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EDITORIAL

We are delighted to welcome you to the summer issue of ESTRO, the academic student journal of the University of Essex. This is the final issue of the 5th anniversary year of ESTRO and we are proud to again present the very best of Essex student research in this issue. As you know, ESTRO is committed to publishing any excellent and engaging student essay from any year and from any department in order to strengthen the academic student community at the University. We are happy to say that ESTRO's multidisciplinary profile has been kept alive and well over the years, with this issue being well stocked with a variety of disciplines and years, containing a wealth of stimulating yet accessible Essex papers.

This edition of ESTRO starts with an essay by Zoe Farr, titled 'Ethnography: A study of sexist attitudes among students'. This essay should be of special interest for many of the University's students for two reasons. Firstly, in order to analyse sexism underlying student language and interactions, Zoe unobtrusively studied the interaction of male and female students in their everyday environments. Familiar and innocuous locations such as the SU bar or a classroom belie casual examples of sexism at the University of Essex. Uncovering sexism towards both male and female students on campus, she concludes that sexism is tolerated differently between the sexes. Secondly, sexism is a fiercely debated subject which concerns a variety of staff and students at the University, regardless of their discipline.

An equally controversial topic is discussed in Chrispas Nyombi's 'The right to die for patients in a Minimally Conscious State: A review of the decision in *W v. M*'. This paper examines in depth the legal case of *W v. M*, where the judge had to balance the ethics of stopping life support with the wishes of family and arguably the patient. Should life-sustaining treatment be stopped if a patient's quality of life is arguably nonexistent? While the right to die may always remain a murky issue, Chrispas critically examines the many factors that were considered in the case of *W v. M*, in order to provide clarity in a legal morass.

Continuing with another case study, the next article investigates closely what influences the capital structure of a firm. 'Capital Structure of Small and Medium-Sized Enterprises: Empirical Evidence from Vietnam', by Thi Thuy Linh Do examines the effects of determinants such as tangibility, profitability, ownership, firm size, and firm growth on the capital structure of specific firms in a developing country. Carefully compiling the empirical evidence for companies in Vietnam in the past few years, she finds that

tangibility, profitability and size all impact the way firms finance their debt. The capital structures of Vietnamese companies differ from similar companies in developed countries, which the reader might not anticipate. While most financial studies focus on the developed world, Linh Do's essay is a welcome reminder that the world is a diverse place.

In a similar vein, Alexander Borodin's 'How the presence of a vibrant Civil Society triggers Democratisation' is a fresh comprehensive look at civil society and the implications for the democratisation of countries. While the essay points out that the more vibrant a civil society in a country is, the more it promotes development and democratisation, there is a clear note of warning. Civil society and liberal democracy coexist and overlap, but civil society is not simply a panacea that invokes democracy. Both are essential, and you cannot have one without at least a basic measure of the other. Alexander argues that we should not as much be interested in the selection of one or the other but to find settings in which both act together to the greatest effect.

The fifth article in this issue of ESTRO comes from Joe Greenwood. 'Beyond focal points in coordination games' is a thoughtful analysis of Thomas Schelling's theory of focal points. Schelling argued for intuitively compelling 'focal points' as a solution to situations where rational actors should not be able to coordinate effectively, but do. Although recognising Schelling's seminal contribution to game theory, Joe explores the gaps in the explanatory power of the theory, as well as the perpetual tension between theory and reality. He examines focal point theory alongside theories of power and determinism, digging ever closer to the reason why people coordinate in unpredictable situations.

Moving from Schelling to the more famous philosopher Immanuel Kant, the last essay is written by Iulia Minulescu, called 'Is beauty necessarily accompanied by pleasure?' Iulia examines Kant's claim that the aesthetic judgment is always necessarily accompanied by a feeling of pleasure by comparing two well-known paintings (Dante Rossetti's *Lady Lilit* and Salvador Rosa's *The Witch*). She concludes that while our judgements of ugliness may be influenced by ideology, our judgments of beauty are a-temporal and therefore always aesthetically pleasing.

Different from our usual fare, we close this issue of ESTRO with the results of The Microfiction Challenge of the University of Essex. Microfiction is all about writing concisely, communicating any story or idea in as few words as possible. The contest asked people to send in their microfiction of 10 words or less, as stories, ideas, on university experiences, or on education. The microfiction programme is close to our hearts as it encourages students (and staff!) to think and write carefully and efficiently. We had a grand total of 188 submissions, of which the winners and runners-up are printed.

We hope you enjoy reading the essays and examples of microfiction this issue has to offer. As editors we very much enjoy working with other students to deliver the best possible Essex research. ESTRO is always keen to receive new submissions, so please feel free to submit your best work to us. We rely solely on the submissions and reviews of interested students, and as such we want to thank everyone who contributed to this issue of ESTRO, especially the authors and reviewers, for their hard work and dedication.

Goedele Caluwé and Daan de Lange, Editors

Ethnography: A study of sexist attitudes among students

Zoe Farr

ABSTRACT

From appearances and stereotyped gender roles to objectification and sexual harassment, sexism can rear its head in many different ways. Sexism is generally acknowledged as being perpetrated by chauvinist men against women. However, there has emerged an ever increasing 'hate-male' culture of casual misandry and sexual impertinence by women which appears to be accepted and ignored. The aim of this research is to reveal the impact and prevalence of modern sexist attitudes, based on the sexist attitudes of students studied at a University campus. Covert ethnography is used to observe students in different surroundings around the campus of the University of Essex, studying their language and interactions with members of the same and opposite sex, to identify any underlying sexist opinions.

Introduction

My interest in social life has always been motivated by inequality, whether between races, genders, classes, or any other social groups. For my social research project I shall be concentrating on gender inequality in the form of sexism amongst students. I chose this subject area due to the history surrounding gender inequality, particularly the inequality and oppression of women. I hope to uncover whether sexism is still rife against women, or if women are in fact appearing more as the perpetrators of sexism. Although sexism against males is not regarded as a prevalent social issue, if my research is to highlight an underlying theme of misandry, it may bring the issue more to the forefront of socio-political concern. Conversely, though perhaps less surprising, sexism against women may be seen to prevail, underlining the falsity of any sense of modern equality between genders.

Literature Review

Before examining sexism between the genders, 'gender' as a concept must be scrutinized. The term 'gender' is socially-constructed, as are the gender roles and expectations associated with it. Garrett (1987, p. vii) outlines this idea: 'whether you are born male or female will be of major consequence for all aspects of your life: for the expectations others in society will have of you, for your treatment by other people, and for your own behaviour.' The social construction of gender and the corresponding characteristics typically associated with the identity of *male* or *female*

function as a foundation for sexism and gender discrimination, as any refusal to adopt gender specific characteristics or crossing the boundaries of gender roles will often result in a negative societal reaction. Eagly et al. (2004) highlight how stereotypical gender roles are presented in the media. Women are often portrayed as ‘unambitious and emotional’, ‘subservient’, and ‘domestic’ (Eagly et al., 2004, p. 109), whilst conversely, ‘men are often shown pursuing careers of high status’ and ‘exercising control over events’ (Eagly et al., 2004, p. 109). Sue Askew (1988) claims that males are also oppressed by society’s ‘gender roles’. The dominant view of men ‘represents them as being tough, strong, aggressive, independent, brave, sexually active, rational, intelligent, and so on’ (Askew, 1988, p. 2), and ‘these stereotypes are obviously damaging and prevent young men from developing their full potential’ (Askew, 1988, p. 3). However, the domineering view of women could not be more different, sharing many stereotypical characteristics often associated with children, such as ‘vulnerable, weak, frightened, stupid, dependent and immature’ (Askew, 1988, pp. 2-3). Askew (1988, p. 3) claims that young men are not only confused and oppressed by their ideological gender characteristics instilled in them during socialization, but that ‘they are also internalising extremely negative images of girls and women’, instilling a view of women as subordinates from an early age.

Feminism tackles the social and political oppression of women in society. The foundation of feminist theory is that society is patriarchal and women are oppressed within it (Fulcher and Scott, 2007). Gersoni-Stavn (1974) claims that we are indoctrinated during socialization to believe that men are the elite, and the most important gender. She says that women gain a negative self-image from hearing everything referred to in masculine terms, for example job titles ending in “man” e.g. fireman, policeman (Gersoni-Stavn, 1974, p. 3). Feminists highlight many ways in which women are oppressed. Controversial feminist Germaine Greer uses the beauty industry as an example of a modern method of oppression, claiming that ‘conditions that practically all women “suffer from” are spoken of as unsightly and abnormal, to make women feel that parts of their bodies, perhaps their whole bodies, are defective and should be worked on.’ (Greer, 2000, p. 25)

Conversely, Nathanson and Young (2001) claim that while misogyny is now almost universally unacceptable, misandry is generally considered morally acceptable, and the projection of women as superior to men is reflected in many aspects of popular culture, such as in film and television. Anthony Synnott (2009, p. 135) alleges that men ‘have been widely demonized and vilified over the last 50 years’, resulting in misandry, ‘the anger towards, and the hatred, fear and contempt of men’. He claims that misandry has become institutionalized, hidden by a veil of humour that disguises the underlying contempt, and is present in advertising, books, coffee mugs, and many other articles (Synnott, 2009).

A more political aspect of my research is the struggles of women and progress in the form of social policy throughout history. For years women have fought for equal rights, resulting in the introduction of social policy such as the Equal Pay Act in 1970, implemented ‘to prevent discrimination, as regards terms and conditions of employment, between men and women’ (legislation.gov.uk, 1970). However, there has been considerable dispute surrounding this, and it is widely argued that women are still not receiving equal rights, but that the inequality is now simply disguised. The general issue of sexism can also be examined using C. Wright Mills’ *The Sociological Imagination*, which considers social problems in terms of whether they are a personal trouble or a public issue (Mills, 1959). Sexism meets both these classifications, in terms of personal experiences of sexism, and sexism as an issue in wider society, both socially and politically. The current literature makes certain assertions, primarily that sexism towards women is still highly prevalent despite advancements in feminism and the implementation of certain regulations, such as the Equal Pay Act. There are also claims of extensive perpetration of sexism towards men, which is often overlooked and widely accepted. I have conducted an ethnographic study in order to either discover more evidence to substantiate these claims, or to establish whether these claims do in fact correspond to reality.

Methodological reflections

Walliman (2006, p. 131) defines ethnography as ‘the immersion of the researcher into the social setting for an extended period in order to observe, question, listen and experience the situation in order to gain an understanding of processes and meanings’. Ethnography involves the researcher engaging with their research subjects in their day-to-day lives, collecting data over a period of time in different forms including photographs, although essentially in the form of participant observation. It can be conducted either covertly (the researcher conceals the aim of his presence) or overtly (researcher is transparent about their research).

The ethnographic method is drawn from the interpretivist perspective and uses qualitative data. Interpretivism is ‘predicated upon the view that a strategy is required which respects the differences between people and the objects of natural sciences and therefore requires the social scientist to grasp the subjective meaning of social action’ (Bryman, 2008, p. 16). In contrast to the empirical scientific method of positivism, interpretivism aims to reveal the deeper meanings behind actions. I am studying the prominence of sexism in the discourse of students, and so it is necessary to study this qualitatively to collect detailed information in context, and uncover the deeper connotations of this attitude. Thus I am using the covert ethnographic method in order to observe students in their everyday surroundings and gain an insight into their overall attitude. Ethnography also contains some aspects of the naturalist approach, which takes into account the use of facial expressions and body language in interpreting the meanings behind language (Weiten et al., 2011).

I am conducting my ethnography covertly. If I informed the participants of the purpose of my research, their 'natural' behaviour would alter as a result. Sexist attitudes may be concealed in light of my presence in order to prevent themselves from being seen as socially undesirable. If I was to use methods from the positivist approach for my topic, such as the structured interview method instead of the ethnographic method, the data would lack validity. For example, using the interview method is more standardised and thus reliable, but lacks the depth and context of ethnography, and so provides superficial answers without the aid of the wider context. Other qualitative methods would be more appropriate alternatives, such as unstructured interviewing, but this also lacks the validity gained from the context of actions and from observing people in a more natural setting. Non-participant observation could be used to observe participants in their natural environment, but this again would be lacking the depth and understanding gained from immersing yourself within the participants.

Every method of social research carries its own difficulties and flaws. As ethnography largely relies on the researcher's analysis and interpretation of data, reflexivity is essential to avoid a biased outcome. To be 'reflexive' is to be able to keep research objective and free from these personal values and beliefs, and the inability to do so can result in the erroneous construction of artificial social data which epitomizes the perspective of the researcher. I must be aware of my own biases so I can better reflect on my data and identify potential prejudices. The nature of the ethnographic method also carries the risk of the researcher 'going native'. 'Going native means that we become immersed so fully in our fieldwork or with our subjects that we become acculturated, and our identity is enmeshed with the culture we study' (Thomas, 1993, p. 48). Broadly speaking, we lose objectivity and our views are changed by becoming too involved with the subjects of our study. This is particularly relevant with my research as I am researching subjects in a social group I am already a part of (students). Also, it can be difficult to provoke people to talk about certain relevant topics related to your research without arousing suspicion or revealing your aim when operating covertly. A further obvious methodological issue is the ethical concern of the use of deception in carrying out ethnography covertly. Although this can be avoided by using the overt methodology, I believe that the increased validity obtained by using the covert method outweighs the ethical issues associated with deception. By operating surreptitiously, individuals will not modify their behaviour as they might if I was open about my research, allowing me to observe natural behaviour and thus increasing validity. Lastly, although the ethnographic approach is rich in validity, it can often be low in reliability and generalisability, as the small group of people being studied may not be representative of the wider relevant population. Overall, taking into account methodological issues, I am satisfied that the covert ethnographic method is most appropriate for my research topic.

I obtained the observations on which I base this paper during day-to-day life on the University campus, engaging with my subjects as a fellow student. First and foremost, I studied students with whom I already had some form of relationship in order to experience interactions at close range, using these relationships to join conversations with other unknown students through association, although I did observe some behaviour from the side lines. I also immersed myself in other wider social situations to attain a more comprehensive set of observations, in settings such as the SU bar or night club Sub Zero where I was easily able to observe a range of behaviours. I carried a notepad with me at all times, using it to make discrete notes after a relevant observation, which was easily done clandestinely given the common nature of note-taking and reading in a university setting. However I did have to postpone this until later in Sub Zero or in the evening at the SU bar as the activity would have stood out as unusual on these occasions. My analysis was based on my own interpretations, coupled with examination of previous research on the topic. I used my field notes to reconstruct the situations and conversations I observed, from which I was able to discern the relevant sections, that is, those which included displays of sexist attitudes or were otherwise related to sexist attitudes among students. I then analyzed these pieces in conjunction with an examination of previous research on the topic, from which I was able to reach my findings.

Findings

Sexism from males to females took a variety of forms. One example I encountered was a discussion about women's rights which had a strong underlying sexist theme, with one male claiming that 'men will always be dominant', meeting the topic of women's rights with humour and derision. The disparagement of the subject of women's rights in this example suggests that the progress made in terms of women's rights have not made a significant impact, or are not taken seriously. Even with legislation, equality is down to the wider attitudes of society, and true equality cannot be achieved unless it is supported in the attitudes of wider society. I observed more examples of blatant sexual impropriety towards females in the form of the sexual objectification of women when two maintenance workers hounded a young woman. After spotting an attractive young woman, one of the two men shouted something at her which I can only assume was sexually orientated (I could not make out exactly what was said), before laughing between themselves. Gilmore (2001, p. 9) claims that 'misogyny is close to being universal'. Currie and Raoul (1992) claim that misogyny is not only hatred of women, but also a fear of them. Human beings fear the unknown, and 'for thousands of years woman has been "The Unknown" to man'. Men have therefore feared women, and their fear has frequently taken the form of male domination over the minds and bodies of the women in their societies' (1992, p. 38). Johnson (2005, p. 64) claims that misogyny has taught women to 'hate their own femaleness, an example of internalized oppression', which goes some way to explain why women appear to persecute their own gender, as with discrimination towards female sexual practices,

explored below. Patriarchy and the accompanying misogyny has become ingrained in the female brain to the extent that we now employ self-regulation of ourselves and other females in order to remain faithful to the patriarchal ideology (Johnson, 2005).

However, I also found examples of females displaying the same kind of sexually suggestive behaviour towards men. When I observed two girls discussing a male in a sexually evocative manner, this exposed the fact that it is not just men who sexually objectify women; though whilst a man would often be reprimanded for this kind of behaviour, women are not judged. This highlights the inconsistency between the social acceptability of sexually suggestive behaviour between the sexes. Had a man voiced the same opinion of a female, he would likely be accused of chauvinism and sexual harassment. Another example of the inconsistency between the social expectations and tolerability of the genders was the parallelism in sexually beleaguering behaviour from both males and females, and the contrasting reactions they received. When a male referred to a girl as a 'Piece of skirt', it was met with disdain. However, when girls pestered a male in a sexual manner, it was met with jest and with no sign of disapproval. This discrepancy between the genders can be explained by the gendered assumptions about the underlying intentions of such sexual behaviour. As women are customarily physically weaker than men, they are seen to pose no real physical threat, and thus their intentions are assumed to be innocuous. Men, on the other hand, are often presumed to have more sinister intentions because of their physical capabilities. Media representations of strange men as sexual predators or potential attackers produce a ubiquitous fear of men as dangerous. 'The attention the media give crime and violence teaches women to fear, and continually reinforces those lessons through frequent portrayals of violence against women' (Gordon and Riger, 1991, p. 67) giving 'misleading impressions of both the crime and how it might be dealt with' (Gordon and Riger, 1991, p. 132). Thus obvious displays of sexual interest towards females can be interpreted as threatening, whereas women are viewed as harmless in this sense. Nathanson and Young (2006, p. i) claim that men have been demonized in modern society, and due to this we now all have 'perceptions of evils or inadequacies that characterize all men'. Many people 'fervently believe that hatred toward men should be regarded as a legitimate exception to the general rule against hatred to other groups' (Nathanson and Young, 2006, p. x), echoed in one conversation I observed of girls collectively labelling men as 'perverts' and 'dickheads'. They argue that misandry, or 'viriphobia' (Gilmore, 2001, p. 12), often goes unnoticed, as the common assumption is that men have all the power, and therefore 'are immune to all serious harm' (Nathanson and Young, 2006, p. x).

The observation I was most shocked by was the lack of appreciation or interest shown by three females to a round of drinks bought for them in the Student Union bar. By freely accepting the drinks and then proceeding to disregard the man who bought them without so much as a thank you, what message were the girls conveying? I also bore witness to what appeared to be a genuine display of chivalry when a male student gave up his coat for a cold female on a night out, to

which he received little appreciation. By rejecting the notion that a free drink obliges them to stay and effectively be ‘bought’, were the girls providing a display of women’s independence, or simply taking for granted the males’ affability, expecting such generosity as a given in modern wooing? Or was it in fact an example of casual misandry? The act of buying the round of drinks can be explained as modern chivalry, in which case my observation offers a useful insight into why chivalry seems to be a thing of the past. However, even in the 21st century, where freedom of expression and liberation from archaic gender roles has emancipated women from housewife duties and acknowledged them as equal members of the workplace, females pursuing males still appears to carry a certain stigma. If women now expect and demand the chase of men, displays of genuine chivalry become superfluous. It may also be the case that modern women are adopting the feminist view of chivalry as a display of male superiority and thus rejecting it accordingly. Chivalry can be viewed as demeaning and patronizing in an era where women are supposed to be equal to men in all spheres of life, and feminists argue that chivalry ‘presumes women’s weaknesses, inferiority, and a need to rely upon men’ (Carroll, 2003, p. 88), viewing chivalry in traditional courtship as ‘particularly abhorrent’ (Lukas, 2006, p. 8). ‘The implication of allowing men to assume the financial burden associated with courtship was that men were essentially “buying time” with the woman or that the woman was for sale’ (Lukas, 2006, p. 8).

Even with the progress made by feminist movements, males and females are judged completely differently in terms of their sexual practices, made evident by the conversation between students about a particular female’s promiscuity in which she was labelled as a ‘slag’ without similar consideration of the men involved. What I find especially poignant is that women do not dispute this assumption either, but in fact largely encourage it. By calling other females degrading names like ‘slut’, women are essentially oppressing themselves, and invalidating the progress made by feminist movements. Martino and Pallotta-Chiarolli (2005, p. 135) uncovered the ‘slut/stud dichotomy’, which is the antagonistic labelling of males and females according to their sexual practices¹. Marianne Hester (1992, p. 40) draws on the work of Shulamith Firestone to explain that the repression of women’s sexuality is ‘controlled socially in the interests of men’. Marysol Asencio’s ethnographic work on the sexuality of Puerto Rican Youth highlights the discrepancy between attitudes of female and male promiscuity. Males who had many sexual partners were reacted to positively, whilst female promiscuity was condemned, or even viewed as ‘abnormal’ (Asencio, 2002, p. 38). Women are also expected to bear the majority of the responsibility when it comes to contraception (Valenti, 2008)².

¹ Valenti (2008, p. 15) provides further evidence of the disparate views of male and female sexuality, claiming that the word ‘slut’ controls women through shame and humiliation, and girls who have a variety of sexual partners are labelled as ‘sluts’, while boys are ‘studs’, or ‘players’.

² Due to space limitations not all observations could be studied in full, but a particularly striking observation was made regarding sexist behaviour in an educational context. Female students were disproportionately selected to answer questions over males, suggesting an expectation gap in the abilities of male and female students. Previous research has proposed an institutionalised higher expectation of males than females (Weiner, 2011) and thus I may

Conclusion

I uncovered examples of sexism from both genders, but found that whilst sexism against women was generally considered distasteful, (although it was discussed with amusement between groups of males on many occasions), sexism against men was received with little or no contention. However, it is possible that I was not able to observe the true extent of male sexism because the males observed may have altered their behaviour around me because I am female. I found that when females displayed sexual objectification of men, I almost overlooked it, whereas I was very aware of male examples. It has drawn my attention to the fact that sexism seems to be tolerated differently between the sexes. I believe the discrepancy in tolerance lies in history coupled with threats of modernization. With the widespread awareness of the threat of rape to women, whether disproportionate or not, the fear of malicious intent in male attention makes sexism, and sexual impropriety in particular, especially objectionable. The struggles of women over the past 100 years and the discrimination endured makes the topic particularly sensitive, as is the case with racism, although the suffering endured during colonialism was evidently more severe. The point, however, is that both subjects are not considered topics of joviality due to their past persecution and maltreatment. Although the prevalence of sexism towards males appears comparable to that towards females, it does not condone the alleged underlying theme of misogyny in everyday life. With many sociologists theorizing that patriarchal oppression still exists, but is hidden behind deceptive laws and regulations, the progress made by feminist movements is fundamentally a sham, created in order to present a mythical picture of equality and maintain cooperation.

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have observed the females being given a perceived 'chance'. See also Tauber (1997), Weiner (2011), and Moore and Johnson (1983) for more on sexism in education.

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The right to die for patients in a Minimally Conscious State: A review of the decision in *W v. M*

Chrispas Nyombi

ABSTRACT

The right to die has been subject to increased media attention in recent years due to a surge in cases in which courts are required to make decisions on whether to approve the right to die or deny it. Courts have been very consistent in denying terminally ill patients the right to end their suffering through assisted suicide. This paper examines the court decision in *W v. M* (2011) on the right to die for patients in a Minimally Conscious State. In this case, the court weighed up a number of factors such as the patient's past wishes and feelings before reaching their decision. These factors are critically examined in order to provide clarity on the court's position in cases involving patients in a Minimally Conscious State.

The right to end life-sustaining medical treatment for persons in a Minimally Conscious State (MCS) has been at the centre of medical law and ethics debates for over a century now (Johnson, 2011). Despite the debates, sanctity of life has been the orthodox position since the passing of the Suicide Act 1961, which made it unlawful in England and Wales to "aid, abet, counsel or procure the suicide of another."³ The case of *W v. M*⁴ has been the first of its kind in the English jurisdiction where the Court of Protection has been asked to authorise withdrawal of artificial nutrition and hydration (ANH) from a patient in a MCS. The MCS was first identified and defined by the Aspen Neurobehavioural Conference Workgroup as, "a condition of severely altered consciousness in which minimal but definite behavioural evidence of self or environmental awareness is demonstrated" (Giacino et al., 2002). In England and Wales, it is lawful to withdraw ANH and other life sustaining treatment from an incompetent patient under the Mental Capacity Act (MCA) 2005 and the MCA Code of Practice 2008, if it is in the patient's best interest not to have the treatment continued (Skene et al., 2009).

In *W v. M*, Baker J objected to the withdrawal of ANH from a patient diagnosed as being in a MCS, despite her family's wishes to have the treatment withdrawn. *M*'s family wanted ANH withdrawn so that *M* could be allowed to die. Baker J considered the role of clinicians, family members and carers in healthcare decision-making and critically evaluated Human Rights provisions before reaching a decision, which could have implications for legal development. Would this case have been decided differently had *M* made an advance decision or had she

³ Section 2(1)

⁴(2011) E.W.H.C. 2443 Fam 28th September 2011

appointed a Lasting Power of Attorney (LPA) prior to the circumstances that later arose? These legal and ethical issues are explored in this paper.

Due to *M*'s incapacity, she was unable to make a decision on her care needs because there was an impairment or disturbance in the functioning of her mind or brain.⁵ At the heart of the MCA 2005 lies the principle that where the individual lacks capacity, any decision or action taken on their behalf must be in their best interest.⁶ Best interest standards were examined in light of participative elements introduced in the MCA, conclusively attaching greater weight to sanctity of life, which was of profound and significant importance. In *W v. M*, Baker J applied the balance sheet approach proposed by Thorpe J in *Re A (male Sterilisation)*⁷ by weighing up the benefits and drawbacks of withdrawing ANH for a patient in MCS. The decision in *NHS Trust v. MB*⁸ confirmed that even if the burdens of continuing treatment outweighed the benefits, treatment could be continued if it was in the patient's best interest. This balance sheet approach has shifted the best interest perspective to a necessary requirement in the decision-making process. However, Bartlett (2005) calls for a more substantive or least content filled test.

Three key factors were weighed up by Baker J in *W v. M*. First and foremost, Baker J invoked statute when deciding the best interest element by referring to Article 2 of the European Convention on Human Rights 1950 (ECHR), which gives everyone a right to life. Baker J also relied on the ruling in *NHS Trust A v. M^P* where it was decided that withholding or withdrawing medical treatment would not constitute an intentional deprivation of life in breach of Article 2. The court held that there was no duty under Article 2 to provide futile treatment.¹⁰ In exploring futility, the General Medical Council (GMC) guidelines on good decision-making in end-of-life decisions do not impose an obligation to give treatment that is futile or burdensome (GMC, 2010). This is also found under the MCA Code of Practice 2008, paragraph 5.31 and was reinstated in *Airedale NHS Trust v. Bland*¹¹ where Lord Goff held that “the fundamental principle is the principle of the sanctity of human life.” A core element of medical practice is that doctors must never have the option to suggest a course of action that would harm their patients (British Medical Association, 2009). Patients trust their doctors that the treatment and advice they receive will always be in their best interest. Thus acting with the primary intention to accelerate a patient's death is difficult to reconcile with the ethical principles of beneficence and non-maleficance.

⁵Mental Capacity Act 2005, Section 2(1)

⁶Section 1(5)

⁷(2000) 1 F.L.R. 549

⁸(2006) EWHC 507 (Fam)

⁹(2001) 1 All E.R. 801

¹⁰*NHS Trust A v. M* (2001) 1 All E.R. 801

¹¹(1993) A.C. 789 as per Lord Goff, ‘if treatment is futile, it is no longer in the patients best interests to continue it’

M's mother and sister argued that her life was of "pointless existence" (Ward, 2011). A physician observed that some patients "suffer severely at the end of life" and agreed that patients can still experience "anguishing deaths" in spite of the "heroic efforts" of health professionals (McKhann, 1999, p. 79). In support of these observations, one patient stated that their experience with terminal suffering was so intense that they felt as though they were becoming "less of a human being" (Kübler-Ross, 2001, p. 61). However, in *M*'s case, observations from clinicians, doctors and carers proved otherwise. On that basis, Baker J accepted that *M* did have "some positive experiences" (Kübler-Ross, 2001, p. 61) which did not amount to treatment being futile.

The decision in *Pretty v. UK*¹² confirmed that Article 2 did not give a person a right to die. Dianne Pretty had motor neurone disease and she wanted to end her life. She was unable to kill herself due to the incapacitating nature of her illness. She asked the Director of Public Prosecutions (DPP) to give her husband advance immunity from prosecution. The court held that Article 2 cannot be interpreted as giving a right to die. Thus the case established that a person cannot obtain advance immunity from prosecution. This was affirmed by the MCA Code of Practice 2008, paragraph 5.31 which stipulates that all reasonable steps must be taken to prolong a person's life.

However, *W v. M* was distinguished because *Bland* was in a vegetable state (VS). Unlike *Bland*, *M* "was sensate, clinically stable, aware of herself and her environment, able to respond to people, and to music, and also, in a very limited way, able to communicate about her needs." *M* was recognisably alive, treatment was neither futile nor burdensome and thus it was in her best interest to be kept alive.

Second, *M*'s past wishes and feelings were considered in determining best interest. The MCA 2005 requires the court to consider, so far as is reasonably ascertainable, the person's past and present wishes or feelings.¹³ Past wishes might also be ascertained from relatives and others known to the patient. In this case, *M*'s partner and sister based their arguments on informal statements which included, "*M* visiting her father and grandmother in a nursing home and stating she would not want to live like that, would not want to be dependent on others, wanted 'to go quickly', and that someone in a condition as *Bland* should be allowed to die". Notably, *M*'s family argued that, "she would not have wanted to live in the condition that she is in". The question for the court was therefore how much weight they should attach to past wishes and feelings in the absence of an advance decision.

¹² (2002) 35 E.H.R.R. 1

¹³ Section 4(6)

When it comes to advance decisions (or directives), there is no requirement that oral statements must be written, although a written statement could carry evidential weight in end-of-life decision-making (Samantha, 2009). Baker J accepted these views and held that there was no evidence to suggest that “*M* ever specifically considered the question of withdrawal of ANH, or ever considered the question whether she would wish such treatment to be withdrawn if in a MCS”. Similarly, in *W Healthcare NHS Trust v. H*,¹⁴ it was held that in absence of an advance directive clearly demonstrating *H*’s preference of being deprived of food and drink until she died, it was in her best interest to reinsert the tube. This clearly shows that in order to prevent ambiguities in law, the Court follows a strict approach in deciding what weight should be given to informal statements in end-of-life decisions. If they bear no similarity to the current circumstances, they will be irrelevant in end-of-life decision-making. Furthermore, *M*’s present wishes could not be known since she had been in a MCS for eight years.¹⁵ Arguably, ascertaining current views from an incapacitated person is problematic, and in all probability is inspirational rather than realistic. Baker J critically evaluated all these issues and held that, in the absence of an advance decision, it would be wrong to attach significant weight to statements made by *M* prior to her collapse.

In this case, emphasis was put on *M* not having made an advance decision, which poses the question: had one been in place, would this case have been decided differently? If an advance decision had been made by *M*, provided it fulfilled both the common law and statutory requirements under the MCA 2005,¹⁶ it would have been binding. This would have allowed her to refuse treatment in anticipation of a period of incompetence when she lacked the ability to make a contemporaneous decision in the future. The GMC guidelines state that “[a]ny valid advance refusal of treatment - one made when the patient was competent and on the basis of adequate information about the implications of his/her choice, is legally binding and must be respected where it is clearly applicable to the patient’s present circumstances and where there is no reason to believe that the patient had changed his/her mind” (GMC, 2002, p. 5).

Nevertheless, it is very unlikely that *M* would have made an advance decision because she had enjoyed a healthy and independent lifestyle. The viral encephalitis, which left her with extensive and irreparable brain damage, was a result of unforeseen circumstances a layperson would never have predicted. Legal commentators such as Maclean (2008, p. 16) argue that “one of the well-known problems with advance directives is the difficulty of drafting a sufficiently specific directive that anticipates the future circumstances when the individual would like treatment to stop.” Arguably, this is a more straightforward approach for a patient with an illness that is inherited, as the patient knows the exact circumstances to outline in the advance directive.

¹⁴ (2005) 1 W.L.R. 834

¹⁵ Mental Capacity Act 2005, section 4(6)

¹⁶ Sections 24, 25 & 26

However, for a formerly healthy patient like *M* it becomes very difficult to draft an advance decision based on unforeseen circumstances. Furthermore, advance directives often do not achieve the individual's aims due to the need to satisfy the validity and applicability requirements to the satisfaction of the reasonable belief of the healthcare provider. Considering *M*'s healthy lifestyle as well as the difficulties associated with drafting an advance decision, it is very unlikely *M* would have made one prior to the circumstances that later materialised.

Preferably, while *M* was competent, she could have appointed her partner and sister as her LPA¹⁷ to make healthcare decisions in her best interest. The MCA 2005 allows an adult with capacity to select a trusted and willing person over the age of 18 to make healthcare and welfare decisions on their behalf in the event of loss of capacity.¹⁸ However, the decision-making authority of an attorney does not extend to decisions about life-sustaining treatment unless the instrument contains an express provision to that effect.¹⁹ Without such a definite expression of will, there would very likely have been irreconcilable disagreements between the attorneys (*M*'s partner and sister) and the healthcare professionals over what would be in *M*'s best interest, thus the case would have had to be referred to the Court of Protection for adjudication. The attorneys would argue that it is in *M*'s best interest to have ANH withdrawn while the health care team would probably want treatment to continue. Provisionally, *M* would be given life-sustaining treatment to prevent a serious deterioration in her condition while adjudication is sought.²⁰ If *M* did not include life-sustaining treatment in the instrument, there is little chance that requests for withdrawal of ANH expressed to her attorneys would be respected, unless this is deemed to be in her best interest by the medical team. However, if the life-sustaining treatment provision were included in the instrument, the attorney's plea to withdraw ANH to allow *M* to die would have been successful.

Third, pain was another factor considered when determining best interest. An Abbey Pain Scale test confirmed that *M* was suffering pain, but the frequency of pain or discomfort was unclear. This test is used to measure pain in people with end-stage dementia who cannot verbalise (Abbey et al., 2004). *M*'s carers reported that *M* was in pain 25-30 per cent of the time, but her family were certain that the pain was a more frequent occurrence. Baker J accepted that *M* being in a MCS had to experience pain, but the extent of the pain was not known. He concluded that there are times when she experiences pain and times when she is pain-free. He also pointed out that pain relief medication is available for times when *M* is in pain and that evidence suggested that she was not in extreme pain. *M* could at times feel pain and occasionally vocalised the experience, which was not applicable to *Bland*, who was in a VS. This signifies that carers, clinicians and

¹⁷ Mental Capacity Act 2005, section 9

¹⁸ Section 10

¹⁹ Mental Capacity Act 2005, section 11(8)

²⁰ Mental Capacity Act 2005, section 6(7) (a) (b)

doctors play a role in end of life decisions. All their views, findings and evidence are given due weight by the court.

Moreover, quality of life was also considered when determining best interest. In examining *M*'s quality of life, Baker J pointed out that she was no longer able to enjoy life considering her independent life-style, and it was wholly understandable why members of her family thought she did not enjoy life at all. Notably, *M*'s sister *B* stated that, "she cannot enjoy a drink, a cup of tea or anything. She has got no pleasures in life". Was *M*'s quality of life therefore so poor, the burden of the MCS so great, to justify withdrawal of ANH? Baker J decided to explore this issue further by considering the evidence from clinicians, doctors and *M*'s carers. The carers submitted that *M* did enjoy some aspects of her life because she occasionally smiled, cried when certain music was playing and overall had some positive experiences. Although her prospect of recovery was very remote and she was likely to stay in this state for the rest of her life, and while Baker J accepted that many of her experiences were negative, he did not find her current life to be overwhelmingly negative or overly burdensome.²¹ Distinctively, *Bland* had such a poor quality of life that continuation of treatment was of no benefit to him.

In exploring the notion of dignity, Baker J held that there is dignity in the life of a disabled person who is being well cared for and kept as comfortable and pain-free as possible. Article 3 of the ECHR provides a prohibition on inhuman and degrading treatment. Furthermore, *NHS Trust A v. M*²² confirms that the patient must be aware of the inhuman or degrading treatment experienced. Arguably, *M* would have been aware if ANH was withdrawn and died from starvation and dehydration within 2-3 weeks since she had a minimal level of consciousness. This infringement of Article 3 does not amount to a dignified end-of-life thus it was not justifiable to have ANH withdrawn. Wishes and feelings of family members and carers were also considered in analysing best interest. Section 4(7) of MCA 2005 allows the court to consult the views of anyone engaged in caring for *M* or interested in her welfare. A majority of *M*'s carers argued that it was in her best interest to be kept alive as she had some positive experiences. However, *M*'s family wanted ANH withdrawn, so that *M* could be allowed to die. *Glass v. UK*²³ confirmed that Article 8 of the ECHR involved parents being involved in decisions regarding their children's welfare. In relation to *M*, the Court of Protection had so far as practically as possible involved her family in the decision making process, thus there was no infringement of Article 8.

Having weighed up and analysed all the factors in relation to best interest, the demerits of continuing ANH outweighed the merits. Baker J held that sanctity of life was the decisive factor

²¹ MCA Code of Practice, para 5.31

²² (2001) 1 All E.R. 801

²³ (2004) Lloyd's Rep. Med. 76

in this case, objecting to the withdrawal of ANH. Being in a MCS, it was in *M*'s best interest to be kept alive though a do-not-resuscitate order was upheld.

The decision in *W v. M* could have implications for legal development. First, it gives more support to the argument that the right to die should be outlawed because of the sanctity of human life. It is based on the belief that human life should be protected at all times and should be cared for throughout their lives (Holt, 2008). It is also morally and ethically wrong to pass legislation that is grounded in the belief that some people are better off dead; to approve the right to die would undermine all the fundamental principles underpinning the sanctity of life. On that basis, the law should not be used as a vehicle for the right to die. Second, *W v. M* challenges previous decisions concerning patients' plans to go abroad for the purpose of assisted suicide because where the law throws out the right to die through the door it would otherwise allow it back in through the window. This was evident in *Local Authority v. Z*²⁴ where it was held that the law did not penalise the decision of a competent adult to take her own life. *Z* suffered from an incurable degenerative brain disease and wished to travel to Switzerland for assisted suicide. Her husband informed the Local Authority that she was proposing to make the necessary arrangements. The court held that if a person has capacity, there is no basis in law for preventing her from planning to go abroad for the purpose of ending her life.

Furthermore, the right to go abroad for assisted suicide can only be supported if there is unavailability of first class services to alleviate the desire for a patient to end their life. One health professional observed that even a "well planned death" can be "slow, noisy, upsetting, and unpleasant to witness" (Humphry, 1992). However, he believed that the focus should be on meeting the palliative care needs of patients in order to ensure the provision of appropriate pain control, dignity and comfort rather than clinically assisting suicide.

It can therefore be seen that the decision in *W v. M* has brought some degree of clarity over the right to end life-sustaining medical treatment for persons in a MCS. Before reaching a decision, Baker J weighed up the benefits and drawbacks of withholding life-sustaining medical treatment by using the balance sheet test to determine *M*'s best interest. However, Barker J placed more weight on the ethical principle of sanctity of life which is supported by Article 2 of the ECHR. The degree of pain experienced and quality of life enjoyed were also considered. Although relatives argued that *M*'s pain was more severe and frequent, the medical professionals disagreed. However, there was a general agreement that *M* could no longer enjoy life. Barker J relied on the legal effect of *M*'s past wishes to reach the decision. There is no requirement for past wishes to be in writing, which creates doubt and ambiguity over their correctness.

²⁴(2004)E.W.H.C. 2817Fam

Alternatively, the patient could have drafted an advance directive. However, drafting an advance decision is very difficult, especially since the patient is unlikely to know future outcomes. Despite that, if an advanced directive that fulfilled both common law and statutory requirements was made by *M*, it would have been binding. Similarly, if a LPA contained an express provision that extends decision making authority to life-sustaining treatment, then a challenge by health professionals would have been avoided and the LPA's decision would have been allowed to stand. In *W v. M*, a LPA would have offered a more flexible solution than an advance directive, which is constrained by requirements of applicability and validity in end-of-life decision-making, provided the LPA's provisions were precise enough.

Overall, *W v. M* has set a precedent with regards to withdrawing life-sustaining treatment for persons in a MCS. It has removed ambiguity about how the law approaches withdrawal of treatment for patients who are not in a VS following *Bland*. Despite the legal developments, reaching the right decision is crucial because an erroneous decision to withdraw life-sustaining treatment that results in death is irreversible.

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Capital Structure of Small and Medium-Sized Enterprises: Empirical Evidence from Vietnam

Thi Thuy Linh Do

ABSTRACT

Capital structure has been studied broadly in developed countries but little in developing ones. This study examines capital structure of Small and Medium-sized Enterprises (SMEs) in Vietnam, and the influence of some determinants including tangibility, profitability, ownership, firm size and firm growth. The result suggests that debt ratio of Vietnamese SMEs is high and ownership does affect the firm's leverage (or debt/equity ratio) where state-owned SMEs are more highly leveraged than private SMEs. In terms of factors influencing capital structure, profitability and tangibility have negative relationships with the debt ratio of SMEs in Vietnam; firm size has little effect and firm growth appears not to influence significantly the debt ratio of the SMEs.

Introduction

Theories which focus on the capital structure of large firms in developed countries and a few studies examining the capital structure, either in developing countries or among small firms, have shown some evidence that capital structure of Small and Medium-Sized Enterprises (SMEs) in developing countries is affected by the same factors as identified for firms in developed economies. However, each country has specific financial factors and SMEs in developing countries have some characteristics which differ from firms in developed ones. Therefore, it is necessary to examine what factors influence capital structure in the small business sector in developing countries.

Vietnam is a developing country which has been in the process of changing to a market-oriented economy since 1986 and has made some great achievements with a considerable contribution from SMEs. Recognizing the importance of SMEs in the transitional economy, the Vietnamese Government has promulgated many policies to support this business sector. However, SMEs still face difficulties in obtaining capital for future development due to some restrictions of the Vietnamese financial system, which is only at the early stage of development. It is characterized as a bank-based system where the greatest role is played by four state-owned commercial banks (SOCBs), providing up to 80 per cent of total loans in the economy. This fragile system makes it difficult for SMEs, especially private ones, to access capital resources.

Tran and Ramachandran (2006) study features of the capital structure of Vietnamese SMEs over the period 1998 – 2001, and examine the influence of specific determinants on SMEs' capital structure, such as growth, tangibility, business risk, profitability, size, ownership, relationship with banks, and networking on three measures of capital structure. Based on their results and conclusions, this study attempts to go further to see how Vietnamese SMEs' capital structure has changed over the years 2009 - 2011, using data from the financial statements of 45 companies audited by the Auditing and Accounting Financial Consultancy Service Company (AASC) in Vietnam.

Different theories relating to capital structure (pecking order theory, agency cost theory and trade-off theory) are reviewed to develop testable hypotheses on determinants of the capital structure of SMEs in Vietnam. Based on the data analysis, evidence is found out to confirm those hypotheses. Even though the sample size is small, the result gives a brief view of Vietnamese SMEs' capital structure and the effects of factors influencing the firms' choice. As the evidence is from such a small developing country as Vietnam, it might be useful to compare and see the similarity to and the difference with results from previous studies carried out in Western developed countries. The paper also suggests and explains some solutions to improve Vietnamese SMEs' current capital structure.

Theoretical Framework on Capital Structure

Brian Coyle, in his book *Capital Structuring*, states that a corporation may support its assets from three primary sources of finance which is its capital structure:

1. A cash surplus from operating activities
2. New equity funding
3. Borrowing from bank and non-bank sources

Capital structure is extremely important because it can influence not only the return a company earns for its shareholders, but also the survival of the company. In this following study, capital structure refers only to the way a corporate finances its assets through a combination of equity and debt. The relative proportion of debt to equity (D/E ratio) in the company's capital structure is defined as the firm's leverage level. When identifying the determinants of Vietnamese SMEs' capital structure, debt ratio is used as a proxy for the firms' capital structure.

Overview of Theories on Capital Structure

The basic thinking on capital structure was proposed by Modigliani and Miller (1958). However, it is generally considered to be purely theoretical because it relies on many unrealistic conditions. The Modigliani-Miller theorem (M&M model) states that capital structure does not

affect the firm's value if the following conditions are satisfied: 1- The capital market is perfect for borrowing and lending; 2- There are neither taxes nor transaction or bankruptcy costs; 3- Information between investors and the firm is symmetric; 4- Investment decisions are not affected by financing decisions. Since those conditions do not apply in the real world, where capital structure is indeed relevant, a number of theories on capital structure have been developed that relax assumptions made in the M&M model.

Trade-off theory (Kraus and Litzenberge, 1973) captures the bankruptcy cost and taxes to point out the advantages and disadvantages of financing with debt. The benefits of debt (namely, the Tax Shield) are accompanied by the costs of debt (financial distress – like bankruptcy), so we have a trade-off with respect to the level of debt – a higher debt level makes a bigger tax shield, but implies a greater risk of financial stress.

Pecking order theory, which was developed by Myers and Majluf (1984), relaxes the condition of symmetric information. It states that companies get financed under the law of least effort – internal financing is used first, then debt is issued, and equity is the last resort. According to this theory, internal funding is preferred over external financing; and when external financing is required, debt is favored over equity. The issue of equity would signal the board's lack of confidence and that they feel the firm is overvalued; as a result, a new equity issuance may lead to a drop in share price.

Jensen and Meckling (1976) present the Agency costs theory which helps explain the relevance of capital structure based on the conflicts of interest between the outside shareholders and the management, and between the debt holders and the equity holders. Accordingly, when an agent has outside shareholders, the management tends to engage in a moral hazard problem in which the management will have a tendency to take risks because it is the shareholders who bear the costs if things go badly. For example, the management may have an incentive to use the firm's resources for empire building and perks, which give them private benefits that are unobservable to the shareholders and, as a result, destroy the firm's value. The bigger the outside equity is, the more serious the problem is. Therefore, increasing the firm's leverage would impose financial discipline on the management. However, debt also has costs, which are the Risk-shifting problem and the Debt-overhang problem (Myers, 1977). As the D/E ratio increases, management may reject safe, profitable projects and undertake risky (even low-valued) ones to shift the risk to debt holders because debt claims are prior to equity claims. The higher the level of debt is, the more serious these problems are.

Benefits and Costs of Equity Capital and Debt Capital

From the above theories, it is inferred that equity capital and debt capital have their own benefits and drawbacks. It is the management's responsibility to attempt to find the optimal capital structure with respect to risk and reward pay-off for shareholders. Let's describe each in detail:

- *Equity capital*: is considered to be less favored, but is mostly reaped by the small enterprises because equity financing offers the following benefits: 1- Normally, shares are issued when the stock price is high; the market's imperfection makes the share price of bad or small firms overpriced and the firms get benefits from that overpricing; 2- Paying dividends is not compulsory, hence the firm can skip equity dividends without suffering any legal consequences; 3- Equity capital has no maturity date, so the firm has no obligation to redeem. However, equity capital bears costs. If the management displays moral hazard behavior, the welfare of investors and the firm's value will be affected. Besides, although the company may avoid the immediate repayment burden, it is only a short-term option. Should it require additional funding, dividend payments will have to be redeemed; otherwise it could have difficulty raising new equity capital. Furthermore, equity is much more expensive than debt capital, i.e. the rate of return required is higher to compensate the investors' taking risky investments, and equity dividends are paid out of profit after tax. Finally, selling shares to outsiders dilutes the control of existing owners.

- *Debt capital*: is often a fairly low-cost source of financing which has many advantages. First, debt does not dilute the owner's ownership interest in the company. Second, a lender is entitled only to repayment of the agreed principal of the loan plus interest, and has no claim on the firm's future profits. Third, principal and interest obligations are usually known amounts which can be forecast and planned for. Fourth, interest on the debt can be deducted on the company's tax return. Fifth, raising debt capital is less complicated. Debt capital has disadvantages, as well. For example, debt must be repaid and interest requires a budget for payment and raises the company's break-even point. In addition, debt puts restrictions on the company's activities, preventing management from pursuing alternative financing options and business opportunities. Moreover, as the problem of creditworthiness implies, a company with larger debt-equity ratio may be considered to be more risky by lenders and investors.

The comparative costs of equity and debt capital do influence the management's financing decision. A company may choose a higher leverage or more equity, but under any circumstances, either an all-equity or an all-debt finance is an unsatisfactory capital structure.

Factors Influencing Capital Structure

There are a number of factors that may affect a firm's decision on capital structure. Gleason et al. (2000) examine data in 14 European countries to show that legal environment, tax environment, economic system, and technological capabilities influence the capital structure. Furthermore, Korajczyk and Levy (2003) state that not only macroeconomic conditions but firm-specific characteristics have effects on firm's financing decisions as well. Tangibility, profitability, firm size, and the level of growth opportunities are identified as important determinants of capital structure in both developed countries (Rajan and Zingales, 1995), and developing countries (Booth et al., 2001). Antoniou et al. (2002) imply that a firm's capital structure is also affected by its surrounding environment such as deterioration or improvement in the state of the economy, the existence of a stock market and/or the size of the banking sector.

Testable Hypotheses on Determinants of Capital Structure of Vietnamese SMEs

In this section, the theories of capital structure will be applied to the small business sector in the context of the current Vietnamese financial system to develop several hypotheses examining the capital structure of Vietnamese SMEs. As mentioned above, capital structure is affected by many factors; however, this paper only discusses the five factors outlined below.

Firm growth

Empirical evidence from the works of Smith and Watts (1992) and of Titman and Wessels (1988) supports a negative relationship between leverage and firms' growth opportunities. However, Myers (1977) suggests that a firm's growth might be positively related to its capital structure if long-term debt is replaced by short-term debt. In the context of Vietnamese small business sector, this proposition seems to be more relevant because most SMEs in Vietnam operate by small and infrequent transactions and often look for short-term bank loans. The first hypothesis is that a firm's growth relates positively to its debt ratio.

Tangibility

Tangible assets may provide collateral for debts. Therefore, companies with high level of tangible assets are expected to take on more debt. While most empirical studies in developed countries find a positive relationship between tangibility and financial leverage (Titman and Wessels, 1988; Rajan and Zingales, 1995), research in developing countries gives ambiguous results. For example, Wiwattanakantang (1999) reports that tangibility relates positively to leverage in Thailand, but Booth et al. (2001) find that tangibility in ten developing countries is negatively related to leverage. It is a matter of dispute whether this relation depends on the type of debt.

Bevan and Danbolt (2002) examine data in the UK and find that tangibility relates positively to long-term debt, but negatively to short-term debt. In case of Vietnamese SMEs which often involve short-term debts, the second hypothesis is that tangibility relates negatively to debt ratio.

Profitability

The pecking order theory suggests that debt is less prior than retained earnings. This implies a negative relationship between profitability and leverage. Research in developed countries by Titman and Wessels (1988), Rajan and Zingales (1995), and Antoniou et al. (2002); and in developing countries by Booth et al. (2001), Wiwattanakantang (1999), and Chen (2004), find a negative relationship between leverage ratios and profitability. In the context of Vietnamese SMEs, using retained earnings to finance operations is even more popular because the firms' managers are usually the owners who do not like to lose control over their firms. Hence, the third hypothesis is that profitability relates negatively to debt ratio.

Firm size

The study of Marsh (1982) shows that small firms often choose short-term debt while large firms prefer long-term debt. The reason why large firms can issue long-term debt more easily than small firms is that large firms have many advantages such as economic scale, bargaining power over creditors, stable cash flows, less probability of bankruptcy, etc. This is particularly true in Vietnam where SMEs have even more difficulty in gaining access to long-term loans because of banks' strict regulations and high lending rates. Therefore, the fourth hypothesis is that firm size relates positively to debt ratio.

Firm ownership

Dewenter and Malatesta (2001) indicate that firms owned by governments are more highly leveraged than those held privately. In Vietnam, the big role of state ownership is also a feature of the economy. State-owned firms seem to get preferential treatment from banks, especially SOCBs, over private firms. The explanation for this argument might be that state-owned firms get support from the government, so they are less likely to go bankrupt and have less credit risks. The fifth hypothesis is that state-owned SMEs have higher debt ratio than private SMEs.

Empirical Research and Results

Data Collection and Methodology

The paper uses the data of 45 SMEs' audited financial statements provided by the Auditing and Accounting Financial Consultancy Service Company (AASC) in Vietnam for the years 2009 – 2011. These SMEs are registered under the Vietnamese Law of Enterprises, with a charter capital of less than 10 billion Vietnamese dong (VND). Financial firms, foreign-owned SMEs and joint-ventures are excluded. The sample consists of 16 state-owned firms and 29 private firms.

The data is based on book value. The relevant variables are calculated as follows:

$$\text{debt ratio} = \frac{\text{total debt}}{\text{total assets}}$$

$$\text{short – term debt ratio} = \frac{\text{total short – term debt}}{\text{total debt}}$$

$$\text{growth} = \frac{\text{total asset of this year} - \text{total asset of previous year}}{\text{total asset of previous year}} \times 100\%$$

$$\text{tangibility} = \frac{\text{total fixed assets}}{\text{total assets}}$$

$$\text{profitability} = \frac{\text{profit before tax}}{\text{total revenue}}$$

With regard to firm ownership, the data is divided into two groups: the first group consists of state-owned SMEs and the other of private SMEs. The analysis process includes examining the effect of firm ownership on capital structure, and a regression of all determinants (growth, tangibility, profitability, and firm size) on debt ratio through a linear model: $DR = \alpha_0 + \alpha_1GR + \alpha_2TAN + \alpha_3PRO + \alpha_4FS + \mu$ where DR is debt ratio; STR is short-term debt ratio; GR is Growth; TAN is tangibility; PRO is profitability; FS is Firm size and μ is the error term.

Results and Discussion

It can be seen from table 1 that Vietnamese SMEs have a debt ratio of 55.26 per cent on average. State-owned SMEs have higher rate of debt than private SMEs, with debt ratios of 76.25 per cent and 54.16 per cent, respectively. The reason for such high debt ratios is that the financial system in Vietnam has not yet developed; the stock market has only opened in 2000 and commercial banks are still the main financial institutions.

In terms of debt-equity ratio, state-owned SMEs are indeed more highly leveraged than private SMEs with an average leverage level of 4.3762, which is twice as much as the private SMEs' leverage level of 2.0855. This can be explained by the preferential treatment from the government of state-owned SMEs to receive capital credit that comes from the government budget or ODA capital with a low interest rate, and/or preference of banks' lending policies. Considering that state-owned SMEs have a 20 per cent higher debt ratio than private SMEs, as mentioned above, these two criteria support the fifth hypothesis that state-owned SMEs have higher debt ratio than private SMEs.

In comparison with the period 1998 – 2001 (Tran and Ramachandran, 2006), it is noticeable that: 1- the difference in the debt ratio between these two kinds of SMEs is becoming smaller. This may be the result of the government's recent policies of creating a more just financial environment; 2- debt ratios of both firms have increased as the result of the financial crisis which started in 2007 in the U.S. and then quickly spread all over the world. Stock markets fell on a global scale and it has become harder to get financed from equity issue. This supports the assumption that debt ratios tend to increase during recessions and fall during expansionary periods.

A substantially low amount of long-term debt is a major difference between developed countries and developing ones. Table 1 shows that most SMEs employ more short-term debt than long-term debt to finance their operations. The average short-term debt is approximately 83.49 per cent, the percentage in state-owned SMEs being 83.74 and the percentage in private SMEs being 83.06. This criterion does not present much difference between state-owned SMEs and private SMEs. Besides that, the data also shows that there are some private firms without any long-term debt during the years 2009 – 2010. This may be a consequence of the 2007 financial crisis. During this period, the economy's slow growth with high lending ratios made it even more difficult for SMEs to access long-term debts, especially bank loans.

With regard to other variables, the results show some difference between the state-owned and private SMEs. The average of profitability at 18.57 per cent is quite high in this period because some firms with big profits compensated for the ones with losses. The firms' positive growth reflects the quick recovery of Vietnamese economy after the crisis, where private SMEs recovered a bit more promptly than state-owned SMEs, with the rates of 1.6898 and 1.2881 respectively. In terms of profitability, it seems that state-owned SMEs are more profitable than private SMEs. The rates are 21.80 per cent for state-owned SMEs and 16.36 per cent for private SMEs. This can be explained, however, by the preferential treatment from the government to state-owned SMEs, not only for capital credit as mentioned above, but also for other facilities such as land rental and tax rates. Besides that, it can be seen that Vietnamese SMEs are really small. The average firm's

charter capital is only 3,398.4 million VND, in which state-owned SMEs are a little bigger with the average charter capital of 3,667.2 million VND.

To examine the possible relationship among variables, the correlation matrix is obtained as shown in Table 2. The results indicate that all the correlation coefficients are small. For example, the correlation is 0.064 between debt ratio and firm size, -0.284 between debt ratio and tangibility and -0.018 between debt ratio and profitability. This means that the chosen factors are only slightly correlated with each other. In other words, there is no collinearity problem among explanatory variables, so a multiple regression analysis can be done to find out the effects of the proposed determinants on capital structure.

Table 3 presents the result of a regression analysis on the linear model of debt ratio, which is statistically significant at the 5 per cent level. Adjusted R-squared suggests that these four variables – firm growth, tangibility, profitability and firm size – can explain 16.98 per cent of the change in debt ratio. This implies that many other factors affect capital structure, and require further study, which should find and include more variables in the model. It can be seen that firm size relates positively while profitability and tangibility have a negative relationship with debt ratio. Growth, with a high P-value of 0.1526, appears not to be a significant determinant.

As far as tangibility is concerned, the coefficient of -0.245 is significant (the P-value is 0.000117) indicating a negative relationship with debt ratio – if tangibility increases by 1 per cent, then the firm's debt ratio reduces by 0.245 per cent. This result is consistent with the second hypothesis and can be partly explained by the high level of short-term debts of Vietnamese SMEs as mentioned above and shown in Table 1.

Regarding the connection between profitability and capital structure, the result also supports the third hypothesis that profitability relates negatively to debt ratio. The coefficient -0.0218 means that a 1 per cent increase in profitability will lead to a 0.0218 per cent decrease in debt ratio. This confirms the argument that when a firm gains a high return on investment, it tends to use relatively little debt and to do financing with internally generated funds instead.

For the effect of firm size, the evidence is consistent with the fourth hypothesis, but not strong enough. Although the result is statistically significant with a P-value of 0.0392, the coefficient is very small at 0.000792, meaning that when a firm increases in size by 1 per cent, its debt ratio rises by only 0.000792 per cent. The reason might be that the sample of 45 firms in the period of three years is not large enough to reveal a more significant relationship. It can be concluded, however, that in the case of Vietnamese SMEs, firm size does not have much effect on firms' leverage level.

Summary and Conclusions

This study gives empirical evidence of the capital structure of Vietnamese SMEs over the years 2009 – 2011. Compared with the capital structure studied in Western countries, the financing decisions of firms in a developing country like Vietnam are affected by the same factors but slightly differently. Particularly, determinants such as tangibility, profitability, and firm size are statistically significant, whereas firm growth appears to have no effects on debt ratio. Profitability proves to have a negative relationship with leverage in both developed and developing countries. Tangibility has a negative effect on Vietnamese SMEs' capital structure choice because of a high short-term debt level, which is different from firms in developed economies. The effect of firm size is not as clear in Vietnam as in other developed countries. Additionally, three main issues are identified and investigated.

First, the average debt ratio of Vietnamese SMEs is very high because the financial system in Vietnam is weak and undeveloped – firms rely mostly on internal resources and bank borrowing. The stock market has just started, but was affected badly by the global crisis in 2007 and has not yet fully recovered. Another issue is that state-owned SMEs receive more preferential treatment, including capital credit preference, over private SMEs. If these problems are not solved, Vietnamese SMEs (especially the private ones) will continue to face difficulties in making financing decisions.

Second, Vietnamese SMEs employ less long-term debt and more short-term debt than firms in developed countries. Commercial banks, which are the main financial institutions, usually have highly strict lending regulations that not many SMEs are satisfied with. Their loan contracts are generally short-term and it is difficult for SMEs, especially private ones, to get access to long-term loans from banks. The lack of formal direct credit markets for long-term debt is also an obstacle to Vietnamese firms.

Third, because profitability and tangibility have a negative relationship with debt ratio in Vietnamese SMEs, one way to reduce the leverage level is to increase profitability and tangibility. However, this solution alone is impractical to highly leveraged firms because of risk-shifting and debt-overhang problems. Therefore, to improve the present capital structure of Vietnamese SMEs it is essential that the financial system, especially the stock market, be improved and highly developed to meet the capital demands of firms.

The major limitation of this study is that it uses data from a small amount of Vietnamese SMEs over a short period of time. Therefore the results do not provide evidence strong enough to support the hypotheses. For future research, a regression sample with more observations and more variables over a longer time period should be obtained. For example, regressors added into

the model could include proxies of business risk, tax rate, management style, operating structure, economic stability, etc. In addition, studies could also examine the capital structure of big firms and MNEs (Multinational Enterprises) or firms in different economic sectors.

Table 1: Capital Structure by Ownership Structure

	State-owned SMEs	Private SMEs	Total
Leverage (Debt/Equity)	4.3762 (2.6587)	2.0855 (2.1027)	2.3978 (2.3088)
Debt ratio	0.7625 (0.1203)	0.5416 (0.2816)	0.5526 (0.2307)
Short-term liabilities	0.8374 (0.2900)	0.8306 (0.2104)	0.8349 (0.2330)
Growth	1.2881 (0.4528)	1.6898 (1.0718)	1.6455 (1.2050)
Tangibility	0.1003 (0.0755)	0.2578 (0.2443)	0.2413 (0.2249)
Profitability	0.2180 (0.3583)	0.1636 (0.2043)	0.1857 (0.2348)
Size (charter capital – million VND)	3,667.2 (3,506)	3,131.7 (3,262)	3,398.4 (3,385)

The number of state-owned SMEs and private SMEs is 16 and 29, respectively.

Table 2: Correlation Matrix

	DR	STR	GR	TAN	PRO	FS
DR	1					
STR	-0.085219	1				
GR	0.100032	-0.049109	1			
TAN	-0.283795	0.060746	0.054387	1		
PRO	-0.017705	0.025247	-0.064034	0.102448	1	
FS	0.063991	0.086145	-0.029031	-0.021048	0.129608	1

Table 3: Summary of regression result

	Coefficients	Standard Error	t Stat	P-value
Intercept	0.094577	0.197451	4.127423	0.000879
GR	0.018689	0.012982	1.439604	0.152627
TAN	-0.245334	0.099028	-4.57791	0.000117
PRO	-0.021791	0.079866	-0.272848	0.045447

FS 0.000792 0.000109 0.726161 0.039178

Confidence level of 95%

Adjusted R-square: 0.1698

F-stat: 4.8265

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How the Presence of a Vibrant Civil Society Triggers Democratisation

Alexander Borodin

ABSTRACT

How does a vibrant civil society establish a profound basis for the emergence of liberal democracy and what particular type of democracy does the presence of such a civil society propagate? This work focuses on the participatory nature of the citizenry in a vigorous civil society and its direct implications for the democratisation of a given country. The principal merit of civil society is that it provides a transitory, interactive cosmos between private and public spheres and therefore encourages people to organize, educate and enrich themselves forming a separate entity from the government.

Introduction

Doubtless, civil society is a widely used and misused term, especially in relation to the modern conception of liberal democracy. On some occasions, it is treated as a kind of miraculous remedy for a country's path toward democratisation, on others it is used as a point of criticism of actual democracies. Due to this ambiguous usage, there is much scope for a critical discussion of civil society in light of its significance for liberal democracy. If we enquire whether a vibrant civil society is a necessary condition for the formation, maintenance and long-term development of a genuine liberal democracy, we will first of all require a clear notion of what distinguishes a vibrant civil society from a listless one. For that purpose we will concisely present the most common measures of civil society comparing them in terms of merit. Likewise, we shall introduce a definition of our dependent variable liberal democracy including the key criteria it rests upon. Apart from these initial clarifications, we will briefly investigate whether a flourishing civil society could in some cases be an obstacle to the emergence of liberal democracy, thus adapting a more critical perspective. Having established the foundation for a purposeful discussion we proceed to interpret civil society's significance for liberal democracy in light of three crucial outcomes it ideally entails. Firstly, civil society in any flavour creates an intermediary zone between private and public, which empowers the individual to acquire the necessary knowledge and skills to fulfil his role as a democratic citizen. Secondly, the presence of a vibrant civil society directly provokes decentralisation of power, a characteristic feature of liberal democracy. Thirdly, civil society (if functioning properly) decisively contributes to a pluralism of ideas and interests - thus diminishing an authoritarian emphasis on a single, often

ideological, paradigm such as religion, nationalism or socialism.

After looking at these intrinsic features of civil society, we will turn our attention to other conditions that are necessary for the presence of liberal democracy, namely market-capitalism and a symbiotic relationship between the so called cornerstones of society - the market, the government and civil society itself. In the course of this work, I will focus on the ways in which a vibrant civil society is clearly necessary, but by no means sufficient for a country to sustain liberal democracy. Therefore, I will also demonstrate two other indispensable factors that are essential for the presence of liberal democracy.

Considering the diversity of notions of civil society, I will mainly focus on the distinction between the three models proposed by Michael Edwards, which are civil society as “associational life”, as the “good society” and as the “public sphere” (Edwards, 2009, p. 18, p. 45, p. 63). At the same time, this clarification serves to contrast the idea of civil society to the term ‘social capital’, which comprises social interaction in its totality and is employed to give it a measurable value. Despite mirroring a lot of intersections, the two terms aren't interchangeable, as civil society is a sphere of human interaction that usually creates and rests upon the presence of social capital (World Bank).

What makes civil society vibrant and how it can be related to liberal democracy

The vibrancy of a given civil society is most commonly determined by proxy measurements that are then used for comparative analysis. Such proxy measurements of civil society are membership in voluntary associations, expenditures in the voluntary sector, participation in demonstrations, boycotts and petitions, and informal social networks (Paturyan, 2012, p. 2). The higher a country scores according to these measures, the more vibrant its civil society is. Clearly, this form of measurement is problematic for the reason that the mere abundance of voluntary association and action doesn't necessitate the actual flourishing of civil society. That is why research that includes more extensive qualifications, as for instance the one performed by Freedom House (2012), gives a more meaningful account of the state of civil society. In short, we can ascertain that a vibrant civil society is likely to generate social capital and thus facilitate the collaborative interaction between individuals. This result is not necessarily a reflection of a high number of civic associations, but of the quality of their inner workings.

When Benjamin Barber speaks about civil society as “a third and independent domain” (Barber, 1998, p. 47), he alludes to the importance of a vibrant civil society in its role as an opposition force to a country's ruling powers of market and government. But does such an opposite pole necessarily entail the formation of values that characterise a liberal democracy? Although this claim might convey, at its core, a correct message, the general formulation definitely makes it

uncertain. This has to do with the fact that one needs to assess the type of pole that emerges in opposition to the existing power structure. It could propagate violence and subordination, which stand in stark contrast to any notion of liberal democracy. Hence, we should concentrate on analysing the underlying principles and features of civil society in terms of their significance for liberal democracy.

Now the time has come to substantiate the term liberal democracy which refers to “a political system marked not only by free and fair elections but also by the rule of law, a separation of powers, and the protection of basic liberties of speech, assembly, religion and property” (Zakaria, 2007, p. 17). This distinguished definition of liberal democracy will serve as a model in order to establish a precise interrelationship between civil society and liberal democracy. Thus, we will examine certain characteristic aspects of civil society that directly provoke a country’s being a liberal democracy. Now, it becomes crucial to highlight that our investigation aims to prove the importance of a flourishing civil society in two different respects: on the one hand for non-democracies to democratise, and on the other hand for already sustained democracies to further strengthen their democratic status.

Civil society creates an intermediary zone between private and public

It has been posited that individuals mostly get engaged in two opposite spheres: the public and the private. The public sphere comprises the citizen’s political participation by means of electing representatives or by public expression, whereas the private sphere primarily mirrors the person’s activity as an economic subject, both as a producer and a consumer. In this context, we can neglect the person’s individual boundaries, of which family is the most important example, since we aim to consider the individual in its role as a democratically determining agent. Let us imagine the situation that a citizen feels alienated in its role both as an economic and a political agent. There seems to be no platform for her to express her views, to share both knowledge and interest with like-minded people, or even to protect her fundamental rights. In such a scenario, the individual is deprived of any power and thereby lacks the possibility to learn to exercise it. Such a citizen necessarily feels “homeless, suspended between big bureaucratic governments...and private markets...” (Barber, 1998, p. 45).

This observation doesn't necessarily reflect a division of private and public, but points to the existence of separable spheres in which particular needs and goals are pursued. According to this reasoning, the economic sphere provides the necessary resources for a person to achieve a sustainable living, the political sphere serves to entail true representation of a country's citizens and the accountability of the rulers while the sphere of family and friends marks the sphere of interpersonal affection, sympathy and love.

The idea we want to put forward here is that civil society should also be seen as a distinct sphere that serves a particular purpose, namely the assertion of common interests and rights within a range of societal networks (Calhoun, 1993). This sphere of civil society is neither strictly private nor public, but establishes a highly important intermediary zone between private and public. Strikingly, civil society is both an expression of the private interests of the individual and a channel for a more effective public role of the individual as part of a greater social network. It is by that definition that we can see its direct connection with democracy: civil society becomes a "democratic institution" (Calhoun, 1993, p. 279) increasing the power of the people to "alter their own conditions of existence" (Calhoun, 1993, p. 279). In that way, individuals acquire certain skills and experiences that enhance the "collective pursuit and defense of their interests and values" (Kim, 2000, p. 9) and by doing so strengthen their role as democratic citizens. By contrast, the lack of a functioning civil society doesn't necessarily lead to an authoritarian regime, but it makes a society far more prone to succumb to such a trend as an important empowering mechanism is missing. Additionally, even an already sustained democracy faces the menace of collapse if an active civil society is lacking or its character begins to deteriorate so that individuals as a result cease to engage in civic affairs. A probable consequence of civic apathy is political apathy as the former promotes the latter. Thereby, democracy also becomes endangered and may disappear entirely in the long run.

Whereas the negative effects of a lack of a vibrant civil society have now been illustrated, we keep looking for immediate effects of such a society regarding a consolidation of liberal democracy. We may already note that the presence of a civil society empowers the individual to find her own sphere that is independent of her role as either economic subject or political decision-maker. This independent, civic sphere "offers a space for public work, civic business, and other common activities that are focused neither on profit nor on a welfare bureaucracy's client services" (Barber, 1998, p. 44). That is the transitory aspect about civil society that establishes a linkage between private and public sphere and most importantly constitutes the cosmos in which citizens can ideally interact in a peaceful, productive and mutually enriching manner.

Civil society significantly contributes to an ongoing decentralisation of power

A corollary of our notion of civil society as an independent and private cosmos in which individuals can discover and fulfil themselves is the crucial aspect of the decentralisation of power. By joining different associations individuals unite with others and learn to exercise different forms of freedoms, such as freedom of assembly and expression. In this respect, it is important to outline that associations constitute forces that are independent of the government and as such contribute to a separation of wealth, knowledge and power among different groups of people. The reason why this aspect contributes crucially to the formation of a democracy is that it prevents the accumulation of power by the state, which is so characteristic of the

authoritarian state. On Michael Edwards' account, "it cannot be coincidental that rising inequalities and concentrated power in America have paralleled the decline of nationally federated associations such as labor unions and the gradual erosion of the public sphere" (Edwards, 2009, p. 89). So what exactly does this show us? This underpins the observation that a poor civil society with regard to the associational sphere amounts to an uneven accumulation of power and wealth, as well as to "vertical relations of authority and dependency, as embodied in patron-client networks" (Putnam, 1993, p. 101).

Thus, it follows that the presence of a broad range of active associations entails "primarily horizontal networks, bringing together agents of equivalent status and power" (Putnam, 1993, p. 173), which necessarily contributes to the phenomenon, which is so significant for our discussion, of the division and decentralisation of power among the distinct actors within a state framework. To substantiate this essential aspect of a vibrant civil society we should make a distinction between decentralising and privatizing power (Barber, 1998, p. 62). Whereas the latter suggests a "slack and irresponsible government" (Barber, 1998, p. 62), the former "nourishes, protects and encourages robust civil society" (Barber, 1998, p. 62). In short, one has to emphasise that the decentralisation of power and the concomitant horizontal relations which constitute a vibrant civil society evidently promote the formation of a genuine liberal democracy. Further, it is important to direct our attention to an additional striking feature of civic engagement and its exact confluence with our notion of a liberal democracy, namely the rise of pluralism.

Civil society adds up to pluralism

Michael Edward considers civil society as a public sphere that empowers associations to represent diverse beliefs, views and values whereby a multifaceted, pluralistic society is promoted. In such a society each member can freely elaborate, express and debate on a set of issues, values and ideas. In this way, diversity promotes exchange of information and as a result innovation and progress is accelerated. At the same time, this pluralist feature contributes decisively to "enlightened understanding" (Dahl, 1998, p. 37) since each individual obtains the theoretical and often practical access to a wide range of opinions and perspectives. This aspect has a huge impact on the public's qualification to exercise democracy since citizens thus have a real choice, the choice between "alternative viewpoints" (Edwards, 2009, p. 64).

In addition, the presence of various conflicting civil institutions furthers the idea of checks and balances, which refers to the mutual control and limitation of different sources of power. Still, one might object that such diversity would add up to a fragmented society, which is characterised by mutual hostility, intolerance and conflict. But what is the alternative? What will become evident if we imagine a state in which there is one paramount idea or belief which prevails

against all others is that this lays the foundation for a regime which doesn't need to be affirmed by consent for the very reason that the prevailing idea is regarded as something absolutely indisputable and at times even divine. If we consult Adam Smith's opinion on this topic, the key problem will become more obvious: "The interested and active zeal of religious teachers can be dangerous and troublesome only when there is, either but one sect tolerated in the society, or where the whole of a large society is divided into two or three great sects." (Smith, 1976, p. 314) Irrespective of the origin of this idea, whether it is religious, political or social, it is strongly protected by the government and even enforced by means of coercion if faced with opposition. To make this claim clearer, we should take a historic example into account that represents such a predominance of a single view.

Let us consider the communist ideal that was pursued by the Soviet Union over a period of more than 70 years. Communism as an idea transcended all facets of human existence such as education, social interaction, the labour market and governmental institutions, which in itself doesn't exclude the possibility of a democratic regime. Likewise, in the modern time capitalism seems to be such a prevailing concept which ceased to be a pure economic system, but left its characteristic imprint on the totality of human behaviour and mutual interaction. Whether it is the social sphere which manifests a strong emergence of materialism and a simultaneous decline in religiousness or the political sphere which is dominated by corporate lobbyism, capitalism can be considered as a prevailing modern paradigm. Accordingly, the very idea of one predominating paradigm as we have now recognised is an obvious obstacle to the consolidation of liberal democracy. The presence of such a single paradigm undermines and often even prohibits the formation of opposition poles and is mirrored in elections that don't reflect the actual will of the citizens.

That is how one of the cornerstones of a democratic system, "free and fair election" (Zakaria, 2007, p. 17), is eliminated by the simple lack of pluralism. On the contrary, the presence of a vibrant civil society excludes the possibility of such a development which has to do with the very nature of such a civil society as a "non-legislative, extra-judicial, public space in which societal differences, social problems, public policy, government action and matters of community and cultural identity are developed and debated" (Edwards, 2009). However, we must not forget that this depiction reflects a civil society in its ideal manifestation, which doesn't exactly reflect reality.

Market-capitalism as an additional necessary condition for liberal democracy

As we have witnessed there is a narrow interrelationship between vibrant civil society and liberal democracy, but is this the most important and possibly only necessary condition? We have stressed the significance of some elements of civil society, such as the formation of a transitory sphere between public and private, the decentralisation of power, and perhaps most decisively the

emergence of pluralism. Nevertheless, we need to keep in mind other necessary conditions for the construction of a genuine liberal democracy. One of the most fundamental conditions is certainly market-capitalism, because it propels individuals and groups of people who aren't guided by the government to acquire wealth and prosperity.

In this respect, one has to remember the importance of the decentralisation of power, and one may be entitled to ask if there is any economic system which is more appropriate to achieve this goal than a free-market economy. The principal reason for this is that in “a market-capitalist economy, the economic entities are either individuals or enterprises that are privately owned by individuals and groups, and not, for the most part, by the state” (Dahl, 1998, p. 167). The success of these economic actors decreases the government's supremacy regarding capital, labour resources, technology or knowledge, since it enables these actors to become autonomous and self-determining in the absence of any “central direction” (Dahl, 1998, p. 167).

By the same token, the risk of political suppression through the government is considerably reduced as governmental control and enforcement are restricted. In addition, market-capitalism generated, from a historical perspective, immense economic growth, which directly promoted the emergence of liberal democracy (Dahl, 1998, p. 167), whereas economic stagnation results in anti-democratic movements, such as the disruption of the rule of law due to unbridled conflict between economic subjects. Strikingly, a thriving economy as achieved, for instance, by a capitalist-market economy also promotes the vibrancy of a civil society and therefore should be regarded as a significant aspect in our discussion of the interrelation between civil society and liberal democracy. Yet, you might question, why is this the case?

This has to do with the kind of growth that is generated in a market economy, which no longer remains in the hands of the ruling elite, but is distributed across entire social classes. Thereby, market-capitalism “creates a large middling stratum of property owners who typically seek education, autonomy, personal freedom, property rights, the rule of law, and participation in government” (Dahl, 1998, p. 168). The depicted impact of market-capitalism stimulates civil society from three distinct standpoints that we reflected on the very beginning of our enterprise. First, it offers to a wide range of economically independent citizens the opportunity to join associations which assert a certain appeal on them. That is civil society as an associational sphere. Second, the notion of civil society as a good society mirrors values and principles such as tolerance, trust, autonomy, freedom or democracy (Edwards, 2009, p. 47) that are similar to the ones strengthened by market-capitalism.

Ultimately, market-capitalism and concomitant economic welfare lay the foundation for a “discursive public sphere” (Habermas, 1987) since people have the ability to and interest in constituting themselves as active citizens. Albeit it is a legitimate approach to investigate distinct

conditions in an isolated manner, it might also be helpful to reflect on the mutual interaction of civil society, market and government, and the effects that follow from this for our core question.

Interaction between civil society and other spheres determines the success of liberal democracy

As indicated in the last paragraph an essential condition for a country's being a genuine liberal democracy is the interaction between the different cornerstones of the state as a whole, namely the market, the government and, as we now might think, civil society. A system of mutual checks and balances needs to be there to ensure "effective participation" (Dahl, 2000, p. 37) on behalf of the citizenry. It is unlikely and at the same time undesirable that these cornerstones will transform in completely independent entities. This has to do with the immediate dependence of the state's success on their effective linkage. Too wide a gap between them would bear the risk of their respective degeneration, whereas a too strong linkage between these elements would increase the probability of one actor having supremacy and dominance in the long run.

To make this subtle interdependence more comprehensible, we should elaborate on the significance of the autonomous character of civil society. Unless civil society is truly autonomous, it can easily be infiltrated by governmental or economic agents who exclusively pursue their own interest as we will consider in short. Doubtless, this would severely endanger the integrity of civil society. Yet, such an exploitation of civil society not only weakens its contribution to a country's being a liberal democracy, but corrupts the entire system from the inside, so that authoritarianism and despotism are likely to result. Thus, we have to accentuate the necessity to find an equilibrium between civil society and its main obstacles in order to achieve genuine liberal democracy: "government itself, when it is arrogant and overweening; market dogmas, when they presume that private individuals and groups can secure public goods; and the yearning for community, when it subordinates liberty and equality to solidarity" (Barber, 1998, p. 69).

Critique of the role of civil society

At this stage, it becomes expedient to adopt a critical perspective from which the importance of civil society has been undermined and even negated. A common line of criticism goes that the presence of a vigorous civil society doesn't solve the problem of elite domination, which pervades both the government and the market. Rather, civil society is marked by the same elite structure and therefore it is questioned that civil society can ever promote liberal democracy. Here, one can object that assuming that civil society is subject to elite domination doesn't imply that large parts of the population are excluded. Surely the cost of participating in civil society doesn't lead to individuals being entirely excluded from it. The primary cost of civic participation is time and not material resources, so that people who want to become an active part of civil society can do

so according to their individual capacity and motivation.

Adding to that, there are various degrees of civic participation which naturally vary in terms of the resources people need to have. Yet, considering a person who is only minimally engaged in a single civic association, there are still opportunities for this person to acquire new information and knowledge through his engagement. This person may not play an integral part in the democratic process, but she may at least express her voice through voting because of a sense of social responsibility she developed by means of her civic participation. For that reason it would be fallacious to infer that we should get rid of civil society due to it being dominated by elites since there is hardly a human system which doesn't comprise a form of domination or discrimination. In fact, civil society is a structure that is able to challenge existing elites since both market actors and government officials occupy completely different spheres of action. In addition, a thriving civil society erects higher demands to its main figures resulting in them being more accountable and transparent. In sharp contrast, in the case that civil society lacks or is weak there is little scope for individuals to oppose power structures, as became particularly evident in our discussion of the decentralisation of power that results from a vibrant civil society.

Conclusion

In the course of this work we have expounded the main characteristics of civil society that serve as a driving force for liberal democracy to appear in the short run and be sustained in the long run. These are linkages between the private and public spheres, decentralisation of power, and pluralism. It is crucial to recognise that the more vibrant civil society is the greater the extent to which it promotes those developments and hence the more likely democratisation will occur. We have also elaborated on other necessary prerequisites for liberal democracy such as market capitalism and an effective collaboration between government and market actors. What do our gained insights ultimately amount to? Do we have to regard a vibrant civil society both as a source of and a panacea for liberal democracy? Indeed, the close overlap between fundamental features of liberal democracy and the impact of a vibrant civil society makes it rational to deduce that civil society, where it thrives in a country, directly promotes the emergence of liberal democracy. However, the underlying problem is that conversely liberal democracy in at least a basic form needs to be established to empower citizens to get engaged in civic participation, mutual interaction and public deliberation. At this point, we begin to recognise the immense difficulty of distinguishing between source and end, facilitator and recipient. Nevertheless, this is not the matter of a selection between these two, civil society and liberal democracy, but rather the matter of finding a setting in which they can display their undeniable merits to the greatest extent.

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Beyond Focal Points in Coordination Games

Joe Greenwood

ABSTRACT

Built on the assumption of humans as rational self-interested actors with ranked preferences in relation to decisions, game theory has focussed on cooperative conundrums such as the prisoner's dilemma and, crucially for this essay, coordination problems. In coordination games actors have multiple plausible solutions to choose between and would benefit from selecting the same solution as each other but cannot know which solution the other players will choose. A common example is two drivers approaching each other on a road without knowledge of which side to drive on. Neither driver can know which side of the road the other will choose but both would benefit from coordinating so that they do not opt for the same side as each other and crash.

Thomas Schelling's seminal theory of focal points suggests that there are certain solutions to such coordination problems that, due to their physical, psychological, or social features, are naturally more prominent to all actors. In essence, Schelling argues that actors will overcome coordination problems due to the focal quality of certain of the multiple possible equilibria that they can choose. This essay recognises the importance of Schelling's solution within game theory and goes further in arguing that it also relates to wider efforts to reconcile imperfect theoretical models with the complexity of reality. Crucially, it is proposed that theories of power illustrate a feature of reality that is not accounted for by game or focal points theory. However, it is argued that theories of power also only account for one part of reality and that this reveals a fundamental tension between parsimonious explanatory theories and full description of reality. It concludes by proposing that determinism may be a useful philosophical frame through which to understand this tension.

Introduction

Implicit in the question that this essay seeks to answer is the proposal that Thomas C. Schelling's theory of focal points seeks to achieve more than providing a solution to 'indeterminate situations' of multiple equilibria in game theory. (Schelling, 1960, p. 22) Whilst the latter achievement would be significant in itself, this essay does consider that there is a broader concomitant purpose to Schelling's work, which is to reconcile game theory with reality. This underpinning assertion is reflected in the essay's explanation of focal points, its response to them, and its conclusion.

The first section of the essay outlines the problem of multiple equilibria confronting game theory and Schelling's proposed solution to it, as well as subsequent attempts to utilise focal points as a bridge between game theory and critical theory. Whilst considered an enrichment of game theory, the second section suggests the incompleteness of focal points in reconciling theory and reality. In particular, it posits that Steven Lukes' and Michel Foucault's theories of the relevance of power to social influences, including focal points, address that incompleteness.

The essay concludes that Schelling's proposal of focal points provides a useful amendment to game theoretical accounts of human action, interaction, and outcomes. Crucially, its incompleteness in accounting for reality is seen to be only partially addressed with reference to the outlined theories of power. In this light, the tension between explanatory theories and description of reality as it exists is noted and determinism, while flawed, is suggested for future consideration as a means by which to drive critical consideration of the incompleteness of any theory.

The Problem and the Proposed Solution

A simple and good example of a game with multiple equilibria is the 'Battle of the Sexes' in which a female and a male partner wish to spend the evening together but cannot agree whether to attend the ballet (her preference) or the boxing (his preference).²⁵ The payoff for both actors is higher if they can coordinate to attend one event rather than go to separate events but there is no way for them to decide between the options. This coordination game is predicated on the key assumptions of game theory, that the players possess 'fully ordered preferences, complete information', and a 'perfect internal computer' (Hollis, 1994, p. 123; p. 116), and on the assumption that they cannot communicate. (Hollis, 1994, p. 129)

²⁵ There are a number of key assumptions that underpin scenarios like this in game theory:

- First, each option has a different value for each player (i.e. person). In this instance both players apply the value of 0 to attending either event (ballet or boxing) alone, the value of 1 to attending their less-preferred event with the other person, and the value of 2 to attending their preferred event with the other person. They are thus considered to have ranked preferences (i.e. they can rank their options in terms of the values, or payoffs, that they assign to them);
- Second, the players aim to maximise their payoffs (i.e. pursue the option with the highest value to them);
- Third, the ranking of preferences to pursue the highest payoff means that players can identify their dominant strategy (i.e. they can choose the course of action that delivers the highest value to them);
- Fourth, crucially, in this scenario, the players cannot communicate with each other, meaning that it is what is known as a tacit game (i.e. each player must make their decision about the best course of action based on assumptions about the other player's preferred course of action);
- Fifth and finally, in this example, the above assumptions mean that players have no dominant strategy; they cannot anticipate the other player's actions so they do not know the best way to gain the highest payoff (i.e. whether they choose to go to the ballet or the boxing there is always a risk that the other person will go to the other option, so they miss out on the highest payoff (i.e. they both end up with a value of 0 if they fail to go to the same event)).

Since both the woman and the man have a higher payoff from coordinating but each has a higher payoff from coordinating, respectively, around ballet and boxing, there is no ‘*dominant strategy*’ (Hollis, 1994, p. 124). This issue stems from the fact that, in a tacit game, each actor is not ‘trying to guess what another will do in an objective situation; [they are] trying to guess what the other will guess one’s self to guess the other to guess, and so on ad infinitum.’ (Schelling, 1960, p. 92-3) In fact, it has been convincingly argued that even with communication the multiple equilibria remain because ‘[w]ords are cheap’ (Hollis, 1994, p. 125) and even strategic moves committing resources may be intentionally misleading. (Johnson, 1993, p. 81) Hence the actors do best by mistrusting each other and paying heed to their knowledge of each other’s actual preferences.

Since ‘[a]lmost all games that are remotely realistic representations of reality have more than one equilibrium’ and potentially an infinite number (Ward, 2002, p. 70), and since indeterminacy undermines the predictive capacities of game theory and its ability to define rational action (Ward, 2002, p. 72), the problem is critical. In this light, the identification by Schelling of ‘the intrinsic magnetism of particular outcomes, especially those that enjoy prominence, uniqueness, simplicity, precedent, or some rationale that makes them qualitatively differentiable from the continuum of possible outcomes’ (Schelling, 1960, p. 70). has great utility. This utility is extended by the equal relevance of these focal points, which are considered to be ‘[t]he psychic phenomenon of “mutual perception”’ (Schelling, 1960, p. 101), in both tacit and explicit games. (Schelling, 1960, p. 71) Thus, returning to the example of the ‘Battle of the Sexes’, a focal point may be the principle of taking turns in which both the woman and the man would consider which pastime was undertaken last time they went out together and do the opposite this time. The principle of taking turns could apply equally in a tacit or an explicit game and, it is worth noting, in a non-game situation (i.e. it is perfectly plausible that an individual, on their own, choosing between two equally enjoyable events would apply the principle of rotation, or taking turns).

Besides their capacity to provide a convincing solution to indeterminacy there is another particularly interesting characteristic of focal points, which is that they are generally not mathematical in nature. (Schelling, 1960, p. 113) Thus, by embracing nonmathematical focal points, people can ‘do something that no *purely formal* game theory can take into account; they can do *better* than a purely deductive game theory would predict.’ (Schelling, 1960, p. 164) In this light, focal points take on a normative character, in that actors ought to pay attention to them to ensure consistently better payoffs than chance alone would allow. (Schelling, 1960, p. 108; p. 64) From a game theoretical perspective there is a problem with the introduction of aesthetic, historical, legal, moral, and cultural properties, which is that they are extremely difficult to model. (Schelling, 1960, p. 113) In effect, acceptance of the concept of focal points

means that the answer to any indeterminacy becomes: ‘Well, they just choose the equilibrium that’s focal for them.’ This problem suggests that Schelling is not just using focal points to amend game theoretical models but is also seeking to ‘meld deductive and inductive approaches’ in order to explain outcomes as they are observed rather than as they are modelled. (Hechter, 1992, p. 38)

In subsequent endeavours, convincing arguments have been proposed that utilise focal points in reconciling game theory and critical theory. Ultimately, such arguments conclude that ‘while game theory provides no account of why cheap talk can ever succeed, critical theory identifies a mechanism to explain how, within constraints, it might coordinate social and political interaction.’ (Johnson, 1993, p. 825) In doing so, it is emphasised that strategic communication can draw upon Jürgen Habermas’ ‘lifeworld’, or the stock of knowledge relating to the objective, social, and subjective worlds. (Schiemann, 2000, p. 5; p. 3) Focal points are identified as part of the ‘lifeworld’, thus their utilisation by actors is considered a sub-competence of strategic competence. (Schiemann, 2000, p. 2) Again, though the initial purpose of the arguments is to reconcile game theory and critical theory, in attempting to fill the gaps in each they are ultimately attempting to reconcile theory with reality, to provide a more convincing account for occurrences outside models.

Beyond Focal Points

In attempting to account for reality by amending or synthesising theory the efforts previously outlined invite the question of whether they have gone far enough. Are there other pertinent pieces of work, relating to game theory specifically or within other schools of theoretical thought that can further account for reality? There has certainly been interesting work relating to the limits of game theory, even when amended by focal points, suggesting that humans often behave in ways not in line with strict rationality. The ‘Allais Paradox’ demonstrates convincingly that humans are risk-averse and will pay a high price to eliminate it completely but will not pay the same price to eliminate the same degree of risk if some remains. (Hargreaves Heap et al., 1992, pp. 37-8) Similarly, the ‘Ellsberg Paradox’ shows that humans are also ambiguity-averse and will trade an ambiguous chance of winning for the alternative of an assured, though perhaps lower, chance of winning. (Hargreaves Heap et al., 1992, p. 45) The former paradox has been used to suggest that the ‘independence axiom’ in rational choice theory, which underpins game theory, may be inappropriate in accounting for human behaviour due to emotions such as regret, which undermine the independence of available options. (Hargreaves Heap et al., 1992, p. 41) It is possible to perceive such departures from rationality to be forms of ‘bounded rationality’ but it has also been convincingly argued that transposition of learned, if irrational, considerations into strictly rational games is ‘*more than rational.*’ (Hargreaves Heap et al., 1992, p. 39; Elster, 2007, p. 342)

Thus, focal points may be underpinned by non-rational human attitudes and behaviours that have variously been posited and demonstrated to be genetic, psychological, and social. (Alford and Hibbing, 2004; Gerber et al., 2010; Jennings, 2007; Saggar, 2007; Caínzos and Voces, 2010; Brooks and Manza, 2004) While the former two factors impact on inclinations, for instance towards taking risks, it is social factors that define how inclinations are expressed. (Gerber et al., 2010, p. 111; p. 113; Cohen, 1919, p. 109) One may be an altruist in a social setting that emphasises the family as the key organising group or in a setting that emphasises friends as the crucial social network but action, interaction, and outcomes will be different in each. (Wildavsky, 1992, p. 11) In this light the power to influence social spheres, and the focal points constructed therein, becomes pertinent and differentiated power in interactions is rendered relevant.

The relevance of differential power to focal points in social spheres can be seen in the concept of patriarchy, or a society that sustains the domination of women by men. Such a society may well construct the focal point of doing what the man wants and, in the example of the ‘Battle of the Sexes’, use this to overcome multiple equilibria problems. The construction of such a focal point would represent only one of Steven Lukes’ three faces of power, which are worthy of further consideration. (Lukes, 2005, pp. 25-9) The first face of power is the most apparent and encompasses coercion and persuasion. It amounts to the ability of one actor to explicitly gain their favoured outcome from another actor who holds, and is aware of, a different preference ordering. In the example of the ‘Battle of the Sexes’ this would manifest itself in the capacity of one actor to either physically force, or persuasively convince, the other actor to attend the first actor’s preferred event. The second face of power is more subtle and takes the form of agenda-setting, or the ability of one actor to define the terms of the debate. In the example, it would amount to the ability of one actor to ensure attendance at their preferred event by, for instance, asserting that there is no time to debate the options. Finally, the third face of power is the most insidious and amounts to control of perceptions of interests. In the example this would constitute the ability of one actor to, without it being recognised, actually change the preference orderings of the other actor so that they consider it to be in their own interest to attend the first actor’s preferred event. The three faces of power are illuminating because they help explain outcomes of interactions as well of the role of power in constructing focal points, as in the example of patriarchy.

Taking the analysis of power one step further, Michel Foucault utilised the idea of the ‘panopticon’ to illustrate that social power perpetuates its influence through a sense of observation that humans feel, regardless of whether they are interacting with others. (Foucault, 1991, p. 173) The idea that social power ‘sustains itself by its own mechanism’ (Foucault, 1991, p. 177) leads to the suggestion that it ‘is not to be thought of as the property of particular classes

or individuals who “have” it, nor as an instrument which they can somehow “use” at will.’ (Garland, 1990, p. 138 cited in Lukes, 2005, p. 89) Together, Lukes’ and Foucault’s theories suggest that actors may utilise power to influence others, for instance by constructing focal points, but that they are ultimately also always subject to power, even when perceiving and reacting against it. (Foucault, 1975) In doing so those theories point to influences on humans that account for reality more fully than game theory alone can, even when it is amended by focal points theory.

Conclusion

Schelling’s theory of focal points provides a persuasive and highly useful solution to the problem of multiple equilibria in game theory. However, this essay perceives that solution to be only part of its purpose, striving as it does to account for gaps between theoretical models and reality. In this endeavour it is, as any specific theory will be, only partially successful. It does not account for how such ‘more than rational’ phenomena emerge underpinned as they are by genetics, psychology, and social settings.

It has been posited that the latter of those influences on human behaviour suggests the relevance of theories relating to power in explaining reality. Power relations structure human interactions and are thus directly relevant to game theory, as demonstrated by the application of Lukes’ three faces of power to the working example of the ‘Battle of the Sexes’, and Foucault’s convincing argument that power pervades all situations and exerts influence on all humans. Crucially, despite covering relevant and important explanatory ground beyond that covered by game theory, as amended by focal points theory, theories of power remain incomplete in describing reality.

It asserted in opening this essay that Schelling’s theory of focal points was, in part, an attempt to reconcile game theory with reality. It has been argued that it did not go far enough and that theories of power must also be considered but that they also remain incomplete. This reveals an important tension between theories that attempt to parsimoniously explain reality, and complete description of that reality. In this context it may be useful to refer to determinism as helpful critical tool that forces ongoing recognition that explanatory theory is always incomplete. It’s utility is limited because reality can never be fully described but determinism suggests an ultimate explanatory model, providing as it does an equation in which an infinite number of determining factors can be combined to account for the particular outcome in question. (Hempel, 1966, pp. 11-2 cited in Sanders, 2002, p. 52) This renders it simultaneously illuminating and unworkable, but it does not undermine its utility in driving a critical approach to any partial explanation, such as Schelling’s, and the search for further determining factors in any outcome.

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Is beauty necessarily accompanied by pleasure?

Iulia Minulescu

ABSTRACT

This essay looks at the Fourth Moment in the *Analytic of the Beautiful* of Kant's Third Critique and tries to analyse his claim that the aesthetic judgment of the beautiful is always necessarily accompanied by a feeling of pleasure. By comparing two paintings, namely Dante Rossetti's *Lady Lilith* and Salvador Rosa's *The Witch*, the present essay aims to suggest that while judgments of the aesthetically unpleasing may be influenced by ideological dictates, the response of the subject when undergoing aesthetic judgments of the beautiful is necessarily a-temporal and, consequently, accompanied by a feeling of pleasure.

In the Fourth Moment of the *Analytic of the Beautiful*, Kant sets out to establish the necessity of aesthetic judgment that is to say, that all aesthetic judgments are necessarily associated with a feeling of pleasure.

In this essay, I intend to show that the necessity of beauty Kant puts forth not only is ascribed solely to positive judgments of beauty, but also that beauty itself is independent of culture, by comparing two works of art that have the same subject – the depiction of a witch – but illustrate it in two very different manners. One of the paintings, namely Salvador Rosa's *The Witch*, is representative of Umberto Eco's treaty *On Ugliness*, while the other, Dante Gabriel Rossetti's *Lady Lilith*, is representative of Eco's treaty *On Beauty*. Even though the artists are separated by a period of more than two hundred years, the subject of the paintings is roughly the same: the depiction of the dangerous woman. By contrasting acknowledged beauty with acknowledged ugliness, I am hoping to show that Kant's notion of common sense, namely the free play of the faculties of understanding and imagination, can only be applied to judgments of beauty, and that the free play is disrupted in the case of judgments of ugliness, thus implying the feeling of pleasure is a result of judgments of beauty alone, as opposed to aesthetic judgments in general.

In the case of the beautiful, the pleasure the Subject derives is a necessity, different from any other kind of necessity in the sense that it is exemplary, that is, impossible to acquire through experience or empirical judgments. Unlike knowledge, which is strictly dependent on concepts, aesthetic pleasure can only arise independently of concepts. Kant differentiates between the necessity that arises from judgments of cognition, which can be, but is not necessarily, a feeling of pleasure, and the necessity arising from judgments of taste, which *must* be a feeling of pleasure,

because taste itself is expressed *as if it were* a feeling of pleasure. Judgments of taste, therefore, only arise when judgment is associated with liking.

When deeming an object beautiful, the Subject relies on beauty's universality in order to exact approval, and thus pleasure, from every other Subject that is met with the object in question. The pleasure in aesthetic judgment is merely contemplative and not interested in the object, as opposed to judgments of the agreeable and judgments of the good, which both take an interest in the object.²⁶ The relation between Subject and object is to a certain extent phenomenological, as it requires the 'participation' of both: as the Subject judges the object aesthetically he enters a reciprocal relation of analysis, that is, one in which the Subject scrutinizes and the object is being scrutinized. However, in the particular case of aesthetic judgments, the relation is not meant to reach completion, and is not initiated with such a purpose in mind, but is, as it were, suspended in a lingering fashion, which is precisely what arouses pleasure in the Subject. The pleasure we derive in aesthetic judgments from contemplating an object is in fact a result of the object keeping representing itself, thus employing our cognitive power without reaching an end (i.e. knowledge through conceptual means). Even though we cannot reasonably demand agreement in our aesthetic judgments, we have the right to do so, because we expect our judgments of taste to be reciprocated. In order for beauty (and implicitly aesthetic judgments) to be reciprocated, they must first be communicated universally. Consequently, a relation between the Subject's manner of subjectively assessing objects and the representation of the object is necessary, because communicating an aesthetic judgment involves communicating the mental state one is in when making judgments of taste. With regard to this, Kant brings into discussion the 'free play' of the faculties of understanding and imagination as the sole ground upon which aesthetic judgments can be imparted and deems pleasure to be a natural response to the awareness of the free play of the faculties: "That an ability to communicate one's state of mind, even though it be only in respect of our cognitive faculties, is attended with a pleasure, is a fact which might easily be demonstrated from the natural propensity of mankind to social life". (Kant, 1952, p. 49) In consequence, because the pleasure we take in the beautiful comes as the result of a communicable mental state, we can rightfully demand that pleasure also should be communicable, as a prerequisite of judgments of the beautiful. Rossetti's *Lady Lilith*, in my view, illustrates the communicability of both mental state and pleasure: the overall impression of the painting creates a disruption in the rational way of existence of the Subject, thus permitting his faculties to alter their customary relation and be in free play. Beauty, consequently, does not *need* to exact approval, but has the right to, as it is alluring and disquieting enough to create the necessary state of mind in order to communicate the judgment of taste.

²⁶ "...the judgement of taste is simply contemplative, i.e. it is a judgement which is indifferent as to the existence of an object, and only decides how its character stands with the feeling of pleasure and displeasure... The beautiful [is] what simply PLEASES him [the Subject].... [the delight] of taste in the beautiful may be said to be the one and only disinterested and free delight; for it...extorts approval." (Kant, 1952, pp. 48-9)

According to the *Critique of Judgment*, the delight is free of interest for any person. It is, therefore, only natural for the Subject to suppose that the object he deems beautiful must have some universal characteristic that enables it to trigger the same subjective response in more than one Subject and thus appear beautiful to many. Beauty is not intrinsic to the object, but lies in the representation of the object in the mind of the Subject. The quality of the representation, that of being considered beautiful or not, that is, of being subjected to an aesthetic judgment, must rely on a ground common to the representations of many Subjects. However, because the triggering of some sort of pleasure is what defines the universality of beauty, the possibility of an aesthetic judgment becomes void in its absence, that is, without the pleasure that the Subject derives from beholding the object, beauty cannot be universal. Rossetti's *Lilith* plays the role of the determinant of delight that possesses the intrinsic ability to trigger pleasure in all Subjects: this is beauty's universality, because taste itself is characteristic to all judging Subjects.²⁷

In order for a judgment to be valid, it needs to be founded on the grounds of a principle; were aesthetic judgments purely objective, their foundation, that is, their underlying principle, would be the grounds on which one could demand agreement from others. However, because aesthetic judgments are subjective, their underlying principle must also be subjective, but, as Kant points out, "with universal validity". (Kant, 1952, p. 82) This subjective principle, which, as aesthetic judgments, is independent of concepts but relies solely on feeling, is called by Kant 'common sense' (or 'sensus communis') and is described as being a free play of the faculties of imagination and understanding, and also the only grounds on which one can determine what is liked by means of feeling and demand agreement regarding one's aesthetic judgments from all Subjects. Common sense as the subjective principle of aesthetic judgments, or at least the idea of one such principle, is therefore necessary for the existence of any judgment of taste.²⁸

Both cognitive and aesthetic judgments must rely on the existence of common sense in order to be universally communicable. The certainty of the existence of common sense therefore results from the fact that knowledge is communicable. However, because common sense is essential in both cognition and aesthetics, "the (implausible) conclusion would be, that knowledge is based on an essentially aesthetic frame of mind", as Hughes (2010, p. 69) suggests, or, equally implausible, that aesthetic judgments are based on cognition. The solution to this semantic

²⁷ Even though judgements of taste are subjective judgements, they come, in part, as a consequence of beauty's intrinsic quality of being universally acknowledged, and are, therefore, invariably conducted on the grounds that every judging Subject should be able to perceive the beauty of a certain object. The necessity of pleasure in the beautiful, therefore, arises from the fact that, because every judging Subject has the possibility of deriving pleasure from the beauty of a certain object, he ought to do so, as a way of concurring to another's aesthetic judgement. Rossetti's painting, therefore, should have *the possibility* of pleasing every judging Subject, even though it does not necessarily have to.

²⁸ Pleasure, therefore, is directly dependent on the free play of imagination and understanding. The question that therefore arises is whether Rossetti's *Lady Lilith* indeed sets the necessary frame of mind for the harmonious play of the faculties to arise, or whether it disrupts the balance, making aesthetic judgements impossible. This question should find an answer in the contrast between Rossetti's and Rosa's paintings.

conundrum is suggested by Hughes' reading of Kant, namely that the difference between the common sense used in cognition and the one used in aesthetic judgments lies in the proportion in which the faculties of imagination and understanding are employed, as well as the nature of the attunement between them, which, in the case of judgments of taste, is a 'free play' – a disinterested harmony of the faculties that could arise in cognition, but does not, and instead only communicates through feeling. The definition of common sense therefore, according to the Readers' Guide, is that it is "the ability to coordinate our mental faculties as is required for any cognition whatsoever" (Hughes, 2010, p. 71). This is not to say that cognition is instrumental in judgments of taste, but that it is the quality of the judgments of taste of being, in a sense, like cognition that makes them communicable, and their particularity of relying solely on subjective judgments that makes them aesthetic.

Common sense, as the subjective principle on which judgments of taste are made, has the possibility of becoming an objective principle when the judging Subject takes common sense as the ground on which agreement regarding aesthetic judgments could exist. That is to say, common sense is represented as objective when its subjective universal validity is exerted, because, as Kant explains, it "could...demand universal assent like an objective principle" (Kant, 1952, p. 85) Pleasure, therefore, is for aesthetic judgments what the intake of knowledge is for cognitive judgment: the necessary result of the principle on which the respective judgment is based, or, to phrase otherwise, the response of the Subject to judgments of taste, just in the way the response to judgments of cognition is the arising of knowledge.

It could be argued that, because aesthetic judgments *must* be followed by an emotional response, it is not compulsory for that response to be pleasure. That is to say, the mere existence of a judgment of taste does not compel the Subject to feel delight, but allows him to feel either delight or repulsion when being presented with an object. The question, therefore, arises from the opposition between positive and negative judgments of beauty, from the clash between the beautiful and the ugly.

To illustrate beauty, Rossetti chose a figure that was deeply rooted in mythology. In the Biblical tradition, Lilith was the first wife of Adam, before Eve, and she is described, both in biblical texts as well as in Rossetti's painting, as a *femme fatale*, a dangerous, seductive beauty who would lure and destroy men. The image of Lilith is highly sexualised: her skin is pale and her body, unconstrained by corsets, is barely covered by a nightgown, features which only highlight her lips and hair of bright hues of red, both symbols of overpowering sensuality. The ambiguity of the setting (the impossibility to establish whether the scene is set in or out of doors) adds to the dream/myth-like quality of the painting, and Lilith's cold gaze, which is self-contemplative and completely indifferent to outer elements, is discrepant with her inviting pose.

By contrast, Rosa's painting describes a witch clasping a flaming torch, possibly a necromant, in a moment of fury and at the peak of her bodily repulsiveness. She is naked, not as a symbol of sexuality, but as one of repulsiveness that comes with old age and wickedness, and surrounded by elements of witchcraft: her familiar, a skull, bones, a parchment signed in blood, and a dead baby.²⁹ As was the fashion in the Middle Ages, witches were wildly infamous and the depiction of witches was to fit the age's understanding of them. Witches, who were mostly learned or simply superstitious women, became the bane of the Middle Ages, arousing an impressive amount of interest and numerous misogynistic treatises on how to identify and punish them.³⁰ Even though, allegedly, it was witchcraft that altered the bodily features, aestheticism played an important part, because, as Eco points out, "in most cases, the many victims of the stake were accused of witchcraft because they were ugly". (Eco, 2007, p. 212) Ugliness was, therefore, the prerequisite of evilness.

The most striking feature the two paintings have in common is the fact that they both are depictions of witches. However, because the ages in which they were painted differ, one becomes a portrayal of repulsive form and wickedness, while the other of eroticised beauty. The difference in age, therefore, sets the standard of beauty, and as the ages progress beauty becomes increasingly more independent of morals, culminating with a reversal in fashion with the rise of Decadence as a movement.

Even though Kant mostly focuses on positive judgments of beauty and on the feeling of pleasure the Subject derives from beholding the object, the negative judgments of beauty are equally important. About the aesthetics of ugliness, Kant says that naturally ugly and frightening objects can only appear to be beautiful when depicted by the fine arts, because of the intensity of the description – that is to say, the work of art is judged aesthetically in itself, as composition, and not through the prism of what it represents. However, as far as negative judgments of artistic representations are concerned Kant's view is that only objects which arouse disgust can be depicted in conformity with nature while preserving aesthetic pleasure: "...the artificial representation of the object is no longer distinguishable from the nature of the object itself" (Kant, 1952, p. 174), thus forcing the Subject to consider the object natural, and not merely as a representation. The result, Kant argues, is that the free play of the faculties is disrupted, because the sensation one takes in beholding a repulsive work of art, that is, the disgust, "depends purely on the imagination". (Kant, 1952, p. 174)

²⁹ These elements were 'identifiers' of a witch: the parchments signed in blood was proof of a pact with the devil and the familiar (commonly an imp, like in the painting, but also a pet, like a cat or a crow) was the witch's way of channelling evil forces according to will. The skull and the dead baby were 'ingredients' for spells, but also what was meant to convince the people of witches' evilness and dangerous natures, as they symbolized two crimes punishable by death on their own: infanticide and desecration of graves.

³⁰ The most famous of these treaties was *Malleus Maleficarum*, published by two inquisitors and witch-hunters, Jakob Sprenger and Heinrich Kramer (1486). The overtly misogynistic nature of the text is obvious even in the title, as the Latin particle '-arum' is only used in the feminine, the form for masculine and neutral being '-orum'.

Rosa's painting – a classical image of the witch in the Middle Ages – is, above all, striking. The posture of the witch, her facial features, her angst, her rage, are all expressively portrayed, and the painting itself is undoubtedly of aesthetic value. However, the reaction the Subject has at the sight of the painting is mostly physical, as opposed to the reaction one might have at Rossetti's painting, which would not limit itself to being purely physical. Rosa's painting is a portrayal of ugliness, of a subject that arouses fear and repulsion. The quality of the representation keeps the viewer from being stricken by the composition itself, but presents the subject of the painting as if it were natural, and not merely a representation. Thus, the response of the Subject is as if presented with a natural object, and therefore, the painting is initially met with disgust. This reaction, in Kant's view, is not a pure aesthetic judgment, as it is not conducted on the grounds of a free play of the faculties, but only influenced by imagination. Rosa's painting invites to be known, not contemplated, that is, assessed through cognition, not aesthetic judgment. While cognition does not, in any way, undermine the overall aesthetic value of the painting, it does imply a relation between judgments of taste and cognition, which impedes on the judgments' possibility of being aesthetic.

Rossetti's painting, on the other hand, portrays the mythological beauty, which, unlike the beauty dictated by fashion, transcends both age and artistic movements. Rossetti's painting invites the viewer to contemplate it: it appears beautiful not because it reveals something about a certain age, movement, historical period or person, but because it portrays a type of beauty that is independent of time. Lilith, as a mythological character, is set outside time,³¹ thus the painting depicts an ideal of beauty that is enduring because it keeps representing itself, it shows a finality of form that is in itself pleasurable, without being in need of interpretation or clarification. Ugliness, as a product of society, is always in need of clarification, while the Kantian beauty should never be. Lilith, as the form of beauty, is never depicted as a product of society; her beauty precedes society, fashion and artistic movements, and is universal in the sense that has the ability of facilitating the free play of the faculties regardless of time. The viewer is made to contemplate the painting in itself, and not its subject (or focus). By contrast, Rosa's witch engages *with* the viewer, making him to seek to understand the subject of the painting (the witch herself) and the historical content, as opposed to the painting as a whole. Ugliness becomes an underlying message: Rosa's witch needs to be known in socio-historical, as well as artistic terms, while Rossetti's Lilith does not require knowledge in order to be contemplated.

While a definite formula regarding the degree in which the imagination and the understanding should be involved in the free play does not appear in Kant's Critique, the complete absence of

³¹ Mircea Eliade named the mythological time '*illo tempore*' – '*that time*': an idealised time which cannot be pinned down to a certain historical age, but exists outside the constraints of historical (real) time. '*Illo tempore*' is common to mythology, folk tales and fairy tales and mostly denotes a stage of the unconscious mind of increased receptivity.

either of them would irremediably disrupt the free play, therefore rendering void both the existence of a 'subjective principle of universal validity' (i.e. common sense) and the Subject's possibility of demanding agreement in his judgments of taste. In consequence, it is only the beautiful that results in the arousal of pleasure in the judging Subject, because, as opposed to the ugly, it is the only one that employs common sense, and thus the only one that allows both imagination and understanding to be in free play. The conclusion is that pleasure is a necessity in judgments of beauty in particular, and thus restricted to this type of judgment alone, as a consequence of common sense, the subjective universal principle which allows judgments of beauty to be communicated.

As all abstract concepts, beauty is always also to be defined by contrast to what it is not; as Alexander of Hales argues, "since from evil comes good, it is therefore well said that it contributed to good and hence it is said to be beautiful within the order.(...) it would be preferable to say: 'the order itself is beautiful'." (Eco, 2007, p. 149) Thus, the pre-Derridean thought of Hales places opposites in relation, and ugliness becomes an integrated part of beauty, in the absence of which beauty itself could not be properly defined. It could therefore be argued that aesthetic pleasure derived from the arts stands in relation to social fashions that dictate the emotional response of the Subject, or rather, to the aesthetic predisposition that is inherent to every artistic movement: art is the product of the current trend, which in turn is the result of society's momentary inclinations. Trends are invariably dependent on human desires, which shift radically once they have reached the point of saturation. In this situation, however, it is important to highlight the fact that artistic movements arise from necessity,³² and therefore have finality, thus being incompatible with the idea of the beautiful. That is not to say that artistic movements have not given rise to works of art, but rather that the human desire for the aesthetically pleasing results in craft, not art, as Kant explains, and thus does not invite the play of the faculties.

Ultimately, although ugliness may be linked to social dictates and may stand in relation to a form of aesthetic pleasure, it does not necessarily follow that the aesthetic pleasure is the beautiful as such. Rather, ugliness represents the opposite of what is desirable, while beauty transcends social dictates and, by appealing aesthetically to the Subject, facilitates the free play of the faculties. The beautiful maintains its communicability and universal claim for validity, despite changes in the artistic preferences of the age. Thus, the fragility of fashion does not attack the universal character of beauty, but rather that of ugliness and of human desire.

³² The desire for change, for progress, for the adoption of different mentalities, political systems, religious views, social climates, etc.

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The Microfiction Challenge 2013

This academic year Learning and Development (Ldev), committed to providing training and development opportunities for staff and doctoral students at the University of Essex, initiated the University's Microfiction Project. The first phase of the project consisted of a series of workshops called *write.read.think.good. microfiction for better diction*, in collaboration with the Faculty of Humanities and Comparative Studies (HCS), and The Microfiction Challenge.

The University's definition of microfiction is 'a self-containing piece of writing in 10 words or fewer.' We envisage that any story or big idea can be communicated in a very few words. Although microfiction is not, as far as we know, recognised as a literary method, genre, or tradition, there are examples in literary history that could be described as microfiction. Learning and Development, on the other hand, uses microfiction as a methodology for exploring a creativity-based approach to teaching and learning.

The workshops were a series of three one-hour sessions aimed at encouraging students to use microfiction as a method to increase their ability to write concisely, read critically, and manage assignments efficiently. Other objectives of the workshops for students included: strengthen the relationship between creative and academic writing, develop a love of language irrespective of discipline, recognise methods of project management and time management, and improve the ability for creative concision. Workshops for staff are being developed as well, in order to investigate the wider benefits of concise writing, thinking and understanding in a professional context. Initial project outcomes will be presented at the second annual Higher Education Academy Arts and Humanities Conference, 'Storyville: Exploring narratives of learning and teaching' taking place on 29-30 May 2013 in Brighton.

Although the workshops were initially trialled with students of HCS, The Microfiction Challenge opened the project up to all disciplines at the University. The Microfiction Challenge was a competition that ran for three weeks in April and May 2013, inviting students, staff, and members of the public to write pieces of microfiction for four different categories: Stories, Ideas, University, and Education. Advertised via Facebook, Twitter, and Email, we received a total of 188 entries: 118 from University of Essex students, 64 from staff, and 6 from members of the public. Of those, 77 were shortlisted by staff from Learning and Development and student editors from ESTRO. This shortlist was finally judged by a panel of six: Professor Jules Pretty (Deputy Vice Chancellor), Dr Pam Cox (Dean of the Graduate School), Dr Lisa Wade (Acting Dean of the Faculty of Humanities and Comparative Studies), James Potter (SU VP Education

Microfiction

elect), Richard Yates (Learning and Development Manager), and Dr Maxwell Stevenson (Learning and Development Adviser).

The winners of the student categories received a £50 prize, while staff winners had to settle with prestige. Thank you for your enthusiasm and congratulations for the writers of the winning and commended entries, which can be found below. Enjoy reading them!

All information on The Microfiction Project, including future programmes, can be found at <http://www.essex.ac.uk/ldev/microfiction>.

Category 1: Stories

The challenge was to tell a story in 10 words or fewer.

Student entries

Winner

It was me. I did it. I'm so sorry.
(Georgina Beard, School of Philosophy and Art History)

Commended

I wore your favourite dress. You stared transfixed at her.
(Lena Barrett, Human Rights Centre)

“We stopped serving breakfast ten minutes ago.”
(Jak Worton, Department of Economics)

He closed his eyes and waited for her to live.
(Alba Moscaroli, Department of Language and Linguistics)

Staff entries

Winner

She ran. He chased. She hid. He ran. She lived.
(Lucy McCaul, Library)

Microfiction

Commended

“That was a bad idea” he muttered, surveying the damage.

(Alan Charnock, Human Resources)

and without hesitation she broke her promise.

(Kate Shawcross, Human Resources)

Bleak mid-winter, stroke came early.

(Alan Charnock, Human Resources)

Category 2: Ideas

The challenge was to express an idea or concept in 10 words or fewer.

Winner

Water is taking the shape of the vase.

(Andreea Manole, student, School of Biological Sciences)

Commended

Summer is not a happy season in my country.

(Lona Mohammed Amin, student, Department of Literature, Film, and Theatre Studies)

Leap of faith. Sometimes too short. Sometimes just far enough.

(Goedele Caluwe, student, School of Philosophy and Art History)

He spent his whole life inhaling, exhaling his last breath.

(Stefanie Savva, student, Department of Literature, Film, and Theatre Studies)

Category 3: University

The challenge was to capture an experience of the University in 10 words or fewer.

Winner

Only 300 Words left! *5% battery* NO! SAVE! PLUG! RUN!

(Sehrish Kahn, student, Department of Language and Linguistics)

Microfiction

Commended

Through jungles, through mountains, he transcended. RIIIIIIIIING! Alarm. Exams. Shit.
(Frazer Merrit, student, Department of Literature, Film, and Theatre Studies)

Approaching wide-eyed and naive, leaving squinty-eyed, pessimistic but confident
(Sehrish Kahn, student, Department of Language and Linguistics)

Concrete brutalism in a wooded park. Two kinds of beauty.
(Chris Coates, staff, Communications and External Relations)

Category 4: Education

Write 10 words or fewer on the subject of either feedback, technology in education, or research.

Winner

That inevitable split second when you take criticism personally.
(Goedele Caluwe, student, School of Philosophy and Art History)

Commended

World of knowledge discovered, got lost in it, never left.
(Ugonnaya Igwilo, student, School of Health and Human Sciences)

Fish and chips wrapped in a Kindle doesn't quite work...
(Georgina Beard, student, School of Philosophy and Art History)

I turned the pages for hours and found a story.
(Chris Coates, staff, Communications and External Relations)

Aims

The journal is dedicated to the publication of high-quality undergraduate and postgraduate writing and is committed to creating accessible and engaging content for a non-specialist student readership. ESTRO encourages and celebrates student research by providing students with valuable early experience of academic publishing and the peer review process. The journal is a multi-disciplinary journal, run by and for Essex students.

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Submissions should include:

1. A cover letter giving the author's name, contact details (including external email address), department, title of their paper and how they discovered the journal.
2. An abstract of about 150-200 words, outlining the content of their paper.
3. References in both the text and end notes should follow the Harvard style*.
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Spellings: UK or US spellings may be used with '-ize' as given in the Oxford Dictionary.