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Discovering Thoughts, Inventing Future

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## Dangers of Indian Reform of the Colonial Land Acquisition Law

By Abhijit Guha

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*Abstract-* Taking over possession of private land by the Government through the use of power of the eminent domain of the state for economic development has become one of the most burning issues all over the world. While the international development agencies are largely in favour of participatory methods of development and governance, the national Governments are found to fight with their own citizens over the issue of land takings, most often, with archaic laws. India is the country where the acquisition of land by the Government still takes place by a more than hundred year old British colonial law, while its law makers have also created democratic and participatory forms of Local Self-Governments, which has no place in the colonial legislation. Ironically, the recent move of the Indian Government to enact a democratic law for the acquisition of land for development downplayed the Local Self-Government by disregarding one of the basic tenets of the Indian Constitution and the various international charters.

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# Dangers of Indian Reform of the Colonial Land Acquisition Law

Abhijit Guha

**Abstract-** Taking over possession of private land by the Government through the use of power of the eminent domain of the state for economic development has become one of the most burning issues all over the world. While the international development agencies are largely in favour of participatory methods of development and governance, the national Governments are found to fight with their own citizens over the issue of land takings, most often, with archaic laws. India is the country where the acquisition of land by the Government still takes place by a more than hundred year old British colonial law, while its law makers have also created democratic and participatory forms of Local Self-Governments, which has no place in the colonial legislation. Ironically, the recent move of the Indian Government to enact a democratic law for the acquisition of land for development downplayed the Local Self-Government by disregarding one of the basic tenets of the Indian Constitution and the various international charters.

## I. INTRODUCTION

While the US President Barack Obama greeted the new Indian Prime Minister Narendra Modi and the huge Indian crowd expressed their jubilant mood at New York nobody either in the US or in India seem to be concerned about the fate of the recent reforms in the colonial land acquisition law. Mr Modi assured the CEO's of multinationals (whom he met) at USA of investments in India and told the enthusiastic crowd that India will be shinning ('shinning India' was also the slogan of the former Congress led UPA government, which miserably failed in the last Parliamentary election) in the next decades since it has cherished the oldest tradition of humanity along with the highest percentage of young age group people. There was no hint in the rightist Indian Prime Minister's speech on how land for industries will be acquired with the new law created under the leadership of his predecessor Dr. Manmohan Singh a well educated centrist democrat of Indian politics. Just a few months after returning from USA Mr. Modi's government recommended the promulgation of an Ordinance which would make significant changes in the new *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013*. Among others this Ordinance would allow the Central Government to acquire mutlicrop fertile agricultural land without social impact assessment and consent of the farmers for

building private for profit industrial corridors! (The Statesman, 30 December 2014).

## II. THE GLOBAL CONTEXT

- a) Democratic form of Governments all over the world functions not only from the top but also from the bottom. Nevertheless, Governments have to operate within societies which have hierarchies based on economic, political, cultural, linguistic and a number of other social parameters. The basic aim of any democratic form of governance is to promote equality and social justice and nations all over the world are making attempts to achieve these goals, which often clash with intra and international pecking order of nations. Countries also put a lot of their efforts to attain economic growth and development often at the cost of loss of livelihood of the citizens. Displacement and dispossession of people for the sake of industrialization, dam building, minning, construction of multi-lane highways is one of the important global phenomena which create new poverty and newer hierarchies that challenge the basic aims of democratic Governments. The universality of displacement caused by development projects has been noted by scholars in the field (Cernea 2008: 19-20). In a recent period, these displacements become more pronounced in the developing nations as capital investments from domestic and foreign sources increase rapidly.
- b) The question of good governance, therefore, comes at the interface of burgeoning economic growth and development-caused forced displacement and rehabilitation since countless displacements are taking place all over the world through the application of the eminent domain laws wherein the State imposes displacement upon the people almost without any legal safety net. In the industrialized countries too, displacements are taking place by the use of the eminent domain but as Cernea pointed out succinctly,

In industrialized countries, however, the impacts of displacement are *partly tamed through ramified legislation* (my emphasis) that tightly protects property, human rights, and judicial recourse. The DFDR processes in developing countries are of growing international concern also because both private sector globalizing industries and international aid programmes

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finance countless projects causing displacements, within contexts that often lack adequate financial and legal safeguards(Cernea 2008: 19).

- c) How best can the countries push forward towards development with proper resettlement and rehabilitation of the affected populations is one of the most crucial issues in the era of globalization. It has been observed by the researchers in the field of development-caused forced displacement and resettlement (DFDR) that it is through changes in policy, legislation and systems of governance that the successful countries are being able to make displacement less painful for the people through sharing the benefits of the projects (Jayewardene 2008:233-259). In a recent study done by a group of Canadian researchers recommended some benefit sharing mechanisms in the case of installation of big hydropower projects which caused large displacements. Among the five benefit-sharing mechanisms, the authors mentioned two important instruments which involved the local Governments wherein the(i) dams revenue were redistributed to local or regional authorities in the form of royalties tied to power generation or water charges and (ii) the local authorities were empowered to levy revenue generating property taxes from the dam builders( Egge et.al. 2008:317-356). The lesson which is learnt from the experiences of a number of developing and developed countries is that one of the keys to achieve successful resettlement is to involve people at the grassroots in the process of development and that cannot be done without the participation of the Local Self-Governments, that exist all over the world and efforts are being given to strengthen these Governments at the grassroots.
- d) The first Global Report on local government published in 2007 illustrated how these entities in different regions of the world are taking part in the decision making processes which would affect the citizens. I quote from the report

Modes of participation by local citizens ----- i.e. expressing voice and making choice----- are the most colourful and innovative spots in the unfolding story of decentralization and democracy. Perhaps the most refreshing message in the report is that many countries in Africa (for instance Ghana, Niger and Uganda) in Asia (India and Pakistan) in East Asia (Philippines) and in Latin America draw on tradition and custom, making creative use of village councils to hear citizen opinion and deliberate. A good example is the *Gram Sabha* in rural India, a mandatory meeting of registered voters called to decide important issues (First World Report on Decentralization and Local Democracy 2007: 63).

- i. *In 2007, the UN-Habitat Guidelines agreed upon by the countries all over the world also resolved unequivocally in its global charter under governance and democracy.*

Local authorities should be acknowledged in national legislation, and, if possible, in the constitution as legally autonomous sub-national entities with a positive potential to contribute to national planning and development (International Guidelines on Decentralisation and the strengthening of local authorities 2007:6).

The European Charter of Local Self-Government adopted in Strasbourg as early as 15.10.1985 by the Council of Europe, having 47 member countries, is one of the best examples of the recognition of Local Self-Government extending beyond the borders of the nation states. In the Preamble of the Charter it is considered that the 'local authorities are one of the main foundations of any democratic regime.'(en.wikipedia.org/.../European\_Charter\_of\_Local\_Self-Govern 2012:1). In Article 2 of the Charter it is stated 'the principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution'. (Ibid).

- e) In this connection, it instructive to look at a recent World Bank policy paper on compulsory acquisition of land in public-private-partnership projects in the different countries of the world. The author of this article is Jonathan Mills Lindsay, Senior Counsel, Environmental and International Law, Legal Vice-Presidency, World Bank. In this paper the author admitted

Although the compulsory acquisition power is deeply rooted in virtually all legal systems, the establishment of efficient and fair legal and institutional frameworks for exercising the power remains unfinished business in many countries around the world( Lindsay 2012: 1).

The policy paper cited the Indian reform contained in LARR as an instance of limiting the powers of the eminent domain of the State through a process of seeking the consent of the majority of the farmers before the acquisition( Ibid 2012: 3). In the section on the procedural aspects of land acquisition Lindsay enumerated and suggested certain key areas on which the policy and law-makers of the countries over the world should work further to improve the existing situation. Although he did not mention explicitly about the involvement of the Local Self-Government in the process of compulsory land acquisition for development, Lindsay's description of the first and foremost key area for the improvement in the process of acquisition of land reminds us of the same

Most national laws would benefit from provisions that enhance participation and more explicitly require consultation with affected people at key decision points, ensuring for example meaningful discussion

about site selection, and the amount and form of compensation, and a greater emphasis on ensuring that people know what their rights are and what the process entails (Ibid 2012: 9).

f) The above account provides the international background of the recent reforms made in the colonial land acquisition law of India. I would now proceed on with the Indian case with specific references to its state of West Bengal in the following sections of the article.

g) *The importance of the paper*

The importance of this research lie in showing the downside of the new land acquisition law recently enacted by the Government of India in 2013. Despite the positive aspects of the law, which has already been pointed out by top resettlement experts like Michael Cernea, (Cernea, 2013) the law downplayed the role of the constitutional bodies, viz. the local self government. In this article, I have shown in details the importance of local governance in every affairs of development recognized and practiced globally and the several shortcomings of the new land acquisition law of India.

### III. INDIAN REFORM

a) It is learnt from the media that the much awaited and controversial Land Acquisition Resettlement and Rehabilitation (hereafter LARR) bill 2011 of India has been approved in the cabinet of ministers in a meeting held on 12 December 2012, and the bill will now be placed before the Indian Parliament (Lok Sabha) for enactment (*The Statesman* 13.12.2012 & *The Financial Express* 13.12.2012). It seemed that after 118 years of its existence since its enactment by the British colonialists in 1894, the Indian Government was getting ready to reform this piece of draconian legislation. The colonial legislation enabled the Central and the State Governments of India in pre- and post-colonial periods to use the *eminent domain* of the state to acquire privately owned land for public purpose in lieu of monetary compensation determined on the basis of previous market price of the land. There is no provision for rehabilitation of the displaced and dispossessed farmers and land dependent families (landless agricultural labourers, sharecroppers, artisans etc.) in the colonial law nor was there any provision for getting the consent of the private owners before the acquisition. One of the root causes of farmers' agitation which often turned into violent conflicts between the state and the people in pre- and post colonial India lay in the forcible expropriation of land for various kinds of development projects which without rehabilitation created more pains than gains for the people who lost their livelihoods in the process. Furthermore, after the introduction of economic liberalization in India since early 90s the

demand for getting land (which is very often fertile for agriculture) by the private companies have tremendously increased and the Governments are found to fight with the farmers in acquiring land for the industrialists. The recent cases of the resistance of farmers in Singur and Nandigram in the West Bengal State of India have not only revealed violation of human rights but also policy and governance failures on the part of the democratically elected popular Governments. Therefore, managing the legal, administrative and policy aspects of land acquisition in India or for that matter in any country of the world is basically a problem of governance which has academic as well as practical dimensions.

b) I would look into the failure of the Indian Government and its politicians to reform the colonial Land Acquisition Act of 1894, keeping in line with the democratic letters and spirit of the Indian Constitution through the Land Acquisition Resettlement and Rehabilitation Bill (LARR) 2011 which has recently been made an Act under the name *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Bill, 2013* which was passed on 29 August 2013 in the Lok Sabha and on 4 September 2013 in Rajya Sabha. The Act has provisions to provide fair compensation to those whose land is taken away, brings transparency to the process of acquisition of land to set up factories or buildings, infrastructural projects and assures rehabilitation of those affected for the first time in the history of the country. Despite all the merits the new law has made a gross violation of the 73<sup>rd</sup> and 74<sup>th</sup> amendments of the Indian Constitution which created Local Self-Governments (panchayats and municipalities) in the rural and urban areas in addition to the Central and State Governments in the country. But strangely, no political party of India, the communists included, have raised this crucial question of governance in the public domain. It is interesting to note here that in a recent debate between the internationally celebrated social activist Medha Patkar and Jairam Ramesh, the Central Government Minister of Rural Development, the issue of recognising the Local Self-Government as one of the 'Appropriate Governments' did not find any place (Patkar 2012 & Ramesh 2012).

c) Let me first go into the details of land acquisition and its relation with Local Self-Governments in India and then I will describe how the new LARR bill failed to take into account the role of panchayats in land acquisition. While doing this exercise, I would give instances from West Bengal, since the violent episodes in Singur and Nandigram during 2006-07, which has drawn international attention, finally led to

the massive electoral defeat of the popular Left Front Government in 2011, centered on land expropriation for private industries.

i. *Panchayat in the Indian Constitution and the case of West Bengal*

The Indian Parliament which adopted the 73rd Amendment Act in 1992 by a majority vote and inserted Part IX in the Constitution which contained Articles 243 to 243-0. These Articles empowered the state legislatures to confer on the panchayats such authority as may be necessary to enable them to function as institutions of Self-Government. These are empowered by the Constitution with the responsibility of preparing plans for economic development and social justice and in regard to matters listed in the 11th Schedule (inserted by the 73rd Amendment). The list contained 29 items, such as land improvement, minor irrigation, animal husbandry, fisheries, education, women and child development, social forestry, etc. Simultaneously, the Constitution under Article 243H empowered the Indian States to authorize its panchayats to collect taxes and fees for generating its own funds. It follows that acquisition of land for industries or for that matter any development work within the jurisdiction of a Local Self-Government should first be cleared by it.

d) In this context, we need to examine the expression "local authority" in Section 3(aa) of the Land Acquisition Act of 1894 as modified up to 1 September 1985. Section 3(aa) reads: "Local authority includes a town planning authority set up under any law for the time being in force". This definition, which does not refer to panchayats, is still valid today in the Land Acquisition Act of India.

The 73<sup>rd</sup> amendment of the Indian Constitution defined Panchayats as institutions of self-government to which State legislatures are required, by law, to endow "powers and authority as are necessary to enable them to function..." In other words, the Constitution recognized the States as competent authorities, which can empower the Panchayats. But how far a particular State can go to empower the Panchayats is left to the States themselves. Under this backdrop, the general tendency among the States is that they always want to confine the powers and functions of the Panchayats to village level development works for which the latter would have to depend on the State Government.

e) The State of West Bengal is not an exception to this general rule. Extending the Panchayats beyond their role of mere executors of State and Central Government sponsored schemes to real local Self-Government that can take policy decisions is not a dream but a nightmare for the ruling political parties of West Bengal. Because, a truly empowered Local Self-Government may develop the potential to challenge the high-level and top-down development

policies which are frequently imposed upon the poor villagers under various types of national and international economic and political compulsions.

i. Notably enough, West Bengal is not only one of the most important states of India in terms of its post-Independence achievements in implementing land reforms and local governance with fair amount of success (Lieten1996; Dreze & Sen 2002) under a democratically elected government led by the Communist Party of India (Marxist) which ruled the state for thirty-four years at a stretch. Interestingly, West Bengal is also the state, which in the era of globalization became committed to invite huge capital investment at the cost of farmers under the Communist Government. The acquisition of fertile farmland for private industries in the state in the recent past had given rise to violent struggles between the people and the Government over the issue of land acquisition which among other reasons, finally led to the massive electoral defeat of the communist government in the 2011 West Bengal Assembly elections.

ii. The acquisition of hundreds of acres of legally owned private agricultural land for the establishment of capital intensive industries, big dams, multi-lane highways and car racing arenas was one such high-handed game which the Left Front Government played with the panchayats while inviting foreign and domestic capital in the wake of liberalization in India. The legal instrument which the communists in West Bengal used to dispossess the small and marginal farmers as well as sharecroppers from their major means of production was the colonial Land Acquisition Act of 1894 which did not have the provision (even after the post-colonial amendments in the law) to consult the panchayats and follow the 73<sup>rd</sup> amendment of the Indian Constitution. (Guha 2007: 58-72 & 123-126).

iii. Interestingly, the West Bengal Panchayat Act, 1973 too, does not mention anything about self-governance. The powers and duties of the Panchayats as elaborated in the various chapters of the said Act are largely development oriented. Two eminent experts, Nirmal Mukarji and Debabrata Bandopadhyay, in their report "*New Horizons for West Bengal Panchayats*" published by the Government of West Bengal in 1993, recommended:

..."there must be a comprehensive overhaul of the Panchayat law, not simply to bring it in line with the 73<sup>rd</sup> amendment, but more importantly to give centrality to the principle of self-government." (Mukarji and Bandopadhyay, 1993:6)

But like many other recommendations of the Mukarji and Bandopadhyay report, this aforementioned recommendation has not also been implemented by the Communist led Government in West Bengal.

The legal manual published by the Department of Panchayats of the Government of West Bengal in 1994 has a section on land acquisition which states

If the Gram Panchayat needs any land for its own work within the purview of the Panchayat Act, then the Panchayat can initiate a negotiation with the owner of the land for its takeover. If such negotiation fails, then the Panchayat can apply to the District Magistrate for the acquisition of the said land and the District Magistrate would acquire the land for the Panchayat (clause 44). The Panchayat, however has to take prior written permission from the State Government before taking possession of any land or corporate property. (Translated from Bengali by the author).

The above paragraph of the legal manual clearly reveals the legal and administrative superiority of the State Government over the Local Self-Governments in matters related to the acquisition of land even when it is required for the Gram Panchayat. Quite obviously, if the State Government needs legally held private land for any development project then there is nothing in the West Bengal Panchayat Act by which the panchayats may advance any legal objection to the acquisition. On the other hand, the State Governments in West Bengal, irrespective of political affiliation, has not yet shown any interest to curtail the powers of the colonial Land Acquisition Act by introducing a clause in the Act so that it becomes obligatory for the State Government to take the permission of the Gram Panchayat whenever the former wants to acquire land for big projects that would displace hundreds of farmers from their homes and/or legally owned farmland. Colonial legislation still seems to be more preferable to the ruling Governments than the 73<sup>rd</sup> amendment of the Constitution.

#### IV. HOW THE LARR BILL 2011 IGNORED THE INDIAN CONSTITUTION AND THE CORE ISSUES

a) The Ministry of Rural Development, Government of India has prepared and placed in the public domain Land Acquisition and Rehabilitation and Resettlement (LARR) Bill, 2011 'as part of a pre-legislative consultative process' among the citizens of the country. It was expected that the draft bill would become a good law and it was also expected that it will take into consideration the spirit and letters of the Indian constitution after passing through the highest body (Lok Sabha) of the democratically elected peoples' representatives of the country. All the democratically minded citizens of India hoped that the aforesaid bill, after due deliberations, would result into the first Land

Acquisition and Rehabilitation Law of the country, six decades after the her Independence by replacing the existing colonial law enacted in 1894 and regarded by many as the root of all the adverse impacts caused by development projects. The new law was born but hopes did not match with the realities and that is the core issue of this paper.

##### i. Core issues

The bill has a "Preamble" or Part I and nine parts and three schedules. In this connection, it may be recalled that earlier the Government of India prepared two bills, viz., (i) The Land Acquisition (Amendment) Bill, 2007 and (ii) Rehabilitation and Resettlement Bill, 2007 on 30 November 2007 and these were placed in the public domain for discussion and the Standing Committee of the Ministry of Rural Development sought the views of the experts in the field and finally in consultation with the National Advisory Council, the present bill was prepared by the Ministry. This in brief is the background of the Land Acquisition and Rehabilitation and Resettlement Bill 2011. Before I go into the detailed discussion on the technical aspects of the bill, kindly allow me to narrate my personal experience of interaction with the Members of the Parliament (hereafter MP) on the proposed bill.

b) The Secretariat of the Lok Sabha invited the opinion from the Indian citizens on the draft bill in 2008 which was notified in the major dailies in India. I responded and sent my written suggestions on the bill along with my published articles on land acquisition to the Secretariat. Fortunately, I was invited to submit my oral depositions before the Standing Committee of the Parliament as an expert. As result, I had the opportunity to talk to the MPs as an expert appointed by the Standing Committee on Rural Development to offer suggestions on the Land Acquisition (Amendment) Bill and Resettlement and Rehabilitation Bill, 2007. At that time there were two separate drafts, one was the Land Acquisition (Amendment) bill, and the other was the Resettlement and Rehabilitation bill. Later, these two bills were combined to prepare the present LARR bill 2011. The proceedings were held in Parliament's Library Building on 17 June 2008. My suggestions focussed on basic issues involved in the definition of 'public purpose' and 'appropriate government'. I suggested that the first aspect should be determined by the elected panchayats because they represent the people who are likely to be affected. This suggestion was based on the 73<sup>rd</sup> Amendment of the Constitution as well as the Right To Information Act of India enacted in 2005. These laws empowered the citizens with (i) the right to decide on whether their land should at all be acquired and (ii) to obtain the correct information regarding every aspect of acquisition, including

alternative sites that will minimise the adverse impacts of land acquisition. The members of the Standing Committee seemed to agree with me on the basic issues. But these were skirted. Instead, the panel of MPs provided examples of purchase of agricultural land by the private companies mostly through their agents. All the MPs irrespective of political affiliations seemed to be united on this issue. Nobody supported me. I was requested to send concrete suggestions in the light of the discussions which I sent later in writing. But the hint was clear, i.e. that one should forget about the 73rd Amendment, panchayat and the Right To Information Act. One should think in terms of sale and purchase of land.

c) *I will now come to the technical part of the LARR bill.*

In the Preamble of the bill under the section 2 entitled 'Definitions', we find in sub-section (e)

The expression "Appropriate Government" means, ----

- (i) in relation to acquisition of land for the purposes of the Union, the Central Government;
- (ii) in relation to acquisition of land for the purposes of any infrastructure project in more than one State, the Central Government; and
- (iii) in relation to acquisition of land for any other purpose, the State Government;
- (iv) in relation to Rehabilitation and Resettlement, the State Government; (LARR 2011:3).

The definition of the "Appropriate Government" as enunciated in the Land Acquisition Act of 1894 and Land Acquisition and Rehabilitation and Resettlement Bill of 2011 remains same. Under subsection 3(e) of the LAA 1894 and subsection 2(e) (i)-(iv) of LARR 2011, the expression "Appropriate Government" means only the Central and State Governments. Like the colonial Land Acquisition Act of 1894, the LARR also bypassed the 73rd Amendment Act of the Constitution which empowered the panchayats to function as institutions of self-government. The issue of "Appropriate Government" is vital to any discussion on social impact assessment as enunciated in the LARR 2011 Bill ( Guha 2011: ) In Part II of the Bill entitled "Determination of Social Impact Assessment" under subsection 3(1) we read:

Whenever the Appropriate Government intends to acquire land equal to or more than one hundred acres for a public purpose, a Social Impact Assessment study shall be carried out in the affected area in consultation with the Gram Sabha at habitation level or equivalent in urban areas, in such manner and within such time as may be prescribed (LARR 2011: 9).

The above paragraph reveals the superior status of the "Appropriate Government" over the local self-government, i.e. Gram Sabha.

d) In this context it should be noted again that the Lok Sabha by adopting the 73rd Amendment Act in 1992 inserted Part IX in the Constitution which contains Articles 243 to 243-0. These Articles empowered the state legislatures to confer on the panchayats such authority as may be necessary to enable them to function as institutions of self-government. These are empowered by the Constitution with the responsibility of preparing plans for economic development and social justice and in regard to matters listed in the 11th Schedule (inserted by the 73rd Amendment). As we mentioned earlier in this article, the list contains 29 items, such as land improvement, minor irrigation, animal husbandry, fisheries, education, women and child development, social forestry, etc. Therefore, the acquisition of land for industries or for that matter any development work within the jurisdiction of a panchayat should first be cleared by the respective panchayats.

Curiously, the new Bill of 2011 like the LAA 1894 and, which is still in force, does not have any place for the for the local self-governments under the "Appropriate Government". In order to place the new Bill in line with the 73rd amendment of the Constitution the expression 'Appropriate Government' should also include the local self-governments, otherwise mere "consultation with the Gram Sabha at habitation level or equivalent in urban areas" would be a mere formality (Guha 2009: 6).

e) Given the above alarming lacunae in the proposed LARR Bill, I raise a basic question: 'Why are the political parties in India and their think-tanks not raising the issue of the complete absence of the local self-government entities in the Bill?' The answer is not very difficult to explore. No political party in India wants to decentralise power at the lowest level of the Government. On the other hand, in every case of land acquisition, the protests are invariably organised at the local level and the land losers may sometimes go against the political masters. The protest by farmers in Nandigram in West Bengal---- once a solid base of the left parties ----- is one of the best examples of this political process. If the panchayats are empowered to have the final say on land acquisition for private companies, it will only embolden the locals and the under-privileged classes to protect their source of livelihood. This may endanger corporate interest in land acquisition. Incidentally, in Nandigram, the panchayats have been won over from the communists by the Trinamul Congress. But they have not been empowered to act legally against future acquisition. Now the Trinamul Congress is at power in the state and if a major corporate wants land in Nandigram, the state Government may allow the company to buy 100 per cent of the land

for their project. The panchayats will have no legal role to play and the bargain between the poor farmers and the corporate will take place at the individual level. The constitutional body, which is empowered to prepare plans for economic development and social justice, will have no role under the amended Land Acquisition Bill. The silence of the think-tanks of the Congress, the Left, the BJP and the Trinamul Congress on the incorporation of the panchayats in the Land Acquisition (Amendment) Bill is a mockery of the Constitution, indeed the people at the grassroots. The Social Impact Assessment study in the new Bill in which the State Government has the final words to say will remain a high sounding phrase and a sheer administrative procedure (Guha 2010: 6). In the LARR bill there is a clause under 2 (y) (iv) wherein it is stated,

the expression public purpose includes-----

the provision of land for any other purpose useful to the general public, including land for companies, for which at least 80 per cent of the project affected people have given their consent through a prior informed process; (Ibid: 5).

But, nowhere in the new bill there is any elaboration of the process of taking prior informed consent. Will the Local Self-Governments collect the consent of the people through referendum? Or will they be consulted at all in the process? Will it be done from the top by the Central or the State Governments? The new bill is silent on these crucial questions of governance and, therefore, falls far short of the brass tacks of the situation.

## V. CONCLUSION

Under the global context of the growing emphasis on decentralized planning and local government in various international charters and the universality of development-caused displacement, the bypassing of the constitutional local governments in the recently proposed land acquisition, resettlement and rehabilitation bill in India posed a challenge to the system of democratic governance not only in India but also for other democratic countries of the South Asian region.

Recent research has shown that the judiciary in India even after Independence of the country has largely failed to protect the poor farmers from the onslaught of forcible land acquisition by the Government. (Gonsalves 2010:37-42). Furthermore, the loss of livelihood and pauperization of a large number of people in the absence of governmental social security measures in the colonial law, the democratic legislations, like the 73<sup>rd</sup> and 74<sup>th</sup> amendments of the Indian Constitution which created decentralised Local Self-Governments (panchayats) for the empowerment of the poor are also

being pushed back in the era of globalisation (Guha 2006:155-173). All these development demands reform and change not only in the spheres of policy but also in effective legislation and governance. The new LARR bill 2011 by not incorporating the Local Self-Governments in the Preamble grossly violated the Constitution of India and the democratic letters and spirit of the various international charters on decentralization and Local Self-Governments, while insertion of an apparently pro-people clause of collecting the prior informed consent of at least 80 per cent of the project affected persons without the specification of the concrete modalities makes it more dependent on bureaucratic control. The makers of the new land acquisition law of India, therefore, did neither use the Constitutional provisions of Local Self-Governments to limit the powers of *eminent domain* to safeguard the livelihood of the displaced millions nor have they honoured the spirit of decentralization as envisaged in the various international charters.

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## The Field of ‘*Between*’ – A New Principle for Interdisciplinary Epistemology

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*Introduction-* Contrary to the established field of mathematical philosophy, interdisciplinary research in physics and philosophy is not well known. Of course, there are the writings of physicists for the non-scientific public introducing selected topics for mass media distribution. Yet in the presentation of highly advanced theories to an audience of physicists, reflections on philosophy do not have a place. On the other hand, reports are written by specialists in scientific theory in which the authors oppose the traditional philosophy of continental Europe. Since the 19th century renowned philosophers have put forward theories interpreting areas of natural science, trying to insert them into the framework of methods traditionally applied in natural philosophy. What is lacking is an interdisciplinary philosophical reflection for contemporary science in which a philosopher is able to grasp the principles of physical thinking, reflecting physical theory in relation to the fundamental philosophical conception of the subject: ‘What is Truth’. To achieve this purpose for interdisciplinary research, philosophers should have a fundamental knowledge of physics. Vice versa, physicists should also learn the purpose of philosophical reflection and what the goals of philosophy are. The philosophy of science does not offer the same explanations for theories in physics or other natural sciences, but its goal is a fundamental reflection of ‘What is truth’, as a common basis for different intellectual disciplines.

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THE FIELD OF BETWEEN A NEW PRINCIPLE FOR INTERDISCIPLINARY EPISTEMOLOGY

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# The Field of 'Between' – A New Principle for Interdisciplinary Epistemology

Hisaki Hashi

## Introduction

Contrary to the established field of mathematical philosophy, *interdisciplinary research in physics and philosophy* is not well known. Of course, there are the writings of physicists for the non-scientific public introducing selected topics for mass media distribution. Yet in the presentation of highly advanced theories to an audience of physicists, reflections on *philosophy* do not have a place.<sup>1</sup> On the other hand, reports are written by specialists in scientific theory in which the authors oppose the traditional philosophy of continental Europe.<sup>2</sup> Since the 19th century renowned philosophers have put forward theories interpreting areas of natural science, trying to insert them into the framework of methods traditionally applied in natural philosophy.<sup>3</sup> What is lacking is an interdisciplinary philosophical reflection for contemporary science in which a philosopher is able to grasp the principles of physical thinking, reflecting physical theory in relation to the fundamental philosophical conception of the subject: 'What is Truth'. To achieve this purpose for interdisciplinary research, philosophers should have a fundamental knowledge of physics. *Vice versa*, physicists should also learn the purpose of philosophical reflection and what the goals of philosophy are. The philosophy of science does not offer the same explanations for theories in physics or other natural sciences, but its goal is a fundamental reflection of 'What is truth', as a common basis for different intellectual disciplines. The Field of 'Between', an epistemological conception developed by the author as a working principle, was introduced into the interdisciplinary field of physics and philosophy in 2006. In the

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<sup>1</sup> For example: Einstein, *Grundzüge der Relativitätstheorie*, Braunschweig 1990. Heisenberg, *Physikalische Prinzipien der Quantentheorie*, Stuttgart 1991. Heisenberg, Bohr (Ed.), *Die Kopenhagener Deutung der Quantentheorie*, Stuttgart 1963. Schrödinger, *Über den Indeterminismus in der Physik*, Leipzig 1932. Treiman, *The Odd of Quantum*, Princeton 1999. See the quoted works in this report. Some works of Heisenberg are extraordinary examples of successful exceptions: *Quantentheorie und Philosophie*, Stuttgart 1994. *Physik und Philosophie*, Stuttgart 1990.

<sup>2</sup> For example: see *ibidem*.

<sup>3</sup> For example: see *ibidem*.

following sections the essential points of this principle are presented in a compact form.<sup>4</sup>

## 1. The Micro-World Significance of the Terms: Being - Substance - Physical Reality

In a well known physical experiment, a light quantum is emitted towards a light sensor – the target. If the quantum hits the target, a visible point emerges on the flat material as the result of the physical *interaction between the flying light quantum and the light sensor*.<sup>5</sup> The location of the light quantum is as completely unknown before measurement as it is after. An exact prognosis of the route of the flying quantum and its location is not possible. The protocol of the quantum flight changes from case to case, depending on what kind of physical facility is used for the experiment and on the method by which the quantum is measured.<sup>6</sup> Even if some renowned physicists have contended recently that the condition of the moving quantum can be predicted to a *limited extent* in probability theory,<sup>7</sup> the nature of the quantum is shown in the principle: the quantum being is dependent on accidental moments, its protocols are case by case changeable. The nature of quanta is 'created' by the experiments and its consistency with Heisenberg's *Uncertainty Principle* is evident in particle physics.<sup>8</sup>

What caused most argument in quantum physics was whether a quantum can be understood as a 'physical real being' and if so to what extent (the so-called '*physical reality*' ('*Das Physikalisch Reale*') presented by Einstein in his arguments in the *EPR-Paradox* against Heisenberg).<sup>9</sup> In the way of thinking based on substantial metaphysics (Aristotelism, Leibniz's *Monadology*) it may be argued that the score of a flying quantum is in reality *just an 'accident' (accidentia)*, a pure *physical effect* in which an emitted

<sup>4</sup> Articles on this theme are found in my publications: see the references at the end of this paper.

<sup>5</sup> Herbert Pietschmann, *Quantenmechanik verstehen*, Berlin, Heidelberg 2003, p. 26.

<sup>6</sup> Herbert Pietschmann, *ibidem* 2003, p. 63. Cf. Pietschmann, "Versuch zur Entwicklung des Denkansatzes der Quantenphysik", in: *intellectus universalis*, ed. by H. Hashi, W. Gabriel, Wien 2005.

<sup>7</sup> Anton Zeilinger: *Einsteins Schleier. Die neue Welt der Quantenphysik*, München 2005. *Einsteins Spuk*, München 2005.

<sup>8</sup> Werner Heisenberg, *Physikalische Prinzipien der Quantentheorie*, Stuttgart 1990, Kap. I.2, p. 16. Pietschmann, *Quantenmechanik verstehen*, 2003, p. 26.

<sup>9</sup> *Einstein-Podolsky-Rosen-Paradox*, American Physical Society 1935. See section 1 of this paper.

quantum vanishes immediately.<sup>10</sup> One scientific theory is that the 'quantum protocol is none other than an *artificial phenomenon* produced by experimental physical facilities.'<sup>11</sup>

Here I should like to present another proposition: a quantum is the minimal physical substance of which the material of the *micro-world*, the *meso-world* and of *macro-cosmic space* can be constructed. But its essential unity can be *never* be explained by *substantial metaphysics* according to Aristotle or Leibniz.<sup>12</sup> Specialists in Aristotelism might say: 'a quantum is *only* a particles – a broken part of an atom. A physical protocol of a quantum results in an '*accident*' in reality, but a quantum *per se* is not a substantial being. The main position of substantial metaphysics since Aristotle does not in any way lose its meaning.'<sup>13</sup>

I will say: 'This position is right. The uncertain nature of quanta *does not interfere* with Aristotelian metaphysics. The theories of Aristotle, Leibniz etc. about *substance* have *no relation* to the aspects of the physical reality of particles in the *micro-world system*. The nature of a quantum has been *independent* from the *principles of substance theories* since the beginning of metaphysics. In other words, the nature of a quantum is *not* recognizable from the position of substantial metaphysics.' There are similar cognitions in the philosophy of continental Europe. Starting from this point my own position is as follows: '***If it is so, the contemporary theory of being has the possibility of changing its essential part dynamically.*** I say that the nature of a quantum is '***emptiness of substance, free from substantiality.***' It emerges and vanishes immediately. The visible point of the scored quantum is the track of the vanishing being. I say: 'This track emerges in the **Field of 'Between'**, the field **between the flying quantum and a receiving material**'.<sup>14</sup>

## 2. The Physical Real Being – Einstein's Argumentation in the EPR-Paradox

The issue in quantum physics from its beginning has been if and how far a quantum is understandable as a *physical real being*. This definition (*das physikalisch Reale*) was coined by Einstein who repeatedly brought arguments concerning the

*Uncertainty Principle* against Heisenberg. In short, Einstein postulated that the base of '*physical reality*' (*das physikalisch Reale*) is lacking in quantum physics, thus fundamental research in it is incomplete. In the opinion of Einstein the '*physical reality / physical real being*' should have three main conditions:<sup>15</sup>

- Definitive location in space-time*: Physical reality is a definite unity in (traditional) physics; a physical material can be measured in repeated experiments. It must be observed and protocolled by a repeatable measuring method which is bound to yield consistent results.
- Stability of the measured object by execution of an experiment*: In measurement the condition of the physical object should not be disturbed by the experimental physical facility. This is totally lacking in quantum physics.
- Systematic relations of the measured object to physical circumstances*: The measured object is a physical system bound to its physical reality. Constructed in its own space-time in physics, it should have consequent relations to the physical beings around it. It must consistently show a definitive physical system. This is also absent in quantum physics.

Therefore Einstein concluded in his *EPR-Paradox*: 'All these conditions of '*physical reality*' are lacking in quantum physics. The basic theories and research methods of quantum physics should be fundamentally reconsidered.' Einstein held this position in a scientific theoretical alliance with Popper.<sup>16</sup>

The point debated most by natural scientists and philosophers was, if and how far a quantum can be interpreted by the previous concepts of '*being*' in '*physical reality*' at all. A quantum stays in physical *space-time* for an extremely short duration and *vanishes immediately*. A light quantum is bound to its own quantum count. It has a spin in a direction and it can be observed and protocolled but its duration is extremely short, for example, it appears with its own *space-time* for 10<sup>-23</sup> seconds and vanishes immediately. A light quantum can split into two further quanta (*double quantum / Doppelteilchen*) after the emission.<sup>17</sup> The

<sup>10</sup> Hans-Dieter Klein, "Inwiefern ist das teleologische Konzept der modernen Physik immanent?", in: *Die Natur in den Begriff übersetzen*, ed. by Thomas Posch and Gilles Marmasse, Frankfurt a.M. 2003. Cf. Aristotle, *Metaphysics*, Book Δ 1025a, Book Z 1032 a-b.

<sup>11</sup> Friedrich Wallner, *Structure and Relativity*, Frankfurt a.M. 2005, p. 67.

<sup>12</sup> In agreement with this analytical philosophers say that classic metaphysics and ontology, like that of Leibniz, is not valid in contemporary philosophy: Chris Swoyer, "The Autonomy of Relations", in: *Facta Philosophica*, vol. 6 No. 1, Bern 2004.

<sup>13</sup> For the idea of *substantia / ousia* see Aristotle, *Metaphysics*, Books Z, H, Θ.

<sup>14</sup> See the notes 5-8 of this article. See the dialogue of Hashi and Pietschmann, in: Hashi, Hisaki, *Naturphilosophie und Naturwissenschaft*, Münster/Berlin/Zürich/London/Wien 2010.

<sup>15</sup> Albert Einstein, Boris Podolsky, Nathan Rosen, "Can a quantum-mechanical description of physical reality be considered complete?", in: *Physical Review* 47, American Physical Society 1935. M. Born-A. Einstein, *Briefwechsel*, München 2005, p. 272ff. Cf. Hashi, "Quantenphysik und ihre Anregungen zur neuen Seinsdynamik", chap. III.3., in: *Wiener Jahrbuch für Philosophie* vol. 38 / 2006, ed. by Hans-Dieter Klein, Wien 2007. "Naturphilosophie und Naturwissenschaft. Denksätze bei Hegel und bei Popper", 2.4.b), in: *Naturphilosophie und Naturwissenschaft*, Polish Academy of Sciences, ed. by Marian A. Herman, Andrzej J. Nadolny, Hashi, Hisaki, Vienna 2006/07.

<sup>16</sup> Karl Popper: *Objektive Erkenntnis*, Hamburg 1973, VIII.3., p. 330. *Objective Knowledge*, Oxford University 1972, p. 302. *The Logic of Scientific Discovery*, London 1959, appendix xii, correspondence with Einstein.

<sup>17</sup> Pietschmann, *Quantenmechanik verstehen*, 2003, pp. 103. Machida,

quantum nature is accidental and differs in protocols depending on the kind of facilities used in the experiments.

### 3. Unproductive Debates

This point has caused many confusing debates. *Consciously* or *unconsciously*, scientists and philosophers consider that a *being* is bound to its *substance*; it exists consistent with its fundamental substantiality; according to traditional physics it is a material bound to a physical body. Natural scientists, influenced by Einstein, were conscious of the concept of the '*Being of Physical Reality*'.<sup>18</sup> Philosophers (like Popper) tended to think that a quantum is bound not only to natural scientific fact, but also to its '*ontological substance*'.<sup>19</sup> A particle of an atom is bound to its '*systematic unity*' which is *indivisible*, like that of Leibniz's *monad* or the *ousia / substantia* of Aristotle.<sup>20</sup> Physicists have proved that this character is *lacking* in particle physics in the *micro-world*. From this result the debates of physicists and philosophers developed in the direction that the 'previous theories of *substance metaphysics* of Aristotle, the *monadology* of Leibniz etc. might lose their relevance completely. Then the previous natural base of *substance, monad or the physical reality / real being of physics* would be negated totally in the new physics.'

In my opinion, there is a failing in the conclusions of interdisciplinary reflection. Unconsciously these thinkers *presuppose* that a quantum as a particle of an atom builds up a minimal part of the material being of the whole universe, by which these particles are valid as the construction of every being. In a *purely physical view* this is right. From the *philosophical* point of view we have to complement a critical reflection.

According to physical materiality a quantum must build an elementary part of any being. But, if we collect atoms in a physical laboratory, we can build, for example, two hydrogen atoms and an oxygen atom, but we cannot produce the '*water*' that we perceive in nature. We can break down physical reality in an analytical and objectivist way to the most elementary part, a '*particle*' of *micro-world*. We can construct a physical world in the *projection* of our *consciousness*, as a *scheme of the world* in the view of natural science.

But, the constructed *projection of the world* and the *real world* are *not* the same; they are different. Neither can be identified with the other. From the combination of the physical parts there cannot emerge a live being. Our self consciousness cannot be produced in a natural science laboratory.<sup>21</sup> If we claim that we can explain and construct everything by natural science theories, our position turns into a theory focusing *excessively* on *natural science, a physical absolutism*, so-called 'physicalism'.<sup>22</sup>

### 4. Epistemological Comparisons – What Aspects are Lacking?

From this point a long series of debates have emerged unproductively. Especially when the debates centre on methodology, their results are not interdisciplinary dialogues but crude and incorrect conclusions drawn by *both* natural scientists *and* natural philosophers because the *different systems* of *thinking* in philosophy and physics are *never reflected on in a comparative way*. In short, physics dominates the subjects of [*quid facti*], the areas of concrete real factums, real materials and causality in every detail to construct the physical world in a deductive way. Compared with physics, philosophy dominates the areas of [*quid juris*]: the *examination of the ways, forms and contents of thinking of every kind, the very methods of thinking* themselves as the fundamentals of philosophy.<sup>23</sup>

The subjects of physics are factums, objects of real being that can be measured. The subjects of philosophy are, in contrast to physics, the various ways of thinking *produced in our consciousness*. This is for philosophy the *Intrasystem*, for physics and natural sciences the *Extrasystem*. Things that can be operated by physical *quid facti* are for physics [*Intrasystem unity*], for philosophy that of the [*Extrasystem*].<sup>24</sup> Unproductive debates between different philosophical and scientific disciplines start from the point where philosophers and scientists *mix up* and *standardize* their own '*intrasystem and extrasystem unities*', *without recognition of the different methods* of their disciplinary thought. **What is lacking is comparative reflection** on different scientific disciplines marked with the key words of the [*intrasystem and extrasystem unities*].

Shigeru, (ed.) *Quantum Theory in Contemporary Physics?* (今さら量子力学?), Tokyo 1990, pp. 26.

<sup>18</sup> Einstein, EPR-Paradox. Cf. the letter of Einstein for Popper dated 11. 9. 1935, in: Popper, *The Logic of Scientific Discovery*, 1959, appendix xii, pp. 457. The position of Einstein against Heisenberg is found also in "Die Quantenmechanik und ein Feldgespräch mit Einstein", in: *Quantentheorie und Philosophie*, Stuttgart 1994.

<sup>19</sup> Cf. the 'Third World Theory' by Popper, in: *Objektive Erkenntnis*, 1973, *Objective Knowledge* 1972. F. Wallner, "The Split of Austrian Philosophy. Wittgenstein and Popper", in: *Konstruktion der Realität*, Wien 1992.

<sup>20</sup> Aristotle, *Metaphysics*, Books Z, H, Θ. Leibniz, *Monadologie*, Stuttgart 1990.

<sup>21</sup> The method of cloning animals is successful in theoretically but in reality there are difficulties in every detail. In cloning, the female cell which merges with the male cell cannot be split easily. Cf. Okada, Yasuhiro, *Organism, Brain and Life*, Tokyo 1999. It has not been successful by a variety of methods in the contemporary science to produce a totipotent cell (see the scientific websites of the subjects „stem cell“, „totipotent“ etc. 2010).

<sup>22</sup> Hans-Dieter Klein, *Geschichtsphilosophie*, Wien 2005, chap. I.1.

<sup>23</sup> The significance of these terms is quoted by Kant, *Kritik der reinen Vernunft*, "Deduktion der reinen Verstandesbegriffe", B 116, A 84.

<sup>24</sup> These technical terms can be applied also in cognition theory and comparative philosophy: Hashi, Hisaki, "Das Feld des Zwischen – Zur system-externen Logik der Quantenphysik", in: *Interdisziplinäre Philosophie der Gegenwart*, Frankfurt a.M. 2009.

*The unique merit of philosophy* is the possibility of examining and proving thinking methods of any kind. As a result of the discourse we could make clear the principles of the various ways of thinking which are valid universally.

On the other hand, *the unique merit of physics* is *different*: it is able to handle concrete material things successively, continuously and in a deductive, verifiable way. Physics presents its way of thinking through physical schemes (formula, matrix, tensor calculation, coordinate systems of Riemann geometry etc.) by which it also finds the disprovable parts of physical reality that will become further issues to explore in nature.

##### 5. Complementary Relation of the 'Intrasystem' and 'Extrasystem'

I am of the opinion that the non-exchangeable merits of both thinking methods (physics and philosophy) should be appreciated and reflected on, to lead to a *fruitful complementary interchange* between both *disciplines*; that of *philosophy* and that of *natural science*. The background to this thinking is the position of **Yukawa** (YUKAWA, Hideki, 1907 – 1981), professor at the University of Kyoto, who was awarded the Nobel Prize for physics for the discovery of the meson in 1949. He was of the opinion that the activity of the human spirit (*Geist*) can also be researched from the perspectives of the natural sciences, in such a way that *'human scientific'* thinking **does not lose** any of its **original value**. In his opinion **Human Science** and **Natural Science** cannot be separated or isolated. *Both* scientific disciplines serve the cognition of the human being. Each is related to the other, if we consider different kinds of knowledge from the *perspective of the cognition of the human being*.

##### Excursus

YUKAWA presented this position in his various writings from the viewpoint of his interdisciplinary thought. One of his typical positions is found in the essay *'chigyoraku'*,<sup>25</sup> with a quotation of the Taoist classic 莊子 Zhuangzi: a dialogue of the Taoist Zhuangzi with his rival 惠子 Huizi (Hui Shi 惠施) while they are walking by the river.<sup>26</sup> Huizi (惠子) took a positivistic and materialistic view against the Taoist Zhuangzi (莊子). In comparing the Taoist and positivistic positions, Yukawa developed his own thesis that this kind of concurrence is also found among philosophers and natural scientists in the contemporary period. Yukawa said:

'Though I represent the position of physics and natural science, I am deeply impressed by the Taoist view. Regarding the development of sciences carefully, I

should say that there have been very few scientists since the period of Demokritos or Huizi (惠子) who have upheld exclusively one of the two poles of *'either A or non-A'*: that is, 'I think and believe *either* the philosophical position concerning the universal truth of unity or the natural scientist's position recognizing only provable things in a positivist way of thinking. Contributions to the advantage of natural science have always emerged from the insight of scientists *not* satisfied with a *merely positivistic* way of thinking. To find and establish a new thesis or principle, the true scientist must hold a position *between* the two extreme poles: regarding the systematic construction of a hitherto unknown part of nature, they have developed their insight and imagination (like philosophers or Taoists). On the other hand, they have clarified what is provable in a positivistic way by employing a maximum of scientific deduction. I, as a particle physicist, want to find the systematic principle of a particle which is not recognizable as a 'substantial and independent particle'. The nature of a particle is recognizable only if we observe it in a relation with another particle: we cannot observe a particle in a constant and consistent state, but only in an extremely short time-span, i.e. when another particle is near the observed one and when the first particle removes the second one. The theory of particle physics is built on this field of relations, in which I, as the scientist, move always between the two poles; one of them is the insight to grasp a new cognition, and the other one is to prove a hypothesis by the scientific method.'

As he presented this position in his international symposium for physicists in Kyoto, this analogy seemed to stimulate many participants.

Yukawa reflected on his thought in his further writings and a result on the professional level for interdisciplinary philosophy is found in the dialogue with KOBAYASHI Hideo, one of the most intellectual of critics in 20<sup>th</sup> c. Japan, entitled 'The Progression of the Human Being' (人間の進歩について).<sup>27</sup>

Yukawa's thesis on how to establish interdisciplinary relations, communications and contributions from natural science to anthropological philosophy is presented in his scientific paper 'Science and Human Nature' (科学と人間性). It is marked by four aspects, the Human Being as a *Thinking Being*, the Human Being as an *Observing Being*, the Human Being as an *Acting Being* and 'Science for the Well-Being of Mankind'.<sup>28</sup>

This position of Yukawa postulates *neither mixing nor a thoughtless equalization* of natural

<sup>25</sup> Yukawa, Hideki, "chigyoraku" (知魚楽, "To know the pleasure of the fish in the water – A Taoist message in a dialogue with a Positivist") in: *The surprising Spirit* (驚く心), ed. by Tsurumi S., Tokyo 1990.

<sup>26</sup> Zhuangzi 莊子, chapter 17 (秋水, the water of autumn), Abs. 16. Ed. by Ogawa, T., Tokyo 1978, pp. 398 – 399.

<sup>27</sup> The Progression of Human Being" (人間の進歩について), in: Kobayashi, Hideo, Complete Edition, appendix vol. 1, Tokyo 1983, pp. 130 – 158.

<sup>28</sup> *Human Being and Natural Science* (人間と科学), ed. by Yukawa, Tokyo 1956, pp. 2 – 46.

philosophy and natural science. He calls for *neither isolation nor equalization* but a 'complementarity'. I think that this idea of [complementarity] can lead to a method of interdisciplinary thinking which is important for comparing [intrasystem] and [extrasystem] unities.<sup>29</sup>

#### 6. The "Field of 'Between' " as an Epistemological Concept

I am of the opinion that we can reconstruct our [intrasystem] thinking *from the stimulation* of [extrasystem] thinking. Generally, one can see *one's own unity* in the *other's reflection* of himself *objectively*. My interdisciplinary scientific concept is the *Field of 'Between'*, stimulated by a fundamental knowledge of Buddhist philosophy (*pratitya samutpāda*) which is in no way connected with esoteric concepts or mystification of any kind. (Problems of 'reincarnation' or 'irrationality' are *never* in my concept!)<sup>30</sup>

The essence of the *Field of 'Between'* is in short:<sup>31</sup> a being [A] becomes [A] only if it enters into a relation with another being [non-A]. The meeting of [A] and [non-A] constructs a field of an '*emerging relation dependent on each other*'. The relation from [A to non-A], [non-A to A] can be *maintained*, it can *develop*, be *dissolved* or *vanish*. The fundamental concept is the [relation of A and non-A]. I will comment that this '*Field of Relations Dependent on Each Other*' always shows a *space of 'Between'* [A and non-A]. The *emerging of a relation*, its *duration*, *development* and *vanishing* in Buddhist philosophy is not discussed according to the principles of Aristotle's *substantial metaphysics*. An expert in his substance metaphysics might say that 'the causality of emerging, staying and vanishing of a relation between A and non-A is in the *dynamis*, in the potential possibility of every thing and being. A and non-A, everyone, is an *ousia*, a substance. Everyone is

present within his or her own being, so there is no space between A and non-A. A and non-A are a 'substantial unity.'

If someone connects the words 'being', 'existing', 'emerging' and 'developing' etc. with a *substantial, constant moment* or *accidence as inconsistency*, he would never grasp the essential meaning of the *Field of 'Between'*. The *Field of 'Between'*, viewed purely physically, is a *field* of space-time that enables a *physical interaction*. Viewed physically, in the double-slit experiment, a physical interaction emerges *between* the shooting light quantum and the receptor. Viewed philosophically and epistemologically, the *Field of 'Between'* is the [space-time], where the things [A and non-A] enter *into a relation*.

We may apply this [A and non-A] in physical reality to ontology: there are two beings *actualizing a relation between* [A] and the other [non-A]; we may say in ontology and in anthropological philosophy, [A] and [B]. In this field, non-verbal communication can emerge between the contents of their consciousness (including parts of their unconsciousness), and their thinking and their feeling. Within Buddhist philosophy it is possible to think that both beings or persons, [A] and [B], do not have a fixed 'substantial unity': Of course we can say: 'viewed physiologically, each of them has his own DNA combinations, his own genetic series *non-exchangeable* with another; each is an organic 'closed system'.'<sup>32</sup> But in Buddhist philosophy, the crucial issue is not the *biological 'a priori'*<sup>33</sup>, but really the '*a posteriori*' in the anthropological field of what happens in the emergence of human relations. The main focus is on the empirical factums, if and how far every person / being is able to develop his natural potential (DNA-combinations, atomic construction) to the reality of what he can do and what he does. Both persons / beings, [A] and [B] ([A and non-A]), accompany their previous experiences / conditions (consciously and unconsciously) into the *Field of 'Between'*. This end result of the empirical unities of every person and every being cannot be predicted absolutely and also cannot be defined by a 'substantiality' of any kind. I shall remark here that my philosophy (stimulated by Buddhist philosophy) is *not* a pure *theoria*. My philosophy works with the main focus on *real experience in the centre of the field of life*.<sup>34</sup> I say

<sup>29</sup> See note 24. The starting point of an analytical way of thinking was founded by Aristotle in his *Organon*, *Metaphysics* and *Physics*. He criticized Plato's thinking of the *idea* (ἰδέα) of the *one / hen* (ἓν) and summed up his thesis in the following way: "To say that something that is, is not or that what is not, does exist – that is untrue. But to say that something that is, does exist and that what does not exist, is not – that is true." , *Metaphysics*, 1011b – 1012a. Plato held only the last position omitted by Aristotle. See "Parmenides"-Dialogue 152a – 166c. Cf. Aristotle's sharp criticism of Plato, in: *Metaphysics*, Book M. In comparison with Aristotle, I think that Plato's insight opens a possibility of fruitful reflection for the comparative philosophies of East and West.

<sup>30</sup> The projection of the "samsāra" as a "reincarnation" in substantial transfiguration from one personality to another is believed mostly in Tibetan Buddhism: But, contrary to popular knowledge in recent decades in Europe, this way of imagination has *less common ground with Mahayana Buddhism* as a religion and philosophy in East Asian cultures. A similar type of "reincarnation" in *Tibetan Buddhism* is found *primarily in Hinduism*. See the literatures of Buddhology: Nakamura, Hajime, *Classics of Mahayana Buddhism* in 7 volumes, (大乘仏典) Tokyo 2002-2005. Hayashima, Kyōshō & Takasaki, Jikidō (Eds.), *bukkyō indo shisō jiten* (Buddhology and Indology), Tokyo 1993.

<sup>31</sup> This basic principle of being is *pratitya samutpāda*. See the Pāli Canon. In Mahayana Buddhism it was extended into a metaphysical/ontological and anthropological principle. See Nakamura, ibidem, Takasaki, Hayashima, ibidem.

<sup>32</sup> Okada, Yasuhiro, *Organism, Brain & Actual Beings* (生命、脳、いのち), Tokyo 1999.

<sup>33</sup> *Not* in the Kantian meaning! Cf. the Original, *Critic of Pure Reason*, "Introduction", B 1 – B 30, A 1 – A 16.

<sup>34</sup> A background to this position is the philosophy of Kyoto School represented by NISHIDA, Kitarō (1870 – 1945) in his *Complete Works*, Tokyo 1965, 1979, 2001, *Selected Works*, Kyoto 1998, 2002. Nishida's system of philosophy includes the philosophy of science in which human experience in a real world is marked as a fundamental dimension for building the theories and the system of his philosophy. In this position logic is not limited to the formalization needed to construct a thought, but it expresses the form

that what is experienced by a person in a relation or in meeting is *more than* what is defined by the DNA-combination, or subject to physiological and biological facts. The *psychological* situation of a person on a certain day, his emotions e.g. his nervousness, or his character traits e.g. his arrogance, etc. are phenomena that cannot be defined as a 'substance' philosophically. These are, in Aristotle's philosophy, *not* the '*substance*' but something which is '*accidental*'. Those particles emerge spontaneously in the **field of communication between [A] and [non-A]**. They **remain for a short time and vanish** at the end of the communication.<sup>35</sup> The **Field of 'Between'** is the [time-space of an interaction] in which different beings, [A and non-A], [B and non-B], enter into relations, and engage in verbal and non-verbal interactions during which both of them construct a [time-space of 'dependent relation' on each other]. Interaction, reflecting oneself against the existence of a partner, communicating and isolating can happen in this **Field of 'Between'**. Viewed purely from physics, this is the space-time of the full *execution of physical interactions* and the results can be developed in further space-time.

For interdisciplinary epistemology I would like to define this using the previous terminology, namely [intrasystem] and [extrasystem] unities: the *interaction of natural philosophy and natural science* corresponds to the [repeated reflections, interchanging positions] in the [Field of 'Between'], between the unities of the [intrasystem] and [extrasystem].

#### 7. The Field of 'Between' as a Cosmological Principle

In the previous sections, the **Field of 'Between'** was presented as an ontological and epistemological concept in the *micro-world* and the *meso-world*. I am of the opinion that this concept is also able to take part in the field of *macro-cosmic space*.

For example, we can consider the *dynamics of the ocean*, its *low tide* and *high tide* (flood):<sup>36</sup>

The water level of an ocean rises if it is in the gravitational field of the moon, exactly, in the additional relation of the [centrifugal force of the rotation of the earth-moon system] (around their center of gravity) and the [gravitation of the moon], resulting in the high tide. That is, both the nearest regions and the furthestmost regions to the moon on the earth have a high tide. On

the *intermediate regions between those two regions mentioned before* of the earth, the gravitation of the moon and the centrifugal force of the revolution (rotation) almost cancel each other: The result is *low tide*, while the water of the ocean of the whole earth is pulled up in the high tide regions, during which the water of the ocean on the whole earth remains in the same quantity. Natural science calculates the proportional relations of the [gravitation of the moon] and the [centrifugal force] due to the rotation of the earth-moon system around their center of gravity, the proportion of the quantity of the high tide to that of the low tide.

Viewed from my natural philosophy, the phenomenon of this dynamic process emerges in the [Field of 'Between'], in the [time-space] *between* the [gravitation of the moon] and the [centrifugal force of the earth-moon system rotation] around their center of gravity.

And where is the place of *man* as a thinking and acting person? I say that man has his/her [time-space] in the [Field of 'Between'], the [time-space *between* the moon and the earth].

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<sup>36</sup> Duden, *Physik*, Mannheim 2001. A thesis from the view of *natural philosophy* to this phenomenon is executed by Hans-Dieter Klein in a deduction from his system theory: "Systemtheorie und Monadologie", in: *Systemtheorie*, ed. by Karen Gloy, Bonn 1998, *System der Philosophie*, ed. by Hans-Dieter Klein, Frankfurt a.M. 2003.

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## Chinese-Mexican Relations through the Trade of Silver in the Nineteenth Century

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*Abstract-* Although most people today believe that global integration such as China's predominance in global trade is a new phenomenon, it is actually not a recent development. Destined for China, heightened profit opportunities resulted in an unprecedented surge in silver production in Mexico. Silver demand grew along with China's population, which consequently led to a "fifty percent silver price premium in China" (Giraldez, Flynn, 1945, 392). "No one disputes the existence of a world market for silver: The issue is how to model it" (Flynn in Tracy 1991, 337). Therefore, I will discuss how trade of silver between China and Mexico affected both countries' economic development.

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# Chinese-Mexican Relations through the Trade of Silver in the Nineteenth Century

Anna Katherine Dvorak

**Abstract-** Although most people today believe that global integration such as China's predominance in global trade is a new phenomenon, it is actually not a recent development. Destined for China, heightened profit opportunities resulted in an unprecedented surge in silver production in Mexico. Silver demand grew along with China's population, which consequently led to a "fifty percent silver price premium in China" (Giraldez, Flynn, 1945, 392). "No one disputes the existence of a world market for silver: The issue is how to model it" (Flynn in Tracy 1991, 337). Therefore, I will discuss how trade of silver between China and Mexico affected both countries' economic development.

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## I. CHINESE-MEXICAN INTEGRATION THROUGH THE TRADE OF SILVER IN THE NINETEENTH CENTURY

Even though Mexico was the country rich with this metal, China benefited more from the exchange in silver than Mexico. Silver was needed and indeed used for China's growing economy and held significant value as an economic benefit to the extent where silver came to have a much higher value (compared with gold or any other measure) in China than anywhere else in the world. Despite Mexico's success of attracting Chinese investment, the pre-revolutionary state assumed nationalist policies through regulating and nationalizing foreign companies and declaring an independent foreign policy. However, how much of the changes in Mexican policies were connected to Mexico's revolution and did changes in Mexican state policy focus on economic development and modernization?

In China's case, did China's economic and political crisis cause silver imports to decline, as Von Glahn (2007) and Flynn (1999) suggest? The fall in silver prices in China is more often connected to its economic downfall, leading to the demise of the Ming Dynasty. I argue that it was famine, resulting from the Taiping Rebellion in 1850 that led to the collapse of the Ming Dynasty. It was towards the end of the Ming Dynasty that rulers eased mining restrictions causing silver to continue lagging in domestic demand.

Nevertheless, both China and Mexico underwent nationalist revolutions in the first decade of the twentieth century. Both incorporated anti-foreign implications that disintegrated into civil war. Although this was opposed by each country's populations, popular demand was ignored in both cases. Therefore, I will examine what this meant for both countries' economic policies and how it changed relations between China and Mexico as well as the role both revolutions played in the grand scheme of globalization.

## II. BACKGROUND

### a) Mexico-China Relations

China's relationship with Mexico can be traced back to China's world silk market in the sixteenth century. Flynn et al (1999) describe this process as the "forces that once landed silkworms in South America then crushed it, as Europeans continued westward and opened the Pacific for trade, which exposed the young Mexican silk industry to the onslaught of the world's oldest and most competitive silk industry, that of China" (51). For the first time, Chinese silk traveled eastward. However, the start of a Mexican silk-sector, "the fruit of successful trans-Atlantic migration of European agriculture and technology" (Flynn et al, 1999, 51) turned out to be short-term.

The widespread destruction of mulberry trees in China resulted in "detrimental effects on trade causing China's share of world silk market to plummet from 50 percent to 9 percent" (Schell, 2001, 103). This, along with British and European competition whose industries started to weave more American cotton than silk contributed to the downfall of Mexico's silk weaving industry. In 1850, imported silk cloth undersold raw silk at one of the largest trade fairs in Lagos resulting in the loss of all Mexican silk weaving businesses.

### b) Mexico: Control and Currency

There is still much debate on the impacts of the Mexican revolution on Mexico's economic development and how it contributed to nationalism and an interventionist state, including broader social and economic policies. Before the revolution, the Porfiriato was already experiencing significant changes monetarizing the market through such improvements like modernizing banking, changes in currency systems and protecting industry.

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In the late nineteenth century, a central bank operating under a specie standard led to the establishment and maintenance of a uniform national currency in Mexico which in the words of Porfirian officials resulted in “amply and securely systematizing the fiduciary currency” (Bortz, Haber, 2002, 53). The Mexican federal government specifically announced that a peso was equal to a silver disk of a specific size, with a particular silver content and specific design. If Mexicans accepted it in payment throughout the national territory, then what did “systematizing the fiduciary currency” mean? It essentially meant “ensuring that all other instruments that functioned as money maintained a fixed value against the silver peso” (Bortz, Haber, 2002, 54). Furthermore, “since banknotes were only redeemable for silver at the branch of issue, they circulated at a discount outside the immediate area” (Bortz, Haber, 2002, 54). As a result, Porfirian Mexico had several different currencies linked by a fluctuating exchange rate in which the central bank would have the responsibility of ensuring that all banknotes and checks denominated in pesos be exchangeable for silver at a one to one rate across Mexico.

Along with establishing a central bank is the mission of stabilizing the banking system. In her chapter on institutional change and foreign trade in Mexico, Sandra Kuntz Ficker states “The second bank of the United States (BUS) created a national monetary union for a time by instituting policies that ensured that bank notes could circulate far from their place of origin without a discount” (Bortz, Haber, 2002, 161). Actually, the creation of a ‘national currency’ that would be exchangeable everywhere for specie at a fixed rate is one of the primary reasons for why congress chartered the BUS in 1816.

### III. CHINA

Until the mid 1800s, China exported over 100,000 pounds of raw silk into Mexico yearly. After the downfall of China’s silk industry, silver currency imports became China’s most valuable trade contributing to China’s restoration of a favorable trade balance. China became a net exporter of silver for the first time in 1834 (Scell, 2001, 112). The treaty port system in China allowed foreign trade to further expand, leading China to expand its money supply. “From 1867 to 1872, U.S. customs recorded exports of over 25 million pesos to China and another 31 million from 1873 to 1878” (Schell, 2001, 110).

The fall of the Ming dynasty resulted in the end of China’s control of foreign trade. This resulted in piracy while trade simultaneously flourished with shipments of Chinese mercury, which had previously been restricted, reached Mexico. This contributed to the resurgence of silver production in Mexico starting in 1670. China’s demand for silver currency dramatically increased

during this time partially due to its annexation of Central and South East Asia into its tributary system, which I will later describe in more detail. This led to disequilibrium in silver markets, but China was still able to become the leading proprietor of silver. Although China once again became the ‘world’s silver sink’, rising silver production (while China tried to keep sufficient quantities of silver in order to maintain European and American profit margins) did not lead to a steady price increase in the 1700s. I will further discuss how periods of inflation were interspersed by periods of somewhat relative price stability.

Once the Manchu dynasty came into play, rulers were able to keep control of legal trade better. However, silver cut into the Celestial Kingdom’s positive trade balances. At this point, the US comes to play a role with Yankee merchants paying for Chinese goods with furs from the Northwest Territories and with silver pesos from the Spanish trade, which they came to dominate during the French Revolution once Spain opened its colonial ports of necessity. As a result, by the mid twentieth century, what was initiated by Sino-Mexican trade, transformed into a much larger phenomenon of global integration. This will be discussed in the context of globalization in the last section.

### IV. SINO-MEXICAN TRADE OF SILVER CURRENCY AND ITS ECONOMIC IMPACTS

Schell suggests that the economies of nineteenth-century Mexico and China are linked in what he terms “a Sino-Mexican symbiosis in which Mexican miners seemed to coin silver in response to Chinese demand for specie” (Schell, 2001, 90). The Chinese export of silver produced such a flow of silver from Spanish mines in Mexico that it displaced paper money (Mungello, 1999, 2). Even Adam Smith noticed this phenomena stating that the price of silver in Mexico “must have some influence on its price, not only at all the silver mines of Europe, but at those of China” (1776/1937:168). During the late nineteenth and early twentieth century a wider variety and higher amount of foreign silver coins circulated in China than at any other time since their introduction in the sixteenth century. This was a result of the increased presence of foreign powers in China and the growing number of issuers whose coinage was circulated and accepted as a medium of exchange.

Mexico’s import of Chinese manufactured goods like textiles could not be compared to China’s import of Mexican silver, which became China’s prime form of currency, absorbing as much as one half of all the silver predominantly mined in Mexico in the early seventeenth century. Even though Chinese manufactured goods were of much better quality than Spanish or Mexican textiles, they did not come to

dominate the Mexican market like Mexican silver did in China.

Although some figures, such as David Brading, possess a Eurocentric perspective regarding Mexican silver production, believing that silver exports responded to European demand through Spain, pesos were actually exported in response to price signals from China, which resulted in China's prosperity at the peak of its imperial expansion.

Ficker discusses how "Mexico's greater openness toward foreign markets was made possible not only by a lower degree of tariff protection, but also by a more liberal regulatory environment that considerably reduced the transaction costs incurred in international trade" (Bortz, Haber, 2002, 162). Although transaction costs were reduced, "high transportation costs, poorly developed links with international commercial transport, and a lack of financial institutions made Mexico a difficult country with which to trade" (Bortz, Haber, 2002, 162). In addition, Mexico's weak transportation system are so poor (often associated with African caravan ways of trade) that economic regions are completely disconnected, hindering trade to major cities in the country. Even though China also experienced issues, like transportation obstacles, not only were they more small-scale issues than Mexico's but they were also more external than internal. For instance, after crossing the Atlantic to Mexico, Mungello (1999) describes how one crossed Central America to Acapulco and took passage on a Spanish ship across the Pacific Ocean to the Philippines. Manila came to play a pivotal role in trans-continental trade. The city was founded by Spaniards in 1571 and is known as initiating Pacific trade and giving rise to global trade in general according to Flynn and Giraldez (1995). "According to conservative estimates, 75 percent of the 400 million pesos of silver bound for the Philippines during the period 1565-1820 ended up in China" (Flynn et al, 1999, 52).

However, onward passage from the Philippines to China was "fraught with difficulties because the Portuguese would arrest anyone who disembarked in Macau without a Portuguese Visa" (Mungello, 1999, 37). In addition, smuggling had become a major problem through the Philippines. By 1630, smuggling became so wide spread that official registers were only able to record a fraction of the Philippine peso trade. Despite some of these obstacles, between 1600 and 1800, continental Asia absorbed at least thirty two thousand tons of silver from the Americas via Europe and three thousand tons via Manila. China received silver over the trans and circum-Asian eastward bound routes. While these trade routes may have hindered Chinese trade, the peso trade through Manila "supported an expansion of Mexican textile manufacture" (Schell, 2001, 95).

The use of Mexican currency in Chinese commerce was secured following the end of the Opium

War in 1840. Due to political pressure from France, Germany, Japan, Great Britain, and the United States, the Ching imperial government was obligated to open major harbors and waterways as treaty ports. As a result, international trade in China flourished in the extraterritorial regions. The fact that merchants from Mexico were joined by foreign banks and that the Chinese were receptive to using foreign currency, helped silver coins circulate smoothly throughout the Chinese market.

Although merchants played a significant role in the long-distance trade between Mexico and China, they did not have control over the finance aspect of trade or the distribution of wealth. Schell argues that merchants were integral to the conduct of trade finance and programs of trade (ie "opportunities for rent-seeking") which developed in similar ways in both countries. Furthermore, while Schell believes that "the arrival of foreigners produced similar effects in Chinese and Mexican markets" (Schell, 2001, 7), I argue that the trade of silver between China and Mexico affected both countries' markets in very different ways. Even though China may have experienced provincial variations in the use of foreign currency, the country used foreign silver for its own commercialization and used Mexican currency on a barter basis. Richard Von Glahn (2007) discusses some of the regional variations in how silver was used between monetary regimes such as Jiangnan and Guangdong, the major commercial centers in China's imperial empire. "While Guangdong reverted to a commodity money standard that allowed the use of a wide range of different types of physical monies, including 'chopped' and broken foreign coins, in Jiangnan the Carolus peso became a unified, fiduciary monetary standard" (Von Glahn, 2007, 1). These differences can be attributed to the distinctive regional characteristics of China's market culture at the time. Mexico, on the other hand, was experiencing economic fluctuations and fiscal constraints that prevented it from engaging in some of the commercializing and new program opportunities that China was pursuing.

In terms of the elites' role in the market and economy, in both China and Mexico, the elite felt a sort of contempt for commerce while demanding tribute from their productive classes and from merchants who were responsible for long-distance trade. The founder of the Ming dynasty, Emperor Hung Wu, pursued a moral economy consisting of "closed rural communities ruled by a little elite" (Brook, 1999, 59). Wu also ensured the provisioning of the cities in China by limiting exactions on the productive classes by the elite. Merchants would be allowed freedom of movement. As a result of Emperor's Hung Wu's protection of peasant produces as well as artisans, he initiated a period of sustained economic growth and increased demand for money, which upset the Confucian agrarian moral order which I

will talk about in more detail in the context of globalization.

However, there are some differences in not only the role of the elite in both countries, but also in how they were perceived by each country. China's programs "provided the elite with new opportunities for rent-seeking and produced tributary forms of capitalism" (Schell, 2001, 2) while in Mexico, elites did not have much control as "greater participation in government by social and economic elites would have permitted stabilization in Mexico" (Stevens, 1991, 109). While "low revenue collections and substantial borrowing coincide[d] with unusually unstable years" (Stevens, 1991, 109) in Mexico, Spanish colonial Mexican dollars, primarily the Pillar Dollar (1732-1772) and Portrait Dollar (1772-1821), continued constituting a major part of China bound cargoes. These dollars were increasingly becoming an important part of China's currency market.

When Mexico declared independence from Spain in 1821, the production of Spanish colonial Mexican Dollars was brought to a halt. Even though it is argued that "Instability provided foreigners with a convenient justification for dismembering Mexico" (Stevens, 1991, 107), by the time these coins had circulated all over China, recognized by China's business communities as "Principal Money" when Mexico's Eagle Dollars replaced colonial dollars in 1856, Mexico's silver coins continued to serve as a basis for all types of commercial activities (including base money for bookkeeping and an exchange media for business activities of all kinds by the commercial society) in China. Continuing through the beginning of the twentieth century, Mexican Dollars were still preferred by the Chinese even after being introduced to other Chinese forms of currency.

As Mexico's wars of independence disrupted silver production, "mintage shrank from 24 million pesos to less than 4 million in 1810, recovered to 14 million the next year, and then declined to an 80-year low in 1826" (Schell, 2001, 109). Richard Salvucci (2009) describes the global deflation as an "overvaluation" of the peso in foreign markets that stifled local manufacture and "may explain the balance of payments problems that Mexico experienced in the 1820s, and consequently, the macroeconomic stagnation that ensued" (Salvucci, 2009, 79). Yet he also finds that peso exports swelled during the 12-year economic expansion preceding the Texas rebellion.

While Mexican mintage increased during this time, after 1834, "Yankee commerce no longer off set drain of silver from China but contributed to it" (Schell, 2001, 125). As a result, US monetary policy became a factor and Congress fixed the mint ratio of silver to gold at "16 to 1, overvaluing gold as it formerly overvalued silver" (Schell, 2001, 129). The "Stability of International Exchange: Report on the Introduction of the Gold-Exchange Standard into China and Other Silver-Using

Countries" (1903) is a report to Congress which describes the requests by Mexico and China for US cooperation to develop a set relationship between the money of the gold-standard countries and the silver-using countries. Starting in 1902, a correspondence on the silver question took place between the governments of Mexico, China, and the United States.

The three commissions were appointed an American Commission and two Mexican Commissions. The Mexican Commissions dealt with international exchange in close cooperation with the American Commissions to examine all local questions that could impact Mexican monetary reform. The local Mexican Commission issued its report in December, 1903, and recommended a monetary system closely following the system adopted in the Philippines. The proposed plan included the closing of the mints to the free coinage of silver, the substitution of a new coin of equal weight for the old dollar, and the temporary prohibition of the importation of that coin.

The "Stability of International Exchange: Report on the Introduction of the Gold-Exchange Standard into China and Other Silver-Using Countries" (1903) discusses the benefits of establishing a gold-exchange standard in China. How did countries determine whether to change their monetary system in considering adopting a common ratio between the gold unit and silver coin usage? The US supported the adoption of the gold standard by other countries. The outcome was the exchange of silver coins for European gold.

Because "Yankees exported only about 50 million from 1835 to 1852 despite a 15 - 30 percent premium paid on pesos there" (Schell, 2001, 130), Mexico's peso exports to the US decreased by 50 percent. When Chinese demand for silver coincided with Mexican supply, global deflation was reduced and "free trade brought to the ports of Amoy, Foochow, Ningpo, and Shanghai by the Treaty of Nanking caused China's tea and silk exports to surge, stemming the silver outflow of previous decades" (Schell, 2001, 132). In fact, "China became the world's silver sink" (Schell, 2001, 135). According to Schell, "Because China was able to absorb sufficient quantities to maintain European and American profit margins, rising silver production did not result in steady price increases in the eighteenth century" (Schell, 2001, 135). As a result, periods of inflation continued to be erratically followed by periods of relative price stability. The alignment of Chinese silver prices with the rest of the world after 1790 caused Chinese merchants to not only exchange silver but also tea for furs, textiles, and opium. The outflow of Chinese silver to Europe through the British East India Company once again resulted in high inflation.

Brading emphasizes the importance of Europe in this "global trade", stating that "had the colonial authorities not shipped this fiscal surplus abroad, Mexico would have been obliged to double its imports

from Europe or else cut its silver production by half: the alternative would have been a collapse in the internal value for silver" (Brading, 10). Flynn, on the other hand, emphasizes the role of China stating that "the silver denominated global price structure was not shaped by American production but by demand in silver's major end market, Ming China" (Flynn, 2002, 20). He concludes by stating that "it is better to recognize that disequilibrium within the silver market itself was an active cause of global trade. . . . There is no doubt that Europeans played an important role as intermediaries, facilitating the movement of tens of thousands of tons of silver around the globe, but the most critical element of dynamism in this case should be attributed to the end-customer, China." Although I argue that China, indeed, played the more important role, I would like to now focus on why, despite China's fluctuating inflation rates compared to Mexico's more stable, modest inflation rates, China benefited more from this trans-national silver trade. I will do this by countering the common held view that "China became so dependent on foreign silver to sustain domestic economic growth that a sharp fall in silver imports in the 1640s led to the fall of the Ming dynasty in 1644" (Von Glahn, 2007, 1). I will also counter the misconception of Mexico's Revolution main legacy being 'economic modernization and development' by focusing on some of Mexico's internal political issues.

## V. WHY CHINA GAINS MORE THAN MEXICO: PROFITS DID NOT TRANSLATE INTO ECONOMIC DEVELOPMENT

Studying taxes in relation to economic development and stability, Stevens specifically examines Mexico. He finds that "governments that extracted relatively large taxes from foreign trade were as likely to be unstable as those which received only relatively small amounts" (Stevens, 1991, 109). Consequently, "the evidence that trade influenced political instability is not as strong as the data that tie the level of foreign trade to political decisions" (Stevens, 1991, 109). Therefore Mexico's internal political instability is a major factor in hindering its potential to prosper economically. Jonathan Kirshner (1995) describes how permissive currency manipulation, which Mexico could have potentially engaged in, requires an economic sacrifice for political interests, which Mexico was not willing to do. "The "coercion-intensive" route practiced by Brandenburg-Prussia and Russia, remained largely alien to Latin America" (Lopez-Alves, 2000, 18).

Furthermore, because silver was a vital export, rivaling oil as a source of foreign exchange, it could have served as an important tax base for national government, as discussed in "Origins of Instability in Early Republican Mexico." Even "after the wars of independence, no state in Latin America was able to

enforce taxation efficiently, cities were coming to dominate rural areas, and direct labor coercion was not always possible" (Lopez-Alves, 2000, 18).

Moreover, Mexican currency did not lead to strong domestic pressure as it did in other countries. Even though the US came to play a role in Mexico, it did not produce effects like it had in other Latin American countries like Brazil. In 1937, the US engaged in reputation-enhancing protective currency manipulation in Brazil. Although the US supported the nation's currency as it had in Mexico, it helped Brazil create a central bank and contributed to Brazil selling sixty million dollars of gold in five years (Kirshner, 1995, 109). Kirshner explains that "the low cost of currency manipulation does not mean that any state can practice it," (Kirshner, 1995, 150) as in the case of Mexico. "As a major producer of silver specie, Mexico was better positioned than China, a major importer of specie, to take advantage of this synchronicity" (Schell, 2001, 115). Although China needed gold and currency to purchase silver from Mexico, Mexico did not take advantage of the situation. "The "coercion-intensive" route practiced by Brandenburg-Prussia and Russia, remained largely alien to Latin America" (Lopez-Alves, 2000, 18).

Although starting in 1877, Manchu scholar-bureaucrats came to believe that China became dependant on Mexico due to its "reliance on imported money," I argue that it did not "damage the economy and impair China's sovereignty" (Schell, 2001, 114). The most significant impact was made by Mexico's reshaping of China's state economy through its participation in an international currency system, but Mexico did not use enforcement and expulsion as forms of exploitation of monetary dependence by China because of its own political issues. Mexico did not take advantage of the explicit rules of institutions and patterns of economic activity which is demonstrated through the way in which it participated in the system.

Mexico's own political conflicts were demonstrated in conservative resistance to liberal self-strengthening, which led to the Wars of Reform (1858-61) and later (1862-67) to French Intervention. This led to catastrophic economic consequences as silver production began to drastically drop. Because Mexican production of silver decreased as silver shipped to China by Yankee merchants, increased, global deflation, according to Salvucci, resulted in an "overvaluation" of the peso in foreign markets which suppressed local manufactures and "may explain the balance of payments problems that Mexico experienced in the 1820s, and consequently, the macroeconomic stagnation that ensued" (Salvucci in Schell, 1999, 115). Fewer pesos were available for export and export peaks led to coin shortages. As a result, the Mexican government continued to find it difficult to balance its budget until the Porfirian economy gained some momentum. However, José Yves Limantour, Secretary

of Finance for Mexico under Porfirio, disrupted Porfirio's short lived momentum, by imposing a gold standard against Porfirian budgeters.

Only after his plan failed, did Limantour consider coalescing with Manchu government to consider conversions to gold. Because every peso export peak contributed to a slowdown in Mexico's economy, Limantour came to realize negotiations with the Manchu government in order to make conversions to gold, were imperative.

Silver came back into the picture when Limantour made the most out of increasing silver prices to sell millions of pesos abroad in order to build gold reserves. However, he misjudged the market and by the time Limantour imposed a "10 percent gold excise tax to halt peso exports, there was critical currency shortage" (Schell, 2001, 116). Consequently, Mexico paid a great price for Limantour's arbitrage.

As a result, international force and reimbursements of "450 million taels payable in gold, were imposed on the Manchu government [and] to obtain the necessary exchange, China dumped millions of pesos on the world market" (Schell, 2001, 217). Shortly thereafter, the peso hit bottom at what is equivalent to 43 US cents.

After silver reached a 20-year high in China, its "government pushed ahead with its defensive modernization and prepared to nationalize the main railways" (Schell, 2001, 118), contributing to the 1911 revolution that ended Manchu rule in China.

#### a) *Mexico's Post-Revolution State*

"After the wars of independence, no state in Latin America was able to enforce taxation efficiently, cities were coming to dominate rural areas, and direct labor coercion was not always possible" (Lopez-Alves, 2000, 18).

Mexico's post-revolution state, which included nationalist policies, emphasizing land reform, was not a result of the revolution. Once again, Mexico can be compared to Brazil to support this theory, because Brazil similarly adopted nationalist policies without undergoing a revolution. Although Mexico focused on commerce and mines to diversify investments, both are far less secure than agricultural land. "Land possessed a dependability not shared by mines and commerce" (Couturier, 2003, 763). In addition, agricultural lands played an important role for the mines that continued to operate in post-revolution Mexico. Miners needed agricultural lands to pasture livestock including "mules that operated their winches and processed ore, produced feed for livestock, rations for workers, and leather for buckets and ladders" (Couturier, 2003, 763).

#### b) *How Mexico's Post-Revolution State Affected Silver Export*

When Francisco Madero initiated his revolution, "the mining law that finally took effect in 1910, was

stripped of its antiforeign elements but did nothing to restore silver's national market or the peso's position in Oriental specie markets" (Schell, 2001, 117).

Due to stagnation in post-independence Mexico, "Mexicans were as likely to treat pesos as a commodity as money" (Schell, 2001, 118). The overvaluation of pesos resulted in harming Mexican manufacturers and "as Mexico's wars of independence disrupted silver production, mintage shrank from 24 million pesos to less than 4 million in 1810, recovered to 14 million the next year, and then declined to an 80-year low in 1826" (Schell, 2001, 119).

## VI. POST-MING RULE IN CHINA

As for China, the fall in silver prices, as mentioned, did not lead to the fall of the Ming Dynasty. Rather, it was famine, resulting from the Taiping Rebellion in 1850 that led to the collapse of the Ming Dynasty. Towards the end of the Ming Dynasty, rulers eased mining restrictions causing silver to continue lagging in domestic demand.

William Atwell concludes that "American silver imports had been the motor of Ming economic growth and that a reduction of those imports as part of a global seventeenth-century crisis had precipitated the dynasty's fall in 1644" (Schell, 2001, 118). Flynn also defines the problem during the Ming dynasty in the context of "evaporating profits as silver's market value fell to its American cost of production" (Schell, 2001, 118). However, as previously mentioned, the silver denominated global price structure was controlled by the demand in silver's major end market, Ming China not by American production. This brings me to my last section on the end of silver trade between China and Mexico and globalization.

## VII. CONCLUSION

### a) *Globalization and the end of Silver Trade*

Global integration into the world market is well demonstrated by China in the mid eighteenth century when its silver prices aligned with the rest of the world as merchants became involved in trading silver, teas, furs, textiles, and more. Although interaction with foreign countries produced similar outcomes between not only Chinese and Mexican markets, but also both countries economies, China benefited more from the silver exchange than Mexico. Even in terms of global integration, China implemented the treaty port system, which contributed to China's economy and further connected it to the entire world economy. Mexico's integration is demonstrated through American-built railways which contributed to a more basic national market. Still, high domestic freight rates hindered Mexico's integration.

The US also came into play when Yankee merchants became involved with China trade. It was in

1934 that the American Silver Purchase Act “initiated for purely domestic political reasons, put tremendous pressure on China’s monetary system” (Kirshner, 1995, 220). The increasing silver prices led people in China to convert currency notes into silver and then silver into gold, which resulted in a “chronic scarcity of currency with attendant serious deflationary effects” (Kirshner, 1995, 221). On November 3, 1935, China abandoned the silver standard due to this pressure resulting in the US purchasing China’s silver from 1935 to 1938 as its main form of protective currency manipulation.

Furthermore, the increasing demand for money soon came to upset Confucian agrarian moral orders in China. This is a case in which the processes of the new phenomenon, globalization, interfered with China’s traditional values. Because money began to be perceived as a malicious and corrupting influence, “the emperor closely regulated it by issuing paper currency and closing China’s silver mines, thus setting in motion events that would make China a black hole for silver” (Schell, 2001, 118).

In terms of Mexico, although some theories suggest that it was profitable commodity trade in pesos with China that was a ‘mistake,’ it was actually Mexico’s importation payments, foreign debt service, and exported earnings resulting from its political issues that contributed to the slowing of potential economic development.

Even though various Eurocentric theories (i.e. Brading) as mentioned, have been applied to Mexico and China’s relationship in trading silver, I do not argue that Europe did not play an important role, rather I emphasize that China took the position as not only intermediary and ‘end-customer’, but more importantly, leader. While Flynn put China at the center of the world economy, Immanuel Wallerstein, who is known for his work on globalization, emphasizes the role of European capitalism, stressing this process as being financed by surplus value being “extracted at the periphery through forced labor and transferred to the core as silver” (Schell, 2001, 115). In the context of China, Wallerstein differentiates between common-held Western ideology of Eurocentrism and its actuality in how he perceives it as an ‘all-encompassing epochal occurrence.

Other scholars, such as Atwell, believe that American imports of silver is what led to the growth of China’s economy under the Ming Rule. Atwell, as mentioned, argues that the reduction of American imports in China led to the Ming Dynasty’s fall. However, evidence shows that silver imports during this time (late Ming era) actually increased.

Nevertheless, despite China and Mexico’s contrasting prerevolutionary outcomes and role in the world economy (resulting from the silver exchange demonstrated through social responses to this new phenomena of global integration whereby Manchu state became strong and Porfirian government focused on

defense) both economies declined and simultaneously experienced ‘social revolution.’

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## A Few Notes on the “*Field of `Between`*”: The “*Field of `Between`*” “as a Core Concept of the Interdisciplinary Dialogue

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*Introduction-* The Field of `Between` is a central concept in scientific theory which I developed in 2006. Since 2008 I have presented and discussed it in my lectures “Natural Philosophy and Natural Science” as well as in other lectures in Central Europe and abroad.

At the Interdisciplinary Symposium of the Polish Academy of Sciences in 2009, organised in co-operation of the Academy’s Centres at Vienna and Warsaw, this topic was one of the keynotes running through the whole Symposium. On the occasion of the new publication of a revised version in English, I shall explain briefly what constitutes the essential parts of this core concept.

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A FEW NOTES ON THE FIELD OF `BETWEEN` THE FIELD OF `BETWEEN` AS A CORE CONCEPT OF THE INTERDISCIPLINARY DIALOGUE

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# A Few Notes on the “*Field of ‘Between’*”: The “*Field of ‘Between’*” as a Core Concept of the Interdisciplinary Dialogue

Hisaki Hashi

## Introduction

The Field of ‘*Between*’ is a central concept in scientific theory which I developed in 2006. Since 2008 I have presented and discussed it in my lectures “Natural Philosophy and Natural Science”<sup>1</sup> as well as in other lectures in Central Europe and abroad.

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### 1. *The original source of the Field of ‘Between’*

This idea has evolved out of the theory of quantum physics: In the basic version of the double-slit experiment (first designed by Niels Bohr) an elementary particle (light quantum or electron) is directed towards a screen. Two plates, one with a slit, the second with two slits, are placed between the source of emission and the screen. This experimental arrangement makes it possible to observe whether the emitted light quantum passes through the slits in the form of a particle or as a wave in the interference phenomenon. Even with the latest state-of-the-art measuring equipment results will differ according to the type of the test assembly. There is no clear definition – not even with the help of experimental calculation – whether the emitted quantum is detected as a light particle (discrete) or as a light wave (continuous). Pietschmann has explained this fact as follows: *The nature of the elementary particle is created or produced by the measuring apparatus.*<sup>2</sup> Whether it appears as discrete or continuous is established only with measuring and recording. I have found the following definition in the light of natural philosophy for this ambiguous phenomenon, which seems to contradict traditional physics - one of the most rigorous natural sciences: Whether the quantum is recorded as a discrete particle or as a continuous wave depends on the “*Field of Between*”, on the space

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between the emitted light quantum and the light-sensitive receptor. In terms of theoretical physics the fact may be described as follows: The “Field of *Between*” is the *topos of the interaction of matter* of two physical beings.

### 2. *“The Field of ‘Between’” as a topos of interaction*

Is the “Field of *Between*” simply the same as “physical interaction”? Seen from a purely physical point of view, the term “interaction” should suffice. Any further elaboration would belong to the humanities. However, I think that the “Field of *Between*” is a central concept of natural philosophy, not simply one of physics. It is an interdisciplinary concept which, based on natural science, stimulates philosophical reflection about the true being (*ontos on*).

In observing a physical interaction the observer meticulously supervises a given physical event (i.e. the exact isolated localisation of an emitted light quantum), which is recorded by the receptor. In *natural philosophy* another horizon of thinking and reflecting is open for the same event: **The physical observer is also embedded into the whole phenomenon of conducting the experiment.** Therefore his viewpoint of physical objectivism is bound to the measuring equipment. The person who measures and observes is a representative of a “rigorous physical objectivism”; he touches the object to be measured in a micro-world, thereby causing a diffusion of the measured object: the Heisenberg uncertainty principle. In his thought experiment about the measured value of the diffused electron, its position value and its impulse value at the so-called Compton scattering effect, Heisenberg established his uncertainty principle within the framework of the mathematically proportional ratio. The individual values of position and impulse cannot be defined with due precision.<sup>3</sup>

From the angle of natural *philosophy*, the basic fact of quantum physics contains the following problem: The “observer interferes with the micro-phenomenon of the measured object”. This means the observer, together with his physical, rigorous, objectivist observation, enters the “*Field of Between*”, i.e. the *topos of physical interaction*. This appearance of the whole may be reflected in the light of natural philosophy as follows: We, as supervisors, wish to clearly observe and reference the given entirety of the exact measuring

process, its effects and the diffusion of the measured object. The action of the "supervisor" intervenes with the "Field of Between", in the field between the physical measuring phenomenon and the philosophical phenomenon of critical reflection".

### 3. What is New in this Key Concept of the "Field of Between"?

A leading theoretical physicist of the Tokyo University says that the essential characteristic of this idea is that the thinking person himself/herself is 'enclosed' in the object under consideration or in the phenomenon of the problem under discussion. He thinks that this is an essential nucleus of natural philosophy, which cannot be supplied by natural science. – I would comment as follows: Let us say, if we have to fall together with the "apple falling from the tree", we cannot derive any mathematical formulas for the law of gravitation. If we fly together with the "flying arrow" in Zeno's arrow paradox, we cannot evolve any concept of thinking which would show a basic model of the development of differential calculus. – This kind of a clear distance, given by us as thinking subjects facing the object of thought, would "certainly be typical and useful for the development of modern rationalism and natural science", says another colleague, sociologist at the University of Vienna. The theoretical physicist of the Tokyo University comments as follows:

„Yes, one can say this in general: The "Field of Between" means that we, as we reflect, move within a given problem area, in critically defining our "human existence" as thinking persons as object of our reflection. This way of looking at things is not unfamiliar to the so-called non-occidental, non-European or East Asian philosophy. We feel a certain proximity with such an orientation in thinking and observing, we feel that in spite of supervisory rationalism and advanced technologies we are nevertheless part of nature.“

I should like to add: This subject-object-relation, in which the thinking person as a cognitive subject, with his human existence as a whole, lets embed himself into the problem field and critically moves together with the problem under consideration, is largely unknown to the basic principles of analytical philosophy. Moritz Schlick, for instance, said in his lecture "Problems of Philosophy" ("Probleme der Philosophie") of the Vienna Circle of the first generation in 1933/34 that a clear-cut split of cognitive subject and cognitive object was a primary basic condition for formulating any cognitive theory.<sup>4</sup> If this prerequisite is lacking any discourse will be lost, it will turn into mere intuition or subjectivist sensation. By contrast, the "Field of Between" as a core concept of scientific theory is justified, for the following reason: A cognitive subject, equipped only with the classical method of analytical thinking, with this orientation "excluding any intuition", turns in on the issue under consideration, where data capable of analysis have

priority. Out of this, another "half-world" will arise, as a result of the excluded, subjective data that do not lend themselves to analytical presentation, a world that may show itself as a kind of subjectivity of analytical centrism.<sup>5</sup>

### 4. The "Field of Between" as core concept of the cosmological principle

The role of the "Field of Between" as core concept of the cosmological principle is discussed in the following:

- In measuring a micro-object the observer switches himself into the given field of the micro-being, together with his act of observing. He switches himself into the "Field of Between", into the topos of interaction of himself and the micro-object, thus gaining a measuring result.
- In the phenomenon of the meso-world the idea of the "Field of Between" can be visualised as follows: Let us assume a prism (as conceived by Newton). Light passing through the prism causes the phenomenon of seven different colours due to their different wavelengths. Light in nature has from the very beginning – before any measurement (also in the sense of Kant's pure reason a priori) - contained the seven colours, but what was hidden has been made visible only by intervention of the prism.<sup>6</sup> In the "Field of Between" this would mean that the seven layers of colour are created in the topos of interaction of light and prism, while we, as observers, switch ourselves into this field of interaction together with our visual power. The "Field of Between" engulfs us as observers. While we scientifically record in our conscious mind the values of the different wavelengths.
- In the phenomenon of the macro-world the "Field of Between" can be noted as follows:

In tidal dynamics, the seawater level on earth is raised by the co-action of different physical forces:

- by the gravitational force of the moon,
- by the centrifugal force of the rotation of the earth and
- by the proportional co-action of the lunar and terrestrial forces (in the rotation of the moon-earth system).

This happens not only on the side of the terrestrial globe which faces the moon but also on the reverse side, because of the centrifugal force of the rotating earth: In these areas the seawater level rises – it is high tide. There is low tide in the other areas – while the total volume of seawater on earth remains constant.<sup>7</sup>

Hans-Dieter Klein has given a nature-philosophical description of this natural phenomenon in his system theory writings:<sup>8</sup> The moon, together with its gravitational force, affects the lunar-terrestrial system. In analogy to a "measuring apparatus affecting the macro-phenomenon" the moon, together with its macro-

presence, may be said to *measure*, i.e. to regulate the tidal dynamics of the earth.

In the "Field of Between" this action may be described as follows: The tidal dynamics occur in the gravitational field of moon and earth, accompanied by the centrifugal force of the rotating globe. Out of the interaction of the two macro-systems there arises the tidal movement in the *field between the moon and the earth*. We, as thinking persons, *switch ourselves into this "Field of Between", between the moon and the earth*. In this our meso-world human existence is enclosed in the macro-phenomenon, *our body consisting of an aggregate of micro-world particles whereas we can at the same time enclose the macro-cosmic whole into our minds*.

##### 5. The Field of Between as a principle of interdisciplinary interaction

In interdisciplinary discourse, experts of different disciplines may often have widely differing concepts and interpretations of one and the same term. Even within one discipline, such as philosophy, such a phenomenon occurs when representatives of different historical schools or experts from different philosophical sub-disciplines meet for discussion. This may lead to endless misunderstandings, in which different concepts are linked together in an erroneous way.<sup>9</sup> The consequence may be a one-sided public "declaration of victory" or a one-sided "presentation of absolutism or centrism" of one's own discipline.

This type of debate developed until the end of the 20<sup>th</sup> century, and even after the turn of the millenium in some world regions this type of "ego-absolutism or ego-centrism" is still working, accompanied by falsifications, erroneous interpretations and misguided developments.

I think that the basic idea of the "*Field of Between*" is able to provide a meaningful contribution towards correcting this undesirable development, with regard to a preliminary orientation of interaction in the field of interdisciplinary.

A fundamental prerequisite in the traditional interdisciplinary scientific communication is that two experts – the I and the You – represent their own, closed worlds, clearly separated from each other. In this "dialogue" either side represents a closed system "without windows". In a positive sense, this means a confirming of one's own system and offers plausibility for self-reference in the theoretical discussion. On the other hand, this has a negative effect, leading to a rigidity in thinking and a limited visualisation of truth, which might suppress and defeat any potential for the expansion of knowledge. In the name of reason a person can undertake the opposite, sure of himself, whereby his intelligence exclusively and endlessly furthers his own powers in an uncritical justification of his own knowledge. An opening for communication,

interaction and for an exchange of interdisciplinarity is thus destined to fail.

The aim of the concept of the "Field of Between" is not at all that the thinking person falls into an intermediate field in an undifferentiated sense. The aim of the "Field of Between" is not simply to group all differences together, to add them and to position oneself, as the case may be, safely "between" different hypotheses. What is important is a totally different aspect, namely that experts with different basic knowledge and ideas may deliberately establish a topos of intra-action and intra-relation between themselves and their partners in discussion. This intermediate zone is suitable for correct intervention, argument and taking up the opposite position. At the same time it is a real "Field of Between", which makes possible a mutual rapprochement, "reconciliation" and mutual amalgamation as "intra-action" and "intra-relation". If this key idea with an integration of two opposites is absent, then any topos of interdisciplinarity is bound to fall into the "*Field of Isolation*" or "*Field of Levelling Relativism*".

The aim of realizing the "Field of Between" is a **clarification of differences, a culture of dialogue, an integration of opposites and the emergence of new ideas arising out of this**. In view of the latter aspects the "*Field of Between*" is a model useful, if not indispensable also for educational science.

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3. Heisenberg, *Physikalische Prinzipien der Quantentheorie*, Mannheim/Wien/Zürich 1991, Chapt. II.2., p. 16ff. Recent experimental physical research affirms that the "uncertainty" of position and impulse values can be measured more precisely. This results in a renewal of the formula of the Heisenberg uncertainty principle, as it has been known up to now, in the field of theoretical physics. Cf. *Nature Physics*, 2194, 15.01.2012, authors: J. Erhart, S. Sponar, G. Sulyok, G. Badurek, M. Ozawa and Y. Hasegawa. The historical importance of Heisenberg's discovery of the "uncertainty" of measuring micro-objects remains unaffected.
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7. Hashi, „Das ‚Feld des Zwischen‘ als Leitidee der Naturerkenntnis –Mit besonderer Berücksichtigung der Philosophie der ‚Leere‘, Chapt. 3, in: Hashi, *Naturphilosophie und Naturwissenschaft. Tangente und Emergenz im interdisziplinären Spannungsumfeld*, Münster/Berlin 2010, p. 192-193.
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## Protection of Child Rights in Perspective of Human Rights in Indonesia (Analysis Approach to Islamic Law)

By Dr. Iman Jauhari & S. H., M. Hum

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*Abstract-* The purpose of this study was to describe children's rights in law and Islamic law, and legal protection of children in law and Islamic law. The method used in this study is a content analysis, research that is in-depth discussion of the contents of a written document from the book and other scientific literature relevant to the object of study. In Islamic view, the obligation of parents on the survival and development of children is entrusted (mandate) to the parents of child by God (Allah). Islam regards the definition of a child as a noble position. Children have a position or get a special place in Nash Al-Quran and Al-Hadith. Therefore, a child within the meaning of Islam must be treated humanely and given education, teaching, the skills of akhlakulkarimah so that the child will someday be responsible in promoting themselves to meet the needs of favorable future. The parents are responsible to the problems of their children in view of the Qur'an.

*Keywords:* protection of children's rights, human rights, islamic law.

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# Protection of Child Rights in Perspective of Human Rights in Indonesia (Analysis Approach to Islamic Law)

Dr. Iman Jauhari <sup>α</sup> & S. H., M. Hum <sup>σ</sup>

**Abstract-** The purpose of this study was to describe children's rights in law and Islamic law, and legal protection of children in law and Islamic law. The method used in this study is a content analysis, research that is in-depth discussion of the contents of a written document from the book and other scientific literature relevant to the object of study. In Islamic view, the obligation of parents on the survival and development of children is entrusted (mandate) to the parents of child by God (Allah). Islam regards the definition of a child as a noble position. Children have a position or get a special place in Nash Al-Quran and Al-Hadith. Therefore, a child within the meaning of Islam must be treated humanely and given education, teaching, the skills of akhlakulkarimah so that the child will someday be responsible in promoting themselves to meet the needs of favorable future. The parents are responsible to the problems of their children in view of the Qur'an.

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## I. INTRODUCTION

Children are the hope of the future. Children also have existence. The existence of the child as a child, as a man who is the totality of life and humanity. Each child is attached with basic rights as human rights that can not be ignored. However, in the reality of the world, there are many forms of exploitation, violence, discrimination and abuse of children's rights, both real and perceived and hidden.

In fact, children are still exploited, both economically as labor, street children, or sexual exploitation as prostituted children. Because of that, the enforcement of children's rights have not been able to enforce and have not been consistent, although legal instruments relatively are available.

According to data released by UNICEF in 2005 revealed that two (2) million children were killed; and 4 (four) to 5 (five) million disabled children living by war. In some countries such as Uganda, Myanmar, Ethiopia, and Guatemala, children are subject to conscription policy.<sup>1</sup> According to the International Labor

Organization - ILO, there are approximately 200 million children economically active work or outside the home because of poverty and urbanization.<sup>2</sup> International Labor Organization (ILO) as a United Nations special agency in charge of international labor issues was revealed that the amount of 7% (seven percent) of children in Latin America are involved in labor, in the Asian region were estimated to be 18% (eighteen percent) children become child labor, and the greater part of which are in Africa estimated to be 25% (twenty five percent).

Meanwhile in Indonesia, according to data released by the Central Bureau of Statistics (BPS), an estimated number of 2.4 (two point four) million children aged 10 (ten) to 14 (fourteen) years are economically active, not to mention children under the age of 10 (ten) years. Figures released by BPS was conservative, that is still small compared with reality-age children are out of school learning that amounted to 6.5 (six point five) million. Even researchers from several institutions who are concerned with the problem of child labor refer to larger numbers, such as Irwanto revealed 6 (six) million children work, and other studies have estimated that approximately 10 (ten) million.<sup>3</sup>

With regard to child labor and school dropouts, the result of the conflict in Aceh war as DOM, in 1989-1998 there were 4521 (four thousand five hundred and twenty-one men) children become orphaned. Then the riots in Jakarta on May 13-15, 1998 engulf tens of thousands of lives. Shootings and riots in Solo, Central Java on 14-15 May 1998, riots in Medan, North Sumatra dated May 2 to 8, 1998, riots in Luwu, South Sulawesi, 11-13 September 1998, heinous murder in Banyuwangi, September-October, 1998, Trisakti and Semanggi tragedy May 12, 1998 and November 13 to 14, 1998, riots in Ketapang, Jakarta, 22 November 1998, riots in Porsea, North Sumatra, 23 November 1998, riots in Kupang, NTT, 30 November 1999, riots in Poso, Sulawesi Selatan, December 25, 1998, Authority operations in Aceh, December 1998 - January 1999, shooting Tengku Bantaqiah, July 23, 1999 the number

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<sup>1</sup> Muhammad Joni dan Zulchaina Z. Tanamas, *Aspek Hukum Perlindungan Anak Dalam Perspektif Profesi Hak Anak*, (Bandung: PT. Citra Aditya Bakti, 2006), p. 1

<sup>2</sup> ILO, "IPEC Programme Document", 1993, p. 4.

<sup>3</sup> Irwanto, 1997, *Perlindungan Anak Prinsip dan Persoalan Mendasar*. Makalah pada Seminar Kondisi dan Penanggulangan Anak Jermal, LAAL. Medan, p. 8

of students who brutally murdered 79 people, riots in Karawang, West Java, January 7, 1999, riots in Ambon, Maluku, 19 to 23 January 1999, the riots in Haruku, Saparua, Maluku, 14 February 1999, riots in Sambas, West Kalimantan, February 22 to 25, 1999, riots in Halmahera, Maluku, 23 to 24 February 1999, the riots in Ternate, P. Hunt, and Ambon Maluku, March-April 1999 and February 2009 March, plus Sampit riots in East Kalimantan.<sup>4</sup>

Through the United Nations (UN) that have endorsed the Convention on the Rights of the Child (UN's Convention on the Rights of the Child) on 20 November 1989, which until now has bound 191 (one hundred and ninety-one) participating countries (state parties), then the effort of promotion, dissemination and enforcement of the rights of children driven to the whole world, especially in countries that have ratified the Convention on the Rights of the Child (CRC).

Indonesia as a member of the United Nations and the parts of the international community have ratified the CRC in 1990. Ratification of the CRC was done through Presidential Decree (Decree) No. 36 Years of 1990. Indonesia is the earliest country to ratify the Convention on the Rights of the Child.

Islamic dimension in putting human rights of the children are very broad and noble teachings of social life. Indonesian society is a collection of a bunch of marginal human, and every human being, without exception, always experience a period called childhood. So that child rights is seen as the seed of a society. In this view, Abdur Rozak Hussein stated as follows: If the seeds of the child in the community is good then surely the public will be formed into a society that is good also, further said: Islamic states that children are the seeds that will grow to form a society in the future will come.<sup>5</sup>

Children need to have legal protection to guarantee their rights. They are country's most important asset. They are the successor to the ideals of national struggle. It is to be hung all the expectations of the nation in the future. Therefore, it is appropriate that the most attention is given in order to meet a better tomorrow. They need to be given to good education, health, affection and attention in addition to food and clothing, so that they can develop their personal properly.

Responsibility for the maintenance of children is the responsibility of all parties (government, communities and families). Family (parents) are the first and foremost responsible for the maintenance of the child, who is mentioned in Law No. 4 of 1979 on Child Welfare.

In the appendix of Presidential Decree No. 129 of 1996 on the National Action Plan on Human Rights of Indonesia stated that "the implementation of human rights conventions in which was passed on the promotion and enhancement of the content of the protection of rights, namely: a) increase the role available national institutions (Presidential Instruction No.2 of 1989 on the National Committee for Children Welfare Development) in order to implement the Convention on the Rights of the Child, b) establish a child protection agency as an independent body in the field of child protection.

Based on the background of the problem, the issues discussed in this paper is how definition of human rights in general, children's rights in national law and Islamic law, and legal protection of children in the national law and Islamic law.

The method used in this study is a content analysis,<sup>6</sup> research that is in-depth discussion of the contents of written documents from the book and other scientific literature relevant to the legal protection of children in the perspective of human rights in Indonesia, an analytical approach to the study of Islamic law.

## II. DEFINITION OF HUMAN RIGHTS IN GENERAL

The term of human rights or basic human rights, which is the translation of foreign terms such as "droits de l'homme" section of the "declaration des drits et du citoyen de l'homme" (France), or "menselijke grondrechten" (Netherlands), "fundamental human rights" (UK), and "huququ al-asasiyah" (Arabic). In general, more widely used in Indonesian terms of human rights.

Actually, the human rights it is an area that is not clearly limit the issues covered in it. However, it should be examined some meaning or definition put forward by scholars. It is intended to address problems that have been mentioned above. The understanding of human rights are the "rights of human beings by nature and cannot be separated rather than intrinsically and because it is sacred".<sup>7</sup> Meanwhile, Marbangun Hardjowirogo<sup>8</sup> believes that human rights are rights that allow it to live unmolested and life as a citizen of a life together. Then G.J. Wolhoff<sup>9</sup> gives the sense that human rights are a number of rights as if rooted in the human person where such rights cannot be removed or lost from the human life. Thus, human rights are basic rights or fundamental rights brought by humans from

<sup>6</sup> R. Babbie, *The Practice of Social Research Practice* (Belmont: Wadworth, 1977), p. 75.

<sup>7</sup>Kuncoro, *Hak-Hak Asasi Manusia dan Pancasila*. (Jakarta: Pradnya Paramita, 1976), p. 19.

<sup>8</sup> Marbangun Hardjowirogo. *Hak-Hak Manusia*. (Jakarta: Yayasan Idayu, 1991), p. 7

<sup>9</sup> G.J. Wolhoff, *Pengantar Ilmu Hukum Tata Negara Republik Indonesia*. (Jakarta: Tinta Mas. 1990), p. 143.

<sup>4</sup>F.S.Swanoro, "Maraknya Pelanggaran HAM Berat di Indonesia", Analisis CSIS.Tahun XXIX/2010, No.2, Jakarta, hlm. 211-212.

<sup>5</sup>Abdul Rozak Husein, *Hak Anak Dalam Islam*, (Fikahati Aneska, 1992), p. 19

birth as a gift from Almighty God. These rights are the basis of other rights and obligations.<sup>10</sup>

Moreover, human rights are also listed in the Preamble to the Charter of the United Nations which reads "for the sake reinforce belief in human rights, the price and the degree of human dignity, the same rights, both men and women and for all nations large and small ... "further provisions concerning human rights are set out in several articles of the UN charter such as Article 1. 13. 55. 56. 62 and 76."<sup>11</sup>

The view of the conception of human rights in addition to what has been described above, was also found by the Islamic conception. Human rights in Islam is defined as a legal ownership, rights and precious possessed by every individual from birth regardless of difference, race, tribe, nation or religion.

Because of the nature of human rights, then anyone who tried to seize the moral sanction as an anti-human actions. In the Qur'an there is a very real gesture that every individual has the right to life and the primordial obtain the same dignity and noble life before God and fellow human interaction. So much so that a person's right to life that Allah has strongly condemned the murder (Surah 2:72, 2:85, 2:91, 3:112. 4:93, 6:151).

According to the version of Islam, which is the first human rights violations occurring in the world once it is the murder of the son of Adam, Habil (Abel), by his brother Qabil (Cain) (Cain killed Abel because not willing to see Abel has a happy life (as husband and wife) with Cain's twin brother, Iqlima, who is pretty good-looking.

Supposedly, according to Cain, Iqlima it must be mated by Adam to the Cain and Abel mated with his own twin sister who has a less attractive face that is Labudda. As a result of the dissatisfaction and reckless, then Cain killed Abel. Thus excerpts history of human rights violations told by Allah in the Qur'an Surah Al-Maidah: 30)

Human life is sacred and should not be violated by anyone. That holiness should not be revoked except by the power of Shari'ah and through the adopted procedures. It is expressly stated in Q.S. Al-Maidah: 32 which means "he who kills a human being, not because that person kills another person, or for spreading mischief in the land, it is as if he has killed all mankind.

Islam does not justify someone forcing his will on others, because the imposition of the will violates the rights of the man himself. Even more, the coercion of religious believe (in this case Islam) was not allowed. It is explicitly mentioned in Surat Al-Kahf: 29, which means "God gives freedom to all his servants if he would like to be a believer or not".

The same thing in another verse of Surat Al-Kafirun: 6, Allah affirms "lakum dii nukum wa liyaa diin", that is, there is no compulsion in religion (Sura Al-Baqara). That's the common thread of respect for human rights in Islam. In terms of faith in the creator, Allah gives freedom of choice to His servant, especially relating to other areas. In this case Islam upholds these rights.

Furthermore, Islam does not declare human rights was only at one place, but scattered in several verses of the Qur'an. Basic rights that are fundamental to the development of rights rights that declared the following, among others: the right to life (Surah Al-Maidah: 30-32), freedom (Surat ash-Shura: 41), the right of equation (Al -Ahqaf: 19), the right to justice (Surat an-Nisa ': 49), the right of protection against tyranny (Surat al-Ahzab: 58), the right to protection from torture (Rawahu Hadith Ibn Majah with a sahih sanad), the rights of individuals in the name of minority (Surat al-Hujarat: 12), the right to shelter (Surat al-Tawbah: 6), minority rights (Surat al-Baqara: 225), the right to work in the life (Surah Ash-Shura: 38), the right of free speech (Surat al-Ahzab: 60-61), the right of freedom of religion (Surah Al-Kafirun: 6), the right to preach (Surah Yusuf: 108), economic rights (Surah Al-Maidah: 120), the protection of the rights owned (Surat al-Baqara: 188), the rights and obligations of workers (Surat al-Ahqaf: 19), the right to enjoy basic foods (Surat al-Ahzab: 6), the right to build a family (Surat an-Nisa: 1), the rights of wives (Surah Ath-THALAQ: 6), the right to education (QS Al-Isra: 23-24), and the right of individuals to protect privatization (Surat al-Hujarat: 12).

Then, when viewed in the Constitution of 1945, provisions governing human rights are more than any other problems, and a number of chapters on human rights, which consists of Articles 1, 2, 3, 18, 26, 27, 28, 29, 30, 32 and Article 34 of the Constitution of 1945, Article number 12.<sup>12</sup>

M. Yahya Harahap, in Iman Jauhari said there are some things that need to be recognized by law enforcement officers, namely:

- Human rights has developed into "ideology" that global (universal), so that human rights become a "concern" of the international community.
- Ruler (government) should be the "servant" of society, so that people really feel there is "protection".
- Some of the keywords of Human Rights, (1) "to take steps", in the form of a series of efforts to positive action to improve the quality of human rights protection, (2) "to guarantee" human rights in the sense of relief for any violation of human rights, (3), "to ensure" rights in the sense of any right response is worth of human rights (4), "to recognize", in the sense of acknowledging that human rights are

<sup>10</sup>A. Mansyur Efendi, *Tempat Hak-Hak Asasi Manusia Dalam Hukum Internasional/ Nasional*. (Bandung: Alumni, 1980), p. 20.

<sup>11</sup>M. Djamil Usamy, "Jaminan Hak Asasi Manusia (Suatu Kajian Yuridis Empiris). *Kanun Jurnal Ilmu Hukum*. No. 22 Edisi April 1999, F.H. Unsyiah. Darussalam - Banda Aceh. p. 3.

<sup>12</sup>*Ibid*, p. 6-7.

inherent to any individual or group, (5) "to under take", in the sense of trying to protect all human rights in all times and places, (6) "to promote", in the sense of improving the quality of human rights protection in the life sector.<sup>13</sup>

### III. CHILDREN'S RIGHTS ACCORDING TO NATIONAL LAW AND ISLAMIC LAW

The term child means many things, especially if said child was followed in other words, such a derivative child, little boy, country boy and so on. The concern here is the definition of a child in civil law, particularly in relation to the family, such as biological children, boys and girls, legitimate children and illegitimate children, the eldest and youngest children, stepchildren and legitimate adopted children, foster child, children's nephew, the son of a banana, discordant children (illegitimate) and so on.<sup>14</sup>

Child development is a stage in human development, life and development of children seen in a historical question. We should pay attention to other developmental stages to identify and educate children, such as stages of development earlier or later life, all of which are not seen as sheets of loose scattered life, but as a straight path to the divine pleasure.<sup>15</sup>

Therefore, for the sake of children and their future, then the people of Aceh, where his wife had died, frequently do the marriage by marital "ganto tika" or so-called "change mat" with his wife's sister, who is not married yet. It is given to the maintenance of the babies, because when babies are left to be taken care by his/her stepmother who has very close family ties, they do not worry things happen that are not desirable to the future of their children.<sup>16</sup>

In connection with the above description, it can be seen constitutionally the meaning of child, Article 1 Convention on the Rights of the Child adopted by the General Assembly of the United Nations on November 20, 1989 stated "the child is any person under the age of 18 years unless to the child that adulthood is attained earlier". Whereas in point 2 of Article 1 of Law No. 4 of 1979 on Child Welfare mentioned "Child is a person who has not attained the age of 21 (twenty one) years and has never been married". Children are God's mandate that has to be maintained and educated properly. Without supervision or maintenance of the parents, it is

difficult for a child expected to be useful for religion and the state.

Sugiri said "as long as the process of growth and development in her/his body, the person is still a child and into adulthood when a new development and growth process was completed, so the age limit for children is the same as the beginning of becoming an adult, which is 18 years for women and 20 years for men, as well as in the United States, Yugoslavia, and other western countries".<sup>17</sup>

Children as one element of a family, have interpersonal relationships in the family, such as in this case is the child's relationship with their parents, children with other fellow children, children with relatives members of the parents, mothers or father.

According Koentjaraningrat in Soerjono Soekanto, a family function as:

1. Groups, in which the individual can basically enjoy major support from others and security in life.
2. Groups in which the individual when he was a kid and have not got a care, helpless and the beginning of their education.<sup>18</sup>

The definition of "family" here is pure family by family system (family system principal), comprising the father, mother and child, not the family according to the extended family system, which consists of father, mother, son, grandfather, grandmother, in-laws, nephew and so on, as found among the people of Indonesia.

A family according to pure family system is the smallest family unit in society and the state. If this smallest unit is good and prosperous, then by itself the state and society would be good and prosperous. Therefore, Islam is concerned about the formation and development of the family. It is evident that in the Qur'an and hadith are dozens of verses from some of the letters and dozens of hadith, which discuss family issues.

Article 1 point 4 of Law No. 4 of 1979 stated that "the family is the smallest community unit consisting of father and/or mother and child". While in the preamble of the convention of children's rights is mentioned that "The family as the core group of the community and as a natural environment for the growth and well-being of all, its members and particularly children should be given required protection and assistance in order to have a fully responsibilities in society".<sup>19</sup>

View of the child in the religious sense will be constructed in accordance with the Islamic view that makes it easy to conduct a study in accordance with the concepts of the Quran and the hadith of the Prophet Muhammad. Islam regards the definition of a child as a noble position. Children have a position or get a special

<sup>13</sup> Iman Jauhari, "Tinjauan Sosiologi Hukum Terhadap Pelanggaran HAM di Indonesia", *Majalah Hukum*, No. 1 Vol. 4 Edisi April 1999, F.H. USU. Medan. p. 91

<sup>14</sup> H. Hilman Hadikusuma, *Bahasa Hukum Indonesia*, (Bandung: Alumni, 1992), p.83

<sup>15</sup> H. Syamsul Bahri Tanrere, "Pendidikan Anak Dalam Islam", *Buletin Dakwah*, No. 39 Tahun Ke XXVI, 1999, Medan, p. 1.

<sup>16</sup> Iman Jauhari, "Penanganan Kasus-Kasus Perkawinan Poligami di Daerah Istimewa Aceh" *Majalah Hukum*, vol. 5 No. 1 Edisi Februari 2000, FH. USU, Medan, p. 73

<sup>17</sup> Romli Atmasasmita, *Problema Kenakalan Anak-Anak dan Remaja*, (Bandung: Armico, 1986), p. 34

<sup>18</sup> Soejono Soekanto, *Intisari Hukum Keluarga*, (Bandung: Alumni, 1980), p. 53

<sup>19</sup> Muhammad Joni dan Zulchaina Z. Tanamas, 1999, *Op.Cit*, p. 133.

place in Nash of Al-Quran and Al-Hadith. Therefore, a child within the meaning of Islam must be treated humanely and given education, teaching, the skills of *akhlakul karimah*, so that the child will someday be responsible in promoting themselves to meet the needs of favorable future. The problems of child in view of the Qur'an are parents' responsibility.

In the meaning of Islam, the position of the child is a lend from Allah SWT to both parents, the community, the nation and the state as the heir of the teachings of Islam (Allah Revelation) that will be prosperity in the world as *rahmatan lilalamin*. This understanding gives the rights to children to be recognized, believed, and secured as the implementation of deeds received by the children from the parents, the community, state and nation. The provision is stated in Surah Al-Isra (17) verse 31, which means: "And kill not your children for fear of poverty. We shall provide sustenance for them as well as for you. Surely killing them is an enormous sin".<sup>20</sup>

The right has two meanings, namely: First, "a set of rules and texts that govern the basics that should be adhered to in relation to our fellow man, either the person, or the treasure". Second, "the power to master something or something is obligatory upon a person for the other kind". Rights according to common sense, "a provision by which the Personality 'set a rule or a legal burden".<sup>21</sup>

Children's rights are absolute in view of the dimensions of belief and religious life of Islam, consisting of:

- 1) The right to protect the child while still in the womb of his mother (Surah Al-Baqarah (2) paragraph 233);
- 2) The right to breastfeed for two years (Surah Luqman (31) verse 14).
- 3) The right to get education, teaching, coaching, and true moral claims (Sura Al-Mujaadilah (58) verse 11 and the hadith of the prophet, it means I am not sent Muhammad but to enhance morals of mankind);
- 4) The right to inherit the property of his parents (Surat an-Nisa (4) of paragraph 2, 6 and 10).
- 5) The right to earn a living from their parents (Surat al-Qasas (28) verse 12).

In view of the international community, the rights of children to be actual, since talked about in 1924, the birth of the Geneva Convention classifies human rights in the field of welfare, where the convention is also published children's rights. On December 10, 1948, the Universal Declaration of Human Rights was born, or more popularly known as the Universal Declaration of Human Rights issued by the United Nations; child rights grouped into human rights in general. Since it is very

difficult to separate human rights on the one hand with the child rights on the other. On November 20, 1959, the United Nations deems it necessary to formulate the Declaration on the Rights of the Child, then known as the Declaration of the Rights of the Child.

Child rights in view of the declaration of children's rights as set out by the UN in 1959 include rights as follows:

- a) The right to special protection and the opportunity that is guaranteed by law (Article 2 of the DRC);
- b) The right to obtain the name and nationality or citizenship provisions (provisions of Article 3 of the DRC);
- c) The right to obtain a guarantee for the healthy growth and development (Article 4 of the DRC);
- d) Special rights for children with disabilities (mental and physical) in the education, care, and treatment (Article 5 DRC);
- e) The right to love and understanding (DRC provisions of Article 6);
- f) The right to education free of charge, at least in the elementary and junior high schools (the provisions of Article 7 DRC);
- g) The right to precedence in the protection / relief (DRC provisions of Article 8);
- h) The right to be protected from abuse, cruelty of war, and the oppression of the regime (the provisions of Article 9 DRC);
- i) The right to be protected from racial discrimination, religious, or other discrimination (Article 10 DRC).

Declaration on child rights initiated by the United Nations, can not be regarded as a provision of positive law in the community association socialized with children. The fact of the constitutional provisions of rights of children in Indonesia, that the absence of laws and regulations that protect the lives of children. The Indonesian people still need to ratify the Declaration of the Rights of the Child into a law or other regulations that are more restrictive to the rights of children in Indonesia. Protection of children's rights in Indonesia, formulated within a legal framework which is not much different with the legal provisions adults in general. For example, in Act No. 39 Year 1999 on human rights, child rights grouping in general to in Article 56 through Article 66 of Law No. 39 of 1999 on Human Rights. Form and meaning of the child's human rights formulation conclude that children's rights contained in the Declaration on the Right of the Child, which was ratified into the new provisions of the rights of Indonesian children.

In principle I Declaration of Rights of the Child, 1959 stated:

Children should enjoy all the rights set forth in this Declaration. Every child, without exception whatsoever, shall receive these rights, without distinction or discrimination of race, color, sex,

<sup>20</sup> *Al-Qur'an dan Terjemahannya*, Departemen Agama RI, p. 428-429

<sup>21</sup> Tengku Muhammad Hasbi Ash Shiddieqy, 1997, *Pengantar Fiqh Mu'a'amalah*, Semarang: PT. Pustaka Rizki Putra, p. 121

language, religion, political or other views, proposals have national or social origin, property, birth or other status, both himself and his family.<sup>22</sup>

Furthermore, children's rights convention that has been adopted by the UN General Assembly on November 20, 1989 also adopted by the Indonesian government by way of signing on January 26, 1990 in New York, United States, and on August 25, 1990 issued a decision of the President of the Republic Indonesia No. 36 1990 on Ratification of the Convention on the Rights of the Child.

Convention on the rights of the child, has a different outlook compared to previous international instruments. The difference was primarily, it appears from the way children seen and treated, not merely as the paradoxical placed with adults, but it is treated as a human being "filled" with all the rights that are inherent attached to the child as being humans.<sup>23</sup>

Article 2 of the Child Welfare Act No. 4 of 1979 defined the rights of the child as follows:

- (1) Children are entitled to welfare, treatment, care and guidance based on love and care in the family and in the special care to grow and develop properly.
- (2) Children are entitled to care and the ability to develop a social life, according to the personality of the nation and to be a good citizen.
- (3) Children are entitled to care and protection, both during in utero and after birth.
- (4) Children are entitled to protection of the environment that can harm or inhibit the normal growth and development.

In the general explanation of the Child Welfare Act No. 4 of 1979, because a child spiritually, physically and socially has not had the ability to stand alone yet, then it becomes obligatory for the previous generation to assure, maintain and safeguard these interests should be done by those who nurture him under the supervision and guidance of the state, and where necessary, by the state itself. Because of this obligation, it is responsible for the care of children must also protect him from the distractions that come from the outside and from the children themselves. So the government appointed foster parent in the form of institutions such as orphanages and raised other foster parents.

Furthermore, in the explanation of Article 9 of Law No. 4 of 1979 on Child Welfare stated that the parental responsibility for the welfare of the child containing the obligation to maintain and educate the child so the child can grow and develop into a smart, healthy, filial to parents, noble character, fear of

Almighty God and willing and capable to continue the ideals of the nation.

Children are expectations of the parents, the nation that will continue the development of the state. Abdullah Bin Abdul Muhsin At Turkey says that:

Childhood is a period of sowing, establishment piling, foundation-making, which can be referred to as the period of the formation of character, personality, and character of a man, so that they later have the strength and ability and be able to stand strong in pursuing a life.<sup>24</sup>

Because of the children physically or mentally not able to stand alone, then the parents should be obliged to maintain and educate them. Parental obligation ends when the child is already able to earn a living themselves.

Act 1 of 1974 also provides protection to minors from adverse actions parents. In Article 48 stated "parents are not allowed to move right or pawn goods still owned by his son who is not yet 18 years old and hold a marriage unless the interests of the child so requires."

To guarantee the fulfillment of children's rights in addition to the role of government, the role of the family (parents) and the school community will determine the realization of children's rights in family and community life.<sup>25</sup>

All children's rights are protected by law will be effective for the life of the child if the following requirements are met:

1. economic and social factors that can support the child's family;
2. Value of culture that provides opportunities for children's growth;
3. Solidarity of community members to improve the lives of children.<sup>26</sup>

#### IV. LEGAL PROTECTION ON CHILD IN REGULATIONS AND ISLAMIC LAW

One of the legal protection of children is the welfare of children. Child welfare is a child's life system that can ensure growth and development with a reasonable, good spiritually, physically and socially. It is stipulated in Law No. 4 of 1979 on Child Welfare. Preamble of this Act refers to Article 34 of the Constitution of 1945, which says: The poor and neglected children maintained by the state. Thus, if the provisions of Article 34 of the Constitution of 1945 was enacted, consequently, the lives of the poor and neglected children will be guaranteed.

<sup>22</sup> Ian Brownlie, *Dokumen-dokumen Pokok Mengenai Hak Asasi Manusia* (penterjemah Briansyah), (Jakarta: UI-Press, 1993), p. 145

<sup>23</sup> Bagir Manan, et all, 1997, *Peradilan Anak di Indonesia*, Bandung: Mandar Maju, p. 86

<sup>24</sup> Abdul Rozak Husein, *Op.Cit*, p. 13.

<sup>25</sup> Yusuf Thaib, *Pengaturan Perlindungan Hak Anak Dalam Hukum Positif*, (Jakarta: BPHN, 1984), p. 132.

<sup>26</sup> Irma Setyowati Soemitro, *Aspek Hukum Perlindungan Anak*, (Jakarta: Bumi Aksara, 1990), p. 21.

Barda Nawawi Arief uses the term "legal protection of children" and is defined as legal safeguards against various freedoms and rights of children (fundamental rights and freedom of children) as well as a wide range of interests related to child welfare.<sup>27</sup>

Child protection is an effort to hold each child may exercise his rights and obligations. The protection of children is the embodiment of justice in a society. Thus the protection of children should be sought in many areas of life of the state and society. Child protection activities is a legal action brought as a result of the law. Hence, it needs legal guarantees for the protection of the child's activities. Law assurance<sup>28</sup> needs to be put in the continuity of children's protection and prevent abuses that brought unintended negative consequences in the implementation of child protection. From the broad outline then that child protection can be divided in two senses, those are:

1. Judicial child protection, including protection in:
  - a. Public law
  - b. Civil law
2. Non judicial protection, including:
  - a. Social field
  - b. Health
  - c. Education

So the juridical protection of children is, concerning all the legal rules that have a direct impact on the lives of children in the sense of a person's legal order for the child's life.<sup>29</sup>

In connection with the above description that the issue of legal protection for children is one of the approaches to protect Indonesian children. Therefore, the problem cannot be approached solely juridical, but need a broader approach, namely economic, social and cultural.

According to Article 4 Law No. 23 of 2002 on Child Protection stated that children are entitled to live, growth, and develop properly and get protection from harm and discrimination.

According to Arif Gosita, child protection is "an attempt to protect the children to exercise their rights and obligations. Child protection law is the law (written or unwritten) that ensures the children can actually carry out their rights and obligations."<sup>30</sup>

Bismar Siregar said that the legal aspects of child protection are more focus on the children's rights and not their obligations, because the child has not been burdened with the obligation legally.<sup>31</sup>

In a society, each person has their own interests, which are not only equal, but sometimes there is a conflict. Civil law determines that the people in relationships and interactions within the community have to know and respect each other to respect the rights and obligations between people, so that the interests of each can be guaranteed and is not disturbed.<sup>32</sup>

Bismar Siregar, et al said that the issue of legal protection for children is one of the approaches to protect Indonesian children. Therefore, the problem can not be approached solely juridical, but need a broader approach, namely economic, social, and cultural.<sup>33</sup>

In Islamic law, the immature person is called saqhir or sabi, whereas an adult called baligh. Law of the child shall remain in force, until the child was older. It is in the Word of Allah, which means: "And you shall test the orphans until they old enough to get married. Then if you think that they are smart, clever enough to maintain the property then let you handed them the treasure. (Q.S. An-Nisa (4): 6).<sup>34</sup>

So to make the perfect transaction, we must wait until the child was older. And here, the meaning of adult is old enough to reproduce, and there are signs of adult males on son, there are signs of adult women in the daughter. This is a reasonable adult, where those signs are not there before the age of 12 (twelve) years for the boys or 9 (nine) years for the girls. Therefore, if a child says he was grown, after he reaches this age, then his statement is acceptable, because he alone is to understand more about whether he/she is adult or not, and children usually do not want to lie in this matter.<sup>35</sup>

Then, if for example the child has passed this age but the indicated signs are not visible yet, then both the son and daughter, both alike to wait until they are 15 (fifteen) years, in the opinion of Abu Yusuf and Muhammad Ibn ' Hasan, and 18 years for son, 17 years for daughter, according to Abu Hanifah. This provision is taken from the hadeeth narrated by Abdullah Ibn Umar, he said: "I am faced with the Prophet Muhammad to register, to the battle of Uhud, and at that time I was 14 (fourteen); then he would not let me join. Then I was exposed to him for Khandak war, being at that time I was 15 (fifteen) years; then he let me go".

The experience of Omar Abdullah is the reason that fifteen years is a measure of adult age, and it is the same for men and women, men are considered strong enough to engage in war.<sup>36</sup>

School of Hanafy explained that the Head of State in charge of providing for the poor people, and the judge is entitled to make demands that poor people

<sup>27</sup>Aminah Aziz, *Aspek Hukum Perlindungan Anak*, (Medan: USU Press, 1998), p.27.

<sup>28</sup> Arif Gosita, *Masalah Perlindungan Anak*, (Jakarta: Akademi Pressindo, 1989), p. 19

<sup>29</sup> Irma Setyowati Soemitro, *Op.Cit*, p. 13.

<sup>30</sup> Arif Gosita, *Op. Cit.*, p. 52-53.

<sup>31</sup> Irma Setyoyawati Soemitro, *Op. Cit.*, p. 15.

<sup>32</sup> Hasan Basri, *Psikiator dan Pengadilan*, (Jakarta: Ghalia Inbdonesia, 1982), p. 161

<sup>33</sup> Bismar Siregar, et.al, *Hukum dan Hak-Hak Anak*, (Jakarta: Rajawali, 1986), p. 22

<sup>34</sup> Al-Qur'an dan Terjemahannya, *Op.Cit*, p. 115.

<sup>35</sup> Bismar Siregar, et. al., *Op.Cit*, p. 24.

<sup>36</sup> Aminah Aziz, *Op.Cit*, p. 42.

were given a living by state. Their livelihood was so taken from the treasure-trove of heritage that no heir in the state treasury, which collects the scattered treasures, which no owner.<sup>37</sup>

According to M. Yahya Harahap, the maintenance of the child becomes:

1. The responsibility of parents to supervise, provide appropriate services and provide for the child's life.
2. Maintenance in the form of supervision and care, and the child is living appropriately continuously until the child was older.<sup>38</sup>

According to Paul Wetty: "Children need a sense of love, or serenity and understanding and encouragement from both parents (mother and father) as well as others. With summary we can say that the affection is to be fulfilled for all (every) child."<sup>39</sup>

RI Suhartin C argues that: "For the sake of the good growth of children, the parents must meet physical needs such as eating, drinking and sleeping. The need for security or protection, the need to be loved by his parents, self-esteem needs and needs to express themselves both in writing and orally.<sup>40</sup> About earning of living, most of scholars agree that 'living and children's clothing from birth to adulthood is borne by the father'.<sup>41</sup>

Furthermore, Zaid H. Alhamidi suggests: "Be a mother to educate their children in the concerns and simplicity and fortitude in addition to educate and teach them (the children) faith, cleanliness, noble character, encouraging them to do good and prevent them from doing crime and nurture them with affection.<sup>42</sup>

The obligation to maintain the child in Islam called hadhanah, which is the maintenance of a child that has not been able to keep an eye on himself, by way of organizing something that brings the benefit of children, to train and educate and nurture the soul and moral growth.<sup>43</sup>

In Article 45 paragraph (1) of Law No. 1 of 1974 mentioned that "the obligation to maintain and educate the children is charged to parents". Obligation of the father is to meet living expenses in addition to caring for children, educating and guiding until they are adults. Such obligations are also borne by the mother, but the mother's obligation is more emphasis on the maintenance, education and child care. "Educating is to maintain, lead and manage all the rights of children."<sup>44</sup>

In Child Welfare Act stated that the parent is the first persons who responsible for the creation of the welfare of children spiritually, physically and socially. Responsibility is borne by the parents as both physically and mentally children have not been able to take care of and feed themselves.

The existence of such responsibilities because there is a child's relationship with their parents based on blood ties. According to customary law, the legal effect of the presence of parents with children are:

1. The obligation of parents to take care of their children;
2. In the marriage of daughter, father becomes the guardian;
3. Prohibition of marriage between children and their parents.<sup>45</sup>

In view of the Islamic law, the obligations of parents on the survival and development of children is entrusted (trust) that God entrusted to the child's parents. But according to Bismar Siregar, "What many of the parents who have children, but he forgot that the child is a blessing and also the trust of Allah SWT."<sup>46</sup>

In a hadist narrated by Abu Dawud, the Prophet Muhammad said which means "to give a good name, giving good education physical education and spiritual education, to give the child the skills and marry him/her with each candidate in accordance with Islamic law".

Then Islamic teaching determinesthat believers should maintain himself and his family (wife and children) from the torment of hellfire, protect themselves from destruction also means protecting his family from the torment of the Fire.

Therefore, the parents not only care for the children in terms of outward, but also includes a broad sense, the achievement of a balance between body and soul and self-protection from disease.<sup>47</sup>

Children are God's creatures that should be respected and honored as God's Word which means "And we actually have glorified the children of Adam" The Holy Quran, Surah Al-Isra (17) verse 70. Hence one should pay attention to and guide their children to the straight path and reasonable and maintain his honor.<sup>48</sup>

Thus the legal protection of children should be made jointly by her father and mother and not by his mother alone because H. Abdullah Shah said "he has been quite busy due to take care and educate their

<sup>37</sup> *Ibid*, p. 44

<sup>38</sup> M. Yahya Harahap, *Op.Cit*, p. 123

<sup>39</sup> Paul Wetty, *Anak-Anak Yang Cemerlang*, (Jakarta: Bulan Bintang, 1980), p. 70

<sup>40</sup> R.I Suhartin. C, *Cara Mendidik Dalam Keluarga Masa Kini*, (Jakarta: Bhatara Karya, 1986), p. 47.

<sup>41</sup> Tengku Muhammad Hasbi Ash Shidieqy, *Hukum Fiqh Islam*, (Jakarta: Bulan Bintang, 1969), p. 38.

<sup>42</sup> Zaid H. Alhamidi, *Fiqh Islam*, (Jakarta: Attariah, 1981), p. 403.

<sup>43</sup> Zahary Hamid, *Pokok-Pokok Hukum Perkawinan Islam di Indonesia*, (Bandung: Bina Cipta, 1987), p. 70

<sup>44</sup> Sulaiman Rasyid, *Fiqh Islam*, (Jakarta: Attahiriah, 1976), p. 403.

<sup>45</sup> Soerjono Soekanto, *Hukum Adat Indonesia*, (Jakarta: Rajawali, 1981), p.,4.

<sup>46</sup> Bismar Siregar, *Renungan Hukum dan Iman*, (Jakarta: Fikira, 1988), p. 28

<sup>47</sup> Dewan Ulama Al-Azhar, Penterjemah Alawiyah Abdurrahman, *Perawatan Anak*, (Jakarta: Al-Bayan, 1991), p. 34

<sup>48</sup> Muhammad Ali Quthb, Translated by Bahrun Abubakar, *Op. Cit.*, p. 72

children. It is a big job, in addition to the feeling of greater affection than men affection".<sup>49</sup>

H.M. Hasballah Thaib said, "in terms of severity of the work does not need to see the hardiness of the job but rather the value of the job for the benefit of family togetherness and their future and their children".<sup>50</sup> However, "their work in educating their children is a worship and struggle".<sup>51</sup> So their children not to be wasted, because the child as God's mandate to be given legal protection to them.

Parents are responsible before God for his children's education. Because they are the generation who will hold the baton of religious struggle and caliph in the earth. Therefore, if the education of the children is well, then blessed are to the parents, both in this world and in the hereafter. Conversely, if the parents neglect on their education, it will be miserable, from the world up in the hereafter. Did not the Prophet have asserted: "Every of you are a leader, and will be held responsible over the people they lead (Reported by Imam Bukhari and Muslim).

Prophet also gave khabar excited to parents who successfully educate their children: "By Allah, that the instructions given by God to man through you is better for you than the wealth of many" (Bukhari and Muslim). Thus educate children to successfully get a guidance of God is incomparable richness value price.

Good news from the Prophet to parents, is also presented by Imam Muslim in a history that asserts: "When a person dies, all his deeds end, except three cases: *Shadakah jariyah*, taken benefit science and pious children who pray for both parents".

Because of the above, then the person is obliged to maintain themselves from things that do not deserve, as well as first run religious orders as well. Because children are more likely to imitate and follow the customs that exist in the environment. That is, to educate children with examples of direct behavior is better than only with the advice in the form of speech. So, if parents have a habit of doing things that are good, then their children will be a pious man. Because since childhood has been forged by the good things,<sup>52</sup> are: instilling values of Tawhid, educate Prayer, educate Morals, educate Honesty and Fairness.

## V. CONCLUSION

Child protection is an effort to hold each child may exercise their rights and obligations. The protection of children is the embodiment of justice in a society. Thus the protection of children should be sought in

many areas of life of the state and society. Child protection activities is a legal action brought as a result of the law. Hence, it needs for legal guarantees for the protection of the child's activities. Legal certainty necessarily to arrange for the continuation of child protection activities and prevent abuses that brought unintended negative consequences in the implementation of child protection. Child protection can be divided in two senses are: a) the judicial protection of children, which includes the protection: public law field, and the field of civil law, b) non judicial protection, including: the social, health, and education. So this judicial protection of children is concerning all the legal rules that have a direct impact on the lives of children in the sense of a person's legal order for the child's life.

In view of the Islamic law, the obligation of parents on the survival and development of children is entrusted (trust) that God entrusted to the parents of the child. Islam regards the notion of children as a noble position. Child has a special position in the Nash Al-Quran and Al-Hadith. Therefore, a child within the meaning of Islam must be treated humanely and given education, teaching, the skills of *akhlakulkarimah* so that the child will someday be responsible in promoting themselves to meet the needs of favorable future. The parents responsible to problem of the children in the view of the Qur'an.

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<sup>49</sup> H. Abdullah Syah, *Harta Menurut Pandangan Al-Qur'an*, (Medan: IAIN Press, 1992), hlm, 37

<sup>50</sup> H.M. Hasballah Thaib, *Hukum Benda Menurut Islam*, (Medan: FH. Undhar, 1992), p. 34

<sup>51</sup> H. Abdullah Syah, *Op. Cit.*, p. 47

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## The Wolf and the Bloodied Knife: The Self –Destructive Quest for Survival in the Niger Delta Region of Nigeria

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*Abstract-* This work examines the circumstance within the Niger Delta, tracing the origins of the crises which currently engulfs the region. Its causes and acknowledging the injustice meted out to the region. It also shows how the activities of groups and individuals have further exacerbated the conditions of its inhabitants as some of the activities being engaged in make it almost impossible to come out of the quagmire or particular note is the effect of oil bunkering, vandalization and kidnapping on the region which has led to a seeming state of anomie. As to the way forward the issue of education, enabling laws such as the Freedom of information, bill and a straightening of the electoral system are advocated as measure to bring us out of the “conflict”-woods” we have found ourselves, preparing us for a time when we do not have to depend solely on oil.

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# The Wolf and the Bloodied Knife: The Self –Destructive Quest for Survival in the Niger Delta Region of Nigeria

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**Abstract-** This work examines the circumstance within the Niger Delta, tracing the origins of the crises which currently engulf the region. Its causes and acknowledging the injustice meted out to the region. It also shows how the activities of groups and individuals have further exacerbated the conditions of its inhabitants as some of the activities being engaged in make it almost impossible to come out of the quagmire or particular note is the effect of oil bunkering, vandalization and kidnapping on the region which has led to a seeming state of anomie. As to the way forward the issue of education, enabling laws such as the Freedom of information, bill and a straightening of the electoral system are advocated as measure to bring us out of the “conflict”-woods” we have found ourselves, preparing us for a time when we do not have to depend solely on oil.

*It is said that in the thick of winter (has there ever been summer!) in the arctic region when the means of sustenance and survival have greatly reduced because of the weather condition, that desperation is usually at its peak. The fastest way to die then is to go out alone or stop for a rest in the snow. Any seeming sign of tiredness is likely to encourage an attack from wolves which are known to trail hikers or drifters for hours.*

*Dwellers in that region are known to carry sharpened knives when they must go out for long outing and in the event of tiredness, with wolves behind them, they cut themselves with a knife and place it in the snow with its extremely sharp and bloodied and exposed.*

*Drawn by the scent and sight of blood, the wolf (or wolves) move to lick the blood and end up cutting their tongue on the knife drawing blood, which they continue licking, not knowing it is theirs, while human makes good his/her escape. (ANONYMOUS)*

## I. INTRODUCTION

The Niger Delta stretches through the Southern part of present and Nigeria and it is the third largest in Africa, ninth in the world. It is estimated to be about 70,000sq kilometres, surrounded by much water and vegetation, the peoples of the Niger Delta are predominantly fishermen and farmers, who have lived in this area for well over nine centuries. What is of interest is the escalating levels of conflict and violence among people who have lived together with minimal conflict?

The question is why has the Niger Delta suddenly become a veritable ground for lack of security, ethnic clashes and anti-government tendencies?

It would seem interesting to note that less than a decade ago, most areas in the Niger Delta were regarded as being among the most peaceful in Nigeria, but today, conflicts seem to be due order of the day and the Nigerian state is either too confused or unconcerned, inept at taking any adequate action that might mediate these conflicts, and through its actions and inaction, worsening the situation in the Niger Delta area. The conflicts as seen in the Niger Delta today, are either being directed at the government, otherwise, they are inter- or intra- communal in nature. When it is the latter, government only sets up probe panels whose reports never see the light of day, but if it is against the government or its sources of economic revenue the reprisals that follow are usually very severe.

The reasons that have been adduced for these conflicts are as many as they are varied, however, the common thread that runs through them all is “the ecological devastation of the area as a result of reckless oil and gas exploration activities by trans-national corporations in league with Nigeria Federal dictatorship”. An example is the 1990 Umuechem protest in which a whole village was razed and over eighty people murdered by Nigerian security force at the behest of an oil producing company Conflict in the Niger Delta have since stepped up due to the seeming resolve of the indigenes of this area to either bring the Nigeria government to accept its responsibilities by making adequate provisions for the people of the area or ensuring that further degradation of the land and exploitation of gas and oil reserves which account for 90%-95% of the Nigerian total revenue –cases on a permanent basis until the people of the Niger Delta are in control of whatever happens in their territory, as exemplified by various militia groups that operate(d) in the region, notable among them, is the Movement for the Emancipation of the Niger Delta (MEND).

Thus, marginalization, real and perceived –as seen in the rapid development of Lagos State and Abuja, the Federal Capital Territory and the abject poverty and deprivation in the Niger Delta that, as it were, produces the golden egg are believed to be the reasons for the acts of violence. The questions to ask

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are then: why are those who own but do not control these resources are left with nothing? What are the processes that have made this possible? Why has it continued unabated? Is it just due to deliberate negligence of the government of Nigeria or is it because class pressure have made it impossible for the government to undertake any meaningful development plan or action in the Niger Delta?

These question are central when one notes that Government (whether at Federal, State or Local government level) has over the years crated agencies, boards and parastatals whose responsibility were to provide ameliorative action for the effects of the ecological denigration and also pursue programmes which would make for the development of the Niger delta. Such agencies are those like the Niger Delta Development Authority (N.D.D.A). Niger Delta Basin Authority (N.D.B.A), Ompadec, PTF, Niger Delta Environment Survey (NDES) and the Niger Delta Development Commission Grand as these programmes may seem, government always ends up shooting itself in the foot through lack of funding imposition of corrupt officials on such boards, grafting and outright scrapping of these agencies.

Why does government set up these agencies with the knowledge that it will ne scrapped in no distant time? To act as a face-saving measure? To act as a means of quelling agitation? Or simply a way of postponing the inevitable? Different scholars have sought and proffered various solutions to these question and more.

Our problematic in this work is to show that though injustice has been perceived and seen on the part of the Federal Government and its association (Oil prospecting and exploiting firms), the approach chosen by some frontline actors from the region has been such that in their quest to bring attention to their plight, more damage has been foisted on the region, knowingly or unknowingly. And the nature of this damage is fundamental, running deep and wide, felt more by the people of the region than others. This view is strongly supported by P.C Wilmot (1978:38) who states that “the native who has been pushed to the wall begins to think of himself almost solely in terms of his capacity for violence. The objects of violence, however, tend to be other native caught up in the same dehumanizing process.

In terms of social and inter-ethnic tolerance, the peoples of Niger Delta were mostly peaceful except for the periodic Kalabari-Nembe, Kalabari-Bonny conflicts over trading posts. In the western delta, the Itsekiri-Urhobo tensions had to do mainly with the status and role of traditional authorities. The discovery of oil only further exacerbated these conflicts and though it is not as if inter-ethnic conflicts never existed, but the rates have shot up with oil-exploratory services and a fight for

economic survival between different groups, and against the government.

With regards to wealth and economic resources, the Niger Delta produces some 90% of Nigeria’s total economic revenue and has a third of the sixty billion barrels of the continent’s proven reserves. Within it are located three refineries, two petrochemical plants, one liquefied natural gas and two liquefied petroleum gas plants, a fertilizer plant, a major steel plant and three gas-fired electric power generating station. Also, within it are numerous revenue generating businesses and concerns. The forests of the Niger Delta provide all types of important sources of food and income to the local communities. The mangroves have over seventy major uses; non-timber forest products collected from the mangrove forests include medicines, dye, thatching, and food species as diverse as monkeys or periwinkles. In the freshwater swamp forests, raffia palm, mangroves and ogbono. Land snails and other products are all significant. So why has the quest for survival become so intense?

The answer is not far –fetched. The activities of multi-national corporations have so devastated the natural environment that sustenance is not coming from thence, and the vast oil wealth being produced does not impact on the people because of the “joint-efforts” of Government, MNCs faulty & hastily concocted policies (such as the Land-use decree, Petroleum Act and recently, the Petroleum Industry Bill) and corrupt politicians. Meanwhile, the over twelve million people consisting of several ethnic groups and communities who live in the region bear the brunt of the social and environmental impact of the coastal erosion, flooding, sea level rise, fishing and forest resources loss, oil and non –oil pollution, industrial effluent discharge, emissions, gas flaring, domestic waste disposal, water contamination, over –exploitation and threat of extinction through incessant military adventures in the area.

## II. CAUSES OF THE NIGER DELTA CRISES

The problems of the Niger Delta are myriad and would tire out an Amazon if an attempt were made to recount them but they can easily be traced to a combination of the following:

- a) The class character of the Nigerian State
- b) Disarticulated mono-product based economy
- c) External /Foreign influence

## III. THE CLASS CHARACTER OF THE NIGERIAN STATE

The character of the Nigerian state since its inception in colonial times, has been that of a class nature. It was a state, which was mainly “a coercive force unable to transform power into authority, domination into hegemony. This is the legacy of the colonial state which made no pretence of being anything

more than an organized force used determinedly to effect colonization and to prevent resistance to it “ (Ake 1994). The colonial State and its agents remained a symbol of superior force, an agent of terror, inspiring though its exemplary acts of violence, fear and awe rather than veneration and respect, but for how long can the state continue its reign of terror, not forever, which is why it has to transform factual power relations into relations of right, duties and obligations. Moreso, because instability of factual power relations can be seen in its always being challenged when one or more of the dominated feel an excess of strength of resentment of rage.

With increasing clamour for independence, the British initiated a process of decolonization, which altered the patterns of participation and influence in public affairs. The character of the colonial state did not change much at independence because the colonial state was inherited rather than transformed “ power was effectively devolved to the bourgeoisie who commanded the skills and resources necessary to determine public policy at the regional and national levels (Williams, 1976)” but like the colonizers before them, most of the nationalist leaders regarded the state as the instrument of their will. They ‘privatized’ and exploited it for economic gain and used it oppressively to absolutize their power. The transition from the colonial to the independent state thus required and led to changes in class relations (from foreign to domestic ruling class and between the comprador bourgeoisie and the peasants or rural dweller) and generated contradiction that could not be resolved within the framework of representative political institution.

It is necessary to note that at this point that, “classes as entities, do not enter into conflict only elements of it do, though it is the case that large parts of contending classes are on rare occasions directly drawn into battle. For the most part, however, the conflict is fought out between groups of people who are part of a given class and possibly, though not certainly, representative of it” (Draper, 1978) in the Nigerian state, the dominant class refer to all “those who are in the power position to take what they can from the nation’s accumulated wealth either directly or through any form of patronage and are also in the position to decide what others will get” (Anikpo, 1996). We thus find a small elite who become rich and are prepared to tolerate (as in the case of Niger Delta, the inconveniences of oil company activities like environmental pollution) inequalities for the sake of continued financial benefit, and are increasingly resentful of their exclusion resulting in protests and fightings.

The Nigeria state has over time, because of its class nature relied heavily on government intimidation and abuse of human rights, leading to the partial displacement of the state by informal groups that elicit a sense of common purpose, and relegate the relevance

of the state to being a power resources and a fearsome nuisance. In the Nigerian case, the contradictions and conflicts led to the invitation of the military into governance, citing reasons such as , the military can act as a corrective force, a modernization agency. The truth of the matter however is that individual ambition and the fact that military is part of the ruling class led to the occurrence of military rule.

The Military which was at first “colonial” was led by a corps of professional officers who constituted the major instrument of power for the “establishment” and it was political in that, while being a tool used for the preservation of the status quo, it was not itself an independent source of power or policy. However, with its invitation into governance, it transformed into a putsch military characterized by highly politicized officers, leading to a familiar pattern of military dictatorship, either of the unstable junta form or the stabler, one-man form, which Gen. Sani Abacha almost attained.

The assumption of state power by military commanders and top civil servant did not eliminate the politics of resources allocation. It simply changed its form. Military administrators, Civilian and Military commissioners now controlled access to opportunities; at both Federal and State levels, a clique of insiders allocated resources. In Nigeria’s fifty years of existence, the military class and their cohorts have ruled for over twenty-eight years; and the military state noted for its command structure and lack of a democratic culture was particularly brutal.

With the return of civilian rule, the likes of General Obasanjo and Mr. Abubakar Atiku attempted to outshine others with their privatization programme which ended up turning common weal to private property; and their quarrel over the little known Petroleum Trust Development Fund (PTDF) presented in clear relief the class nature of the Nigerian State and its “minders”. The incessant raises in fuel pump price and attempted extension of tenure and sale of the refineries, in the dying days of his administration are other pointers of the exploitative class character of the Nigeria State.

#### IV. DISARTICULATED MONO-PRODUCT BASED ECONOMY

Another cause of the problem in the Niger Delta is that, over the years, Nigeria has not been able to come to terms with its economy. The economy suffers from a serious lack of forward and backward linkages, which would have allowed industries to service themselves and play complimentary roles to one another. For example, virtually every economic activity it touched upon by what happens in the oil industry and yet there are hardly any successful attempts at diversifying the economy and so we see a situation where after ONLY groundnut, it became ONLY coca,



ONLY palm oil and finally ONLY crude oil. Even the petroleum sector does not service itself, much more other sectors. Gas is flared endlessly, polluting the environment and yet the turbines of the National power company suffer from a lack of gas to power the turbines and produce electricity, which is vital if the manufacturing sector will thrive.

In the Rivers State, for example, the “School –to- Land” programme which was meant to provide jobs through agriculture was initially a huge success with the yields obtained from the farms, but the programme failed and along with it a mammoth crowd of people were thrown into the labour market, because there were no linkages. Mountains of corn cobs were thrown on the street constituting a health challenge due to the fact that there were no strong facilities and also because no conversion industries which could produce by-products from the raw crop like corn syrup, biscuits, corn flour, corn flakes, etc were available.

The narrow focus on one product or area makes it all but possible to meet the needs of the region, much more the country, because one sector alone does not have the capacity to absorb all the citizens in suitable employment. The same narrow focus on oil revenue has led to what is referred to as “the Dutch diseases” which has the effect of breeding corruption and the abandonment of essential issues as tax collection, which if it occurs, the collectors are usually the beneficiaries. This does not portend well for any nation.

## V. EXTERNAL /FOREIGN INFLUENCES

The role played by external influences which are interested in this crises cannot be underplayed because while some (like the trans-national oil companies) generated the conflict through activities such as environmental pollution and degradation (NDES report, 1997:249 notes that “*between 1976 and 1996, a total of 4835 incidents of oil spillage has occurred with approximately 2,446,322, barrels of oil spilled on the land, swamps and offshore environments of the Niger Delta*” and worse incidents of spills have occurred since), inducing government officials to take actions and decisions inimical to the well being of the host communities, sponsoring State terrorism (when the people of Umuechem demanded provision of basic social amenities and compensation for oil pollution of water supplies, which also affected crops by conducting peaceful protests at the premises of Shell. In response, Shell divisional Manager (East), Mr. J.R Udofia wrote to the police commissioner on October 29, 1990, requesting a detachment of armed mobile policemen for “security Protection” from the “impending attack” by youths; and between October 30<sup>th</sup> and 31<sup>st</sup>, over eighty people had been killed with the mobile police force unit “destroying or badly damaging 495 houses” (the price

of Oil, 1999:123), others like arms dealers have seen in the region a source of wealth and are actively pushing in arms (the thirty –three(33) containers loaded with RPGs and other weapons from India intercepted by the security agencies in the last week of October 2010 is a cases point)

Foreign oil merchants also traverse the terrain seeking for those who will assist in oil –theft or bunkering, as it is popularly called, willing to do anything at any cost to lift crude oil for sale, albeit illegally.

The above reasons have all culminated in the crises occurring in the Niger Delta presently, but what are the self destructive tendencies arising from them?

## VI. EXPRESSIONS OF SELF-DESTRUCTION

While it is no longer deniable that the problems of the Niger Delta were caused by the above stated reasons, the animosities in the region seem to be inflamed by disregard and careless statements like that by a certain Philip Asiodu, a former secretary of petroleum as to what he thought about the demands of the minority ethnic groups. Hear Him. “The people are so small, they will never threaten the welfare, the economic welfare of Nigeria or its stability”. In response, different groups have tried to assert themselves in order to come out of the poverty and deprivation which stalks the inhabitants, particularly in the rural areas. For example, the leader of NDPVF is known to have insisted that “the oil belongs to us” when asked why his group was engaged in bunkering.

The recourse to oil bunkering has left many communities without a source of livelihood or drinking water as youth engage in the vandalization of oil pipelines to access crude for sale as a means of the sustenance. Not having the requisite technology, spills have been the order of the day, leading to further degradation of an already battered environment. Apart from the sale of crude, person have been known to engage in local distillation of crude to produce petrol and diesel for sale. This has led to the deaths of numberless youth arising from health complication of inhaling escaping gases or when explosions occur because of the pervasive presence of combustible gases.

In the period prior to the granting of amnesty, innumerable young men and women died because of gang wars over tufts, areas of influence and control of oil extraction spots, with security agencies left bewildered and overpowered when they were not in complicity. While they may be viewed as miscreants, channelled properly, these are supposed to be part of the productive work force of the region and nation. When the young, strong and healthy die off, what hopes do we have for the region in terms of its ability to develop or its quest for survival.

Another area in which the quest for survival has proved inimical, is the issue of kidnapping for ransom, which began as an effort to attract attention to the plight of the region. Today, a lot of companies have pulled out of the region because of the heightened insecurity and the effect has been greater unemployment and poverty as those who were previously employed have been thrown into the labour market when their companies relocate to safer climes.

A yet more fundamental tendency is the diversion of the youth from education activities as ends-means disparities are on the increase. Role models are now political thugs or those who cannot account for their source of wealth. In some communities, children as young as eleven and twelve, in a bid to fend for themselves, prefer to roll drums and gallons to discharge and loading points than to go to school and the importance of education cannot be over-emphasized in the quest for development and survival. Without education, such communities, and by implication the region, are simply brushed aside in an ever-globalizing world which demands an understanding of universal trend attainable only with qualitative formal education. Circumstances have arisen where after cries of marginalization, indigenes are asked to send in candidates for employment in companies and the only position that can be filled are those of messengers and cleaners because they do not have those with necessary qualification to obtain the most basic clerical posts

With the above, we begin to see how the “wolf” licks its own blood, chasing shadows while forgetting the substance it ought to have gone after. Any lack of a clear cut, well thought-out feasible plan will continue to negate the search for development and survival in the Niger Delta region, because it would be the case of someone shooting himself in the foot.

## VII. THE WAY FORWARD

One reason why the social sciences are viewed as not being a science is because of its social nature. Human action can hardly be straight-jacketed in particular moulds at all times and this is because an individual might not act in the same way another time given the same circumstances. In the same vein, solutions to social problems are usually not water-tight. What is proffered here are possible solutions, which should work, all things being equal (but what have things ever been equal?)

### a) Education

There is a need for government, at all levels to engage in the provision of meaningful, qualitative and accessible purpose driven education to the all segment of the populace. Providing education creates the enabling environment for loosening the mind from the grip

of ignorance and manipulation, making it possible for the human potential to be realized.

### b) Electoral system

Present day Nigeria is bedevilled by the issue of politicians and office holders who do not lay allegiance to the people because they were not voted into office. The present system of voting without choosing or selection rather than election makes it impossible for the electorate to hold their leaders accountable and it also prevents them from actual participation in the decision-taking processes that border on their well being. A case in point is the Freedom of Information bill that the national assembly has refused to pass because it creates room for monitoring the spending patterns of office holders and this is one way by which the populace, whether of the Niger Delta or elsewhere, can assert themselves and have a voice in what affects them.

It is usually the attempts to muzzle the people that leads to agitations and in some cases violent protests, as Fidel Castro was once believed to have said. “Those that make peaceful change impossible, make violent change inevitable” I have noted elsewhere (Badey, 2007) that there is an urgent need to expand the social and political space such that even if the strong have their way, the weak will not be prevented from having their say.

### c) Viable laws and policies

Another possible way by which the crises in the Niger Delta can be doused is the formulation and execution of viable laws and policies which have been thought-through and are contextualized. Hiding under the cloak of ‘universal best practices’ will our cultural, traditional and socio-economic cum political milieu will only lead to further confusion. Issues like the Global Memorandum of Understanding (GMOU) which the oil companies have tried to foist on host communities would do nobody any good.

Our laws must be proactive and targeted at doing the best for the most. Why, for example, would SPDC and other oil companies still be flaring gas and the Federal Government keep granting them extensions knowing the impact of such gas flares? Why should inanimate pipeline have the Right of Way (ROW) and uproot communities that have settled on native adequate relocation plans or compensation?

Government must remember that laws are made for the good of the people and not the other way round. The United States government prevailed on SHELL to stop the oil spill in the Gulf of Mexico which is far removed from the immediate shores of the country but our government would prefer to label every spill as sabotage. Other laws such as the land use decree, petroleum Act and the Petroleum Industry Bill must either be abrogated or reviewed in line with present realities.

The current Amnesty programme must also be carried out in line with the recommendations of the Niger Delta Technical Committee set up by the government to ease the tensions which are a result of the belief that government, in its usual manner, is attempting to short-change the people of the region, especially with the reports of the starvation of NDDC of funds.

With the above, there is a strong belief that the Niger Delta with or without oil, would be a place that will exemplify true development.

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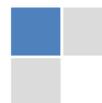
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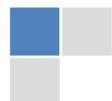


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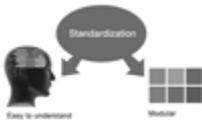
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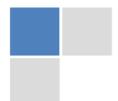
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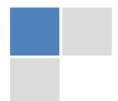
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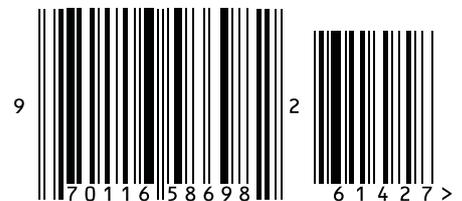


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