see Robert W. McGee, *The Theory of Secession and Emerging Democracies: A Constitutional Solution*, 28 *STANFORD JOURNAL OF INTERNATIONAL LAW* 451-476 (1991-1992), reprinted at <http://ssrn.com/abstract=2177439>; Robert W. McGee and Danny Lam, *Hong Kong's Option to Secede*, 33 *HARVARD INTERNATIONAL LAW JOURNAL* 427-440 (1992), reprinted at <http://ssrn.com/abstract=2403476> ; Robert W. McGee, *Secession and Emerging Democracies: The Kendall and Louw Solution*, 2 *JOURNAL OF INTERNATIONAL LAW AND PRACTICE* 321-335 (1993), reprinted at <http://ssrn.com/abstract=2177437>; Robert W. McGee, *Secession Reconsidered*, 11 *JOURNAL OF LIBERTARIAN STUDIES* 11-33 (1994), reprinted at <http://ssrn.com/abstract=2177434>.

It would also increase international tensions, which is not a good thing, unless one wants to trigger a crisis in order to gain more power.

Imposing sanctions must necessarily violate someone's property, contract or association rights, and infringes on the right to choose the form of government the people of Crimea want. Thus, imposing sanctions fails the rights test. If sanctions fail both the utilitarian ethics test and the rights test, on what grounds can they be justified?

## **WOULD IT BE CONSTITUTIONAL?**

The question of whether imposing sanctions is constitutional is almost never asked, let alone seriously analyzed or discussed. However, it is one of the first questions that should be asked.

The United States Constitution is a constitution of limited powers. The federal government may only engage in the activities that Constitution permits it to engage in. If there is no provision in the Constitution that permits the federal government to engage in a certain activity, it is prohibited from engaging in that activity.

Over the years, this principle of limiting the scope of the federal government has been eroded, to the point where our policy makers believe that the federal government can do practically anything it wants because some majority of Congress have passed a law allowing them to do it. The most frequent constitutional provision they cite to justify the action they want to take is the General Welfare Clause,<sup>22</sup> which provides that the government may do whatever is for the general welfare.

However, it is difficult to see how the general welfare can be promoted by imposing sanctions on Russia. No identifiable group of Americans stands to benefit by the sanctions, and some groups and individuals stand to lose something. Their property rights are violated if they are prevented from trading the property they have for the property they want (doing business or purchasing Russian goods). Their contract and association rights are also violated as a result of the sanctions.

## **CONCLUSION**

From the above analysis, it seems clear that there is little justification for imposing sanctions on Russia as a result of its involvement in Crimea. A supermajority of the people of Crimea wants to separate from Ukraine and become part of Russia. Russia wants Crimea to become part of Russia. The fact that many Ukrainians disagree is irrelevant. No one should be forced to be part of a political affiliation that they do not want, to paraphrase Ludwig von Mises.

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<sup>22</sup> United States Constitution, Article I, Section 8, clause 1.

Sanctions fail the utilitarian ethics test because there are more losers than winners. Sanctions fail the rights test because property, contract and association rights are violated, not to mention the right of political affiliation. It is not in the best interest of the United States to impose sanctions, and it is not in the best interest of any European country, with the possible exception of Ukraine, to prevent the political realignment, which could only be done at great cost, if at all.

# **GCC STATES AND TRADE REMEDIES: BETWEEN BENEFITS AND CHALLENGES**

*Habib Kazzi*

Professor of International Trade Law – Lebanese University  
Lawyer at the Paris Bar, France

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## **Abstract**

This paper aims at highlighting the ambiguous position of GCC states as to the application of trade remedy rules set forth in WTO agreements and implemented in GCC Common Law on Antidumping, Countervailing Measures and Safeguards. These countries acknowledge the usefulness of these rules used in case of difficulties due to trade liberalization, particularly by ensuring the defense of the legitimate commercial interests of WTO Members when they are victims of unfair practices or are forced to adopt emergency measures in the event of market disruption. GCC states also make the point that contingency measures are an essential tool for the success of regional integration process and diversification policies of their national economies launched for a decade. The fact remains that these countries are, surprisingly, reluctant to use these remedial tools at both regional and multilateral level. Very few investigations have been already initiated and no contingency measures have been yet adopted to date. In this context, and after recalling the benefits that could be reaped by the GCC countries through a more aggressive use of these instruments, this contribution endeavors to explain the reasons of this ambiguity.

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**Keywords:** Trade Remedies, WTO, GCC States, Contingency Measures

## **INTRODUCTION**

Established in 1981, the Cooperation Council for the Arab States of the Gulf (GCC states hereinafter) is a regional organization composed of six Arab and Muslim states of the Persian Gulf: Saudi Arabia, Oman, Kuwait, Bahrain, the United Arab Emirates and Qatar. If it is above all a very political "club" of Sunni oil monarchies who are concerned about security against Shiite Iran and neighboring civil wars (Iraq, Syria), the areas of cooperation have gradually expanded to integrate health, education, environment as well as the fight against transnational crimes.

But it is in the sphere of the economy that the progress is the most significant. The GCC region represents currently the most accomplished economic integration model in the Arab world. The GCC Common Customs Law was promulgated on January 2003. Since then, the GCC states have operated on the basis of the common external tariff. On 1 January 2008, the members of the GCC have also formed a common market, allowing the free movement of services between the members. This process is the final step before an economic and monetary union and the introduction of a single currency expected in 2010, but which has still not been completed to date.

GCC countries display cultural, geographical and economic similarities. They are among the world's biggest producers and exporters of oil and natural gas. Thanks largely to the surplus and investment generated in this area, this region is experiencing continuous growth and development. Its standard of living is one of the highest in the world. These countries have one of the highest per capita GDP in the world with an average of USD 33,005 GDP/inhabitant.

Fervent advocates of the virtues of free trade, all GCC states are thus full members of the WTO and are amongst the good performers of this institution, providing periodic anti-protectionist pledge to the international community. At the same time, GCC countries consider that regional economic integration can be a useful complement to the multilateral system, by deepening the integration of markets, reinforcing the role of trade in economic growth, promoting gains of scale for domestic firms, and providing an expanded base to face global competition. This region is preparing to become a major hub for international trade, as well as an important gateway to the Gulf, Asian and Middle-East regions.

In terms of trade policy, GCC members seem to have made use of their WTO accession and GCC integration to reform their economies and attract investments. As part of their accession, they have adopted a largely open tariff regime for goods and made extensive services commitments. Within the framework of the GCC, a common external tariff has been put in place, leading to applied tariffs well below their bound rates in the WTO. GCC Members have agreed to allow free movement of services and harmonization of certain trade rules has been achieved or is in the process of being achieved (e.g. customs, rules of origin, antidumping, countervailing duties and safeguards, standards and technical regulations).

Nevertheless, there are clearly economic and trade policy challenges on the horizon. Firstly, GCC countries' fortunes still rest heavily with the export performance of one sector. In 2014, oil and gas represented approximately one third of real GDP, but provided more than 80% of governments revenue and export earnings. In contrast, while services and, albeit less, manufacturing represent a large share of GDP and total

employment, they provide very limited contributions to public finances and export earnings. Due to the lack of diversification of their economies, these countries are highly dependent on foreign trade. The ratio of merchandise and services trade (exports and imports) to GDP represents more than 90% of the GDP.

Besides hydrocarbons dependence, GCC countries also face the dilemma of public/private sector dichotomy. While we note a significant government involvement in the economy, the private sector remains underdeveloped. State-owned enterprises exist in many sectors (such as insurance and banking, petrochemicals, electricity, air transport, real estate, telecommunications, postal services, etc.). Even if such companies are suggested to operate on the basis of commercial considerations, there is an apparent risk that they deter foreign as well as local competition and investments.

All in all, these parameters raise serious questions about the competitiveness of the bulk of GCC economies, as well as the vulnerability of the GCC businesses. It seems that, looking forward, these states are at something of a crossroads, faced with some important decisions regarding the direction they want trade and economy to take in terms of diversification, transparency, role of the state and state-owned enterprises, attractiveness to investors and identification of non-hydrocarbon sectors where economy should become competitive.

Inasmuch as GCC economies are increasingly dependent on international trade, the outcome of these domestic structural reforms also depends on the ability of Arab stakeholders to play a more active role within the WTO fora, as well as on a more aggressive use of the trade defense instruments devoted in the framework of the GCC Customs Union through the GCC Common Law on Anti-Dumping, Countervailing Measures and Safeguards (GCC Common Law hereinafter).

Trade remedies are trade policy tools that allow governments to impose import restrictions in response to different situations and circumstances which may be causing material injury to a domestic industry. Under “antidumping duties” an importing country may impose tariffs in addition to ordinary customs duties to counteract certain “unfair” pricing practices by private firms that injure or threaten to cause “material injury” to a competing industry. An importing country may also impose “countervailing duties”, which are tariffs in addition to ordinary customs duties that are imposed to counteract certain subsidies bestowed on exporters by their governments, again when they cause or threaten to cause material injury to a competing industry. An importing nation may finally impose “safeguard measures” which are temporary trade restrictions, typically tariffs or quotas, in response to import surges that injure or threaten “serious injury”

to a domestic industry. Safeguard measures plainly differ from anti-dumping and countervailing duties on one essential point: if the latter are the actions taken against products imported through unfair trade conditions, safeguard measures, by contrast, can be used against products imported under fair trade conditions.

Based on the above, it is clear that trade remedy measures may constitute an instrument of competitiveness through the protection of an established GCC industry or the facilitation for the establishment of new industry. In this respect, the modernization of GCC economies requires both a diversification of economic base and a fight against adverse effects resulting from trade liberalization. GCC countries development strategy centered on a liberal trade regime and a more business-friendly environment is not sufficient.

It is also crucial to avoid that the path of sustained economic growth is questioned by unfair practices implemented by foreign firms or states, or even by market disruption. Such circumstances are not sporadic. The WTO annual reports regularly underline the high number of such barriers to free trade and the impressive number of litigations submitted to the Dispute Settlement Body in this area. These reports emphasize, at the same time, the growing use of remedial tools not only by developed countries, but also by a growing number of developing countries. Surprisingly, Arab states, and in particular GCC states, still remain far from this trend. To date, no anti-dumping, countervailing duty or safeguard measures has been yet imposed by a GCC state.

The importance of the use of trade remedy measures, as specified in the WTO agreements and implemented in the GCC legislation, for a sustainable development strategy is the subject of Section I. Section II reviews key features of the GCC current regulatory framework applicable to the contingency measures. Finally, Section III endeavors to explain the reluctance of GCC Members States for using these trade policy instruments despite the benefits for their economies. These arguments will be followed by a brief conclusion.

### **Section I- Benefits of the implementation of trade remedies by GCC states**

As argued before, GCC economies are entirely based on oil and, to a lesser extent, on gas. The hydrocarbons represent more than 85% of the Members exports and nearly 80% of governments' revenues. Agriculture contributes to less than 5% of the GDP. As for tertiary sector, it contributes around 40% of the GDP and is dominated by international trade, air transport, tourism and financial activities. The industrial sector currently represents approximately 60% of the GDP, with the notable exceptions of the

Kingdom of Saudi Arabia and Bahrain where the balance between industry and service is quite striking. These countries export far more than it imports. This results in a positive trade balance, which is expected to remain largely positive during the coming years.

To limit their dependence on hydrocarbons, GCC states have launched since a decade a long term comprehensive development strategies on a GCC-wide integrated basis, including the implementation of the “Unified Strategy of Industrial Development for the GCC Member States” (art. 8(1), GCC Economic Agreement, 2001). The success of these structural reforms will not only consist in enhancing industrial diversification or fostering the role of the private sector, including privatization and more attractive investment, competition and public procurement policies. Member States shall also “unify their industrial legislation and regulations, including rules related to industry promotion, anti-dumping, and precautionary safeguards” (art 8 (2), GCC Economic Agreement, 2001). Recalling the importance of the role played by GCC industry in the national development, the preamble of the GCC Common Law dictates that the ultimate objective of this regulatory text is both “to achieve economic integration among the GCC Member States” and “to support the industrial process and increase the industrial sector’s contribution to the national income of the GCC States”.

In this respect, a key element of Gulf countries’ development process was their participation in the multilateral trading system and a full economic integration under the Gulf Cooperation Council, including harmonization of legislation on, *inter alia*, customs, contingency trade remedies, SPS and TBT. GCC countries have indeed put in place a set of measures favorable to free-trade. As mentioned before, they have reduced trade barriers, harmonized regulations, and increased transparency in line, of course, with their WTO obligations.

Accordingly, GCC economies are very open, with an accessibility rate which varies between 80% and 100%. GCC countries are taking steps to simplify customs procedures. Customs duties are relatively low and there are not many trade barriers in this region. Although the bound tariff commitments of the GCC Member States towards the WTO are different, GCC member states have harmonized their applied tariffs in order to create unified external customs tariff. Almost all GCC countries imports are covered by a general import tariff rate of 5% on all agricultural and industrial products. Nearly 100% of their tariff lines are bound with more than 95% of the applied duties having ad valorem tariffs. This finding may be moderated by the maintenance of a gap between the average MFN applied tariff rate (5%) and the average bound rate (between 10%), creating uncertainty for businesses. Barring a few exceptions, goods produced in other GCC member states enter duty free, if accompanied by certificates of origin. However,

import of alcoholic beverages, tobacco and pork products attract at least 100% duties. It is noteworthy that article 25 of the GCC Common Customs Law applies rules of origin in accordance with the WTO Agreement on Rules of Origin.

While the process of regional economic integration continues and some Arab countries play an increasingly active role in the WTO, the GCC authorities acknowledge the existence of significant potential risks resulting from non-mastered liberalization of trade. For GCC members, in particular Kuwait, Oman and United Arab Emirates, the contribution to GDP of the industrial sector is significant. For those countries, the threat of competition from European and North American industrial goods is obvious and can impact negatively on GDP growth rates. These concerns appear in Article 1 of GCC Common Law underlying the necessity “to prevent the GCC economies from the injurious practices in international trade that cause or threaten material injury to an established GCC industry or retard the establishment of such an industry which can be achieved by taking appropriate GCC measures against such practices”. This article argues that these practices include dumping, subsidies and unjustifiable increase in imports.

One can better understand in this context why GCC countries have deliberately opted for a common legislation in this field, while such measures under national or regional law are permitted, but not required, by WTO law, subject to the limitations found in WTO treaty text, including GATT 1994 (hereinafter GATT), the WTO Agreement on Safeguards (hereinafter SA), the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (the Antidumping Agreement, hereinafter ADA), and the WTO Agreement on Subsidies and Countervailing Measures (hereinafter SCMA). These WTO Agreements impose extensive substantive and procedural restrictions on the use of each type of measure.

Plainly, the consecration of trade defense measures in the WTO system and GCC framework lies both in economic welfare gains and the realm of political economy.

From the standpoint of economic efficiency, if the bulk of the modern normative commentary suggests that contingency remedies are economically unsound (SYKES, 2005), several arguments may, however, justify the recourse to this legal arsenal. Proponents often argue that there is a need for troubled industries to restore their competitiveness. Because of the injury test, the principal beneficiaries of these remedial tools are industries that have difficulty competing in open markets. Hence, in case of a rapid increase in imports, a temporary period of protection will allow firms with profits to finance new investments, the argument runs, so that they can again compete in both domestic and global markets.

Further, it is generally argued that the mainly useful function of the antidumping and countervailing laws from an efficiency standpoint is the avoidance of predatory pricing and monopolization by foreign firms. As a result, the difficulty for GCC governments will consist in identifying industries that can become competitive “again” and in promoting long-term financing by the capital markets. Another challenge for these governments will be to avoid a trade remedy policy that provides a government-sponsored route to cartelization, which would otherwise violate their antitrust laws. In conducting an econometric analysis on a dumping or subsidy practice, local authorities should take into consideration key features of their markets, the elasticity of domestic supply and demand, the degree of substitutability between imports and the concrete impact on competitors. It is interesting to recall that some exporters may not be harmed by antidumping or countervailing actions against them. If they are able to settle the case through a price undertaking, they will have raised price and restricted output much like a cartel.

In other circumstances, GCC authorities can use safeguard measures to reconvert industries affected by increased competition in expanding sectors where they could benefit from a competitive advantage, not to mention, of course, concerns related to the employment situation. Under the reconversion process, safeguard measures will permit to slow the pace of industry contraction and reduce adjustment costs. But the success of such a policy will depend, to a great extent, on the labour market flexibility and state aids encouraging the hiring of the unemployed.

Also in terms of economic efficiency, some empirical studies recently conducted on the basis of contingency measures adopted in both developed and developing countries have revealed that this type of instruments is not only conditioned by microeconomic or sectoral factors. Beyond the evolution of the industry or companies concerned, macroeconomic factors, such as the evolution of industrial production, the trade balance, the intensification of international competition, the fluctuation of the real GDP or the real exchange rate, also play a major role in antidumping or countervailing filings and their assessment by the regulatory authorities (Mustapha Sadni Jallab *et al*, 2008). The development of the economic situation as a whole can increase (or mitigate) the inclination of authorities to respond or not to requests for investigation formulated by the domestic producers. The demand for protection increases with the deterioration of the general economic situation. A context of rising unemployment and deteriorating balance of trade can change the perception of the damage and its severity by regulatory authorities.

The antidumping proceedings constitute a particularly favorable field for such considerations. The aforementioned empirical surveys have indeed

demonstrated that a high probability of satisfaction in a given economic environment may encourage companies to make greater use of anti-dumping rules. Simultaneously, in a situation of economic stagnation and more aggressive international competition, national authorities may be tempted to use anti-dumping rules, not at the service of fair trade practices, but for protectionist purposes.

The risk of misuse of anti-dumping proceedings is likely to be more important in periods of unfavorable macroeconomic variables. Investigations are totally at the discretion of the authorities, companies originally complaints have a high probability to benefit from protection and even if this is not the case, the existing empirical studies show that the mere fact to initiate the procedure provides a protective effect by causing a decline in imports.

In this regard, anti-dumping measures, unlike countervailing duties, are targeted to companies and not to governments. As a result, they are not subject to the rule of most favored nation or the principle of reciprocity (unlike the safeguard clause), which makes them particularly attractive as instruments of protection. Likewise, antidumping procedures provide more accurate selectivity by targeting states, sectors and firms concerned. Following the same line of thought, it is noteworthy that this trade instrument does not expose the country that applies them to the obligation to negotiate compensation. In sum, these features give antidumping proceedings the properties of an opaque instrument of protection that is not subject to the constraints that WTO rules (non-discrimination and reciprocity) impose to other trade remedies. The only possible response for the affected countries is the resort to the WTO dispute settlement mechanism in case of abuse of process.

The above mentioned surveys also make the point that the influence of each factor may vary according to the differences in practices and rules in force. While the period of investigation shall not exceed 18 months as per Article 5.10 of the ADA and Article 35 of the Rules of Implementation of GCC Common Law, GCC authorities have a large operating margin in the determination of dumping and evaluation of the damage suffered by domestic industry.

These findings have important legal and economic implications. By way of illustration, the consideration of a long period of about 3 years instead of 1 year for the evaluation of prejudice, as authorized by the ADA, can lead to an increasing number of investigation procedures and a more decisive influence of macroeconomic factors in the assessment of the economic impact of unfair practices or market disruption. Indeed, it is not surprising to note that, under national practices, the dominant trend (in accordance with the recommendations issued by the WTO Anti-Dumping

Committee) is to hold a short period to analyze pricing practices (usually one year before the complaint) and a longer period for investigations on injury (usually 3 years).

In sum, it is widely agreed that trade remedy measures and economic development are inseparable. In this respect, one should recall that WTO developing country Members receive special and differential treatment with respect to other Members' safeguard measures, and with respect to applying their own such measures. In applying safeguard measures, GCC states may indeed extend the application of a safeguard measure for an extra two years beyond that normally permitted. In addition, the rules for re-applying safeguard measures with respect to a given product are relaxed for these countries.

From a political economy rationale, safeguard measures permit GCC governments to face future political pressure for protection of declining industries. If we fully extend this reasoning, it may be in the mutual interest of the parties to trade agreements to allow each other to deviate from commitments when the domestic pressure to do so is high in an importing nation, but they must also worry that trading partners may deviate opportunistically because domestic political pressure is unobservable by others. Likewise, if protection for a declining industry harms foreign exporters who are highly profitable and growing, they will tend to raise less political objection to it because their prosperity would often be competed away in any event. It may then be in the mutual political interest of parties to trade agreements to allow each other to reimpose protection to help an industry that is in severe decline due to some shock that also leaves its foreign competitors prosperous and expanding.

This line of analysis also provides an explanation as to why the WTO Safeguard Agreement is designed to provide temporary rather than permanent protection for declining industries. Such industries will tend to become a less potent lobby for protection over time as existing physical and human capital depreciates, and the returns of sunk investments that are lost due to foreign competition diminish. Another partial solution to this problem is to limit the number of times that nations may deviate from commitments in a given industry—governments will be less tempted to cheat by deviating when political pressure to do so is low, for fear of losing their right to deviate in the future when pressure is high. This observation suggests an explanation for one feature of the WTO Safeguard Agreement: safeguard measures cannot be used in an industry that has used them in the past, for a length of time equal to the time that they were in place.

In the same way, safeguard mechanism may constitute a device of “trade negotiations”. Without a safeguard mechanism, cheating on trade agreements might become acute and cooperation might unravel, denying

trading nations the long-term benefits of trade liberalization. Because treaties are negotiated under conditions of uncertainty, it is in the interest of political officials to include provisions that allow them to adjust the bargain when their obligations become politically onerous, much as private contracting parties permit deviation from contractual commitments under circumstances where their performance has become economically onerous.

Further, one may emphasize how the opportunity to deviate from commitments when the pressure to do so is high may make negotiators more comfortable about making trade concessions in the first instance. The economic welfare effects of the safeguard mechanism then depend on the balance between the economic welfare gains associated with more trade concessions *ex ante*, and the economic costs associated with renewed protection under the safeguard mechanism *ex post*. The *ex post* welfare consequences of the safeguard mechanism also depend importantly on the extent to which nations negotiate trade compensation when they employ safeguard measures, or instead trigger trade retaliation.

A related, though seemingly distinct, argument for antidumping measures is the suggestion that they redirect pressures for protection away from the legislature and into a more benign administrative process. Contingency remedies would thus be an instrument of pacification of international economic relations.

Briefly, the reasons mentioned before explain the persistent popularity and survivability of trade remedy measures in the WTO framework while we note that several bilateral and regional trade arrangements have merely removed the possibility to use contingency remedies. The same reasons cited above also explain the random nature, or even utopian, of proposals for reforms that aim at ending the confusion of the roles of judge and jury by transferring the implementation of investigation procedures and sanctions from national or regional level to multilateral framework.

## **Section II- GCC regulatory framework relating to trade remedies**

If WTO trade remedy rules are international, their application is purely national. It is up to the importing country to decide on the existence and nature of adverse trade practices and decide what action to take. In line with the GCC Customs Union and according to GCC resolutions, GCC states have opted for a common model law on trade remedies. The GCC Common Law on Anti-dumping, Countervailing and Safeguards Measures (GCC Common Law hereinafter) was therefore adopted on 1 January 2004 within the framework of the GCC Customs Union. Promptly, the GCC Supreme Council has instructed the Industrial Cooperation Committee (ICC hereinafter) to prepare the relevant Rules of Implementation within the first

half of year 2004, provided that such law shall come into force after thirty days following the adoption of the said Rules of Implementation by the ICC. As a result, the ICC has adopted the said Rules of Implementation at its 23<sup>rd</sup> meeting held at Kuwait (11 October 2004). On 10 March 2008, a Technical Committee was established to review and amend the GCC Common Law and its Rules of Implementation. Further to the review, the Supreme Council adopted and amended the GCC Common Law on Anti-dumping, Countervailing Measures and Safeguards in December 2010.

After introduction within domestic legislations, the provisions of the GCC Common Law are compulsory for GCC member states. The probability of discrepancy between the GCC Common Law and national laws or between GCC member states laws is impossible since the original GCC Common Law and its amendments become national law upon ratification and publication in the national Official Gazette. It should be noticed that Qatar has not, however, adopted these rules, nor has domestic legal instruments to implement them. But this position has a negligible impact since the GCC Common Law sets forth that anti-dumping, countervailing, and safeguard investigations or measures are carried out at the level of the GCC customs union and not at the level of individual states. Thus, despite having no legal framework, Qatar has indicated it would participate in such procedures and cooperate in the process for investigations initiated in other GCC member states (Trade Policy Review, 2014). Anyway, GCC member states should notify any decision to initiate antidumping or countervailing duty investigation to Committee on Anti-Dumping Practices and SCM Committee and final measures at the time they are taken. Under WTO rules, these countries are also required to notify immediately the Committee on safeguard and affected countries of the initiation of a safeguard investigation and its outcome.

As members of the GCC, all the concerned states are committed to using trade remedy instruments under the WTO Agreements (Anti-dumping, Subsidy and Countervailing Measures, Safeguards) only if GCC statutory requirements are satisfied. It must be said that GCC rules are strongly inspired by WTO texts, in particular in terms of evaluation of injury to a GCC industry, the conduct of investigation procedures, as well as the nature and duration of remedies. Hence, an investigation must be carried out by “competent authorities,” including notice to all interested parties and “public hearings or other appropriate means” to allow parties to present evidence and views. The findings of the competent authorities must be published setting forth “reasoned conclusions” on all matters of law and fact.

The Implementing Regulation stipulates that, as a rule, anti-dumping, countervailing duty and safeguard measures apply to all imports into the GCC. However, the application of anti-dumping, countervailing and

safeguard measures may be limited to one or several member states of the GCC, as per the exceptions provided in the Implementing Regulation. The exceptions concerning the scope of application of the GCC Common Law are set forth in the Implementing Regulation of the GCC Common Law. These exceptions are based on the provisions of Articles 4.1(ii) and 4.2 of the Anti-Dumping Agreement, Articles 16.2 and 16.3 of the SCM Agreement and footnote 1 of the Agreement on Safeguards. As a rule, the assessment of injury and of the effects of dumping and/or subsidization is to be made on a GCC-wide basis. However, where the scope of an investigation is limited to one or several GCC member states, the injury and the effects of dumping and/or subsidization will be assessed only for the GCC member state(s) concerned.

With regard to the procedural requirements, the complaint against dumping, subsidy or an unjustifiable increase in imports is to be submitted to the Technical Secretariat of the Permanent Committee in writing on the form prepared for this purpose. The complaining party must attach with his complaint a non-confidential summary of adequate details explaining the subject matter of the submitted confidential information. For a complaint to be acceptable, it has to be filed by the GCC industry or its representative, by the concerned chamber of Commerce & Industry, producers union or by any ministry in charge of the production sector in any of the GCC member states. The decision to keep the complaint (application) or to initiate or terminate investigation, or to take any provisional measures, accept price undertakings or any other relevant decisions, procedures or measures shall be effected by a decision of the Permanent Committee in the light of the investigation findings. Composed of representatives of the governments of the Member States, the Permanent Committee takes the necessary measures and procedures under the provisions of this Law, including the imposition of provisional measures and price undertaking. But it only proposes the imposition of definitive anti-dumping and countervailing duties to prevent subsidies and submit them to the Ministerial Committee, also called the GCC Industrial Cooperation Committee (hereinafter ICC). PC proposes imposition of definitive safeguard measures to prevent the unjustifiable increase of imports. In the same way, the Permanent Committee may also propose appropriate solutions for settlement of the disputes that may arise between Member states over interpretation of GCC Common Law.

The ICC approves the definitive measures relating to anti-dumping, countervailing measures or safeguards, or suspending, terminating, increasing or reducing such measures. The ICC also takes the final decision in the settlement of disputes that may arise between Members over interpretation of the GCC Common Law. Note that the ICC adopts the Rules of Implementation while the Financial and Economic Cooperation

Committee (FECC hereinafter) is responsible for interpreting and amending the GCC Common Law in coordination with the ICC.

### **Section III- Reasons of non-implementation of trade remedies by GCC states**

Previous arguments have highlighted that the application of trade defense rules is essential for both the economic competitiveness and integration process. It is therefore not surprising that during the period 1995-2013, 25% of WTO agreements referred to in requests for consultations, which is the first stage in the WTO's dispute settlement process, related to trade remedy rules (WTO, annual report 2014). In 2013 only, 20 requests for consultation have been filed, of which approximately half by Developing countries including Cuba, Guatemala, Panama or Indonesia. Eight of them were related to trade remedies. This is confirmed by the fact that ¼ of WTO disputes in 2013 focused on trade remedy issues.

The review of WTO members involved in disputes during the period 1995-2013 reminds us that, to date, no GCC member state has been involved in WTO dispute settlement procedures in any capacity, neither as a complainant, respondent, nor third party. Only Saudi Arabia has occasionally participated in some litigations as third party. Accordingly, the GCC member states have not imposed, to date, any trade remedy measures. Two safeguard investigations were in fact initiated at the request of GCC domestic industries in 2009 on imports of iron, but were terminated without measures being taken in 2010. By way of indication, the inertia of GCC Countries is almost similar to that of all Arab countries. No safeguard measure on imported products have been to date imposed by any Arab state. Only Egypt has initiated and imposed anti-dumping measures, while antidumping duties are by far the most frequently used measures in the WTO trade remedy arsenal.

Further, although a number of industries or services are supported by state subsidies, GCC countries do not grant or maintain within their territory any subsidies within the meaning of Article 1.1 of the Agreement on Subsidies and Countervailing Measures, which is specific within the meaning of Article 2 of the Agreement, or which operates directly or indirectly to increase exports from or reduce imports into its territory within the meaning of Article XVI:1 of the GATT 1994.

Even if GCC governments claim that they do not encounter any significant trade problems requiring the use of trade remedy measures, this argument is not convincing. In this context, how is it possible to justify this inertia of GCC states?

The lack of use of multilateral trade defense rules may be explained may several reasons linked, among others, to the specifics of GCC countries

and the inefficiency of WTO trade-related technical assistance mechanisms that did not fully respond to the needs of GCC countries in this field. An in-depth analysis of these different issues is required.

The absence of GCC states in the WTO dispute settlement system (hereinafter DSS) may indicate that these countries chose to settle their disputes by peaceful means. This claim is supported by the fact that no GCC state has been yet involved in a dispute under its regional or bilateral agreements. But it is difficult to justify that no "request for consultations" has been filed to date by a GCC state! The reasons clearly are elsewhere. A number of experts endeavor to justify this situation by the high cost of litigations initiated under the DSS which is an obstacle for many Arab countries, but also by the fear of reprisals and adverse consequences on the financial assistance provided by developed and emerging countries. It is striking nonetheless that some countries such as Guatemala, Cuba, Bangladesh, Pakistan or Colombia adopt a more offensive position in the DSS. The lack of participation in the WTO dispute settlement proceedings may also be attributed to the low contribution of GCC states to world trade. Here again, this argument should be moderated since it is sufficient to recall the low share held by some active countries such as Argentina (0.6% of world trade) or India (1.5% of world trade), as well as the other countries mentioned above.

In any event, the reasons given before cannot overlook the fact that the infrequent use of the DSS by GCC states is, first, the result of their lack of expertise and knowledge of WTO rules. This situation is exacerbated by the increasing complexity of commercial disputes. Bringing an action before a WTO panel is a long process that requires the preparation of legal and business data which cannot be provided by the other Member or the WTO Secretariat. A State Member must find other sources of relevant information by using legal experts and economists who can provide consultations and econometric studies supported by substantial documentation. It is not questionable that GCC states have a severe lack of experts in these areas. Is it necessary to recall that, notwithstanding the provisions of Article 17.3 of the Dispute Settlement Understanding (hereinafter DSU) by which the Appellate Body shall be broadly representative of WTO Members, only two Arab experts have integrated this entity since 1995!

This situation is compounded by the delay of Arab governments and national universities to incorporate into their courses and training programs issues related to international trade. But it is inevitable to question the effectiveness of the "progressive learning strategy" and the "reference centers" that constitute the two vertebral columns of the trade-related technical assistance program for developing countries. Managed by the WTO Secretariat, and more particularly by the Institute for Training and Technical

Cooperation (hereinafter ITTC), this program focuses on e-learning courses, academic programs, seminars and workshops organized at global, regional and national levels. The immediate objective of these activities is to enable participants to understand the fundamental principles of the WTO in relation to the matters dealt with. For specific questions in connection with the Doha Round, the goal is to give participants the factual and analytical information required to participate meaningfully in the negotiations process.

While the training tools have been continuously improved since the creation of the WTO, in particular through the growing use of e-learning tools and the incorporation of results-based management approach, their added value for GCC states remains, however, limited. The latest annual report issued by the WTO is eloquent. In 2013, the WTO undertook 281 technical assistance activities related to trade capacity building and most of which were for officials from developing countries and LDCs. But the analysis by region shows that only 5% of those activities concerned Arab states and Middle East region as a whole, including GCC states, ranking this region almost in the last position with the Caribbean area which received 2% of the technical assistance activities.

A more circumscribed review focused on the period 2012-2014 underlines that WTO trade-related technical assistance was concretized by both global or regional trade policy courses and regional seminars or workshops destined to Arab and Middle East countries as a whole, including not only GCC states but also Algeria, Libyan Arab Jamahiriya, Morocco, Tunisia, Egypt, Mauritania, Djibouti, Sudan, Bahrain, Iraq, Jordan, Lebanon, Syrian Arab Republic and Yemen. Among the activities carried out in cooperation with the IMF, the AMF or IDB, only one WTO workshop related to trade remedies (Level 2 - Specialist path). It was held for 3 days (from 22/09/2012 to 25/09/2012) in Oman and was designed for the investigators in Arab countries that have an active investigating authority. The focus was on dumping margin calculations and the discussion of WTO jurisprudence on selected topics.

During the same period, no national technical assistance activity was undertaken in the WTO framework. GCC countries may, of course, have individual access to trade-related technical assistance through The ECampus website that offers interactive courses over the Internet which provides participating government officials online access to training material and to their assigned tutors from any location in the world. Likewise, Saudi Arabia is at the final stage of establishing a WTO Reference Centre located at the Ministry of Trade and Industry.

There is no doubt that the small number of technical cooperation and training activities does not increase the level of expertise in the GCC countries in the field of international trade, nor does it target the needs of

these countries in the implementation of the WTO Agreements and the Doha Round negotiations. The dramatic situation of these countries requires more than a few days of training or seminars on specific international Trade issues. This requires more regular training and monitoring mechanisms for Arab officials selected on skills and stability criteria, as well as more intense awareness policies for businesses, parliamentarians and decision-makers in these countries. GCC states also need to organize more targeted technical assistance corresponding to their common needs and priorities, and that may be different from those of other Arab states. GCC states welcome the host of national or sub-regional Seminars and workshops organized by the WTO secretariat or in cooperation with other international organizations. They are interested by the provision of technical assistance in various WTO agreements to ensure effective participation in the multilateral trading system. These countries have identified trade remedy issues as a priority of WTO technical assistance as the Agreement on Trade in Services (GATS), the Agreement on Trade Related Aspects on Intellectual Property Rights (TRIPS) or the Agreement on Government Procurement (The Kingdom of Saudi Arabia, Trade Policy Review, 2011).

Before concluding, it is striking to note that the weak expertise of Arab countries in international trade issues has a negative impact on their representation within the WTO bodies and in the process of multilateral negotiations. Coordinator of the WTO activities, the Secretariat has 634 regular staff selected from 78 WTO Members. Among them, there are only 14 experts coming from four Arab countries (Jordan (1), Egypt (5), Morocco (3) and Tunisia (5)) which constitute roughly 2% of the total staff. There is no representative of GCC states in the current Secretariat staff. This analysis may be moderated somewhat by the review of the current chairs of WTO bodies and the presence of H.E. Mr Abdolazeez Al-Otaibi (Saudi Arabia) at the head of the Working Group on Trade and Transfer of Technology, Mr. Mohamed Al Saadi (Oman) at the head of the Working Party on State Trading Enterprises, as well as Mr. Saqer Almoqbel (Saudi Arabia) heading the Working Party on GATS Rules.

## **CONCLUSION**

In conclusion, the above discussion suggests, at least, three observations.

First, in order to reduce their dependence on oil and petrochemicals, and to boost employment levels, GCC states have recently released a revised Comprehensive Industrial Strategy and Future Vision for the Industrial Sector. This development strategy enhances diversification of the economic base, encourages privatization, and deepens trade liberalization process rooted in the basic principles of the multilateral trading system. In this

framework, previous developments have demonstrated the key role that could be played by contingency remedies for the success of such a strategy and the struggle against abuses associated with an open and liberalized economy. These trade instruments permit, depending on the circumstances, to maintain fair competition, to restore competitiveness of troubled industries or to support the conversion of such industries.

Second, and beyond the economic efficiency, trade remedy measures follow a political economy rationale usable by GCC authorities in the international trade negotiations with the goal to facilitate the agreement and concessions from trade partners. In allowing governments to take remedial action against imports which may cause material injury to a domestic industry, they actually constitute a device for governments to face future political pressure for protection of declining industries.

Finally, previous developments have also pointed out that GCC states are too reluctant to use such a legal arsenal. These states go so far as to deny the existence of dumping or subsidization practices in the GCC market, or even the occurrence of any market disruption to date. But it is difficult to consider that these countries remain unaffected by such practices, while many developed and developing countries emphasize their adverse effect on domestic markets and initiate investigation procedures ending by, in several cases, the imposition of trade remedy measures. A closer look reveals that this situation may be justified by cultural and economic features of GCC states, and also, to a large extent, by the inefficiency of WTO-trade-related technical assistance that failed to make GCC authorities and businesses understand the main issues surrounding the contingency rules and to provide appropriate legal and economic expertise necessary for their implementation.

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# DIGITAL HETEROTOPIAS AS NEW SPACES FOR POLITICAL PARTICIPATION SOCIAL MOVEMENTS AND POLITICAL EDUCATION IN THE INTERNET AGE

*Christina Schachtner*

Prof. of Media Studies at the University of Klagenfurt,  
Department of Media and Communication

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## Abstract

This paper poses questions as to the characteristics of new forms of political participation in the digital era and what the implications of this might be in relation to education theory. The main empirical foundations for the analysis come from the research project Communicative Publics in Cyberspace, supported by the results of other studies focusing on the Occupy movement, the Bersih movement in Malaysia and the Spanish Indignadas. The characteristics which have emerged in relation to these new forms of political participation include emotions and widespread concern as a starting point, togetherness, translocality and networked experiences.

While the digital networks are not the cause for the emergence of political participation, they do play an important role in the initiation and promotion of a «culture of autonomy», as Manuel Castells puts it, due to their specific structures (Castells 2012, 221). To round off the paper, the new challenges will be outlined which arise for democratic competence as seen from the perspective of the characteristics identified in relation to political participation.

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**Keywords:** Digital heterotopias, social movements, participation, political education

## Introduction:

Digital networked media are currently under debate as new instruments of and spaces for political participation, both from a theoretical and a political perspective. In his (1999) essay in the journal Media Studies, Hans Magnus Enzensberger pointed out the unique opportunities afforded by electronic media:

For the first time in history, the media are making possible mass participation in a social and socialized productive process, the practical

means of which are in the hands of the masses themselves (Enzensberger 1999, 69).<sup>23</sup>

The one-to-many form of communication provided by traditional mass media is being displaced by many-to-many communication (Jenkins/Thorburn 2004, 2) in digital networked media, with the result that the distinction between sender and receiver is disappearing. The possibility of »many« helping shape what appears in the media has developed into opportunities to initiate political processes which are not necessarily restricted to cyberspace.

According to Henry Jenkins and David Thorburn, digital networked media can be seen as a second phase of participatory media, the precursors of which were underground newspapers, grassroots videos and autonomous radio stations (ibid., 11). The democratization effect attributed to networked media has not gone unchallenged, however; there always were and still are voices insisting that political involvement developed in the net would be better invested in political action offline (ibid., 8.). This position implies that it is a case of either/or, as it differentiates strictly between political participation in the net and political participation beyond the net, in so-called »real life«. This dualistic position is, however, suspect in view of the mediatization of modern society, considering the extent to which media have permeated every aspect of our social and cultural lives (Krotz 2010, 106/Hepp 2010, 67ff.). And once a society has been mediatized, social behaviour, and with it political participation, should always be investigated with respect to its potential interfaces with digital networks. An analysis of political participation in the internet age from the perspective of media studies, as envisioned for this paper, has implications for educational discourse in keeping with Wolfgang Klafki. As Klafki put it, »Bildung« or education is «both a pedagogical and a political concept» (Klafki 1998, 239). He continues by saying that education should be understood as our «adoption of the issues and problems of our historically established present and emerging future which concern both us and our fellow human beings» (ibid.), empowering us «to help fashion our common cultural, social and political relations» (ibid.).

Seen from the perspective of media studies, the interplay between media structures and participatory action is brought to the fore, also with a view to suggesting possible goals for political education in the context of digital networks. The theoretical and practical implications for education which this particular perspective entails will be outlined at the end of the paper. The leading questions are therefore:

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<sup>23</sup> Enzensberger primarily associates digital networked media with electronic media, as becomes clear from his subsequent argumentation.

- What are the characteristics of new forms of political participation in the age of the internet?
- What role does the internet itself play in generating these characteristics?
- What does democratic competence mean in the context of digital media?

A central theoretical point of reference for this analysis is the approach developed by Manuel Castells in his book *Network of Outrage and Hope. Social Movements in the Internet Age* (Castells 2012) which sets the new forms of political participation against the backdrop of a mediatized society instead of dividing them up into political actions in digital networks and in more traditional contexts. Other theoretical benchmarks include Michel Foucault's concept of heterotopia (Foucault 1992), which illuminates the character of new political arenas within and beyond the digital media, and the Rhizome concept developed by Deleuze/Guattari (Deleuze/Guattari 1977), which describes an essential property of the structure of new political forms. The primary source of empirical evidence is the study *Communicative Publics in Cyberspace*,<sup>24</sup> an investigation of recent political movements in the Middle East and North Africa; this is supported by the results of other studies and newspaper reports on the worldwide Occupy movement, the Bersih movement in Malaysia, the Gezi Park protests in Istanbul and the Spanish Indignadas.

## **1. Political participation as a heterotopic movement supported by digital media**

Political scientist Dieter Rucht defines political participation, in relation to forms of protest, as «publically visible actions ... , by which non-governmental groups and organizations present a political and social concern accompanied by criticism or resistance» (Rucht 2012, 6). Rucht developed this definition in response to the student movement in the 1960s and 1970s, the feminist movement and the anti-nuclear power movement. His definition also covers aspects of new political forms in the internet age but it needs to be developed further, particularly with respect to the role of networked media as components of these political forms. Rucht believes that the media have an effect on «modern techniques of protest» (ibid., 10) to the extent that these techniques, in his view, take their bearings from the question as to

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<sup>24</sup> Research team: Nicole Duller, Katja Koren Ošljak, Christina Schachtner, Heidrun Stückler. The project (2009-2013) was supported by the Austrian Science Fund and the VW Foundation as part of the study on *Subject Constructions and Digital Culture* carried out in cooperation with research teams at the universities of Bremen, Munster and the TU Hamburg-Harburg. The final results were published by Transcript Verlag in the book *Digitale Subjekte. Praktiken der Subjektivierung* (2013).

«whether they are suitable for staging and visualization in the media» (ibid.). The link between social action and networked media in new political forms is much more varied, however, as illustrated (1) in the emergence of a new political awareness and changed political visions and (2) in the mobilization and organization of political protests.

Networked media are, at one and the same time, instruments and stages with/on which forms of political participation can emerge and, as such, they are not without influence on the configuration of such participation. In conjunction with human actors, they constitute new political spaces, the special characteristics of which have been latterly associated with the Foucauldian concept of heterotopia (Anderson/Bharthapudi/Cao 2012, 152ff./Schachtner, 2012). Foucault denotes heterotopias as spaces which are drawn into existing societies in which the mechanisms of traditional cultures are represented and, at the same time, called into question, spaces which act as counter-placements or abutments (Foucault 1992, 39). For Foucault, concrete examples of heterotopias include brothels, libraries, fairs, psychiatric clinics, cemeteries, ships. These spaces are quite different from all other spaces which they reflect or which they refer to (ibid.). Foucault distinguishes between two types of heterotopias: (1) spaces for individuals whose behaviour is outside the norm and who are therefore in a state of crisis, and (2) spaces for individuals whose behaviour is deviant in relation to the norm (Anderson et al. 2012, 157).

This paper relates to the second type of heterotopias, even though it is not possible to strictly divide the one from the other. Foucauldian heterotopias are part of the physical world while here it is very much a question of heterotopias in a mediatized society, covering both the physical world and the immaterial-material world of the internet. These heterotopias have fluid boundaries which do not exile new political forms to one or the other space and which are also linked to the society which surrounds them, which can potentially lead to their not being unaffected by political counter-visions (ibid., 162).

Anderson/Bharthapudi/Cao recommend considering heterotopias as transient ideas (ibid.). This thought cannot have been alien to Foucault as he considers ships to be the «heterotopia par excellence» (Foucault 1992, 46). The metaphor of a ship calls for political forms characterized by political actors finding themselves in constant dispute with established orders and their own moral values, sailing towards the shores of a new society in the process (Anderson et al. 2012, 164). According to Anderson/Bharthapudi/Cao, digital media reinforce the ship metaphor because they can involve network actors in a process of reflection thanks to their transnational and interactive character, which could contribute to initiating social change (ibid.).

## 2. Characteristics of political heterotopias in the age of the internet

The following section introduces five characteristics of digitally supported heterotopias as spaces for political participation which not only emerged in the study on Communicative Publics in Cyberspace but which Manuel Castells also considers to be significant. Some of these characteristics are inconsistent with the traits of political movements to date; some of them are well-known features which have taken on a specific form under the influence of networked media. These characteristics do not only leave their mark on political action in digital networks but also on actions in the »outside« world, in geographical places like Tahrir Square<sup>25</sup> in Cairo or Zuccotti Park<sup>26</sup> in New York. In line with Castells, my interest lies in the activities of political movements taking place in both virtual and physical reality because, as clarified above, political participation in the internet age does not lend itself to being exiled to one or the other space.

At the same time, it is important to point out that the theoretical categories used to capture the characteristics of new forms of political participation have been developed in a western context. This entails a risk of being imprecise, maybe even a risk of making errors of judgement, and reminds us of the necessity of transnational dialogue between academics in order to verify or sharpen the categories used to explain these new kinds of hybrid phenomena.

### 2.1 Emotions and concern as a starting point

Concern was identified as the strongest motivation for political participation on the part of the Arab activists, both online and offline, who were investigated in Communicative Publics in Cyberspace.<sup>27</sup> This emotion is expressed in a comic strip which we found on the platform *Mideast Youth*<sup>28</sup>: «We grew up with 12<sup>th</sup> century culture and see the foolishness of old barriers and grudges». Concern points to an entanglement of structures and institutions which influence their lives (Fraser 2007, 249). It is accompanied by strong feelings which Castells also sees as a frequent trigger for new forms of political participation (Castells 2012, 219). In line with

<sup>25</sup> Main location of the Egyptian revolution in January 2011.

<sup>26</sup> Gathering place of the Occupy Wall Street movement.

<sup>27</sup> As part of this study, discussions on the platform *Mideast Youth* were analysed, observations of other Arab networks like *bahairights* and *migrantrights* were carried out and interviews were held with network actors from Bahrain, Saudi Arabia, the Yemen and the United Arab Emirates; our interview partners also produced drawings to illustrate their thoughts. This part of the project relates to the Middle East, Europe, the USA and Canada.

<sup>28</sup> *Mideast Youth* was founded in Bahrain in 2007 and sees itself as a digital meeting place for people from various countries and with different ethnic/cultural backgrounds. Right from the start, it aspired to initiate democratic processes (<http://www.mideastyouth.com/about-us>, accessed on 31.07.2007).

Castell, every social change includes individual and collective actions which are emotional at heart (ibid.). As he points out, anger and rage grow as injustices are detected and somebody is identified as being responsible. In our study *Communicative Publics in Cyberspace*, the Arab network actors expressed their anger and outrage in the face of the suppression of the freedom of speech and opinion by entrenched political powers. They also emphasized the suffering caused by such circumstances, as illustrated in the words of a Yemeni network actor «We're talking about many years of suffering, of people suffering in their own nation by their own regime»<sup>29</sup>. We also encountered fear, for example when electronic messages containing threats were sent by surveillance authorities. While anger, rage and frustration tend to provoke a reaction, fear and suffering tend to prevent action from being taken. Castells believes, however, that obstructive feelings can be overcome by communication (Castells 2012, 219). That is something referred to by the blogger from Yemen cited above when she called networked media «assisting tools» which encourage individuals to share their emotional experiences with each other.

Another emotional antithesis for anger and outrage is created by humour and jokes, triggers for political participation which we often found in Arab comics online. Such comics are used to help deconstruct the mechanisms of the discrimination or criminalization of certain ethni groups like the Kurds or Baha'is. One example of the deconstructing effect of comics is *Sophis-tech-ated*, published in the network *Bahairights.org* in 2009 (Fig. 1).

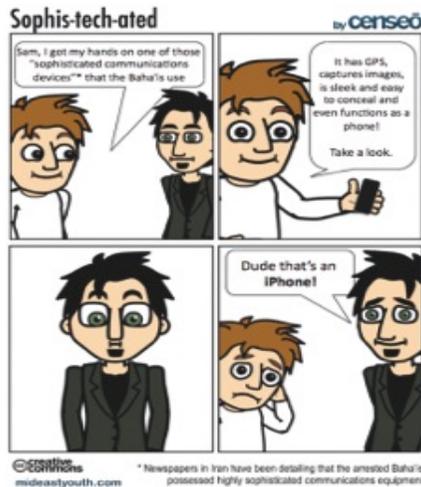


Fig.1. *Sophis-tech-ated*

Source: <http://www.bahairights.org> (accessed on 28.01.2013)

<sup>29</sup> All citations from network actors where no source is given were taken from the study *Communicative Publics in Cyberspace*.

The backdrop for this comic is the discrimination of the Baha'is in connection with two of their political leaders being arrested on charges of having suspicious communication technology with them (Schachtner/Duller 2013, 130f.). This made them appear dangerous. But the use of just one word – iPhone – exposes this suspicion as absurd. Those who believe that possession of what is, after all, a widespread form of everyday technology can be classified as dangerous expose themselves to ridicule. And those who are ridiculed have no power; existing power relations are reversed.

Comics allow their authors to express criticism in encoded form, thereby protecting themselves from repression. Their jokes turn a burden into something lightweight, which can reduce feelings of powerlessness.

As already mentioned, concern signals entanglement in situations which are experienced as being a burden or a threat. For Nancy Fraser, concern is a prerequisite for the normative legitimacy of political participation (Fraser 2007, 249).

## **2.2 Interconnected experiences as the mainstay of political participation**

In contrast with established forms of political participation, as developed in political parties, the new forms of political participation are not connected by programmes but by experiences (Castells 2012, 144). Shared experiences, realizations, views and emotions contribute to integration; they create the sense of shared identity which we came across time and again in our interviews with Arab network actors. Common experiences are seen as part of their shared identity, as illustrated by the words of this female Arab network actor: «We have a lot of stories, a lot of issues, a lot of aspects, a lot of faces that we want the world to know about». These shared stories then form the basis for a joint political voice which should be acknowledged, the network actors believe: «We have a voice and we want it to be heard». Melanie Radue emphasizes the importance of interconnected experiences for the Bersih movement in Malaysia, which is trying to change electoral law in the country. Following the Bersih 2.0 rally in 2011, which took place on the streets but had mostly been organized with the help of the internet, and at which, as Radue reports, the police brutally attacked the demonstrators, the distribution of information using digital media played a very important role: «[...] the Internet was used to disseminate news and to share experiences. Videos, photos and statements of participants were immediately spread all over the world» (Radue 2012, 65).

Just because a common experiential basis has been created does not mean that differences will not continue to exist, a fact that is implicitly referred to in the citation in this paragraph which talks about the many faces of the political movement in the Arab world. In fact, difference as an

enriching factor of political discourse is emphasized surprisingly frequently by the Arab network actors interviewed in the study *Communicative Publics in Cyberspace*. Even as early as 2007, the mission statement published by the founders of the platform Mideast Youth includes the text «We are a diverse group of young students, bloggers, and activists who strive for coexistence through democracy and democracy through coexistence»<sup>30</sup>. What the Arab network actors are aspiring after comes very close to what Yvonne Spielmann calls «contact zones» in line with Mary Pratt (Pratt 1992), in which differences and contradictions are not smoothed out; instead processes which maintain differences coexist with processes which resolve differences (Spielmann 2010, 61ff.; Winter 2010, 107).

### 2.3 Togetherness

Togetherness, in Castells' mind, is a key characteristic for new forms of political participation based on networked experiences (Castells 2012, 225). It helps individuals overcome their fears and regain hope, thus creating, in Castells' words, «a source of empowerment» (ibid.). In contrast to established political associations and parties, togetherness does not arise from a political programme or guidelines issued by a strong leadership but in a process of understanding via criticism, by creating a common system of values, by developing shared visions which go beyond the status quo, as the following question found on the platform Mideast Youth tried to initiate: «What would you do if Saudi Arabia just has it's [sic] first female president?».

This question alone is provocation enough when asked on a platform used by network actors who mostly live in countries with a patriarchal tradition. The fact that they are prepared to grapple with this question is evidence of a participatory culture with the help of which the participants in the discussion are exploring new avenues in political discourse. Initiating discourse by posing a question does not only imply a search for common ground but also tolerance of differences. «Togetherness-in-difference» (Spielmann 2010, 65), to put it in Yvonne Spielmann's words, appears to be a typical characteristic of new forms of political participation. It requires a balancing act which can be conceived of as the result of a learning process which co-determines the speed of political movements. «We are slow because we go far», was, as Castells reports, the most popular slogan used by the Spanish Indignadas (Castells 2012, 114). The contours of a different society, Castells continues, will evolve in a process in which speeding up and slowing down alternate.

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<sup>30</sup> <http://www.mideastyouth.com>, accessed on 31.07.2007.

## 2.4 Translocality

In the face of globalization and digitalization, new forms of political participation no longer stop at national borders. Even when the starting point is a local problem, like the planned urban development of Gezi Park in Istanbul, translocal criticism is often one result of the debate on such proposals relating to the unleashing of market forces or the authoritarian leadership style of those in power, for example. Smartphone videos ensure that local protests reach a global audience. It can also work the other way round. Global problems like the mechanisms of a capitalist economy are dealt with on a local level by the activists of the Occupy Wall Street movement in Zuccotti Park, for example, a protest which was, nevertheless, very much in the limelight for the world public thanks to digital media and the coverage provided by the mass media. According to Spielmann, translocality arises out of the fact that every bit of information is constantly «circulating in mobile, flexible combinations and not taking on a fixed position» (Spielmann 2010, 65). As Castells points out, it is typical of the new political movements in a networked society that they initiate a «permanent global discourse in the net» (Castells 2012, 223) whose sphere of influence extends far beyond the net. That is what makes it possible for the spark to ignite. Castells talks about the virality of political participation (ibid., 224). If people in different parts of the world realize that protests are going on elsewhere, this gives rise to hope that change can happen (ibid.).

Jenkins/Thorburn discuss the phenomenon of virality in connection with the protests against the World Trade Organization in Seattle in 2000. Indymedia.org, which was specially set up at the time, served as a platform for political activists to disseminate their goals, reports and documents worldwide. Jenkins/Thorburn sum it up thus: «These independent media centres have become a central force in a worldwide campaign against what the activists perceive as the evils of globalization» (Jenkins et al. 2004, 4). A current example of a platform which banks on virality is Crowd Voice, on which reports, videos and pictures of political movements can be found from all over the world. The founder of this platform set up Mideast Youth just a few years before, already getting to know the potential of virality in the Arab world and appreciating the more extensive opportunities of Crowd Voice. The fact that the virality of political movements is recognized as a risk by non-democratic systems can also be read into their attempts to gain control over the communication channels of political movements: «There is a prophylactic measure against the infectious nature of freedom» (Kedzie 2014; Schmidt 2012, 7; Jenkins et al. 2004, 10).

## 2.5 No command centres

Political movements in our modern networked society do not need an official leadership or command centres in order to distribute information or initiate processes of communication and political action. According to Castells, the decentralized structure of digital networks optimizes the opportunities for participation, helping to create endless networks without pre-defined limits (Castells 2012, 221). As was somewhat hopefully assumed from the start, these networks represent «a world with no center, no gate keeper, no margins» (Jenkins et al. 2004, 11).

In order to substantiate this approach, the metaphor of the rhizome can be called on which was introduced to the philosophical discourse by Gilles Deleuze and Felix Guattari (Deleuze/Guattari 1977, 35). The term comes from botany and describes a horizontal, usually underground stem that sends out roots and shoots from its nodes.

For Deleuze/Guattari, a rhizome is a decentralized, non-hierarchical system without a General which can be entered or exited at any one of many interconnected points (ibid., 35). Deleuze/Guattari juxtapose the rhizome metaphor with that of a tree, which represents a hierarchical system in which «one element only receives information from a higher unit» (ibid., 27). In rhizomatic systems, in contrast, the connections are not fixed; communication runs from any neighbour to any other (ibid., 16) Rhizomes do not function in isolation; instead they form a rhizome with their surroundings, as Deleuze/Guattari point out, with the wind, an animal, human beings (cf. ibid., 19). They deterritorialize themselves, just as they cause deterritorialization in their counterparts (ibid.).

Qualities of this nature also play a role in raising hopes relating to the political potential of digital networks. Should these hopes be confirmed, new forms of political participation are to be expected thanks to the connections between political actors and digital networks, and these will contrast sharply with all previous forms of political participation to the extent that the latter are characterized by centralized structures and fixed connections. It is also to be expected that these forms of participation and of sharing criticism and opinions will continue to proliferate underground, even when they are sporadically invisible in the physical world, only to suddenly re-emerge, above ground, somewhere else on the planet.

Nonetheless Deleuze/Guattari do not rule out that there are knots of arborescence in rhizomes, which implies the existence of hierarchies (ibid., 33). According to Jan-Henrik Schmidt, the architects of these new spaces of communication, the providers and software developers, can be identified as knots of arborescence: «They write the software code, thus programming the options and restrictions available to and imposed on users when exchanging information and participating» (Schmidt 2012, 8) Even if they do not dictate

the activities, they do channel them (ibid). As already mentioned, these «inner knots of arborescence» correspond to «external knots of arborescence» in the form of attempts to control rhizomatic developments in the net and to inhibit them, if needs be.

### **3. The role of the internet as a space and instrument for political participation**

When debating the significance of the internet for political participation, the question Is the internet democratic? is often implicitly or explicitly found to be at the heart of the discussion (ibid., 3; Radue 2012, 62; Jenkins et al. 2004, 12). So far this account of the characteristics of new forms of political participation has revealed that they are developing at the interface between the network actors and the medium. Digital networks are neither democratic per se nor do they trigger off democratic processes (Castells 2012, 227; Winter 2010, 20). Rather, the causes are to be found in situations when outrage and anger are shared about social injustice, like a lack of freedom of speech and opinion, authoritarian hegemonic structures and a decline in living conditions, when the participants feel connected and believe that alternatives are possible (Castells 2012, 229). At the same time, the virtual spaces which political activists employ are vitally important for initiating and promoting political participation. As one political activist from Bahrain explained in an interview, «We use new media in order to fight against oppression, oppression against ourselves, oppression against minorities». The Tunisian media studies expert, Larbi Chouikha, confirms the role of digital technology in her own country's revolution: «Communication technologies such as Internet and mobile phone greatly accelerated Ben Ali's flight and the fall of the regime» (Chouikha 2012, 151). Castells considers the digital communication networks which are used by political movements in the internet age to be «decisive tools for mobilizing, for organizing, for deliberating, for coordinating [...]» (Castells 2012, 229) political participation. The study *Communicative Publics in Cyberspace* confirmed that digital networks constituted themselves as media abutments in the Foucauldian sense of heterotopia many years before the Arab revolution broke out in 2011.

As Castells sees it, digital networks serve as communication networks for the organization of political participation on the one hand and for the promotion of political awareness on the other. The latter points to new, digitally based public spheres which partially correspond to the Habermasian concept. Jürgen Habermas defines the public sphere as being «made up of private people gathered together as a public» (Habermas 1990, 86) who discuss matters of common concern and come to agreement on joint action (Fraser 2009, 148; Habermas 1990, 56). Connectedness in the medium

of communication, shared interests and political intentions also characterize the digitally based public spheres which the new forms of political participation depend on. There are also differences. Firstly Habermas believes public spheres to be constituted in rational discourse alone while the forms of political participation presented here draw on political public spheres in which emotions and concern have been identified as extremely powerful factors. Secondly Habermas takes a single public sphere as his starting point while the new forms of political participation imply a multitude of partial public spheres (Fraser 1996, 157). Finally the Habermasian concept of the public sphere does not include the power factor which can impede political participation, as discussed here in connection with «internal and external knots of arborescence».

What makes digital networks eminently suitable as places and instruments of political participation despite the expectable «knots of arborescence»? With regard to the characteristics of new forms of political participation presented here, the following specifics of digital networked media would appear to be essential:

- Digital networks are characterized by low-threshold access which makes it easier for individuals to present their own opinions, search for information and to process this with others (Schmidt 2012, 3; Jenkins et al 2004, 2).
- The network structure of the medium supports the generation of concern particularly due to the cross-links with images and videos. That is why Castells believes that YouTube and its images can play an important role in the mobilization of political protests (Castells 2012, 224). The images are so powerful because they were often taken by political activists who were personally involved in the events or they were transmitted by live video streaming, enabling viewers to participate directly in what is going on «on the ground».
- Virality essentially relies on the transnational structure of networks which connect every point in the world with every other and which have no defined borders.
- The interactivity of digital communication media encourages the exchange of experiences, feelings and thoughts, resulting in the emergence of togetherness.
- The horizontal network structure of digital heterotopias is responsible for dispensing with the need for command centres and generals (Deleuze et al. 1977, 40) in favour of cooperation and solidarity (Castells 2012, 225).
- It is still possible for individuals to configure parts of the internet themselves, even if the possibilities are limited. This provides

opportunities to bypass the taboos created by the mass media in connection with certain topics, which can completely transform media discourse as a whole (Anderson et al. 2012, 158).

The media heterotopias encouraged by the specific structures of digital networks open up spaces which can become locations for experimenting in a safe environment in order to develop a new set of values and strategies for action, if network actors are interested in these new opportunities (Winter 2010, 96). In our interviews, Arab network actors explained how they used digital space in this interpretation of the word in order to overstep the limits of what is allowed, at least in terms of what they could discuss: «We talk a lot of taboos, homosexuality, [...], atheism, sex traffic, things that people don't talk about outside of Mideast Youth because they are scared».

As Castells sees it, in its capacity as a location for dissent, the net fosters a «culture of autonomy» (Castells 2012, 230.), a culture which he defines as an attempt to balance the needs of the individual with the needs of society (ibid.). This culture promotes individuation not individualism; the former relates to shared ideals such as environmental protection or the realization of human rights while the latter places individual well-being at the focus of attention (ibid.; Hipfl/Marschik et al. 2011, 20). Digital networks which are used by political actors to create a «culture of autonomy» take on the functions of a ship as expounded in the Foucauldian concept of heterotopia because they are able to bring about a cultural transformation (Anderson et al. 2012, 164).

#### **4. Democratic competence in the internet age**

As I pointed out at the beginning of this article, political participation is one of the requirements of future-oriented education according to Klafki. I would like to return to this issue now and identify the competences which enable individuals to participate in political matters. The characteristics of political movements in the internet age sketched out above imply that there are several essential components of fully fledged democratic competence, and I will outline them briefly to round off the chapter.

- Interconnected thought

In view of our fragmented lifeworlds and experiences of life in today's globalized society, Oskar Negt calls for training in the ability to identify connections between developments in different places and on different levels in order to understand the relations between the local and the global or between social and economic phenomena, and to be better oriented (Negt 1998, 27). Interconnected thought makes it possible to create links between experiences because the communalities have been identified, even if

those experiences are quite different, a typical characteristic of political movements in the internet age.

– Heterological and transversal thought

Introduced by Christoph Wulf, the concept of heterological thought describes the ability to perceive and think about things from the perspective of the Other (Wulf 2006, 45). Transversal thought, in contrast, which Nira Yuval-Davis considers to be an essential ability when looking forward, starts with the Self, envisaging that first the Self is given a voice, without claiming that one's own position is essentialist (Yuval-Davis 2011, 206f.). Both concepts of thought aim to create common ground as a pre-condition for togetherness. Both schools profit from mimesis as understood by Wulf/Weigand. Mimetic learning involves processes of increasing resemblance according to Wulf/Weigand, implying an ability to open up to the Other without actually becoming like the Other (Wulf/Weigand 2011, 85f.). These processes help to surmount divides between the subject and the object (ibid.). In translocal political movements, mimetic competence helps to relate to emotions and concern experienced by people from very different backgrounds and different origins.

– Political imagination

In order to bring about social change, new orientations are required, and these, in turn, necessitate political imagination. The Arab network actor's wondering out loud what it would be like if Saudi Arabia had a female president can be seen as a starting point for such flights of the imagination. On the one hand Wulf/Weigand see imagination as making the world manifest to us and, on the other hand, creating the world with the help of mental images (ibid., 91). In its audacity, if not in its absurdity, the question about a female president for Saudi Arabia reveals the status quo of a society and, at the same time, points towards a different future. Oskar Negt pleads for a reservoir for the imagination or, as he puts it, for «mental stockkeeping» (Negt 1998, 20) which does not only store the bare essentials but which we can draw on in the long term.

– Media competences

In face of the development of political movements described above and in combination with digital networks, media competence does not only include the technical skills to make use of them but also abilities to creatively cooperate with these networks to achieve political goals. This also requires the ability to recognize the limits and risks which come from internal and external gatekeepers so as to be able to circumvent them, if possible, and to expand one's own room for manoeuvre.

### **Conclusion:**

The competences described above combine media/technical skills and cognitive skills with social, cultural and emotional components, the last one being a particularly important motivation for political participation, as has been emphasized. They underline aspects which imply a changed conceptualization of the subject. The subject of the future is no longer the subject of the enlightenment, which has been considered the dominant model so far and which is still popular as an educational goal and in the theories of developmental psychology today. The subject of the enlightenment attempts to restrain, control and dominate diversity (Welsch 1991, 359.), gaining autonomy and individuality through demarcation from others. Philosopher Wolfgang Welsch juxtaposes such a subject with another one which resembles the type that we found in digitally supported heterotopias. Political participation in the context of the networked society requires a subject which sees diversity as enrichment and which reckons with Otherness (ibid.), which does not interpret feelings as a sign of weakness but as potential insights, which does not consider autonomy as being independent of relationships but as developing in and through relationships.

Subjectification as a process of coming to terms with social reality (Hipfl et al. 2011, 20) is not an incidental factor in political participation but an essential component, if not the actual origin. Prompted by the principles of the Spanish Indignadas, Castells conveys the following: «Let us rebuild ourselves (..), from the inside out, not waiting for the world to change to find the joy of living in our daily practice» (Castells 2012, 143).

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# HISTORICAL PRESERVATION DISTRICTS AND LOCAL POLITICAL ORGANIZATIONS EFFECTS ON REAL PROPERTY VALUES

*Dr. David Gordon, Associate Prof,*  
*Dr. Michael Stowe, Associate Prof.*  
University of Saint Francis (IL), USA

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## Abstract

This article describes in detail the significance of having real estate or entire districts designated as historically significant. The economic, political and social effects of such a designation is examined. The function of a local historic preservation commission is addressed as well as the role of a local political group such as a city council. It is shown that such a local historic preservation commission augments the benefits of a historical designation by eliminating and/or informational asymmetries. A simple supply/demand economic model is developed indicating the valuation changes arising from the benefits of the historical designation. Changes in social valuation are also addressed. Hedonic regression models along with “difference in difference” regression models are explicated. Empirical results from these models are briefly surveyed.

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**Keywords:** Hedonic Regression, Asymmetric Information, Preservation District

## Introduction:

The main purposes of this paper is to establish the significant benefits of developing a dynamic and governmentally supported local historical preservation district commission and to explain the role that a governmental body plays in supporting this commission. The main role of the district commission is to ensure the historical preservation of the local district in question. This paper will also illustrate the various types of benefits that not only accrue to the historical preservation district itself, but also to the neighboring commercial and residential communities. Most of these benefits exist even in local preservation districts that do not have any local regulations regarding land use in place, but are much more prominent where local ordinances and regulations are utilized. A modest economic model will be developed to help demonstrate some of these direct and indirect benefits.

More formalized models including hedonic regression models will also be described. Past empirical outcomes from models using these approaches will be conveyed. The presence of such a local historical preservation district also contributes in a very positive manner to the expanding public emphasis on sustainability. The critical role played by the local preservation commission in supplying valuable information to the real estate market will also be explored. The role of mayors, city managers, council members, and other local politicians will be examined here as well.

## **I.:**

### **ECONOMIC AND POLITICAL IMPORTANCE OF HISTORICAL DESIGNATION**

The foremost reason for having an area within a municipality or town designated as being historically significant is to provide a means of protecting the area from physical and economic deterioration. The National Historic Preservation Act of 1966 gives the U.S. Secretary of the Interior the authority to designate a building or district as being historically significant. Upon receiving this designation the building or district is given official recognition by being placed on the National Register of Historic Places which is normally referred to as the National Register. Although this national honor offers selected protection for the sites listed in the register it does not guarantee the future conservation of such sites. Physical and economic deterioration of the buildings in question might still occur. This is where the local preservation commissions perform such a vital role. These commissions are truly the front line enforcers of maintaining and preserving the substance and economic value creating nature of the historic sites and neighborhoods. Local preservation districts have the largest influence when the following two conditions exist: clearly written and well publicized guidelines for all affected properties and vigorous educational outreach to the real estate community including brokers, bankers, architects and especially owners. Both of these conditions are predicated by the existence of a fully staffed local preservation historical committee which makes consistent and predictable decisions. The importance of a supportive local government cannot be emphasized enough. The cooperation of mayors and city councils are needed to ensure that the actions of the historical commissions are carried out.

### **IMPACT OF HISTORICAL DESIGNATION ON DEMAND**

Although the foremost reason for historical designation relates to preventing the deterioration of buildings and thus maintaining their value a secondary effect can also be established. This relates to a positive spillover effect on commercial and especially residential properties within and

surrounding the historical district. A simple supply and demand model can be used to display the increase in property values. We will assume that the demand for properties is a negative function of price and a positive function of both household income and an active local historical preservation district commission. Graphically this means that when the desired quantity demand (horizontal axis) for properties is plotted against the property values (vertical axis) the demand curve will have a downward (negative) slope. Increases in household income would cause the demand curve to increase (shift to the right). In other words we are assuming that real properties are a normal good which seems like a reasonable assumption to make since normally higher income individuals own higher priced homes. The Preservation Economic Impact model developed at Rutgers University demonstrates that historical preservation results in a greater degree of job creation than new construction thus creating higher household income which in turn enhances the demand for properties. The presence of, and higher activity level of, the local preservation commission would also cause an increase in demand. Positive action by local mayors and city councils would be another reason why the demand would increase. Any increase in demand would cause property values to increase and at times the increases could be quite dramatic.

There are numerous reasons why a direct or positive relationship exists between the presence and activities of the historical commission and the demand for properties. Firstly, the commission plays an important role in seeing that land use ordinances are carried out. The preservation of such properties encourages potential buyers of property that the neighborhood will not be permitted to perish over time. This would also provide incentives for property owners surrounding the district to revitalize their properties. Secondly, the commission serves to reduce informational asymmetries that might exist in real estate markets. Asymmetric information exists when the buyers and sellers have different information sets. Generally a seller would possess a more immense quantity of information about a property than a potential buyer. Real estate brokers do offer warranties that sellers can attach to their properties which can reduce the information differences, but these add to the cost of the property and thus discourage sales. One significant implication of an information asymmetry is that demand is reduced and subsequently real estate values are reduced. Adverse selection might arise where too few of the higher quality properties normally associated within and around a historical district become sold. The historical preservation commission provides further important information about the nature, significance and quality of structures within the district and thereby reduces or eliminates informational asymmetries. This in turn stimulates demand and thus prices for the properties within and surrounding the historical district.

## **IMPACT OF HISTORICAL DESIGNATION ON SUPPLY**

We will assume that the supply of properties for sale are a direct function of real estate prices and an indirect function of the following variables: tax benefits of property ownership, favorable neighborhood effects, stronger sense of community and land use ordinances. As with demand, real estate values are measured on the vertical axis and quantity of properties for sale on the horizontal axis. Since a positive relationship is assumed to exist between these two variables the supply curve would naturally have a positive slope. Increases in tax benefits, neighborhood effects, sense of community, and land use ordinances would all cause the supply to decrease which would be shown as a leftward shift in the supply curve. Any decrease in supply would cause property values to increase.

The vigorous presence and activities of a local historic preservation committee can lead to a national government designation such as a listing in the National Register of Historic Places. Such a designation comes with significant tax benefits such as a federal tax credit for the rehabilitation and maintenance of the designated properties. The recognized presence of these tax benefits would provide an incentive for current property owners to maintain and retain their real estate therefore decreasing the supply of properties for sale on the market. The tax benefits might not be known to the public at large. The local commission can once again play a vital role in disseminating this important information. Local government officials can also play a significant role in providing this information to the general public. A firmer sense of community or attachment to a community would further serve to reduce the supply of property for sale. If property owners have an emotional attachment to the area they of course will be reluctant to relocate their residence or business operation. Local land ordinances also have the advantageous effect of keeping properties from being offered for sale in the real estate market.

## **VALUATION DIFFERENCES**

The historical designation along with an active local historic preservation commission and a supportive local government leads to the aforementioned changes in demand and supply. These changes in turn lead to an increase in property values within the district. (Appendix A shows how a decrease in supply from  $S_1$  to  $S_2$  along with an increase in demand from  $D_1$  to  $D_2$  results in higher property values.) Properties near the historic district also will see similar changes in supply and demand and thus similar changes in property values. Here we can employ what we will call the Las Vegas Effect. Before Las Vegas casinos proliferated in Nevada (especially on “the strip”) the area was essentially worthless desert. When the casino resorts began to open in the 1950’s the land that the casinos occupied eventually

increased exponentially in value. But as we now know, the value of land surrounding the Las Vegas Strip also increased exponentially in value. This is a type of neighborhood effect or positive externality. Increases in property values do indeed appear to be contagious at least with regards to contiguous properties.

The academic and professional literature abounds with examples of meticulous studies showing the positive effects that historical preservation districts have on the prices of real property within the district and surrounding the district. The vast majority of these types of studies utilize one of two established valuation models: difference in difference models or hedonic regression models. The difference in difference models are the easier of the two to utilize. This model involves computing a sample mean for the growth rates in property values within and surrounding an historical district and also a sample mean for the growth rate of property values clearly outside the district. A statistical test is then performed to see whether or not there is a meaningful differentiation in the growth rates. The chief problem with this type of study is that no particular variables are controlled for. The averages disguise the probable significance of the variety of differences that exist in the many properties themselves. These would include square footage differences, number of bedroom differences and the condition of the property. The hedonic regression model is thought to be superior to the difference in difference models. This type of model provides a means to estimate the implicit value of various structural characteristics of a property. It allows for a precise assessment of the extra value given to a property with historic designation while controlling for specific property and neighborhood characteristics. In this type of theoretical model we assume that utility is a function of a vector of attributes of the property and a composite attribute of all other goods. The problem that a household must solve is to maximize this utility subject to a budget constraint involving rental prices for houses and a unit price for the composite good and also subject to a linear transformation technology that relates attributes to the housing stock. Statistical hedonic models typically include the natural log of the property price as the dependent variable and structural and neighborhood characteristics as well historic preservation district status as the independent variables. (The semi-log form of the model is normally used, because then the coefficients on each explanatory variable can be interpreted as percentage changes in the property price given a one unit change in the independent variable.)

## **EMPIRICAL RESULTS SAMPLE**

Both types of studies confirm statistically significant additional positive values associated with properties within and surrounding a district identified as historically significant. Examples of such studies include Ford

(1989), Leichenko, Coulson and Listokin (2001), Clark (1997), Coffin (1989), Linneman (1980), Rypkema (1994, 2002, 2005), and Listokin, Listokin and Lair (1998). Most of these studies see additional benefits to property values when known local land ordinances exist alongside a local preservation district. Market failures, due to informational asymmetries, resulting in lower property values might arise if these benefits are not publicly pronounced. The local historic preservation commission would play this important role along with a cooperative and active local governmental body.

### **SOCIAL VALUE AND SUSTAINABILITY**

Positive externalities are also present when historical preservation districts exist. They undoubtedly add social value. Sustainability is presently receiving positive recognition in both private and public markets. Notable economist and historical preservationist Donovan Rypkema equates sustainable development with historic preservation. When given all the embodied energy found in older residential and commercial properties filled with bricks, metals, concrete and other materials, sustainability advocates point out the negative impact of destroying the current resources and creating a new building made of all new material. (Embodied energy is defined as all the resources expended during the construction of a building. These can include raw materials as well as the electric, gas energy and human capital that went into the construction of the components and the building itself.)

The novel expression emerging from the topic of sustainability states that “the greenest building is the one that is already built.” Rehabilitating historic buildings can be a sound sustainable strategy of promoting energy efficiency by significantly preserving the energy already represented in existing buildings (embodied energy), rather than waste additional energy building with a new structure with all new material. This new material itself would have to be produced which would utilize more energy as well. It is estimated that a new energy-efficient office building that includes as much as 40 percent recycled materials would take approximately 65 years to recover the energy lost in demolishing a comparable existing building.

The U.S. Environmental Protection Agency (EPA) has estimated that building construction debris constitutes around a third of all waste generated in this country, and has projected that over 27% of existing buildings in the United States will be replaced within the first three decades of the 21<sup>st</sup> century. Very few historic buildings are structurally unable to be saved. (The major reasons why buildings can't be saved are mainly due to non-repairable structural damage, dangerous materials (asbestos, lead paint) or location issues (earthquake, contaminated soil).) Many preservationists point out that the main issue with the new green building movement, which still

only accounts for less than one percent of all newly constructed buildings, is that preserving existing buildings may be the greenest approach.

Preserving an older building is often called the ultimate recycling project, yet preservationists commonly fight the perception that historic structures are terribly inefficient and require expensive and drastic corrective measures to retrofit for an energy saving return on investment.

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# ON STRUGGLING FOR PEACE OR SURRENDERING THERETO: *HEGEL, DE MAISTRE AND PROUDHON SEEKING BALANCE WHERE NONE IS*<sup>31</sup>

***Taha A. Al-Douri, PhD, Associate Prof.***  
Strategic Advisor, Development, Middle East Region  
New York Institute of Technology, New York

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## Abstract

Conflict is a primary idea in art. I use the term “conflict” for the essential determinant of identity where “an individual makes its appearance in antithesis to an individual”<sup>32</sup> risking mutual damage, trouble or striking – all in pursuit of certainty (let us remember that an earlier pursuit of certainty about the forbidden fruit anticipated the expulsion from Paradise.)<sup>33</sup> A term that delegates no blame, identifies no perpetrator or victim, conflict denotes no externalization of other as enemy beyond ascertaining existence “each is indeed certain of its own self, but not of the other, and hence its own certainty of itself is still without truth;”<sup>34</sup> it may at once be *war* or *revolution* in one human condition that is self-validating, self-manifesting, and self-fulfilling along the lines dividing self from other. In conflict, as in art, man surrendered to an impulse to exchange forces with nature toward a desired state of equilibrium of forces; and while creativity is the free will to clothe thought into sensuous form, dedicating resources to creative endeavors often requires patronage. The same totalitarian authority drives making art -- managing resources, combining and isolating, tempering qualities and altering roles—as the one that drives managing a conflict: the same natural

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32 Hegel, G. W. F. *The Phenomenology Of The Spirit*, Translated by Friedrich, Carl J., The Modern Library, New York, 1953, pp. 401ff.

33 Com- usually meaning “with, together,” from Latin com, archaic form of classical Latin cum; conflict from Latin conflictus “to strike together, to “afflict” together. From Old French afflicter and Latin afflictare “to damage, harass, torment, overthrow, press, crush. Transferred meaning of “trouble, distress.” Is first recorded 1530s.

34 Hegel, *Ibid.*

instinct as a tool for reason –Kant’s Practical Reason—of the mind to run and orchestrate the external world to serve the purpose of the craft. That instinct was to define creativity via imitating the universe, at once home and captivity. Existing prior to Reason, the universe had its norms and properties with which Reason only could reckon if reason were to self-fulfill, as Reason had no say in the authorship of those norms and properties. Combination, separation, distillation, heating up and cooling down were few of several means to make suitable the extreme qualities of materials for purposes past simple utility into happiness and self-realization through work and achievement, for Reason is, at once, the faculty by which the craftsman found a place in the universe and the quality that set him apart from –if not at odds with-- everything else in Nature.

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**Keywords:** Art theory, Esthetic, conflict, war, peace, Hegel, Proudhon, De Maistre, Kant, Political theory, Philosophy of History.

Peace, unlike either art or conflict is unattainable in the absence of reason and reasonable prescription for natural necessity. There exists natural tendency toward conflict, unlike peace: a construct of reason and necessity that, once brought about, ought to be maintained against the natural forces of skepticism and deterioration. In April 1797, *Considerations on France* by Joseph de Maistre appeared. Less a direct critique of Jean Jacques Rousseau in general than of *On the State of Nature* and *On the Sovereignty of People*, *Considerations on France* established de Maistre as “an apologist of throne and altar.”<sup>35</sup> De Maistre wrote: “I am not sure if those who claim that *the arts are friends of peace* know what they are saying. At least, this proposition would have to be explained and limited; because I see nothing in the least peaceful in the ages of Alexander and Pericles, of Augustus, of Leo X and Francis I, of Louis XIV and Queen Anne.”<sup>36</sup> Examples continued after the life and times of De Maistre testifying to the uncanny association between the arts and totalitarianism, if not plainly dictatorship. “Just as the meanest and most revolting substances are nevertheless still capable of some degeneration, so the vices natural to humanity are still more corrupt in the savages.” De Maistre asserted that all might be left to decay when natural tendency is without rule of reason or morality.

In 1861 an essay entitled *la Guerre et la Paix* by Pierre-Joseph Proudhon was published. In the book that *surprised his enemies and troubled his friends*, Proudhon recognized a right to war, an idea of its time. In the wake of the 1848 revolution, Proudhon contemplated war as an artistic

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35 Lebrun, R., *Against Rousseau*. Intro., p. xi.

36 De Maistre, J., *Considerations on France*. The Works of Joseph de Maistre, p. 63.

necessity that would have been invented by art had it not existed. He established the practice of nations on three interdependent propositions: First that there is a right to war, second that war is a form of judgment, and third that that judgment was to be rendered in the name of and by virtue of force. The first and third propositions seem to be a continuation to Hegel's ideas on conflict and those of De Maistre that war, or conflict, is a natural tendency. The second proposition, however, on war being judgment, remains problematic to me. Reason, the faculty for judgment, may or may not be present upon following tendency. As a tendency, would happen when circumstances lead thereto, in the presence or absence of Reason, unlike judgment, for which Reason is essential. In the case of war, however, conflict is on such large magnitude and the stakes are so high that much foresight, planning and deliberation must be dedicated toward an aim, by means of much reasonable prescription. Thus I would set war outside the bounds of conflict as natural tendency, by its sheer magnitude and recognize the duality of conflict and peace, rather than war and piece. The complexity of war sets it outside conflict as intuitive indulgence of natural tendency, and into judgment, thus weakening the parallel between war and the arts, as exchange of forces with nature.

Henri Moysset –a French historian and politician-- considered Proudhon a Hegel enthusiast and witness to the large popularity of Hegelianism upon the July Revolution and after. Proudhon, however, had admired Joseph de Maistre *the great theosopher*, “a thousand times more profound in his theosophy than the so-called rationalists whom he put to shame with his words. De Maistre, the first to establish war as a sort of manifestation of the Divine Will --one that admittedly he never understood and-- precisely by that admission he showed that he had understood something.”<sup>37</sup> Proudhon examined war in phenomenological terms rather than by a study of morals or religion. In fact, he considered war a means for arriving at moral revelation on equal par with religion and art. “By a prevalent belief of the common,” wrote Moysset; “victory is a producer of right. To the simple man, force, reason, and right are synonyms.”<sup>38</sup> Victory, not exclusively a military term, might conclude other forms of conflict including when no force is used –such as struggle within oneself, debate, and struggle for values and meaning-- where victory is attained through right rather than right claimed upon achieving victory. Settling non-forceful conflict by arguing a right established a priori versus establishing right by

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37 “Ainsi parle de Maistre, le grand théosophe, plus profond mille fois dans sa théosophie que les soi-disant rationalistes que sa parole scandalise. De Maistre le premier, faisant de la guerre une sorte de manifestation des volontés du Ciel, et précisément parce qu’il avoue n’y rien comprendre, a montré qu’il y comprenait quelque chose.” Proudhon, p. 31.

38 Moysset, Introduction to Proudhon, p. XXI.

force may be two facets of what von Clausewitz considered as “politics only by other means”<sup>39</sup> and termed as war for convenience, probably other than military conflict. War to von Clausewitz must have been, as it was to Proudhon, a revelation of an *ideal* that remained unchanged as conflict took various *forms*. That understanding of war as a representation of idea, as a form of manifestation of the self to an other, brought close the idea of right and that of force to the extent that necessitated “a long historic effort to disengage the idea of right from the idea of force.”<sup>40</sup>

Proudhon dismissed Kant’s argument for eternal peace –without direct reference: “I would abstain, as I would from blasphemy, from all talk against war. I would regard the partisans of perpetual peace the most detestable of hypocrites, the plague of civilization and the pest of societies.”<sup>41</sup> While maintaining agreement with Kant –the prime advocate of eternal peace-- that peace was a construct, an artifact, and a work of reason. He spoke against the military institution of his time, stopping short of advocating abolishing war, probably for his romantic view of conflict as a revelation of an ideal central to the creative thought of man not unlike art and faith, the latter to Kant being what makes representation of the visible world possible at all. In the very imitation of nature in art, Kant sees implicit faith, not as mediation, but as practically acknowledging the supremacy of nature as the true model for all creativity by reason. Proudhon could not escape Kant: “A statue is not only the marble out of which it was carved,” wrote Proudhon; “however, would the artist have had the idea of making a statue had it not been, in part, because nature had furnished marble?” Material in itself would not define the work of art without meaning or ideal content. In other words, an objective form of artifact may not be reduced to its material component but is as much in the *spirit* that affords an object its artifact status, its purpose. Form was thus dependent on the dynamic nature of the spirit for its perpetual character.

A frequent subject of artistic endeavor, war is an occasion for revelation of the ideal through art. By phenomenological approach, Proudhon contemplated war in all its immediacy with no reference to certain detachment or distance necessary for an analysis to be thorough and coherent; distance that was crucial to Friedrich Schiller’s concept of art. Divorce from immediate actions and passions of war would make possible

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39 Von Clausewitz was aware of, and arguably influenced by Hegels philosophy of the Right. See Creuzinger, *Hegels Einfluss auf Clausewitz*, Berlin, in-8°, 1911.

40 “C’est un long effort historique qui a dégagé l’idée de droit de l’idée de force.” Moysset, *Intro. To Proudhon*, p. XXI

41 “... je m’abstieudrais, comme d’un blasphème tout parole contre la guerre; je regarderais les parisans de la paix perpétuelle xomme les plus détestables des hypocrites, le fléau de la civilisation et la peste de sociétés.” Proudhon, p. 50.

contemplating war as a *form*, a construct of no reference external to itself, no former *whole* ought to be supposed in contemplating the debris. “We are aided in forming this acquaintance by the fearfully magnificent spectacle of all-destroying, re-producing, and again destroying mutation –or ruin, now slowly undermining, now suddenly invading—by the pathetic pictures of humanity yielding in the struggle with destiny, of the incessant flight of prosperity, of betrayed security, of triumphant injustice and of prostrate innocence, which history furnishes abundantly, and which tragic art brings with imitative skill before our eyes.”<sup>42</sup> Only by contemplation, free from the natural fetters of violence and destruction<sup>43</sup>, while remaining fully aware of all cultural and ideological discontinuity, could an imitative artist realize war as a subject matter for esthetic representation. Schiller dismissed the possibility of true idealism as only “what the complete realist practices unconsciously, and denies at the expense of consistency.”<sup>44</sup> By allowing a take-over of the unconscious, the mind of the realist voluntarily submits to a force of nature thus completely annihilating its power<sup>45</sup>. A conscious submission to the unconscious would liberate *will* from the reductive duality of things being *real* or *ideal*. Stimulated by sensible objects, the mind seeks freedom for its esthetic tendency in ennobling itself through divorcing the objects of esthetic affinity from possession. It is the object as possession or property that Edmund Burke described as “sluggish, inert and timid.”<sup>46</sup>

What appears to be a convulsion of nature is, therefore, argued to be a manifestation of a force of the unknown operating on Nature, or by means of the visibility of natural phenomena. “Our social life is the best Tragedy,” Plato writes in the *Laws*. There would always be a reason, however, to create works of art in imitation of reality. Inconsequential and, ultimately, impersonal<sup>47</sup>, imitations evoke select emotions, and thus are formally suitable for certain occasions and not others. This notion Aristotle uses to counter -argue Plato’s conclusion that since Art is a representation of the representation of the senses to reality, then Art is “three removes from truth.” “As representative of universal truths,” Aristotle argues in *The Poetics*, “Art is closer to the truth than history.” A poet’s creation, rather than being an account of facts, employs facts only as constituents of past probabilities and

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42 Schiller, F., *The Sublime*, pp. 258-259.

43 “... her [nature’s] imitator, creative art, is completely free, because she [art] abstracts all contingent limitations from her object, ..., because she imitates only the show and not the reality.” Schiller, *The Sublime*, p. 260.

44 Schiller, p. 247 [footnote.]

45 “But abolishing a force in idea, is nothing else than voluntarily submitting to it.” Schiller, p. 246.

46 Burke, *Reflections on the Revolution in France*, p. 140.

47 I say impersonal in the Platonic sense that Art represents not the “particulars” of sense but “universal” truths, the inner interpretation of the mind.

future possibilities.<sup>48</sup> Historical accounts, however, are but ingredients for a poetic construct and the poet writing an epic, is no more an author of, say, the Trojan War than a metalworker is an author of the ductility of raw steel.

Peace is not a natural phenomenon. It has to be established and maintained by work of human agency. It is not the mere absence of a state of war. Rather, it is eliminating the possibility of war. Kant identified states as essentially existing in multiplicity and are thus against the law of nature wherein things gravitate toward unity. Kant was amongst those who recognized war as natural. War is a force of nature by which a state of equilibrium amongst nations may be recovered. “It is far from easy to explain why war produces different effects in different circumstances. What is sufficiently clear is that humanity can be considered as a tree that an invisible hand is continually pruning, often to its benefit.”<sup>49</sup>

It is by war --or fear thereof--that the natural tendency of power-escalation in a world of national multiplicity is tempered. Not only tempering force, war is also a means for spatial temperance as people are dispersed throughout the earth along the flow of force. After the Providence has instituted living in all the various regions and climates on earth, nature “has by war driven them everywhere, even into the most inhospitable regions in order to populate them.”<sup>50</sup> This population is in geographical proximity where ethics contrast, wealth varies, and ambition conflicts. Nature had seen to it, namely by war, that resolutions are reached and observed. “...She has forced them [human beings] by war to enter into more or less legal relationships.”<sup>51</sup> Not motivated by any moral views, man would “labor at the noble work of peace” to sustain himself by means of commerce and economical exchange. And so, need rather than fear is the primary motive to tend toward peace. One consequence of war, namely dispersal, created the configuration, which necessitated peaceful communication. This necessity is less a moral one than a Platonic necessity (i.e. necessity due to circumstance.) In other words, the constitution of peace is in the pretext for waging war. Once conflict had run its course leveling out power, ego, and wealth, a new and tempered reality is at hand wherein even the victor is so to

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48 “ a poet’s object is not to tell what actually happened but what could and would happen either probably or inevitably. The difference between a historian and a poet is not that one writes in prose and the other in verse –indeed the writings of Herodotus could be put into verse and yet would still be a kind of history, whether written in metre or not. The real difference is this, that one tells what had happened and the other what might happen. For this reason poetry is something more scientific and serious than history, because poetry tends to give general truths while history gives particular facts.” Aristotle, *Poetics*, IX § 1.

49 De Maistre, *Considerations on France*, p. 62.

50 Kant, p. 496.

51 Kant, p. 496.

an extent. Virtue lies not in the victory or loss, only in the extent to which either is achieved.

### **Conclusion:**

Peace is possible essentially a strife for balanced order, one that -- once established-- might as well be tensile, precarious and cautious as it might be comfortable, stable and effortlessly enduring; all else in variation with place, time and the particulars of the human condition. A structure, peace is a manifestation of a structure's every basic aspect, no less than the Vitruvian<sup>52</sup> sense thereof: *Firmness*, *Utility* and *Beauty* (Firmitas, Utilitas, Venustas) where each of the qualities stands for a number of mutable characteristics of political order such as *stability*, *feasibility*, and *effective foreign policy*, respectively. As a form of political discourse, war must be economically, technically, and strategically feasible to be allowed, otherwise it might naturally occur as a form of slippage or a state of imminent and sudden natural entropy, if one could exist; and thus war would be managed as a crisis would be, made less likely or probable by raising the stakes beyond collective tolerance. Otherwise, war is Nature's means of tackling -- even eliminating-- the multiplicity of will and reason by which political order, amongst other human creations, shook and, often enough, destabilized a natural order tending toward unity of philosophical experience, natural order, and common existence.

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52 Marcus Vitruvius Pollio (First Century BC) --Vitruvius-- a Roman architect, best known for having authored the first complete work (treatise) on architecture and design to live in its entirety to the present day from Antiquity. The final chapter of his ten-chapter *De Architectura* is on the design and construction of war machine (invoking the common linguistic root between art and artillery.)

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