

# 法 政 學 報

第3期

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淡江大學公共行政學系

淡水 台灣

1995年1月



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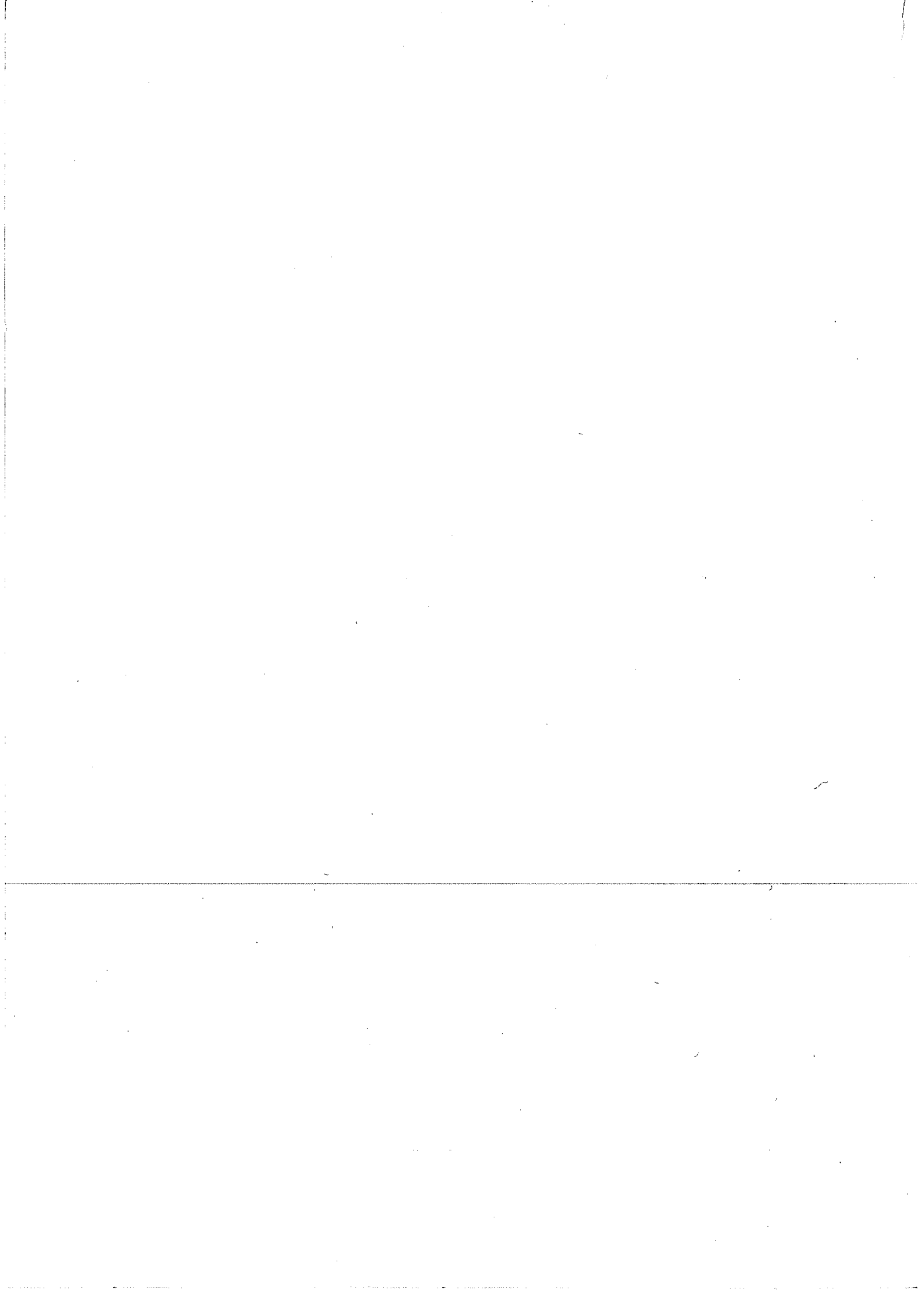
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## 預防接種侵害事故之國家責任

范姜真媿\*

### **The National Liability of an Inoculation Accident**

by

Fan Chiang Chen-Mei

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## 壹、序言

「預防接種」如眾所皆知是現代國家爲了防止傳染疾病之發生、流行、促進全民健康、提昇公眾衛生，而推行或強制實施之衛生之行政政策或措施。但是因爲接受預防接種而產生嚴重之副作用導致接種者死亡或殘障、或產生嚴重疾病之事故，則時有所聞（註1）。此對受害兒之本身及其家屬而言不啻是飛來橫禍，其所受身心之打擊實非外人所能體會。但是爲了社會全體之疾病防衛及公共福祉，如此之預防接種政策不能因此而廢止，勢必繼續推展，在將來還是有不幸之犧牲者繼續會產生。對這些不幸遭受犧牲之接種兒及其家屬，如果強要其獨自負擔損害，自「公平」之正義來看，自然是吾人所不能坐視的。因此在德國（註2）及日本（註3）均基於相互扶助、社會公平之理念，明文對因預防接種而受害者加以補償救濟。在日本因爲其據預防接種法所給予的補償是定額化補償金。相較於現實之所需尚有一段差距。於是日本之受害兒家長即對日本政府提起訴訟，另行要求補償或賠償（註4）。前後共有五個頗具有代表性的判決，其判決中對預防接種事故之國家責任各有見解，在日本學術界亦引起許多議論，頗值得研究國家賠償責任人之探討；而且若將來在我國有相同之訴訟時亦是一個極具參考價值之案例。

## 貳、日本判例之介紹

本文先依判決時間之先後順序介紹之：1.高松地裁昭和59年4月10日判決（下稱高松地決）（註5），2.東京地裁昭和59年5月18日之判決（下稱東京地判）（註6），3.名古屋地裁60年10月13日判決（下稱名古屋地判）（註7），4.大阪地裁62年9月30日判決（下稱大阪地判）（註8），5.東京高裁平成四年12月18日判決（下稱東京高判）（註9）。這其中東京地判和大阪地判是直接以憲法第二九條第三項（註10）爲根據，積極地肯定原告等的補償請求權；高松地判和名古屋地判則消極地否定之，而最特殊的，也最值得注意的東京高判，則是以厚生大臣預防接種行政的「組織過失」爲理由而承認國家之損害賠償責任。

以下先介紹採消極見解之高松地及名古屋地的判決要旨（註11）。

1. 高松地判：關於國家之損失補償責任其在判決中認定：憲法第二十九條是有關於財產權之保障的規定；對財產權之侵害與對生命、身體之侵害在性質上並不相同，關於財產權補償之規定或解釋無法直接類推適用在對生命、身體之侵害的補償上。其次：即使對被害人應為補償，但其具體的內容在憲法上並未直接明文規定；而且，預防接種的救濟制度已經確立，對被害人除了前開救濟制度之外，不得准許超過其限額的損失賠償請求。

3. 名古屋地判：其判決要旨大略為：(1)憲法第二十九條第三項是有關「私有財產」徵收的規定，類推適用在人的生命、身體、健康的被害事件上，很難認為有合理性。(2)憲法第二十五條第一項（註12）為保障國民經營健康生活的權利之規定，據此規定得直接對國家請求補償。(3)但是，對於如本件的預防接種事故原本即有基於預防接種法之救濟制度存在，原告們再由其它法律的基準（註13）算出損害額而請求其間之差額，即有害於法體系的統一整合性，而無法准許。其次，為積極承認被害人等損失補償請求權的二個判例。

2. 東京地判：其判決要旨為：

(1)依照憲法第十三條後段（註14）、二十五條一項的立法目的來看，比較課以財產上特別犧牲義務之場合和對生命、身體課以特別犧牲義務的場合，我們完全找不到容許對後者採取較不利之處置之方法的合理理由。

(2)因此即使是對生命、身體課以特別犧牲義務的場合，也在類推適用憲法第二十九條第三項之規定；被強制要求犧牲者得直接根據憲法前開規定對國家請求正當的補償。

(3)預防接種被害之救濟制度雖已法制化，但只要其補償額未達到正當的額度，對於這差額仍得有補償請求權。

4. 大阪地判：則以下述之理由，積極地承認原告們的補償請求權。換言之：

(1)依據憲法第十三條、二十五條第一項及二十九條之規定，很明顯地憲法對國民之生命、身體之保障要比對財產權之保障要注重得多。……則對於因為公眾之利益而接受預防接種以致承受更沈重的傷害之被害人所應給予之補償當然不得少於對財產權之補償。

(2)因此之故，原告得直接依據憲法第二十九條第三項請求補償。

簡言之：東京地判是類推適用憲法第二十九條第三項之規定承認原告等可以直接地對國家請求正當的補償。而大阪地判則是參照憲法第十三條、十四條（註15）、二十五條及二十九條之立法精神及目的，認為當然解釋上原告們（註16）可以對國家請求損失補償。

5. 東京高判：這個判決是前述(2)東京地判上訴二審的判決，也是所有有關預防接種事故訴訟的第一個高等法院判決，其是重要性及影響力自然是不言而喻。而且這個判決雖然否定了被上訴人們（即原告人們）的損失補償請求權，但是卻認為厚生大臣（註17）違反了行政上之義務而有過失，做國家應對被上訴人們負損失賠償責任。就這一點也得到日本學界很高的評價（註18）。

本判決主要之理由為：

(1)本條預防接種被害是有關違法之生命、健康法益的侵害，故無法以對財產權之合法侵害為補償為規定內容之憲法第二十九條第三項做根據導出損失補償請求權。憲法第十三條、第十四條第一項及第二十五條無法做為損失補償請求權之根據。

(2)預防接種常會有產生嚴重之反應之虞，為伴隨著危險之事，為了減少這危險，在接種之前，醫生應為充分的預診，建立該別排除禁忌者（註19）之制度是必要的。厚生大臣基於其職務應依前述精神，制定具體的措施，而後並定立省令等；並且依地方自治法第一五〇條指揮監督為預防接種業務施行立體的市町、村長；或是依地方自治法二四五條對地方公共團體為宣導忠告；而應有對擔任接種之醫生及國民採取使其詳知預防接種的反應及禁忌之措施之義務。反觀本件，厚生大臣長久以來為了防治傳染病，其政策重點只放在提高預防接種的接種率上，對於其反應的問題未盡相當程度之注意，故其為怠於履行前開義務。如此之預防接種行政的組織過失亦即為厚生大臣的過失。國家應負損害賠償之責任。

本判決回避了以損失補償解決問題所會產的理論上的問題（亦即憲法上之根據，與預防接種健康被害救濟制度的關係，及補償之範圍），並且這問題在學說上也有很大的爭議；但是在將來如果判決中所指摘的行政過失都獲得改善，制度上也完備時，被害人又當如何請求賠償？這恐怕是吾人不得不考慮的問題。



## 參、日本學說之介紹：

對於預防接種事故，其被害人是否得請求超過預防接種健康被害救濟制度的給付以外的金錢補償？學者之說法也相當分歧；除了一部分將否定的見解外（註20）。

現在之日本仍是以採肯定說者為其主流。但是即使是採肯定說者，其所持之理由亦各有擅場並不一致。大致來說可以分為三種。1.基於損失補償說的觀點而主張之第二十九條第三項類推適用說。2.基於犧牲補償請求權的觀點而主張之第二十九條之項當然解釋說。及3.公法上之危險責任說。以下就各說之內容分別述明之：

1. 憲法第二十九條第三項類推適用說：這個主張中又可再細分為實體上之類推適用說與手續上之類推適用說。首先，先就主張前者之說法之學者及其內容加以說明。

(1)鹽野教授：（註21）對於預防接種的國家責任將之視為損失補償責任的損失補償說，在實定法上是位於距離最近的位置上。其為對生命、健康侵害的這一點上，自人的公用負擔的觀念來看與損失補償未嘗是不相容的概念。再者，現行法制原則上也是將損失大概換算成財產，因此關於生命、身體的損失也應可以說是財產的損失。更者，相較於財產權，如果將人的身體、健康權之保護置於次位，在憲法的解釋論上，也是難以認同的。

(2)芝池教授：（註22）之主張如下：損失補償的觀念與財產權的保障或是其損害相結合在一起被世人所理解，這是歷史上偶然的產物（註23）自這一點來看並不能構成否定對非財產之損失的補償。再者，在對生命、身體也可能有適法之侵害的前提下，損失補償之觀念並無理由限定在財產權侵害的領域內。其法之根據除了類推適用憲法第二十九條第三項之外，第十四條、二十五條也在被考慮之列。對生命、健康、身體的特別犧牲也承認給予補償，亦有益於確保法秩序全體的平衡。

(3)原田教授之主張（註24）與鹽野之主張大致相同並謂：「如果京地判在憲法第二十九條第三項尋求根據，對非財產之利益的侵害上也類推適用損失補償的法理，是最簡單、直接的方法了。」教授認為因為生命、身體是不可償之利益，所以輕易地適用公用徵收的法理，雖是不十分妥當，但「即

使不容許，對已造成不幸產生身體上等的侵害的場合，由類推適用憲法第二十九條第三項而承認補償以作為救濟的手段是非常重要的。」

總而言之，以上的各教授的見解主要是：試著將當初預定規定為財產權之徵收的損失補償的憲法第二十九條第三項，在實體上擴大類推適用到對生命、身體的補償上。但是對前開條項之實體內容，換言之：徵收補償之要件、效果等在生命、身體的特別犧牲上，到底可以適用到什麼程度？並未進一步說明，讓人感覺有一些不足。

對此，後者2的手續上之類推適用說有：

(1)遠藤教授（註25）則指稱：「判決（東京地判）之損失補償的實質上根據是與財產權無直接關連的憲法第十三條、十四條及二十五條等；只有在其結論上以第二十九條第三項為請求權的形式上的根據並為其直接請求權的基礎。有鑑於此，「判決只是利用憲法第二十九條第三項罷了。」

(2)今村教授（註26）主張：過去並未曾有依據憲法第十三條承認對國家有實體法上的請求權的例子存在，從而即使吾人得自憲法第十三條等導出國家的責任，為了使其在具體上的請求權也能具備完成，有必要向已經被認定為實體法上之根據的憲法第二十九條第三項求得援助。

要言之，所謂的手續上之類推適用說主張：由於預防接種事故而來的損失補償請求權，另外以憲法第十三條、十四條及二十五條等為其根據；但是為了借用訴權性而使之類推適用二十九條第三項。這個見解最大的目的被認為是欲促使法官在抵抗最少的情形下承認補償請求權的訴權性。（註27）這個見解的確是較前述之實體上之類推適用說要妥當一點。

2. 憲法第二十九條第三項當然解釋說：阿部教授（註28）認為：此「並非是憲法第二十九條三項的類推適用，因為連財產權的剝奪都被補償，所以對被憲法第十三條、二十五條所保護的生命、身體的剝奪不予補償的話未免太過不均衡，所以當然解釋上應予補償。」，而東京地判也指明：「並非容許對生命、身體的有意圖的侵害，只是如果對財產侵害為補償的話，原本係不得侵害的生命、身體結果被侵害時，毋庸贅言，有必要為補償或賠償（此時當然解釋）。」又阿部教授認為如此一來，此判決並非就原原本本地適用損失補償的法理，而是根據憲法第十三條、十四條及二十五條加上二十九條間均衡論，創造新的國家賠償理論。故而吾人在充分了解這個判決後應

予贊同之。（註29）這個主張的特徵是：由於其不採取類推適用的方式，關於補償範圍、額度較財產權侵害的場合的限制得為更自由、柔軟的解釋。尤其是更容易承認慰籍金的賠償。（註30）

### 3. 公法上之危險責任說

(1)西荳教授（註31）之主張如下：在日本，一般皆將「對財產權的適法、意圖的侵害」解釋為損失補償的概念要素；自這個概念要素來看，預防接種事故補償在損失補償的範疇內來掌握的話會產生許多疑問。結論上，這個問題應以公法上之危險責任來解決。由於國家強制或者是以勸導獎勵之方式要人民接受預防撞種，故而形成特別的危險狀態；生命、身體的被害，即是由這個特別危險狀態的產生者。這個責任，在實定法的根據並不十分完全的場合下，直接由憲法之規定導出國家的補償責任，亦即由第十三條、十四條第一項，二十五條第一項導出，應是妥當的吧！

(2)潼澤教授（註32）也排斥憲法第二十九條第三項的適用，而主張國家之危險責任，教授認為：東京地判所採之損失補償的解釋與法國法律對比之下，雖然很近似於法國判例法上公共負擔之前，人人平等之補償責任的原理。但在法國法上，預防接種事故採無過失責任主義，毋寧說是將其定位於比較接近國家賠償責任的危險責任之位置上。

對此說，今村教授曾批判說：（註33）所謂之危險責任作為國家補償類型的意義是存在於：國家一方雖未有直接之加害行為，但是因為將其行政對象置於危險狀態下而使其發生損害的場合中；其只不過局限在結果責任的一部分而已。如預防接種事故的補償，並不問其原因行為的適法性如何？而係不容許在這種情況下使被害人甘心忍受「特別的犧牲」；這應該是結果責任說的看法。再者，日本至今在實定法上仍未承認危險責任，此說如何找到根據，還有問題（註34）。

## 肆、我國現狀之檢討

筆者為了解我國現在對預防接種受害事故之處理方式及訴訟情況，曾向有關主管機關行政院衛生署防疫處及司法院民事廳詢問及收集資料，結果截至目前為止，似乎尚未有具體的訴訟提出（註35）；故而有關我國對此

類事件之法院實務上之見解，尙不得而知。但是，此並不意味，在將來我國即永遠不會有類似之訴訟提起（註36），屆時法院應如何審理判決，實在是一件令人頗爲好奇並注目之事。在此筆者先嘗試從損失補償及損害賠償兩方面討論對被害人等另行救濟之可能性。

1. 自損失補償之可能而言：當我們探討這個問題時，首先要考慮的是關於這種預防接種事故的國家責任性質，其次是如果我們確定它是一種補償責任，那其補償請求權之根據何在？

(1)依前述之「預防接種理論與實務」第十九頁法律觀之第2點可知我國目前衛生行政上，乃採「任意性的預防接種」之制度，而在各地之衛生所所發送給民眾之行政院衛生署印製之「媽媽的親愛寶貝」（預防接種手冊）中則有「國小新生報到別忘接種卡，若有漏種，校方將安排補接種」等字樣，並在實務上；由各衛生所護士在得知所轄之區域有新生兒後，即安排探視新生兒之家庭，或以打電話之方式勸導或詢問新生兒接受預防接種之情形。故雖說是「任意性」，但實際上卻以積極之「行政指導」方式推行預防接種政策。在現正送立法院審議中之「傳染病防治條例修正草案」，其第十二條則對幼童之法定代理人課以「使兒童按期接受預防接種」及「妥善保存預防接種記錄」之責任。則明示已改採「強制接種」，不問任意接種抑或強制接種，使國民接受預防接種是一種國家行使公權力之行為，應無疑問，然因其造成接種兒死亡或是重度殘障之後遺症，其公權力行使之效果顯然是違法侵害了人民之權利（註37）又此公權力行使之目的是在預防流行疾病之傳染、提高國民之健康水準、維護全民之福祉，如此之行政無疑亦是爲公共利益。但是在這「公共利益」之目的下卻往往會使一些人遭受嚴重之後遺症，造成其無可挽回之傷害，或死亡之結果。當然這種損害是爲了「公共利益」而個人蒙受之「特別犧牲」；如由受害人個人獨力承擔，顯有失公平。故在「公共負擔人人平等」之原則下，此種損害應由全體國民分擔，亦即由國家負起違法無過失行政補償責任。（註38）

(2)進而如此之補償請求權在實定法上之根據爲何？有學者主張只要有合於補償之事實，即應酌予補償，不問有無成文法或習慣法上之根據。（註39）當然這是最合國家保障人民權利之精神者，但以我國現在司法界向採較爲保守之姿態來看，似乎在實務上會有困難。因此我們似乎可以以一般學者多主

張為國家補償責任之根據的憲法第十五條：「人民之生存權、工作權及財產應予保障」之規定（註40）視為預防接種事故補償請求權之根據；如果仍嫌太過抽象不夠具體，則再觀憲法第一五五條：「……人民之老弱殘廢，無力生活及受非常災患者，國家應予適當之扶助與救濟」之規定；人民因接受預防接種而發生不能預見又無可防止之生命、身體健康之被害時，何嘗不是條文中所言之「非常災害」。況且條文中規定為「非常災害」而不言「天然災害」，顯然人為所造成之災害本即包含在內。故依據本條為補償之請求權恐應屬可行之計。

2. 自損害賠償之可能而言：依我國國家賠償法（下稱國賠法）第二條第二項之規定為：「公務員於執行職務行使公權力時，因故意或過失不法侵害人民自由或權利者，國家應負損害賠償責任。公務員怠於執行職務，致人民自由或權利遭受損害者亦同。」吾人即可知國家賠償責任之成立，係以公務員之故意或過失違法侵害人民之權益為要件。換言之：依國賠法第二條第二項請求賠償時，須先證明該當公務員之違法執行職務係出於故意或過失。但眾所周知「負舉證責任者恆敗訴」，尤其是公務之執行往往事涉專業知識或技術，又一般市民面對龐大複雜之行政機構，更是相對的弱勢無法與之抗衡。如此人民要請求賠償顯然絕對的不利。故而近年有學者主張「過失客觀化」及「組織過失」（註41）；即只要公務員有違背職務之行為，即可推定其具有故意或過失。如此一來被害人請求賠償時，只須證明其被害係由於公務員出於違背職務之行為即可，不須就公務員個人之故意過失負舉證責任。並且因行政組織系統是有上下指揮、監督；服從、執行之關係及本質，所以公務員違背職務之行為也應可視為行政組織整體之作業監督系統之疏失；從而行政組織之整體即具備有有責性，應可認定國家賠償責任之成立。

關於預防接種，我國長久以來衛生主管機關即不斷的宣導勸誘人民接種，其行政之重點，顯然偏重在提高接種率上，而在對民眾說明預防接種所可能產生之副作用及接種之禁忌上，所做之宣導似乎不夠，至少筆者至今未見過具體的行動或有關之活動。再者，在接種之前醫生之間診義務如能確實執行，亦應可以篩檢出絕大部分不適合接種之禁忌者也防止不幸事故之發生。依筆者實際攜帶幼兒至某國立大學附屬醫院接種之經驗得知，在接種之前，醫生僅有問及是否有發燒、感冒之情形，而未進一步確認小孩過去有無過敏之症

狀、體質是否特異、有無其它疾病等；如此顯然並不能十分確實、徹底的辯別出禁忌者，未嘗不是一種疏失。則衛生署在監督指揮上可曾注意此一問題？可曾有任何措施督導醫生更確實執行此一問診義務？如果答案為否定時，則在將來若有訴訟時，日本東京高判之判決理由，似應可借鏡為我國認定國家賠償責任之參考。在被害人之救濟上開啓一可行之途徑。

## 伍、結語

我國現行並沒有預防接種法，只在傳染病防治條例中第十二條規定：「地方衛生主管機關，應按期及視實際需要，實施各種有效之預防接種」，關於預防接種之救濟則付之闕如，現亦只有依行政院衛生署所訂定之「預防接種受害救濟要點」給於受害人等救濟；換言之我國現今預防接種受害之救濟並未立法明文化；而且其救濟金之來源是由提供接種疫苗之廠商所提供之捐款及社會各界之捐款而來（註42），並非國家之預算。所以如此之救濟顯然無法將其歸類為國家補償，當然更不是國家賠償，有點類似保險制度，又不盡然；更欠缺法源依據；實在是政府應儘速解決的大問題。而現正在立法院等待審議的「傳染病防治條例修正草案」，其中第十二條第一項修定為：「地方衛生主管機關，應按期及視實際需要，實施各種有效之預防接種。因接種而受害者，得予救濟。」第十三條則為增定條文，其第一項規定：「中央衛生主管機關應設置預防接種受害救濟基金，供前條所定救濟之用。基金於疫苗廠商出售疫苗時，徵收之。」雖然使得受害救濟有了法律根據，但美中不足者，政府似乎仍不認為如此之受害救濟應為政府之責任，而應由疫苗廠商負擔風險。但是如前所述，有時接種兒受害之發生，並非疫苗之問題，政府在推行預防接種時，應確實指揮監施行之醫療院所之醫護人員，能在接種前履行問診之義務，盡最大努力視別禁忌者，使被害之發生減少到最小之程度。否則政府想規避責任，恐怕不是一件容易的事。

## 註 釋

- 註 1：依據行政院衛生署所集成冊之「預防接種理論與實務」（83年一月出版）第19頁法律觀 77年6月至82年4月21日該署處理之預防接種侵害要件共52件。
- 註 2：德國聯邦傳染病預防法（in der Fassung Bekanntmachung Vom 18. Dezember 1979. BGB1. Is 2262）第51條一項一款。
- 註 3：日本預防接種法第16條～19條之四。預防接種法施行令第三條。
- 註 4：行政上損失補償與國家損害賠償雖然在行政法上都屬於行政救濟制度，但是二者之成立要件卻不相同。亦即損失補償是國家基於合法之目的行使公權力，而造成對特定之人民財產上損失時，基於「公負擔人人平等」之原則，由國家對該特定之人給予補償。而損害賠償責任，則是國家公務員因故意、過失違法執行職務造成人民損害時，由國家負擔賠償責任。因為預防接種基本上是國家為「公益」而推行的政策，但卻不是對人民為財產之徵收；又被害人一般而言，很難舉證證明施行預防接種之醫生有故意或過失，有時甚至醫生已盡了注意義務，因接種人體質特異之關係，而發生嚴重的副作用。其自兩個救濟制度來看，都有其不符合之要件之處。所以一般學者也稱這種事故正位於國家補償與國家賠償的「谷間」或稱「中間灰色地帶」，請參閱陳新民著作政法學總編（修訂二版）四十四頁。
- 註 5：地裁即相當於我國之地方法院；地判即地方法院之判決。判例時報二一八號一六三頁以下。
- 註 6：判例時報一二八號二八頁以下。
- 註 7：判例時報一一七五號三頁。
- 註 8：判例時報一二五五號四五頁。
- 註 9：高裁即相當於我國之高等法院；高判即高等法院之判決。判例時報一四四五號三頁。
- 註10：日本憲法第二十九條是規定國家對人民財產權之保障。其第一項為：財產權不得侵害。第三項為：私有財產在有正當之補償下，得征收為公共之用。
- 註11：以下各判例其內容其實尚包括許多法律的理論，但因為篇幅之關係，無法全部一一介紹，在此只能就損失補償請求權之部分加以說明。

- 註12：日本憲法第五條第一項之規定爲：「全體之國民有經營健康上、文化上最低限度生活的權利。」
- 註13：最主要是根據民法侵權行爲責任計算總失的利益，增加之生活費用及慰籍金等。
- 註14：日本憲法第十三條後段之規定爲：「對國民之生命自由及追求幸福之權利，只要不違反公共福祉，在立法及其它國家政策上必要給予最大尊重。」
- 註15：日本憲法第十四條第一項爲：「全體國民在法律之下皆爲平等，不因其人種、信仰、性別、社會上身分或門地而在政治上、經濟上或社會關係上予上差別待遇。」
- 註16：日文原文爲「勿論解釋」
- 註17：即相當於我國之衛生署長，但其職權不僅止於衛生行政還包括社會福利行政在內。
- 註18：東京預防接種禍訴訟控訴審判決字賀克也著ジュリスト一〇二四號（一九九三年六月一〇日臨時增刊號）「平成四年度重要判例解説」第56頁。
- 註19：即欲接受預防接種之人有體質特異或其他身體狀況不適合接受預防接種者，稱之爲「禁忌者」。
- 註20：在此僅舉出其代表的學者。成田頼明：「預防接種事故の法的責任とその被害救済」ジュリスト的四〇六號九二頁。古崎慶長：「預防接種と憲法二九條之項の類推適用。季刊實務民事法八號一九五頁。此二位之見解相當曖昧不明而且被認爲欠缺說服力。
- 註21：鹽野宏「行政法散歩」二二一頁以下。
- 註22：芝池義一「演習法學教室」No.六十六號一〇八頁。
- 註23：關於損失補償之源起大抵是爲了限制君主專制時代君主之絕對的權力而在「依法行政」理論的形成過程中之產物。其詳可以參見藤田宙靖：「國家賠償訴訟と損失補償責任の接近について」一文，日弁運研修叢書昭和五十七年。
- 註24：原田尙彦ジュリストNo.八三八號五十頁。同雜誌No.八九八號五頁「預防接種事故と國家補償」、「昭和五十九年重要判例解説—預防接種ウクチ介禍事件。」



- 註25：遠藤博也「行政法スケッチ」（昭和六二）二〇七頁以下。
- 註26：今村成和ジュソストNo.五五號七〇頁「預防接種事故と國家補償。」
- 註27：宇賀克也，判例時報No.一九八二號判例評論No.三五六號。
- 註28：阿部泰隆判例タイムズNo.六〇四號七頁以下「預防接種禍をめぐる國の補償責任。」
- 註29：阿部泰隆法曹時報三十七卷之號三五頁「賠償と補償の間—兩者の異同と國家補償の谷間を埋める試みについて」
- 註30：宇賀克世同前掲註二十六。
- 註31：西埜章ジュソストNo.八二〇號二八頁「預防接種判決と損失補償」
- 註32：潼澤正判例タイムズNo.五三〇號十七頁「預防接種事故と損害の補償—預防接種禍東京地方裁判所判決に寄せこ」
- 註33：今村成和同掲註二十五。
- 註34：阿部泰隆同前掲註二十七。
- 註35：因爲我國之國家賠償事件依國家賠償法第十條之規定採「先行協議程序」之制度，故而有關之賠償事件請求賠償之人民應先與賠償義務機關進行協議，不得逕行提起訴訟。當然，預防接種受害事故之被害人等在提起賠償訴訟前亦須先與預防接種地之衛生局進行協議。而有可能被害人等在獲得行政院衛生署依據預防接種受害救濟要點所給付之救濟金後，均成立協議，致未有訴訟之提起。
- 註36：依行政院衛生署所訂立之預防接種救濟要點第六：預防接種救濟給付標準：（一）死亡救濟最高額度爲一百萬元，（二）殘障救濟爲九十萬至四十萬元，（三）嚴重疾病救濟以三十萬爲限。依現在之生活水準及被害人實際上所受之損害及比較其它事故之賠償金額來看，當然這個賠償金額仍嫌不足；而且也未包括慰籍金等的賠償。則將來若有被害人要求超過之賠償金額時，即有可能提起訴訟。
- 註37：參見陳新民前掲註四四〇頁。
- 註38：參見廖義男著「國家賠償法」（行政法論集(1)）增訂版二十三頁「國家責任」體系之表解。在此我們須先設立一個前提，即國家在預防接種之行政上沒有任何過失，甚至我們可以說這種補償請求權之行使不須要以國家之行政有過失爲其前提要件。
- 註39：林紀東著「行政法」四〇九頁。

註40：林紀東前揭註四〇九頁。古登美著：「行政救濟制度」二七三頁。  
（文馨出版社）

註41：陳新民著前揭書四二二頁。廖義男著前揭書六〇頁。在日本亦有為數甚多之國家賠償法判例，採如此之見解：例如：東京スモ判決、北陸スモ判決、在宅投票制度違憲訴訟高等法院判決等。

註42：預防接種受害要點三之(一)、(三)。

# 以「無塵室程序」開發相容電腦程式\*\*

田正人\*

## Developing Compatible Computer Programs by Clean Room Procedures

by  
Peterson C. J. Tien

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\*\* 本文係摘譯自作者的博士論文。該論文曾獲1993年美國著作權人協會舉辦之Nathan Burkan 紀念論文比賽第二名。

## 壹、前言

在現代生活的諸多層面裡，例如科學研究、商業交易、藝術設計或軍事等活動、電腦程式已成爲基本工具。電腦軟體業的興盛可歸因於幾個因素：首先，電腦公司在七十年代不再從事「集束銷售」（bundling）活動，以強迫其客戶整體購買硬體、軟體及週邊設備（註1），這也就爲獨立經營的軟體公司創造了一個全新的市場。其次，微處理機（microprocessor）及電腦晶片使個人電腦及其他資訊產品大爲暢銷，這也相對地刺激客戶對各種電腦程式的需求。此外，個人電腦的暢行導致套裝軟體的出現，並大大降低電腦程式的銷售價格。然而，如同其他新科技的發展，電腦程式也引發了新的法律挑戰與未定議題。

電腦法的未定爭議之一即是有關於所謂「無塵室程序」（Clean Room Procedures, CRP）的法律地位（註2）。CRP 是電腦軟體開發人於撰寫相容程式（「結果程式」）（註3）時，爲避免侵犯他人已受著作權保護程式（「目標程式」）而採用的技術。此種技術引發幾點疑問，諸如「相容權」是否屬於法律權利？「逆向工程」（Reverse Engineering）是否爲美國1976年著作權法（「著作權法」）認可？以及中介拷貝（intermediate copying）是否構成侵犯？本論文即在於研討如果未經授權去解析（disassemble）他人程式而以CRP開發相容程式時，是否會侵犯著作權人的法定權利。

本文第一部引介全文大綱。第二部介紹CRP 的基本作業情形及實際考量。第三部探討電腦程式的創作以及「概念與表達二分法」，此法是決定著作權侵犯的前題。第四部討論專屬著作權，以及CRP 是否可能侵犯這些權利。第五部分分析現行的侵犯認定標準——相當近似性測試（註4）——以及對應侵犯控訴的抗辯。第六部探討新案例所引發的CRP 相關問題。於第七部的結論，筆者探究可能爲法院採用的舉證責任與標準以決定CRP 的合法性。

## 貳、無塵室程序（註5）

對於開發相容程式的工程師而言，最惱人的技術問題即在於如何迴避其作品與其他既存程式相似。實際上，由於硬體設備與軟體的限制使程式結構與撰碼受到拘束，某種程度的近似係不可避免。此外，「相容性」以及產業標準程式（例如Microsoft 的 Dos 或 Windows）也迫使後繼的軟體開發公司不得不採用此種基礎程式的某些特定表達方式。而且，依現行案例，即使開發人以不同的程式語言撰寫，結果程式仍可能被認定侵犯目標程式的整體組織、結構與順列或其他非文字的要素（non-literal elements）（註6）。

CRP 可以將軟體工程師隔離，並因此切斷著作權侵權責任的兩個基本要素——實質近似性與接觸（access）；相較於傳統的軟體開發技術，CRP 比較有可能免於侵權之責（註7）。CRP 由於耗時、費事又昂貴，因此業者多半用以開發基礎程式如Dos（磁碟作業系統）或BIOS（基本輸出輸入系統），而非應用程式。

一般而言，CRP開發人會設立規格開發組、協調組、撰碼組以及測試組（註8）。

規格開發組在於讀取目標程式的各種功能；它會檢驗與此有關的一切資料如實際撰碼、使用者說明、技術文件或維修手冊。因此，這是一個被污染的小組（tainted team），其成員經常會逆向判讀或解析目標程式（註9）。撰碼組僅能依目標程式的功能來完成結果程式；它不得參考任何含有目標程式表達方式的資料（註10）。完成撰碼後，測試組檢核結果程式的功能、相容性及效能。如其不符合規格所需，規格組必需修正錯誤的規格，或撰碼組必需更新撰寫新碼。以上程序皆必需由協調組律師核可後進行。

協調組通常由內聘或外聘律師擔任。其主要功能在於將撰碼組隔離在「萬里長城」（Chinese Wall）之內以避免結果程式受到污染（註11）；以及保存證據以證明縱使結果程式與目標程式之間存在實質近似，前者仍係由開人獨立撰成（independently created）。

由於表達與概念的區別十分模糊（註12），欲有效督導規格開發組與撰碼組的通訊乃成爲十分困難之事。此外，撰碼組遭遇瓶頸無法撰成符合規格所需的次程式（subroutine）時，規格開發組也可能放水而將目標程式的

特定表達透露給前者。

整個CRP 初步完成後，協調律師會比對目標程式與結果程式的相似部份，此種相似可能存在於撰碼。螢幕顯示（screen display）、鍵盤功能配置（key function assignment）、程式的組織、結構或序列。針對可疑的相似部份，協調律師將要求撰碼工程師說其本質以及程式開發過程。如果後者無法提出可信的解釋，協調律師必需要求重實施CRP以消除此種可疑的相似撰碼。

協調律師於引用「融合法則」（Meger Doctrine）時亦必須十分謹慎（註13）。當撰碼組再三無法撰成特定的次程式以達成某個特定功能時，協調律師必需依據撰碼組的工作日誌、測試報告以及工程師的證詞，以決定是否可行的撰碼方式皆已竭盡。如果協調律師認定該特定功能只能由一種或少數幾種撰碼來表達，依現行案例法（註14），協調律師可將目標程式的撰碼透露給撰碼組，後者可以抄襲該撰碼的大部份，甚或全部照抄。然而，如果協調律師判斷錯誤而將被污染的資料交由撰碼組，以致於結果程式被法院認定侵犯目標程式，他們有可能吃上執業不當的官司（註15）。

## 參、電腦程式

電腦程式是一套直接或間接用於電腦的陳述或指令，以達成一定結果為目的（註16）。依著作權法，電腦程式係屬於文字著述（literary works）的一種（註17）。關於電腦程式的早期法律爭論包括：著作權是否保護「目的碼」（object code）？是否保護作業程式（註18）。近期關於電腦程式著作權保護的爭議則有：微程式處理機上頭的「微碼」（microcode）是否受到保護（註19）？以及著作權保護是否一體及於電腦程式的文字與非文字部份（註20）？

電腦程式的設計與開發，通常是由工程師先界定該程式的功能或客戶需求（註21），接著則將基本功能組分為由碼群（coding groups）組成的細部規格與次程式或模組（modules）。其次則依據撰碼邏輯將次程式編排為流程圖。流程圖的組織反映各次程式與電腦程式之間的互動關係（註22）。工程師則將此流程圖表達的解決問題流程（algorithm）撰寫成電腦能解讀的

電腦程式。實際撰碼需要兩個步驟來完成：工程師先將程式寫成人類可以解讀的語言（human readable language）——此種語言頗近於簡化英語——技術上此即為原始碼（source code）。原始碼經由編譯器（compiler）或通譯器（interpreter）轉換為目的碼。目的碼是由為數眾多的阿拉伯數字0與1組成，而它也是電腦能解讀的機器語言（machine readable language）（註23）。最後，工程師會依據相容性、功能與使用者親和力等考慮，來測試並修改程式的瑕疵（註24）。

總而言之，電腦工程師係將特定的功能需求與概念轉化為可受著作權法保護的文字與非文字表達而撰成電腦程式。然而，如何在概念與表達之間劃一道分界線，長久以來一直是擾人的法律議題。

著作權法最基本的原則之一即是著作權只保護表達，而非概念（註25）。著作權法也將此判例法予以成文規定（註26）。「概念／表達」的區分在於「平衡法律保護與產業競爭」（註27）。此種區分同樣適用於電腦程式以決定其著作權保護的內容與範圍。然而，著作權法的立法歷史亦明白表示「欲區分電腦程式裡頭受保護的表達與風格以及構成表達的程序，是十分困難的」（註28）。欲從事此一艱鉅工作，只能依賴實際案例所提供的方針。

在 *Nicholas v. Universal Pictures Corporation* 乙案，韓得法官（J. Learned Hand）首創廣為後人採用的「抽離法」（Abstraction Test）（註29）來區分表達與概念。該法係將一個作品的插曲（incidents）——如人物、對話、佈景與情節——逐予剝離，則該作品最後可以單一詞句甚或其標題來加以涵蓋。此種抽離後所存的概括描述（generality）即是該作品的概念，這是著作權不保護的。

雖然抽離法最初是用以解決一個劇本的著作權爭議，它可適用於電腦程式案件因為電腦程式被界定為文字著述的一種（註30及註31）。少數法院於使用抽離法時，將著作權保護的範圍擴大至除了電腦程式功能以外的一切要素（註32）。但是由技術觀點來說，每一個次程式或模組都各自擁有其次功能或次概念（sub-functions or sub-ideas），論者因此批評此種判決過於浮濫（註33）。大多數法院對於電腦程式的保護範圍並不作如此寬鬆的認定（註34）。

## 肆、CRP 與著作權人的專屬權利

依著作權法第一〇六條規定，著作權人對其著作物專屬享有複製、準備衍生作品、分銷複製品、公開表演以及公開展示的權利。這些權利依法受著作權法第一〇七條至一二〇條的限制（註35）。任何人未經著作權人同意或授權、或未能成功引用法定例外或免責條款、或未能援用案例法的例外情形（註36）而違反著作權人任何一項專屬權利，即構成侵犯著作權。

至於電腦程式的使用，著作權法1980年修正版（註37）提供兩個免責條款。首先，使用人可以複製或修改其購買的電腦程式，如果該複製或修改是使用電腦程式的必要步驟。其次，使用人得複製該電腦程式以為備檔，唯該備檔僅能用以防備電腦程式的機械性或電子性故障，除此目的外，使用人不得複製備檔程式（註38）。

於實施CRP時，工程師會分解目標程式以探究其功能、組織與結構，同時也會列印目標程式的目的碼與原始碼。此外，他們也會修改或增、刪目標程式以求取其功能。上述動作皆可能被認定為侵犯著作權人的專屬權（註39）。

現行著作權法並無明文承認逆向工程或發展相容產品是有效的侵權抗辯，或構成對著作專屬權的法定限制。案例法亦主張開發相容產品並不足以卸脫侵權責任（註40）。

雖然「公平使用原則」經常被使用逆向工程開發商用的競爭性程式的當事人引為抗辯，早期法院通常拒絕採用此一抗辯（註41）。此外，案例法亦指明著作權法第一一七條並不足以作為使用逆向工程以發展相容產品者的屏障（註42）。

總而言之，按現行著作權法，CRP 開發者有可能被認定侵犯著作權人專屬的複製權、修改著作物以及準備衍生著作作品的權利。

## 伍、著作權侵犯及抗辯

著作法規定「任何人違反第一〇六條(a)款至第一一八條規定之專屬權利者，即為侵犯著作權之人」（註43）。該法亦規定被侵害人得對侵權人



訴請救濟（註44）。

欲有效控訴侵害著作權（*prima facie case*），著作權人需證明其擁有系爭著作作品的著作權；以及被告抄襲（*copies*）該著作作品的表達（註45）。由於原告通常很難證明直接抄襲，所以法律認定如果被告曾接觸過（*has access to*）系爭作品，而且系爭作品之間存在實質近似性，即有抄襲的事實（註46）。此即所謂的「實質近似性測試」（*Substantial Similarity test*），此測試首度見於 *Nicholas v. Universal Pictures Co.*, 乙案（註47）。

對於「接觸」的定義為「可以觀閱系爭作品的機會」（註48）。如果沒有直接抄襲的證據，法院亦會推定存在接觸「如果所存在的近似令人震驚，以致於排除獨立創作的可能性」（註49）。案例法更進一步判定實質近似必須依「一般觀察者測試」（*Ordinary Observer Test*）來認定。亦即，實質近似是由一般觀眾的角度，對於系爭作品的整體來檢證，而非割離支解（*dissects*）系爭作品後，再交由專家予以逐步認定（註50）。由於「一般觀察者測試」最初是適用於文學作品——小說、戲劇或舞蹈——以了解其給予觀眾的整體感受，可是電腦程式卻不具備任何文學或美學的特質，而是由為數眾多的0與1組合而成，因此對一般觀察者來說，也就很難去探究兩個電腦程式之間是否存在實質近似（註51）。因此，近代的法院皆容許由專家來認定程式的實質近似以及判定相關的技術問題（註52）。

即使著作權人證明被告曾接觸前者之作品而且兩者的作品之間存在實質近似，被告仍可依著作權法或案例法提出相關抗辯以免除侵權責任。首先，被告如能證明其對原告電腦程式的使用屬於著作權法第一〇七條至一二〇條所規定的例外情形（註53），被告即可免責。其次，被告亦得主張「融合法則」。法院一貫認定如果一個概念只能以一種或少數幾種方式來表達，則概念與表達皆不受護因為對於表達給予保護，則不可免的亦會保護概念，而這是違反著作權法最基本的規定的（註54）。此外，被告亦得援引「獨立創作」的抗辯——此抗辯源生於著作權法所要求「原創性」（*originality*）俾便作品取得著作權。美國最高法院奧康諾大法官（*Justice O'connor*）曾判定「原創性」意謂「為原作者在撰成系爭作品時所原創，亦即，該作品是由作者所獨立創作完成而未曾參考或引用他人作品可受保護的表達」（註55）。所以，即使系爭程式之間具有實質近似，如果被告能證明其程式係獨立創作，

被告亦不構成侵犯著作權。

## 陸、「無塵室程序」相關的議題

由於迄今仍只有少數公司採用CRP 來開發相容的電腦程式，所以並沒有任何案例直接宣示CRP 的合法性。CRP 程序的運用是費時、耗力而又昂貴的計劃，並非規模中、小型電腦公司所能負擔。另外一個原因也可能是因為CRP 開發人都極謹慎保存其獨立創作的相關證據，使得目標程式的擁有者無從對其興訟。現行案例對於逆向工程與中介拷貝的法律意見雖未直接論及CRP 的法律地位，其仍有助於吾人研判此一議題的未來走向。

目前至少在第九巡迴法庭，似乎有趨向顯示法院已經捐棄陳見，而判定逆向工程就法律而言（as a matter of law），係屬於著作權法規範的「公平使用」（Fair Use）（註56）。

在 *Atari v. Nintendo* 乙案（註57），原告Nintendo（任天堂美國公司）係一電視遊樂器製造商——在其主機上設置了所謂「鎖碼或主人」程式（10NES）來偵測未經其授權的卡匣帶（註58）。電動遊樂卡匣如果有正確的「解碼或奴僕」程式來解除10NES 的鎖碼動作，整個遊樂卡即無法啟動使用（註59）。被告Atari 是Nintendo的競爭對手。被告以逆向工程解讀原告的10NES 程式，並開發己的解碼程式—兔子程式（Rabbit Program）。可是兔子程式無法有效的開啓Nintendo的主機鎖碼，因此被告的遊戲卡匣無法在原告的主機上使用（註60）。被告遂依據其律師的建議，問著作權局報稱其正與Nintendo進行訴訟，所以必需參考10NES 的原始碼（註61）。事後證明Atari 公司對著作權局的陳報全屬謊言（註62）。在Atari 不當取得10NES 的目的碼後，其工程師乃得以修改兔子程式使其能解除10NES 的鎖碼（註63）。證據亦顯示兔子程式含有不必要以及無所用的10NES 撰碼（註64）。

審理法院首先判定10NES 受著作權保護因為它包含原告公司設計的獨特表達方式（註65），而並非純功能性的產品。該法院進一步判定，就法律而言，公平使用是有效的侵權抗辯，然而該抗辯並不適用本案因為被告無法證明其係原告著作程式的合法授權擁有者（註66）。因此，兔子程式被

判定侵犯10NES 程式（註67）。

在 *Sega v. Accolade* 乙案（註68），審理法院認為依法而論，如果CRP開發人有合法理由而且已無其他途徑來了解目標程式未受保護的要素時，逆向工程屬於公平使用（註69）。原告Sega在其製造的電視遊樂程式上設計一保全裝置——商標保全系統（Trademark Security System / TMSS），其作用與Nintendo的10NES 相同。被告Accolade是Sega的競爭廠商。當TMSS 啟動時，它會解除Sega主機上的鎖碼，同時在電視螢幕上顯現Sega的商標（註70）。Sega商標是由TMSS裡的啟動碼（initialization code）來表達，該啟動碼祇佔大約25個bytes。Accolade的工程師以逆向工程而得知TMSS以及啟動碼的存在，他們同時也知道Accolade 的電腦遊樂程式並不需要包含TMSS的啟動碼，也照樣可在Sega的主機上使用，可是他們還是決定將啟動碼照抄在Accolade的電腦程式裡（註71）。結果是每當Accolade的電腦程式一啟動，在電視螢幕上即會顯示一行文字：「本產品係由Sega Enterprise Ltd.生產或由其授權製造。」可是Accolade並不是Sega的授權廠商之一。

開庭時，Sega的律師證明TMSS與電視遊樂程式是否能在Sega的主機上操作並無技術關聯（註72）。Sega的技術專家亦作證說明電視遊樂卡匣即使不含有TMSS或其啟動碼，仍然可以在Sega的主機上操作。此外，即使將Sega的商標說明文字由程式中消除，也不會影響該遊樂程式的整體功能（註73）。審理法院最後判定認為，雖然被告Accolade抄襲Sega的商標說明程式——TMSS及其啟動碼，並因而造成令人混淆的商標展示，但是Accolade的逆向工程係屬於公平使用，因此不構成侵權行為（註73）。事實上，Accolade的遊樂程式容量平均為50萬至150 萬個Bytes，而Sega啟動碼約只佔25個Bytes，而其內容與Accolade的表達亦無太大關聯，審理法院極可能認定就質與量而言，兩程式之間並無實質近似性存在。

雖然逆向工程似乎已逐漸為司法界接納，以從事解析並探究目標程式的內容（註74），但是目前仍不清楚在運用CRP 時，對目標程式的撰碼從事中介拷貝是否合法。

案例法並未判定所有的備分拷貝本質上（per se）皆屬合法（註76）。縱然著作權法賦予著作權人專屬複製及分銷權（註77），案例法則判定此兩種權利係屬不同的權利，同時「實質近似性」的認定亦不侷限於最終成品，

因此，被告雖僅複製原告的程式而未加以分銷者，仍可構成侵權行為（註78）。對於中介拷貝的法律見解仍然紛歧，即使在同一轄區，法院的意見亦不相同。在 *Atari v. Nintendo* 乙案（註79），審理法院裁定中介拷貝並不侵犯原告的著作權因為「對於拷貝予以全面禁絕，將扼殺概念的自由流通，同時也不能促進著作權人的合法權益」（註80）。相對的，在 *Sega v. Accolade* 乙案（註81），審理法院則裁定不論被告的結果程式是否與被告的目標程式具有實質近似，中介拷貝皆構成侵權行為（註82）。上述兩個截然不同的非判決理由，皆出自第九上訴巡迴法庭。

筆者認為 *Sega* 法院係未詳思著作權法的立法目的（註83），而僅對該法進行形式上的解釋而導致此種認定。就技術上而言，新開發的程式皆必須依賴市面上已有的程式作為參考或基礎。判例法更指出「如果作者與發明人不得依據既有的發明或進步（來創思自己的作品），即不可能提昇科學與實用藝術。這一點認知，是所有智慧財產法領域裡無可爭議的前提要件」（註84）。論者亦指出如果工程師不能合法進行中介拷貝以探究目標程式的內容，「相關的工程師即必須再重新發明輪子，以便於進一步構思足以推動科技進步的發明」（註85）。是以中介拷貝本質上應不構成侵權行為，欲決定其實際上是否侵犯他人著作權，法院應謹慎考量此種拷貝的本質（註86）與著作權的立法目的（註87），並衡量其對於著作權人個人權益的保護後，再加以裁決。

## 柒、結論：舉證責任與標準

雖然實務上CRP 僅為少數電腦廠商採用，但是有鑑於新興的司法意見傾向於給予著作權人較廣泛的法律保護，CRP 在未來可能會較目前風行。於決定CRP 的合法性時，法院可能會先推定結果程式是不乾淨的（unclean），因為它是由被污染的資料（tainted materials）發展而成。所以，CRP 開發人將負舉證責任以證明結果程式並未侵犯目標程式。不同的法院可能會依據其個自對著作權法的立法目的與社會機能的見解，而要求被告去達成不同的舉證標準。

一方面，法院可能依「公司僅具備單一人格」的觀念而推定既然規格開

發組遭受過污染，因此結果程式也是被污染的。所以，如果CRP 開發人欲推翻此種推定，即必須提出「明白與可信」(clear and convincing)的證據。換句話說，如果對於結果程式是否由被告獨自開發存有疑義的話，法院將作不利於CRP 開發人的認定，其因此無法享有「懷疑的利益」(the benefits of doubt)。

另一方面，有鑑於新司法潮流認定逆向工程係屬於公平使用(註88)，法院亦可能依此公平使用原則而僅要求CRP 開發人符合「證據平衡」(the preponderance of evidence)的舉證標準即可。也就是說，如果被告能證明其獨立開發結果程式的可能性略微大於其抄襲目標程式的可能性，法院即會判定結果程式是乾淨的。

概括言之，第一種見解比較傾向保護著作權人的法律權益，而第二種觀點則比較符合著作權法欲「提昇科學及實用藝術」的目的(註89)。依據現行多數見解主張著作權法的目的並非在於保障個人權益，而是著重於提昇公眾利益與社會福祉，CRP 開發人大有機會說服審理法院採用「證據平衡」標準作為審案依據。

## 註 釋

註 1： *United States v. International Business Machines Co.*, 69 CIV. 200 (S.D.N.Y. 1969)。並請參見 *Antitrust and Trade Reg. Rep. (BNA)* 88 (Aug. 19, 1982)。

註 2：「無塵室程序」是半導體晶片業界使用的術語。其意在於避免外物介入晶片製造廠區以確保成品晶片的品質。

註 3：「相容性」可用於軟體相容或硬體相容。本論文僅研討軟體相容——電腦軟體的功能相當近似者即具備軟體相容性。

註 4：此測試亦適用於電腦程式侵犯的案例。參見後引註45及相關內文。

註 5：開發相容軟體時的「無塵室程序」主要意旨在於軟體開發人如何避免侵犯其他軟體的表達方式。參見前揭註2。

註 6：參見 *Whelan Association v. Jaslow Dental Lab.*, 797 F. 2d 1222 (3d Cir. 1986); *Lotus Development Co. v. Paperback Software Int'l Ltd.* 740 F. Supp 37 (D. Mass. 1990)。

- 註 7：參見後引45至註49及相關內文。
- 註 8：測試組可以與規格開發組合併。
- 註 9：「逆向判讀」或「逆向工程」並不等於是CRP。此外亦請留意其意義與「半導體晶片保護法」(Semi-Conductor Chip Protection Act 17 U.S.C. § 906(a), 1984)的「逆向工程」內容迥異。
- 註10：實際上，撰碼組僅能參考協調組律師所核可的資料。
- 註11：參見後引第二部第六節。
- 註12：參見後引註28。
- 註13：參見後引註53及相關內文。
- 註14：參見，如 *Morrissey v. Procter & Gamble Co.*, 379 F.2d 675 (1st Cir. 1967); *Herbert Rosenthal Jewelry Co. v. Kalpakian*, 446 F. 2d 738 (9th Cir. 1971)。
- 註15：實務上，協調律師欲引用「融合原則」時，最好要求公司研發部(R &D)副總、撰碼組組長及成員簽署文件，具結後者已竭盡一切可行撰碼技巧而仍然無法達成所須之功能。
- 註16：17 U.S.C. Section 101 (1976)。
- 註17：同前引， Section 101 (a)(1)。
- 註18： *Apple Computer, Inc. v. Franklin Computer Co.*, 714 F. 2d 1240, 1249(3d Cir. 1983); *William Electronics, Inc. v. Artic International, Inc.*, 685 F. 2d 870 (3d Cir. 1982)
- 註19： *NEC Corp. & NEC Electronics, Inc. v. Intel Co.*, 1989 U.S. Dist. Lexis 1409, 10 U.S.P.Q. 2d (BNA) 1177, 1989 WL 67434(N.D.Ca. 1989)。
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- 註20：參見 *Lotus v. Paperback*, 前引，第37頁； *Computer Associates International Inc. v. Altai, Inc.*, 982 F. 2d 698, 723 (2d Cir. 1992)。
- 註21：此亦所謂的「需求與分析階段」。參見L. J. Kuttan, *Computer Software*, Section 1.05 (1985)。
- 註22：參見Raymond T. Nimmer, *The Law of Computer Technology*, Section 1.03[2] (1985)。
- 註23：參見 *Lotus v. Paperback*, 前引。

- 註24：電腦業界稱此種測誤修正過程為「除虫」（Debugging）。
- 註25：參見，如 *Mazer v. Stein*, 347 U.S. 201, 217 (1954)。
- 註26：17 U.S.C. Section 102(b)。
- 註27：參見 *Herbert Rosenthal v. Kalpakian*, 前引，第742頁。
- 註28：Commission on New Technological Use of Copyrighted Works, Final Report ("CONTU Final Report"), at 44。
- 註29：45 F. 2d 119,121 (1931)。
- 註30：17 U.S.C. Section 101。
- 註31：*Lotus v. Paperback*, 前引，第60頁。
- 註32：*Whelan v. Jaslow*, 第1222及1236頁（電腦程式的功能就是它的概念，（電腦程式裡）任何與概念無必要關聯者，皆屬於表達的一部份）。
- 註33：參見 3 Nimmer, Section 12.03[F], at 13-62.34; Pamela Samuleson, "Is Copyright Law Steering the Right Course?" Sep. 1988, IEEE Software, 78,81。
- 註34：如，*Sega Enterprise Ltd. v. Accolade, Inc.*, 1993 U.S. APP. Lexis 78, 93 Daily Journal DAR 304 (9th Cir. 1993)。
- 註35：這些法定限制當中以一〇七條（公平使用）以及一一七條（電腦程式權的限制）對電腦程式著作權的影響較大。
- 註36：例如「獨立創作法則」（Doctrine of Independent Creation）。參見後引註55及相關內文。
- 註37：17 U.S.C. Section 117。
- 註38：參見CONTU Final Report, at 31; 以及 *Atari, Inc. v. Js & A Group, Inc.*, 597 F. Supp 5, 14 (N.D. ILL. 1983)。
- 註39：17 U.S.C. Section 101。規格開發組可能侵犯著作權人專屬的複製權以及準備衍生作品權。
- 註40：*E. F Johnson Co. v. Uniden Co. of America*, 623 F. Supp 1485 (D. Minn. 1985)。
- 註41：*SAS Institute, Inc. v. S&H Computer System, Inc.*, 605 F. Supp 816 (M.D. Tenn. 1985); *Hubco Data Products Co. v. Management Assistance, Inc.*, 219 U.S.P.Q. 450 (D. Idaho 1983)。

- 註42：參見，如 *Atari v. JS & A*, 前引，第14頁； *Apple Computer, Inc. v. Formula International, Inc.*, 594 F. Supp 617 (C.D. Cal. 1984)。
- 註43：17 U.S.C Section 501 (a) (1976)。
- 註44：同上引，Section 501 (b)。
- 註45：參見 *Uniden* 前引，第1485頁。
- 註46：實質近似性可根據質或量兩個要素來認定。參見 *Atari, Inc. v. North America Philips Consumer Electronics Co.*, 672 F. 2d 607 (7th Cir. 1992); *Sid & Marty Krofft Television Productions, Inc. v. McDonald's Co.*, 526 F. 2d 1157, 1162 (9th Cir. 1977)。
- 註47：參見前引第121頁。
- 註48：*Smith v. Little Brown Co.*, 245 F. Supp 451,458 (S.D.N.Y. 1965)。
- 註49：參見 *Ferguson v. National Broadcasting Co.*, 584 F. 2d 111, 113 (5th Cir. 1978)。
- 註50：參見 *Harold Lloyd Co. v. Witwer*, 65 F. 2d 1,19 (1933)。
- 註51：Howard Root, "Copyright Infringement of Computer Program: A Modification of the Substantial Similarity Test," 68 *Minn. Law Rev.* 1264, 1285-1288 (1984)。
- 註52：參見 *NEC v. Intel*, 前引，第1989頁； *Uniden*, 前引，第1493頁。
- 註53：參見前引註35及相關內文。
- 註54：參見，如 *Morrissey*，前引，第678頁； *Atari*, 前引，第616頁。
- 註55：*Feist Publications, Inc. v. Rual Telephone Service Company, Inc.*,— U.S.—, 111 S. Ct. 1282, 113 L. Ed. 2d 358 (1991)。
- 註56：參見，如 *Sega Enterprises Ltd. v. Accolade Inc.* 1993 U.S. App. Lexis 78 (9th Cir. 1993); *Atari Games Co. v. Nintendo of America Inc.*, 975 F. 2d 832, 861~862 (9th Cir. 1992)。
- 註57：975 F. 2d 832 (9th Cir. 1992)。
- 註58：同前引，第835頁。
- 註59：同前引。
- 註60：同前引。



- 註61：同前引，第837頁。
- 註62：同前引。
- 註63：同前引，第838頁。
- 註64：同前引。
- 註65：同前引，第847頁。
- 註66：同前引，第863～864頁。
- 註67：同前引，第873頁。
- 註68：1993 U.S. App. Lexis 78 (9th Cir. 1993)。
- 註69：同前引，第2頁。
- 註70：同前引，第9頁。
- 註71：同前引。
- 註72：同前引，第12頁。
- 註73：同前引。
- 註74：同前引，第3頁。
- 註75：參見前述第六部相關討論。
- 註76：參見 *Atari v. JS & A Group*，前引，第5頁。
- 註77：17 U.S.C. Section 106 (1976)。
- 註78：參見 *SAS v. S&H*，前引，第816頁。
- 註79：975 F. 2d 832 (9th Cir. 1992)。
- 註80：同前引，第861頁。
- 註81：1993 U.S. App. Lexis 78 (9th Cir. 1993)。
- 註82：同前引，第21頁。
- 註83：同前引，第18頁。
- 註84：參見 *Lotus v. Paperback*，前引，第77頁。
- 註85：參見 *Howard Root*，前引，第1293頁。
- 註86：參見，如 *Atari v. Nintendo*，前引，第28, 29頁。
- 註87：著作權法的目的在於「提昇科學及實用藝術，……（所以）作者及發

明人於特定期限內享有各種專屬權利。」參見美國憲法第一章，第八節，第八條。

註88：參見前述第六部及相關討論。

註89：參見前引註87。

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## 警政的內部管理

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# The Application of Organizational Theories in Police Organization

by  
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### 摘 要

本文在介紹組織理論並應用於警政的內部管理。

Key words: frame, structural frame, human resource frame,  
political frame, symbolic frame

關鍵詞：型模、結構型模、人群關係型模、政治型模、表徵型模

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警察組織性質因法令規章及組織目的差異而與其它組織有所不同，但仍適用一般組織理論及原理原則，理由在於組織理論之發展已具深厚基礎，且有其長久的歷史發展，本章即在詮釋組織理論並應用於警政的內部管理。

警政內部管理的目的在於使警察組織發揮其應有之功能，以達組織目標或完成警察任務。而再深入一層探討內部管理的目的在於提高組織成員的工作滿意度及工作績效（表現），雖然工作績效有時不見得那麼容易衡量（李湧清，1993），例如非刑案的警察服務品質、犯罪預防或民眾滿意度有時很難反應在工作績效上，管理的另一目的即在使成員出自內心願意，甚至喜歡所負予的工作任務。然而警察內部與外在環境息息相關，欲達內部管理的目的，常常也須瞭解外在環境的需求。例如基層員警與民眾接觸，中高層警官則可能另與民代或不同性質組織接觸，在在都可能影響警察的內部管理。例如民代可藉由控制警察預算影響警察內部管理。欲瞭解警察組織外環境之關係可以系統理論（Katz & Kahn, 1966）分析，將警察組織視為整個政府組織的次系統（sub-system）或是整個社會體系的次系統。

管理的定義在學者間仍有很多不同的看法，本文在應用組織理論，並將其分為四個型模（frame）來探討警政的內部管理。這四個型模是結構型模，人群關係型模，政治型模，及表徵型模。所謂的四個型模事實上是四個不同理論的簡單分類，可幫助我們瞭解、解釋、及預測組織現象，進而改善警政內部管理的運作。這個概念架構（conceptual framework）源於美國學者柏曼與笛爾（Bolman & Deal, 1991）的組織管理著作（*Reframing Organizations*）。

本章共分五節，第一節結構型模（Structural Frame）包括古典及目前的組織結構理論。第二節人群關係型模（Human Resource Frame）介紹需求理論、職業設計理論、及團體理論。第三節政治型模（Political Frame）包括權力理論及衝突理論。第四節表徵型模（Symbolic Frame）介紹組織文化理論的概念。而前面四節的理論介紹係本文作者主觀看法所選取。第五節以實際的組織問題探討型模在內部管理上的應用。

## 壹、結構型模

依結構的觀點，組織管理應遵循一套完整的原則，如費堯（Fayol, 1949）的一般管理原則及泰勒（Taylor, 1911）的科學管理原則，而其原則建諸於專業分工、權責、及責任分配上，這是早期的組織管理概念，其最終的考量在於對效率的重視，韋柏（Weber, 1947）提出的科層制（又譯官僚體制，bureaucracy）即是組織分工的理想寫照。

以刑事警察局為例，其組織下分偵查隊、法醫室、鑑識科、人事室、國際科……等，各單位依其性質承辦不同業務，關於一般偵查案件交由偵查隊處理，命案死者之生理檢驗交由法醫室，犯罪現場採證交由鑑識科，涉外案件交國際科，有關新進人員之選用、訓練、福利等由人事室辦理，這就是一種專業分工及責任分配的概念。偵查隊分三隊，三隊下又設偵查組，偵查隊上由局長及副局長監督，成為層層節制的科層組織（hierarchy）。每一層各有其主管，如此環環相扣形成嚴密的監控網。

現今社會分工細密，專業知識發展亦日益複雜，組織分化（differentiation）遂成為必然趨勢，為達組織目標，分工之後必須加以整合。（McCasky, 1974）。再以刑事警察局為例，一個案件發生往往需鑑識科、法醫室、指紋室、甚至總務室的協調配合。可能的情形是分工愈細，整合愈困難（Lawrence & Lorsch, 1967），理由是各分化單位可能因專業化產生獨特的價值系統，或該分工單位必須將專業語言轉化成另一單位可以瞭解的資訊，造成溝通困難，形成整合之困難。

而結構分化又可分為垂直及水平分化（McCasky, 1974）。所謂垂直分化是指層級之增加，增加層級一方面製造更多升遷機會，同時可縮小階層的控制幅度，對人的監控度因而提高，但另一方面可能上令難以下達或下情難以上達。至於水平分化在增加不同部門以達分工之目的。而分化後的組織將產生溝通及協調的問題，理由是為達組織目標需回部門間的通力合作。如命案偵查除需偵查人員過濾嫌疑人，尚需法醫及鑑識人員的配合方得順利偵辦。

組織理論學者柏恩及史多克（Burns & Stalker, 1961）將組織結構分為機械型（mechanic）及有機型（organic）。依其理論穩定的環境適合機械性的結構，例如有固定流程的事件或例行公事適合分工清楚的機械結構，事情

可以在最快速、妥善的安排下解決。有機型結構為具彈性之組織結構，類似生物的有機體可適應環境變化，有機型結構可因環境變遷調整出最適合的結構。例如刑案大小所受重視的程度常不可預測，固定的機械結構往往無法應付這種千變萬化的環境，分局警備隊的機動支援或偵查隊視實際刑案組成不同大小的專案小組，這就是有機型組織結構的寫照。

另一方面，組織最初之設立原則係依其目標及特性安排出最理想的結構，所以其組織設計可以說是理性化的結果（rationality）。但組織長久存在亦可能造成組織僵化及組織膨脹。所謂組織僵化係指組織因長久存在，無形中產生過多的慣例或規章限制組織成員的活動，導致喪失原有之彈性，甚至影響其應有之功能。例如組織可能因成員犯錯而增加法令規章，或組織為因應特殊環境變遷而增加之行政程序，無形中限制了組織成員的活動能力，造成組織的僵化。而組織膨脹可能導因於接受非組織目標之業務或臨時性任務編組之保留，組織膨脹的結果將造成資源浪費及行政效率的降低。

古典組織理論結構設計以控制為手段，並認為好逸惡勞是人的天性，而期望透過結構的設計進行監督控制，以達最高效率的目標（Taylor, 1911）。然而在人群關係學派的衝擊下，組織結構設計漸漸重視人性的基本需求（Maslow, 1954），而朝人性化方向發展，其結果表現於尊重個人的自主權，這種現象使組織成員較諸以往有更大的權力，滿足了個人對權力的需求（McClelland, 1966）。有別於古典理論重視集權、層級化、及正式溝通方式，人群關係思想開啓了人性光明面的一道清流。其主要論點將於下節論述。

現代結構理論學者凱都（Keidel, 1990）則提出三度空間的設計概念，這三個變項是控制（control）、自主（autonomy）及合作（cooperation）。控制源於古典結構理論的集權及監控思想，自主起源於人群關係強調個人存在的重要性，但過於強調獨立自由的結果將失去其與組織的配合度，因而第三度空間—合作的考量成為組織設計極重要的因素，合作係注重與人相互配合，考慮他人的立場，並調整相互的關係，在這三層考慮下組織目標較可能在和諧的氣氛中達成。

## 貳、人群關係型模

由於人是組織最重要的資源，如何有效運用人力資源，包括人的知識、智慧及技能等，成為組織相當重要的課題。古典組織理論重視法令與效率化，導效非人性化，人的尊嚴未受到尊重，人群關係型模因而興起，其所關心的是基本需求的滿足，以及人如何在組織獲致良好的適應。本型模將從需求理論（need theories）職業設計（job design）及團體理論來探討組織內部的管理行爲。

### 一、需求理論

需求理論學者強調人類基本需求的重要性（Maslow, 1954；Hertzberg, 1968；Alderfer, 1972）。馬師婁（Maslow, 1954）的需求層次理論認為人有五種需求由低而高依次為生理的（physiological）、安全的（safety and security）、社會的（social）、自尊的（self-esteem）、及自我實現（self-actualization）的需求。其基本的假設是人只有在低層獲最低限度的滿足，才能提高至高層。應用於警政內部管理，其首要在滿足員警之生理及職業安全需求，使其能無後顧之憂努力工作，否則員警仍需鎮日為溫飽發愁將無心投注心力於警察工作。然組織成員人各不同，對不同層次的需求程度不一。而測知正確的需求程度有時並不容易，這是馬氏理論不足之處。

赫茲博格（Hertzberg, 1968）參照馬師婁的理論發展出兩因子理論（Two-factor Theory）。第一是衛生因素（hygiene factors），係指對於能防止不滿的因素，這和馬師婁的基層需求如生理及社會需求類似，但對赫茲博格而言這種衛生因素不存在可能造成員工不滿足，其存在卻無法造成激勵的效果。第二個就是激勵因素（motivator），這與馬師婁的高層需求如成就感及自我實現慾類似，它可產生激勵作用，提高成員工作效率。雖然兩因子理論係根據美國公司所做的研究結果，是否亦適用我國仍待進一步實證研究，然該理論仍提供吾人對人性激勵再次省思的機會。例如多年前警政署在委任一級及荐任七級中增加荐任十級，這一政策在當時議論紛紛。然依赫茲博格的理論，升遷可視為成就慾之一種，增加層級相當於增加成就慾，增加荐任十級的作法激勵了受升遷者的工作士氣，所以應給予高度的正面肯定。

再就阿德佛（Alderfer, 1972）的存在—關係—成長理論，簡稱ERG（Exist-Relatedness-Growth）來談，其對人性需求作了更深一層的分析，相對於馬師婁的五層需求，阿德佛將需求分為三層，即生存、關係、及成長，但這三層並非是層級性的排列方式。其理論的三個要點是，第一，每一層的需求滿足愈少，則愈希望能滿足。第二，愈低層次愈被滿足，愈希望滿足較高層次的需求。第三，較高層次需求滿足愈小，對較低層次愈需求。阿德佛的理論對人性需求做了更具彈性的解釋，同時也反應面對需求可能產生的差異性。依此理論來分析警察升遷問題，若管道受阻，成長需求將得不到滿足，將促使其轉向較低層次的需求如生理或金錢上的需求。

綜觀需求理論，其對人在組織內需求的解釋有其不可磨滅的貢獻。然沙連係及費佛（Salancik & Pfeffer, 1977）則不認為有所謂“需求”之存在，所謂的需求僅是外在環境刺激所造成的結果，人往往不是很清楚自己的需求是什麼，而是受到資訊流通（information processing）所影響。例如看到美食佳餚會分泌唾液想吃那些食物，但不見得真正肚子餓，或是說不見得有吃東西的需求，而是美食造成我們有想吃東西的慾望。再如廣告也是一種資訊流通，將普通商品塑造成另一種風貌，刺激人的需求。資訊流通因而對警察內部亦具極深意義，管理者可透過資訊管理以影響組織成員的需求。例如管理者可以直接或間接的褒獎方式將任務賦予使命或價值，使部屬認為參與任務即是榮耀，而願意參與。

## 二、職業設計

職業設計的基本精神亦在於激勵組織成員的工作意願。本段即在探討如何透過職業設計使組織成員能在工作中發揮最大效用。早期的職業設計學者海克曼及羅勒（Hackman & Lawler, 1971）提出工作豐富化（job enrichment）的重要性、工作豐富化係給予組織成員更大的自由、權限、及挑戰，而又稱為垂直的增加工作責任，因具較大的自主權。為增加績效，避免組織層級及法令產生的障礙造成時間拖延，喪失時效，工作豐富化有其必要，另一方面，增加權限後的工作設計可滿足人類對權力的需求（McClenlland, 1966），形成激勵的效果。

海克曼、歐漢、詹森、及普帝（Hackman, Oldham, Janson, & Purdy,



1975) 則從五個不同觀點來研究工作設計。第一是工作的多樣性 (variety)，這在組織中係將不同工作整合，而對個人能力做更大的挑戰，避免工作之枯燥乏味。第二是工作認同感 (task identity)，即對一項工作之全程參與度，按照他們的說法是全程參與的成就感比部分參與來得高。第三是工作重要性 (task significance)，所指的是工作造成的實質影響及意義，例如參與偵辦重大刑案可能就比偵辦小賭博案更大的成就感。第四是工作自主權 (autonomy)，這與前面提過的工作豐富化觀念類似不再重複。第五是回饋 (feedback)，所謂回饋係指成員可直接由工作中得知其表現，而不需由管理者或他人告之其工作表現，以減少不必要的磨擦及衝突。

沙連係及費佛 (Salancik & Pfeffer, 1978) 同時對職業設計理論提出批判，其理由與他們對需求理論的批評類似，認為人對職業設計的反應事實上是受過去經驗及社會資訊的影響，而不是人本身會自動有前述之需求產生。依照這個論點，工作設計產生的激勵效果在管理上的意義應大於實質的意義，因為管理者可透過對社會資訊的解釋及控制而達激勵的效果。換句話說，組織成員也許並不清楚他的工作需不同的技術、缺乏認同感、不認為其工作具重要性，也不喜歡有較大的工作自主權 (因須負較大的工作責任)，甚至不屑任何的工作回饋 (包括正面及負面的回饋)。這些均有賴管理者如何負于工作設計新的生機，而讓組織成員對新的工作設計內容有深的認識而樂於付出。

### 三、團體理論

一般而言，二人以上有互動存在便可稱作團體。在組織中，團體可謂無所不在。例如團體之形成包括同學會、同鄉會、志趣相投者、或經指定之警網、專案小組等均屬之。換句話說，團體有正式與非正式之分。而團體現象可分三方面來談，第一是團體內現象 (intragroup)，這可以從人與人之間的互動談起。角色理論 (Role Theory) 即提供吾人一套型模以解釋並瞭解角色的差異與衝突。按凱茲與凱恩 (Katz & Kahn, 1978) 的說法，角色行為 (或個人在組織的行為，role Behavior) 的形成同時受本人與他人對角色認知的影響，當認知有所差距，就有角色衝突存在，此衝突行為並同時受到個性、團體規範及組織文化之影響。而角色衝突又可分角色內及角色間衝突。

角色內衝突（*intrarole conflict*）係因不同的人對同一當事人的角色傳遞不同的期盼（*expectation*），而當這些期盼有差異甚或不協調時，便可能產生角色內衝突。例如刑事偵查員與警察局長對刑警隊長同時傳遞不同期盼，局長有其對刑警隊長的期望，而偵查員對刑警隊長的要求也有不同期盼，當刑警隊長認知到局長與偵查員的期盼差距過大時，便可能產生角色內衝突。而若刑警隊長尚須面對來自更上層或社會上傳遞角色期盼，則使角色內衝突益形複雜。角色間衝突（*interrole conflict*）則在闡述組織內個人身兼不同角色，在扮演不同角色時可能造成不協調而產生的衝突。例如一位偵查員可能身兼數個專案小組，再警察人員為兼顧家庭與工作，必須同時扮好兩種角色，但當工作負荷過重及家庭要求甚殷的雙重要求下，難免不發生角色間衝突，而造成工作效率低落或家庭問題。在工作上，每個人同時扮演不同的角色，也同時受到多重期盼的傳遞，而造成角色衝突，至於衝突之管理可以溝通方式解決，而湯瑪斯（Thomas, 1979）的衝突型模亦提供解決衝突之方式，將於下節敘明。

溝通的目的在降低彼此認知的差距，而因個性的差異，每個人有所謂的溝通風格（*communication style*；Rowe & Boulgarides, 1992），而這事實上也是管理或決策風格的延伸（Rowe & Mason, 1987）。也就是說每個人有其特殊的溝通風格，且具有不變性及一致性可供吾人預知其所可能傳遞訊息的方式。而瞭解自我及他人的溝通風格是降低衝突的方式，同時也是容忍個人溝通方式差異的良方。

## 參、政治型模

從政治型模的觀點而言，組織是個人與團體追求利益的場所，而組織資源有限，資源分配的決策便成重要的組織議題。由於權力常成為資源分配的決定因素，衝突因而在所難免。雖然美國學者坎特（Kanter, 1979）認為政治權力是非常骯髒的字眼，但其存在卻是不爭之事實，我們可以透過人們對權力的認知及運作瞭解組織現象。就現存的警察升遷舉例說明，因警察升遷員額有限，當合乎升遷標準或競爭人數眾多時，就牽涉到政治資源分配的問題，最後脫穎而出者便很可能是所謂政治背景雄厚者。除非能訂定一套公平

的升遷制度，否則權力競爭產生的不良後遺症仍難避免。以洛杉磯甄選的警察局長為例，其過程係由委員會全權處理，委員會成員則選擇具公信力之人員擔任，再訂出一套公正客觀的程序（包括從甄選到錄用），如此以力求客觀的程序擺脫不當權力之介入及運作，較可能產生適才適任的人選。

既然權力（power）與衝突（conflict）在所難免。本文將以討論兩者之定義及現象為主。沙連係及費佛（Salancik & Pfeffer, 1977）認為權力是一種使某事依當事人意願完成的能力。法蘭奇與雷蒙（French & Raven, 1959）則認為權力是影響力，而影響力是一種能改變現狀的力量，而這種改變則包括行為、意見、需求、及價值觀的變化。根據這個定義，法蘭奇與雷蒙將權力分為五種，這五種是獎勵權（reward power）、強制權（coercive power）、法定權（legitimate power）、人際表徵權（referent power）、及專家權（expert power）。獎勵權指能給予獎勵的權力，在警察機關中，主管有不同的獎勵權，如破格升職、大功、小功、嘉獎、優蹟表揚、獎金、或物質上與精神上的獎勵等。至於給獎是否適切，或給獎時有否注意到其公平性或受獎人感受獎勵之價值性，均是應考慮的問題。現今警察界使用之獎勵多以成員之明顯工作表現為主，如緝捕重要逃犯或有明顯的績效等。這種重視績效或結果的獎勵，往往忽略了組織成員對工作的付出（input），也就是說工作努力程度未受到重視，如此過度重視績效的結果，可能導致成員使用不當的手段爭取績效。換句話說，工作的過程或努力程度常常比工作的結果或績效更值得吾人重視。

強制權（coercive power）或懲罰權是具有強制或懲罰的能力。警察首長具有的懲罰權包括免職、大過、小過、申誡、劣蹟處分，精神或物質上的懲罰等。而處分常造成員警抵抗或負面心理反應不可不慎。另再從資訊流通（information processing）的概念來談，管理者可善用資訊的管理來表達獎懲的輕重程度並影響成員的想法。如此，縱然實質的處分不大，傳達出來的訊息是嚴重的處分。相同的道理，可能實質的獎勵不大，卻產生極大的激勵效果。

法定權（legal power）指因職位關係所擁有的權力。例如在警察人員管理條例及警察勤務條例均載明有警察首長可運用之權力如人事及獎懲權。專家權（expert power）指個人具有之知識、技能、或能力等。例如法醫或

鑑識人員所具的特殊知識或技能便非受過專業訓練之人員所能瞭解，具這些知識的人在鑑識上便有權威性，在組織中就有所謂的專家權。人際表徵權（referent power）則代表人際吸引或人際關係的認同。例如某甲對某乙具有特殊的吸引力，某乙對某甲就有認同感，於是某甲對某乙就有影響力。因為某乙認同某甲，便可能以某甲之喜好為標準，對某甲產生影響力，便可能同時影響到乙。

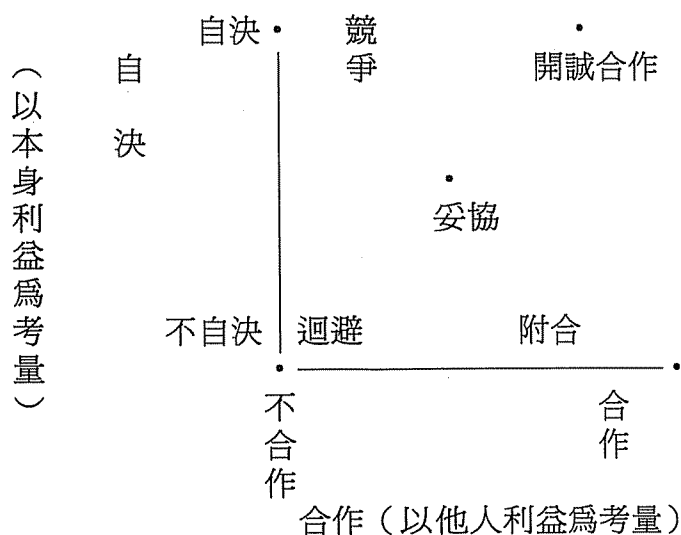
在實務上，上述的五種權力常常不是單獨存在的，例如主管在運用獎懲權時，若無人際表徵權配合，其作用可能大打折扣，或某甲有很好之人際表徵權但卻缺乏專業知識，其在專業領域之影響力亦可能受到減弱。另一方面，獎懲的輕重常是多重選擇或具彈性的，一位犯小過的成員在衡量其犯意下可以適度減輕或加重，這在管理上便是考慮到人際表徵權的存在及運用。此外相當重要的是行政倫理的問題，權力的濫用（power abuse）不僅違反道德，亦可能觸犯其它法律，雖然防止權力濫用可以法律規定之，但最重要的還是運用者本身具有高度的道德標準。

巴納德（Barnard, 1938）曾提出組織是一個合作系統，但人與人接觸互動，衝突乃不可避免。產生衝突的原因至少有二。第一是資源分配的問題，這裡所謂的資源可以包括獎勵、金錢、政治（人事）等。第二是角色認知差距所產生的問題，認知差距則可能起因於個性、資訊、或組織因素所引起，至於學者對衝突的定義並不一致，湯瑪斯（Thomas, 1979）便承認其定義上之困難性，並介紹了兩種不同的衝突定義。第一種是衝突可以被解釋為人與人互動所產生的干擾，他並將這種干擾比喻為物理學上的摩擦力，依此觀點，衝突將導致挫折、影響協調，並降低工作效率。第二種將衝突解釋為對現狀的質疑，包括對組織策略，過程的挑戰及省思。衝突因而變成激發創造力的先決條件，根據這個定義，衝突是有益組織的。本文承認二種說法之存在，但將衝突定義為人與人之間因認知或行為的差異而產生挫折感的現象。

湯瑪斯（Thomas, 1979）提出了二度空間五種方式來解釋及解決衝突行為。如圖一橫座標為合作（cooperativeness），此座標以他人利益為考量，縱座標為自決（assertiveness），此座標以自身利益為考量，依此二空間發展出五種解決衝突的方式。第一種是迴避（avoiding），此係不合作亦不自決。第二種是附和（accommodating），此係合作但不自決，完全以對方利

益為考量，並以配合對方為主。第三種是競爭（competing），此係自決但不合作，這是以自身利益為考量的方法。第四種是妥協（compromising），這是半自決半合作的解決方式。第五種是開誠合作（collaborating），此係自決與合作，即合乎己身利益同時顧慮他人的利益。按照湯瑪斯的說法，這五種方式適用於不同的情況。例如確定自己為對時採競爭方式，確定自己為錯時採附合之方式，當事情本身不重要時採迴避之方式，而當目標本身重要卻不值得採自決的方式破壞彼此關係。但實際上對或錯常常不是很清楚的被瞭解，面對衝突時可能多於五種解決方式時採用妥協之方式，就像座標的數字一樣，可能有無數的解決方式。然而湯瑪斯的理論仍提供吾人一個簡單清楚的衝突解決模式供吾人檢測與參考。

圖一：衝突行為模式



由於衝突可能產生挫折及焦慮，但另一方面也可增加彼此瞭解及刺激創造力，如何管理衝突增加組織績效便成重要課題。湯瑪斯（Thomas, 1979）遂提出過程（process）及結構（structure）介入來管理衝突。所謂過程介入是指從其互動過程以辯論或書面方式增進彼此的瞭解與溝通。所謂結構介入

則是以改變環境方式（contextual modification）及以訓練方式改變衝突氣氛，而這種方式牽涉到衝突管理的訓練，課程內容可以包括衝突的原因、結果、及因應策略。在警察機關中，衝突也是無所不在，長官與部屬間會有衝突，部屬間亦可能發生衝突，機關內小團體間也有產生衝突之可能，若處置不當，則可能影響警察對外的的工作。

## 肆、表徵型模

表徵型模事實上是文化人類學理論之應用（Bolman & Deal, 1992），依其觀點，組織是無法以理性來分析，因為未來充滿太多的不確定性，所以人們創造表徵以降低這種不確定性帶來的不安全感。例如天災人禍之不可預知，國人在車上掛香包以乞求行車平安。或前一陣子台北市基層員警流行戴佛珠都是在創造表徵以降低對不確定未來的恐懼感。所以表徵型模在強調表徵本身意義上的表達，形成眾人共同接受的信仰（belief）或價值觀（value），以增加對不確定未來的信心。既然表徵是組織文化的表達，它的內容應包括日常生活的語言、組織的歷史背景、生活習慣軼事、儀式、典禮、英雄人物。所以欲以表徵型模來管理警察組織，就必須瞭解警察特有的文化。本文僅就軼事（或迷思）及典禮儀式（rites & rituals）來談。

### 一、軼事

所謂軼事是在組織廣為流傳的事，不一定是真的，但卻廣為成員接受的事。例如派出所內可能有以下傳聞：某警員於某日值深夜勤突見不明人影（鬼），他馬上戴上警帽，這不明人影馬上消聲匿跡。這至少隱含著兩層意義，第一警帽上的警鴿有趨吉避凶之功能，可驅走妖魔；第一，警帽代表正義，它可增員警深夜執勤的自信心，以降低黑夜帶來的不安全感及不確定性。

### 二、儀式及典禮

所謂典禮儀式可解釋為組織發生的活動，例如服兵役有所謂的入伍訓練，有這段經歷的人都會認為這是畢生難忘的經驗。它代表著成為組織一員所必經的考驗及磨鍊，換句話說，其背後隱含的意義是入伍訓練是一種榮譽，要

吃得苦中苦才夠資格成爲軍中的一員。而所謂的迎新聚餐也算是一種儀式來歡迎新進的組織成員，也算是正式承認其爲組織的一員，在餐會中成員亦可能將組織的成文或未成文規定以輕鬆的語言透露給新進人員，嚴格說來這種以非正式開導新進人員的方式，也可算是一種組織社會化（organizational socialization）的過程（Van Maanen, 1975）。再如畢業典禮或結業典禮；隱含學習告一段落，已具備基本的知識技能，邁向人生的另一旅程。

再如頒獎典禮中頒發警察獎章、破案獎金、績效獎金等，常常是其背後隱含的意義重於實質意義。警察獎章的頒發一方面在表彰受獎人所奉獻的心力，另一方面藉由典禮向成員宣示此獎的可貴性，並讓成員知曉某人獲得這項殊榮，而且這項榮譽是大家的榜樣，應予熱表追求，無形中形成大家都接受的價值觀或成爲組織文化的一部分，而產生激勵組織成員的效果。換句話說，頒獎典禮所傳達的訊息往往重於典禮本身的意義。

## 伍、型模在管理上的應用

型模的應用事實上就是理論的應用，如前面所述四個型模代表四個不同的角度分析組織現象，四個型模各有其基本的假設，因而有時難以將之整合而成一個型模來分析組織，例如堅信表徵型模的人可能不易與深信結構型模者溝通，因爲結構型模代表一種理性的思考方式，而表徵型模則爲非理性的哲學思想。這種溝通的困難類似個性差異產生的結果，因個性的不同導致價值觀和喜好的差異，這種差異便造成溝通的困難，但也由於這種思考差異創造出不同的理論觀點，但也只有在不同型模分析下才能更深入地分析組織，而以更彈性的方式來領導及管理組織。至於如何善用四個型模則是一門藝術，有人會視狀況採用不同型模，或以混合型模之方式來分析或管理組織，但欲熟練或善用四個型模唯有親身實際應用於管理或分析組織。

然而柏曼與笛爾（Bolman & Deal, 1992）提及系統理論或可視爲第五個型模，系統理論視組織爲開放系統，而開放系統有別於封閉系統，而最重要的是喚起人們對組織環境的重視。一般而言，系統理論代表組織之巨觀或整體分析，而有其不可磨滅之貢獻，但仍難否定前面四個型模的組織分析。就像摩根（Morgan, 1986）以不同印象（images）來分析組織一樣，他將之

比喻為瞎子摸象一樣，每個型模事實僅看到組織現象的一部份，各印象有其對組織的深入分析，但卻亦無整合的必要性，而因有不同的組織理論存在，方能使組織分析更活潑更深入。

而分析組織的目的無非在領導、管理組織，甚或可以將這些概念運用在組織變遷（或發展）上。如前述，這四個型模概念類似羅與梅森（Rowe & Mason, 1987）的四個管理風格。因為他們所謂的管理（或領導）風格事實上就是在描述個性上的差異。運用在組織變上，這四個型模亦可以代表四種不同的組織介入方式，達到改善組織績效的目的。例如在改變組織架構的同時，將改變成員間的互動關係，甚至影響到不同利益的個人（即權力與衝突的介入），同時亦傳遞出變的訊息（表徵現象）。

最後茲以警察內部實際問題套上四個型模加以分析解釋並提供解決之方法。勤務交接遲到一直是警察內部的管理問題，其發生之原因及處理方式均可以本章介紹之四個型模加以分析。以結構型模來看，可能是法令規章不切實際，非人性化、或組織結構不當而導致勤務遲到，那麼欲解決勤務遲到就必須從改變法令規章或組織結構著手。從人群關係型模來分析，勤務遲到可能起因於個人需求得不到滿足，例如薪資太低、得不到同事關懷、或工作上沒有成就感等，解決方式就是從滿足需求著手。從政治型模觀之，勤務遲到可能是利益衝突或權力競爭的結果，尤其接班者若較為資深，而運用其所擁有的專家權（expert power），也就是在單位上所知道的資訊（information），以達其私人利益的目的，或以遲到為手段達到報復的目的，解決法可用人際表徵權或以衝突的解決模式來處理。從表徵型模來看，勤務遲到本身可能不是那麼重要，而是遲到背後隱含的意義值得重視，這可能是士氣低落的徵兆，或根本就是組織文化的一部份而為組織成員認為這是理所當然的現象，那麼管理者便須從改變組織文化著手，改變組織文化最重要在改變成員的價值觀，雖可從正式的規定著手改善，亦須輔以表徵之管理，例如管理者對勤務遲到的公開譴責，便是在傳遞表徵或訊息而達改變成員的價值觀。而勤務遲到只是管理問題其中之一，很多組織管理問題均可以前述四個型模加以分析解釋，不再贅述。



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# 組織中之潛在權力和權力運用 ——結構面與行爲面之探討

黃煥榮\*

## Potential Power and Power Use in Organizations : A Study of Structure and Behavior

by

Huan-Jung Huang

### 摘 要

本文旨在強調欲系統地研究組織中的權力現象，必須同時關注和整合權力的兩大面向，即潛在權力（權力的基礎和來源）和權力運用（影響結果的能力）。本文首先回顧和檢討過去學者探討組織權力所獲致的論點和研究的缺失，然後進一步釐清影響組織權力結構面和行爲面的分析要素，希望能有助於分析和瞭解組織中潛在權力和權力運用的情形。

關鍵詞：組織權力、潛在權力、權力運用

Key words: organizational power, potential power, power use

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## 壹、前言

組織權力是組織與管理中極為重要的核心問題，蓋權力乃為組織賴以推動工作的原動力，權力運作的良窳影響組織目標的達成與否甚鉅。研究組織中的權力，許多學者雖然提供了多種理論和研究途徑，然而，過去的研究過於瑣碎或只強調某些權力的特質，無法累積廣博的理論建構和經驗研究，因此有些研究者嘗試建構整合性的理論架構，以更有力解釋組織的權力現象（Molm, 1990; Ibarra, 1993; Brass & Burkhardt, 1993），本文基本假定是：要完整的瞭解組織中的權力，必須同時整合總體與個體層面的分析，而組織的現象同時具有總體與個體的意涵（Krackhardt & Porter, 1985），因為結構提供了個人認知與運用權力的系絡，而行為互動模式亦會影響結構的型態；所以組織中的權力分配，同時受到結構與行為互動所影響。本文首先回顧和檢討過去學者研究組織權力所獲致的論點和缺陷，以進一步釐清影響組織權力的結構面和行為面的分析要素，希望有助於分析和瞭解組織中的權力現象。

## 貳、權力的意義

Russell曾描述，「權力」(power)：「如同能量是物理學的基本概念一樣，權力是社會科學的基本概念。」（靳建國譯，民78）。然而，權力的涵意卻相當分歧，莫衷一是。對於這種分歧現象，Bachrach and Lawer (1980) 認為，因為權力是一種原始性的名辭，但是在功能上是敏感的，所以它的觀念模糊不清，無法充分說明我們所注意的現象。基於這個看法，「影響力」、「權威」、「控制」等，都是權力的某種型態，並且能夠說明權力這一個原始名辭。而Philp (1985) 則認為，權力備受爭議，這些爭議的主要來源有三：（一）社會科學中的不同學門各自強調不同的權力基礎（例如，財富、地位、知識、武力、權威）；（二）不同的權力形式（例如，影響、強制、控制）；（三）不同的權力用途（例如，個人或社群的目的、政治目的、經濟目的）。於是，許多研究者根據他們本身理論上與實際上的旨趣，而強調此一概念的不同面向，並對權力的研究，做不同的分類（註1）。

在探究組織權力各個類別中，大部份的學者多少都談論到權力觀念所包

含的內容，其中重要的論點在於權力本身、權力與社會以及個人與組織等觀念，俱說明了他們對權力的觀念 (Lukes, 1974; Wrong, 1979; Bachach & Baratz, 1962; Sampson, 1965; Lehman, 1969; Benson, 1978; Tannenbaum, 1962; Clegg, 1989)。大部分學者注意力所涵蓋的範圍也都包括了總體與個體的社會科學，以及實驗性的研究和哲學性的論述。從過去學者理論的探討和經驗分析的結果，與組織意涵有關的權力概念主要有以下四種界定方式 (蔡麟筆譯，民79: 33-58；羅虞村，民79；Philp, 1985)：

1. 將權力視為強制或控制對方的能力，這種能力通常以行使權力者的強制和壓制對方的強制力來衡量。Dahl (1957: 203)以為，「A能使B去做原來不想做的事情的程度，即表示A對B擁有權力。」Tawney 則強調權力關係的不對稱性，並把權力界定為一個人（或一群人）按照其所願意的方式去改變其他人或團體的行為，以及防止他自己行為按照一種他所不願意的方式被改變的能力（孫非等譯，民80: 139）。Lasswell 和 Kaplan (1950: 74) 也認為「權力是指為了持續一項政策並防止反抗，而預期的或實際的使用嚴厲之懲罰或剝奪。」

2. 將權力視為影響他人之行為與態度之能力或潛在可能性。此界定方式通常視權力為影響他人時所需的資源，且視權威為來自職位的正式權力，並認為影響力就是權力的行使，領導則是影響的意圖或過程。例如，根據 Yukl (1989: 13-14) 的看法，權力為某人對另外一個人或某些人的態度及行為的潛在影響力。影響造成對方的改變，可能是施用影響力者早有的企圖，也可能與施用影響力者預期的影響目標存有距離。影響的結果可能大到足以控制對方的行為，也有可能小到只令對方感到壓力，但未曾使之發生任何改變。

3. 將權力視為自主與依賴雙方的關係而非影響他人行為的資源。此界定方式通常視行使權力者處於自主的地位，對方則處於依賴的地位。換言之，權力被視為控制或被視作一方對另一方的支配關係。例如，Giddens 即認為權力關係是互動中自主與依賴的關係，支配現象見之於部屬的行動及上司的權力行使，惟權力的行使不限於上對下的方式，上司有時也依賴部屬，部屬也有自主的空間 (Philp, 1985: 635-39)。

4. 將權力視為遂行意志的能力。Max Weber 認為：「『權力』是一種

社會關係中的某一行動者能處在某個儘管有反抗也要貫徹它自己意志的地位上的機率」(孫非等譯, 民80: 139)。根據這樣的看法, 權力不等同於權威, 權力包含強制性的控制, 也指涉不具威脅性的說服及建議等控制方式, 而權威則全然基於正當性, 不含強制意味, 所以權威乃是正當或合法的權力。

上述各種界定方式, 都掌握權力部分的面向或特質, 事實上其間並無相左之處, 只是強調的重點不同而已。蓋影響他人必依權力行使者的意志為之, 且影響可包含強制與說服兩種方式, 權力行使的目的不外乎意欲支配或控制對方的行為或態度。因此, 權力可視為影響他人的潛在可能性或能力, 其影響包括使他人表現某種行為及改變他人行為或態度。而欲完整的瞭解組織中的權力即須同時關注和整合, 潛在權力(即權力的基礎和來源)和權力運用(即影響結果的能力)權力的兩大面向。

## 參、組織權力研究之回顧

權力雖然是社會科學普遍關注的現象, 然而權力的研究在組織與管理的文獻中 卻是經常被忽略的一個領域 (Mowday, 1978; Pfeffer; 1981), 因此, 誠如Ryan所言, 「雖然權力方面的著作並不匱乏, 但卻一直沒有一個全面涵蓋性的觀點, 它們極少以組織之力場研究為基礎, 也不重視社會系統之參與者對政治過程與系統結構的認知問題」(蔡麟筆譯, 民79: 59)。至今吾人對於組織中權力的角色, 了解仍然是有限。

早期的管理學者或組織社會學者的研究興趣多在於組織如何控制對於權力的使用, 因此研究的焦點是在於組織層級節制體系和官僚理性的基礎上。由於正式的權威體系並非權力關係的唯一基礎, 因此探討組織權力如果只就基於合法性權力 (legitimate power) 的層級節制體系做分析, 顯然忽略了組織中權力的其他重要面向, 因而引起許多學者普遍的質疑 (例如 Salancik & Pfeffer, 1974; Bachrach & Aiken, 1974; Mowday, 1978; Pfeffer, 1981)。事實上, 正式職權之外的權力或影響力亦是了解組織行為重要的變項 (註2)。

近期的學者研究組織權力, 則關注於為何在組織的決策場合中, 某些個人或團體比其他的個人或團體, 更能夠達到其所欲追求的目標 (Salancik & Pfeffer, 1974; Pfeffer, 1981; Wrong, 1979)。他們著重於探討組織的權力來

源或基礎，對於權力來源或基礎的種類，French & Raven 提出五種權力類型，並廣被採用，五種權力類型為（轉引自張潤書編譯，民74: 315-16；羅虞村，民79: 14-15）：

1. 合法權力 (legitimate power)，係獲自一個人在組織的層級或結構中的職位。此種權力主要來自規則、法令、規章，或來自權力行使的對象知覺到權力行使者有規定或限定其行為及意見的權力。

2. 獎酬權力 (reward power)，係以控制及實行對依從指示或要求者獎酬。此種權力來自權力行使者具有轉遞獎酬的能力，而非權力行使者所固有。

3. 強制權力 (coercive power)，係以獲自控制及實行對不依從指示或要求者懲罰。此種權力來自權力行使的對象知覺到權力行使者具有轉遞懲罰或制裁的能力。

4. 專家權力 (expert power)，係以一個人所表現的特殊能力、技能、專門知識為基礎。此種權力來自權力行使的對象知覺到權力行使者具有解決問題及達成任務的專業知識和技巧。

5. 認同權力 (referent power)，係基於個人對個體的崇拜，欲加模仿其行為、態度的欲望而來。此種權力來自權力行使者與眾不同的領導氣質與才能，以及良好的人際或適宜的待人方式及態度，致獲得他人的敬愛、情感、信心、信任、及衷心奉獻。

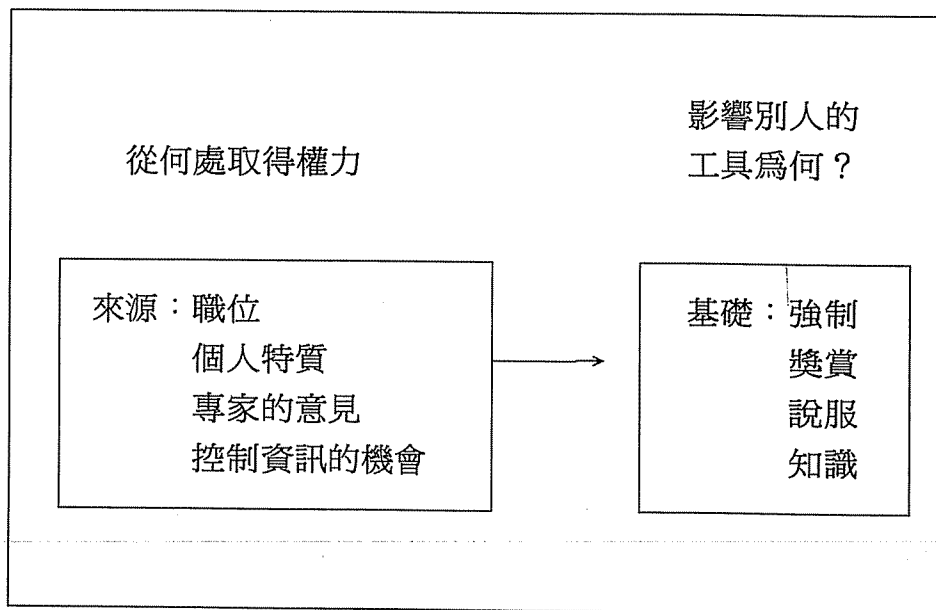
最後 Raven & Kruglanski 在上述五種權力之外，另提出資訊權力 (information power)（指能接觸到資訊及傳佈資訊而獲致之權力）。

以上分類為權力研究提供了深入探究的基礎，惟大多數學者並未明確區分權力基礎和權力來源的不同。而依照Robbins的說法：所謂權力的基礎係指權力的持有者因控制了一些事物，使其能夠操縱別人的行為，權力的基礎有四種，即強制權、獎賞權、說服權、及知識權。而所謂權力的來源指權力持有人從何處取得權力的基礎。權力的來源有四種，即職位、個人特質、專業技能、及接收與干擾資訊的機會（黃麗莉、李茂興譯，民 79: 316-19）。

欲了解權力，首先必須認識權力的基礎與權力的來源。圖一指出兩者之間的關係。權力的來源是手段，個體藉著職位、個人特質、專業知識、或適當機會，而後可利用強制、獎賞、說服、或資訊的操控等方式來影響別人的

行爲。是故，權力的來源指出取得權力的源頭；而權力的基礎則指出如何操縱此一權力。

由前面論述可知，權力通常指一個人爲克服障礙而達到其所欲目標的一種能力（Pfeffer, 1981）或者影響結果使事情完成的能力（Salancik & Pfeffer, 1977; Mintzberg, 1983）。研究組織中的權力，從總體的觀點界定組織權力著重於組織的系絡（context），如何影響個人行爲；從個體的觀點著重於個人對於權力的反應及其所應用的策略及技巧。事實上，結構和行爲無法截然劃分，兩者彼此交互影響；職是之故，吾人認爲應結合結構的和行爲的兩種途徑，截長補短，才能真正窺探組織權力的面貌。以下就這兩種途徑，作進一步的分析和探討。



（圖一、資料來源：部分引自黃麗莉、李茂興譯，民79: 319）



## 肆、組織權力的結構面

從社會學的觀點，通常將權力視為結構的現象 Pfeffer (1981)。權力的結構來源反映出一個社會系統的特性，而不是任何特定個人互動屬性或行為 (Astely & Sachdeva, 1985)。結構的權力可分為兩類：正式（層級節制）和非正式（社會網絡）兩個部分。傳統的組織理論多強調組織的層級節制體系；而許多管理學者指出，非正式的組織網絡是一種權力的機制，控制了組織的資源，以及在組織革新的過程扮演重要的角色（參見彭文賢，民81: 第3章）。下面就這兩個部分進一步的分析。

### 一、層級權威

正式的權力和在組織中層級的職位有關，根據 Simon 的說法，層級節制是指組織內部的工作關係，亦即構成處理合法性權力之一定的組織程序。是故合法性乃是層級主管權力最主要的來源（彭文賢，民70: 33）。在層級節制的組織體系中，每一個人均佔有一個法規所規定的職位，再按照職位的高低，規範人員權力與服從的關係。層級節制的行為，就是上級與下級各守其份的行為；下級覺得他們應該服從上級，而上級覺得他們應該被服從。因此，層級節制的行為，乃是全體組織成員的原有行為習慣，只不過是當他們加入某一組織之後，所經過的一種制度化的行為 (Ibid)。由於層級職位是制度化及社會普遍接受的性質，所以是最強而有力的結構潛在權力來源，以及對權力使用最大的結構性限制 (Madison et al., 1980)。Bacharach and Lawler (1980) 則認為，職權是一種源自結構、具有穩定結構之功能的權力，而影響力則是一種來自個性、專家才能，和機會的權力。因為權力是由於個人在組織層級中佔據某地位而來的，所以是所處之組織體系擁有權力，而非個人擁有。Gouldner 亦指出，如果認為權力和職權之間沒有關係存在，將是一種很冒險的做法。擁有職權的人同時也會擁有其他種型式的權力，權力是靜靜的存在的，在外表上它是持續的，並且具合法性的（轉引自蔡麟筆譯，民79: 49）

組織的層級權威，它不僅包括了一連串制度化的地位體系，而且也含涉了由最高管理人員，以至於一般員工的權宜性決策問題。由於權威結構的複

雜性及其多面性，主要表現在以下幾方面（彭文賢，民79：24）：

1. 控制幅度：所謂控制幅度，是指一位主管在同一個時間內，對於所屬事物與人員，所能進行的一個最為有效的控制限度。由於各個階層的控制各不相同，衡量的方法也就相互有異。

2. 權威的層級數目：權威結構的第二個指標，就是計算由最高管理人員以至一般工人間所呈現的權威層級數目的多寡，也就是指整個制定、解釋，以及執行各種不同決策時所呈現的權威層次。

3. 行政管理與生產部門間的比例：此種比例又稱為美樂曼比例（Melman's ration）。上述的控制幅度是以整個組織作為分析的單元，而美樂曼比例則以組織中的某一次級單位作為分析的單元而已。

4. 自由裁量的時間幅度：乃指個人在某些資源的提供下，組織授權給他從事各種創意性決策時，所賦予的最大時間幅度。

5. 決策權力的集中程度：在權威結構中，到底那個層次才是真正的決策層級？比方說，有關勞工關係的決策，可能集中在最高管理階層，也可能被授權到中、低管理階層。其他程度愈大，那麼從事決策的層次也就愈低。

許多的研究多發現組織權力來自於組織工作分工和專業化，某些人佔據重要的職位，因而享有較多的權力以及權力所帶來的發展(Fomburn, 1983; Hinings et al., 1974; Pfeffer & Salancik, 1978; Salancik & Pfeffer, 1977)。Kast and Rosenzweig (1977: 336-40) 曾指出：當科學技術愈趨複雜、日益多變時，組織人員必須有更高的知識和技術水準，組織內部將有更多的專業部門和專業人員，從而各部門及各職位間的工作關係，也將愈須密切配合。換言之，各基層部門專業化的結果，將使中上層的主管們因缺乏足夠的專業知識而難予有效的領導和控制；惟為求適應環境和應付技藝的改變，各部門間的工作關係又不能不自行相互調整。所以當科學技術愈趨複雜而變動迅速時，組織的結構將愈趨複雜，從而上下階層間的指導與控制，亦將逐漸減少其重要性。

傳統的官僚組織理論，除了假設各職位的知識和職權是合一的之外，同時還假設職位的高低和貢獻的大小成正比，貢獻的大小和報酬的多寡亦成正比。認為若一個人在組織中的職位愈高，即代表其職權愈大；既擁有較豐富的知識，貢獻當然也較大，同時，獲得的報酬也較多。但顯而易見的，此種

假設日益受到挑戰，誠如 Simon 所言，在今天的社會中，個人對於組織的貢獻，乃取決於他擁有的專業知識，而不在於他的職稱或頭銜（彭文賢，民70: 34）。由於專門人員及技術專家的重要性日益增加，間接削弱了層級節制體系的權力。相對地，非正式的結構將日益受到重視。

## 二、非正式的結構

從組織的層級節制體系中成員的階層職位安排，雖可以看出組織內部各單位的權力關係。但實際上，在層級節制體系下，有的成員比其職位更具有影響力，有的權力甚小，權力的分配未必與其職位相對稱。因此，在正式的權力關係與實際的權力運用的關係之間，便有了一段距離，而形成了某一職位應有權力與實際權力之間的差距（彭文賢，民81: 93）。尤其組織規模變成龐大之後，必經縱向分層及橫向分化，而這種分化結果必經相關的工作流程所形成之相當穩定的網絡型態，而須加以整合。從社會網絡 (social networks) 的觀點，結構是人際間律則化、重複性的互動模式 (Mintzberg, 1979)，雖然是非正式的，但社會互動相當一段時間之後，將具有相當穩定和制度化的性質。而且會影響正式的工作流程和職權關係，因此可作為觀察組織的重要面向。

社會網絡被認為具有一種影響人們行為和人格名方面的明確結構。社會網絡具有四個重要的結構標準 (Boissevain, 1985: 557-58)：

1. 規模(size)：一個人可以與比他有直接關係的人還多得的人接觸。透過他的直接接觸，他可以與其他人發生接觸。

2. 密度(density)：這是指一個人的網絡裏的成員在獨立於他的情況下相互接觸的程度。密度可以表達為人們中可能存在的聯繫實際存在的程度。網絡的密度是網絡成員潛在溝通的一項指標，凡是網絡密度高的，其溝通就相當密切。

3. 核心性(centrality)：這是網絡成員相互接近可能性的一項指標。一個人愈是處於網絡的中心位置，他就愈是能夠進行溝通。

4. 群集度(clustering)：這是指網絡成員形成群集的程度，這些人相互間的聯絡更為密切。這種群集的存在，如果被一個人察覺到了，那麼就會影響他的行為。

網絡分析以多種方式對其他研究方法進行補充，特別集中於分析單位間的相互聯結和相互依賴關係。這個分析焦點包括一個分析架構中的個體層次和總體層次，經由對於相互關係、相互依賴及互動的集中分析，它產生了對於由互動形成的各種組織型態的洞察，而突出組織的內在動態性 (Scott, 1991)。

從社會網絡途徑研究結構權力，通常與資源依存架構 (resource dependency framework) 有密切的相關 (Emerson, 1962)，根據資源依存理論，權力是隨著組織所控制關鍵性資源的多寡來決定，一個核心組織擁有愈多的稀有資源對其它交易互動的組織愈有影響力，而邊陲或半邊陲組織也意圖改變稀有資源分配的關係，以降低受其它組織宰制的程度 (Pfeffer & Salancik, 1978)。在網絡核心職位的人員，有更多的管道和潛在的控制能力可以獲取相關的資源；由於能夠掌控相關的資源，因此可增加他人對其依賴。除了使他人增加對其依賴以外，行為者亦必須設法減少對他人的依賴，所以必須有管道獲取他人無法控制獲得到的相關資源。

另一方面，Foucault亦認為，「權力關係紮根於社會網絡的系統之中」（錢俊譯，民80: 281）。在現代高度組織化的社會中，組織是鑲嵌 (embedded) 在一個複雜的社會系絡中，也就是說每個組織都有綿密的組織網絡，要探討組織行為、策略與發展必須要分析組織間關係的影響，同時重視社會網絡中權力探討的重要性，以及正式組織本身所形成的網絡關係對組織運作的衝擊。許多實證研究發現，人員在組織網絡中的核心性 (centrality) 有密切的關聯 (Brass, 1984; Brass & Burhardt, 1993; Krackhardt, 1990; Burhardt & Brass, 1990)。因而許多學者從事測量核心性的概念，以了解社會網絡途徑中的權力結構 (Bonachic, 1987; Friedkin, 1991; Brass & Burhardt, 1993)。綜合這些學者的研究，核心性大致分成以下三種的量度：

1. 中心程度核心性 (in-degree centrality) 指多少人可以選擇一位焦點人員的程度，中心程度核心性的量度通常隱含權力不對稱的關係。
2. 封閉程度核心性 (closeness centrality) 可概念化為獨立性 (指焦點人員能夠避免受到他人控制的程度)，和效率性 (指焦點人員能夠以直接和間接最短的聯結到達他人的程度)。
3. 關聯程度核心性 (betweenness centrality) 可概念化為焦點人員能夠

潛在控制他人的程度，通常用來測度資訊的控制。

## 伍、組織權力的行爲面

組織權力的行爲面，把權力視爲人格的一面，或是在組織中個人面對權力時採取某些策略或技巧的行爲反應 (Alder, 1962; Winter, 1973; Emerson, 1962; Zaleznik, 1970; Mangham, 1979)，權力關係即使藉助不確定性的應付，可代替性，及整合的重要性予以建立時，團體可用以獲得團體間權力者仍有其他組織策略。這些策略因包括兩個以上團體關於團體間關係調整的協議而稱作合作策略(cooperative strategies)。獲得團體間權力有三項基本策略 (張潤書編譯，民74: 297-300)：

1. 訂約 (contracting)，指兩個以上團體間爲了未來交換的控制或互動的保證而作的協議磋商就稱作訂約。每一團體對其他團體都有某種程度的不確定性，所以希冀藉由成功的集體談判協約，降低此種不確定性。其結果是談判的團體都由不確定的控制及依賴關係的穩定，而得到某種程度的權力。

2. 延納或吸收 (co-opting)，指吸收新要素或團體將其納入一個組織的領導或決策結構之內，作爲避免對其安定性威脅的一種手段的過程。藉助吸收或延納其他互動團體，一個團體對其他團體發生影響的不確定性就可以控制了。延納或吸收反對的一方，表面看似轉移了決定權力，實則卻擴大了對該項決定的總影響力，達到化阻力爲助力的功效 (羅虞村，民79: 26)。

3. 聯合 (coalescing)，指一個組織團體與另一個團體減少不確定性從事一種聯合或共同事業稱作聯合。如此可以增加影響力，而避免勢單力薄，孤掌難鳴，難以發生作用。聯合在組織決策上扮演主要角色，若沒有最高層聯合去集中並控制組織的權力的廣泛分配，不確定性將到處瀰漫，而導致缺乏指揮、共同目標、而造成衝突及低落的組織績效。

個人獲得使用權力在能力上、技巧上、意願上有明顯之不同，許多學者指出，不確定性 (uncertainty) 和權力的有效使用有明顯的關係。Kipings, Schmidt, and Wikinson (1980) 發展一套廣博途徑，將權力的使用分爲六大類型，可視爲對組織權力行爲面研究，一種完整的分析架構：

1. 武斷 (assertiveness)，指要求服從，命令及設定最後期限等影響的策

略，包括對部屬嘮叨方式和表達憤怒等，使用組織的獎賞或處罰來迫使對方就範。此種權力一般被認為是較無效用的使用方式，其理由係慮及其乃是以高壓手段迫使他人順從，易造成部屬的不滿、敵對、或反制，從而損及領導者的權威及聲望。反對行使此種權力的另一理由是為防止行使權力者藉之滿足其不當的權力慾，以及由於無知而作不當的使用（羅虞村，民79: 22）。

2. 逢迎 (ingratiation)，指讚美、禮貌地問候、友善地態度、舉止謙恭、儘量討對方歡心、以及建立親密的關係等，武斷和逢迎策略之合理基礎和效果是建立在增強理論 (reinforcement theory) 和操作制約論 (operant conditional) 之上。換言之，人們採取了某種反應之後，若立即有可欲的結果出現，則此一結果就變成控制行爲的強化物，會增加該行爲重複出視的頻率。

3. 理性 (rationality)，指以推理、邏輯和妥協等方式影響他人。這種以事實或資料作後盾，提出合乎邏輯和理性的想法或要求，通常較能夠同時被組織的管理者和部屬所接受，以及樂於使用的方式。Pfeffer (1981: 194) 指出，理性的使用宛如正式組織中的宗教一般，理性的分析、計劃及決策之效用為組織中普遍的共同信仰，而甚少遭受質疑。

4. 交換 (exchange)，指提供對於他人的協助，用以換取互惠性的利益。個人透過資源的交換以使期望效用最大化。Homans 的交換理論對於權力的交換觀點作了具體的解釋。他指出：一個人從事交換的人，他所付出的，對他而言是成本，就像他所獲得的，對他而言是報酬一樣。自己行爲改變愈小，對自己就是利益，亦即報酬減去成本所得到的利益愈大。反之，在交換活動中，活動愈多，或必須改變的行爲愈多，則負面價值愈大，個人愈不可能完全投入這個活動。一個有權力的人能在負面價值最小的情況下運用權力（蔡麟筆譯，民79: 23-24）。

5. 向上訴求 (upward appeal)，指為獲得組織中上級人員支持的一種行爲企圖。向上訴求隱含權力的使用者正式的權力及個人的資源有限，所以必須向上尋求權力和資源，以為奧援。因此，凡遇有不利於上級的批評或舉措，便會起來抗拒，如上級有所差遣，則會力求表現，冀能獲得上級的欣賞和信任，以爭取到更多的權力。

6. 聯盟形成 (coalition formation)，指與組織其他人員建立合作關係之企圖。組織中的人員或單位，為達到支持或杯葛某一政策或計畫的目的，可

結合其他成員，以圖強本身力量，維護本身權力地位。結盟的對象不限組織內的人員或單位，組織外的人員或單位若能發生影響力，亦可作為結盟的對象。

## 陸、結語

管理的功能離不開權力的運作，能夠有效組織成員的管理者，必須對組織權力的來源和基礎相當的瞭解，並且能有效而正確的使用權力。雖然從對過去文獻的回顧，可以了解學者對權力的研究所涵蓋的範圍極為廣泛，但卻沒有一套完整的理論架構，以指導實證研究的進行。雖然過去對於權力方面的著作相當豐富，但卻一直沒有一個全面涵蓋性的觀點，很少以組織的場域作為研究和分析的定向，同時也不重視社會系絡的參與者對政治過程與政治系統結構的認知問題。

事實上如本文前面所述，要完整的瞭解組織中的權力現象，應整合總體與個體層面的分析，因為組織的現象，同時具有總體與個體的意涵；而組織權力分配，便是同時受到總體結構與個體行為互動所影響。職是之故，若肯定權力的概念有助於我們對於組織管理的工作及對個人及團體行為的了解，則我們應該進行更多有關權力理論的建構和實證的研究，隨著對組織中的權力了解愈多，管理人員將可更明確的運用權力這個變數，提昇組織的績效。惟本文僅就理論部分作初步的檢視，是否能普遍有效解釋組織管理的現象，則有待經驗研究做進一步的觀察和檢證。

## 註 釋

註1：例如，Cavanaugh 將各種權力文獻分門整理，歸納為五種不同的概念架構（蔡麟筆譯，民79：第1章）：

1. 權力是一種個人的特質；
2. 權力是一種人際間的架構；
3. 權力是一種商品；
4. 權力是一種因果架構；
5. 權力是一種哲學架構。

而Ryan 則將學者們探討權力時採用的方法分為三類（蔡麟筆譯，民

79: 33-34) :

1. 從社會立場的觀點探討權力；
2. 探討組織內的權力；
3. 探討個人層次的權力。

註2：影響力與權力之所不同者，在於影響力沒有強制性的成份。權威與權力之不同在於權威具有合法性。有關權力的相關概念的討論，請參閱（Bachrach and Baratz 1962; Lukes, 1974; McGall, 1979）。

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## 馬克思和韋伯學說的比較

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### The Marx-Weber Debate — A Comparative Study

by

Hung Lien-te and Chiu Shih-shen

#### 摘 要

本文藉卡爾·麥爾有關馬克思與韋伯的比較研究，嘗試去理解十九世紀與二十世紀兩位社會科學界的巨星之學說特徵。經由兩人對意識形態、社會行動、辯證法的見解、進化論的觀點與科學的功能之比較，而掌握馬克思與韋伯思想學說之歧異。最後，以黑格爾和康德的不同來對比馬克思和韋伯的差別，作為結論。

Key words: Capitalism, socialism, dialectic, evolution  
and revolution, the function of science

關鍵詞：資本主義、社會主義、辯證法、進化與革命、科學的使命

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## 壹、引言

近代社會學的產生可以說是西洋學界對英國肇始的產業革命和法國爆發的大革命之反思，也是對十八世紀啓蒙思想的省察；更重要的則是針對十九世紀以降馬克思及其追隨者理念的響應與批判。作為資產階級思想代言人的韋伯，遂被視為批判馬克思學說的急先鋒。有人甚至把韋伯當成資產階級的馬克思來看待，或認為他之所以作為一位社會學家是與「馬克思的陰魂長期與激烈交接應對的結果」（註1）。

事實上，馬克思和韋伯都曾經大量地使用歷史材料，並以環球的、宏觀的、巨視的角度，應用歷史發展的邏輯來進行社會制度的剖析與批判。兩人揚棄以統合的想法，而採取衝突的觀點來評論當代西洋最重要的制度——資本主義。儘管兩人在研究的範圍、方法的取向、理論的形態等方面有所不同，但兩人關懷的主題，仍舊是當代或跨世紀的人類所不可忽視的。

儘管韋伯在世之日，有關他與馬克思之間學說的異同，早就引起爭論，但自從他逝世以來這七、八十年間，有關他與馬克思理論的爭議反而引起學界極大的興趣。這種馬克思—韋伯的爭辯視為二十世紀人文與社會科學界的盛事，應該是可被接受的事實。

早期兩人的爭議主要集中在資本主義和社會主義衝突兩項社會事實解釋孰為優劣的上面。有人認為韋伯有關新教倫理作為現代資本主義的最先條件之理論，較馬克思唯物史觀高明。有人指出韋伯以階級—階層—黨派來解釋社會衝突並不比馬克思的階級鬥爭說優越。參與爭論的學者不是認為韋伯只是擴大馬克思有關階級的解說（註2），便是以為韋伯根本反對，甚至企圖取代馬克思的說詞（註3）。另外第三派則認為：兩人的問題意識(*problematics*)，包括邏輯推理與認知假設都迥然不同。因之，把兩人的學說作正面的比較是毫無可能的（註4）。

自從1960年代後期開始，有關馬克思—韋伯理論之爭辯，無論是使用的詞謂或強調之處與從前的爭論已大不相同。爭論比較上不像以前那樣把兩者的不同兩極化或概括化，而是以實用的、中階的(*middle-level*)方式，指陳這兩位理論家相輔相成的部分。

其原因主要是美國研究韋伯的學者不似以往那樣盲目地排斥馬克思。這

與帕森思(Talcott Parsons)對韋伯功能派的解說趨向式微有關，也與學界在反越戰以來逐漸左轉有關。另外，自從60與70年代以來，新馬克思主義的思潮泛濫美國校園與論壇（註5）。其代表性人物如華勒斯坦(Immanuel Wallerstein)所討論的世界經濟體系下之國家與軍事的問題，都能與韋伯的觀點契合，而西方馬克思主義者和法蘭克福學派的理論，更有迎合韋伯學說之勢（註6）。

由於在60與70年代世界局勢的劇變，引發人們研究興趣的轉換，一向居社會科學主流之社會學，逐漸由國際政治與政治經濟學兩門學說所取代，這兩門學科中所彰顯的「選擇性的近似」(elective affinity)是針對戰前貧富國家與社會所滋生的問題，以及戰後兩大集團和第三世界的互動，而引起不同理論的探討，從而發現馬克思與韋伯對問題的提出與解決之道也有「選擇性的近似」。這也就是促成馬克思—韋伯的爭辯進入嶄新的時期（註7）。

就在這段時間中，我們有幸讀到麥爾(Carl Mayer)有關韋伯對馬克思學說的詮釋（註8），深覺此文對馬克思—韋伯的爭辯有其獨特的看法，值得介紹給臺灣的讀者知悉。因之，在並非字斟句酌的直譯原文之下，將麥爾的剖析重加整理鋪陳，並增加本文作者的看法，希望對現代這兩位傑出的社會理論家學說之理解，稍微有些貢獻。

## 貳、問題的提出

在本世紀30年代，研究韋伯的著名學者沙羅門(Albert Salomon)指稱韋伯的作品不僅需針對著馬克思的背景下予以檢視才能獲得理解，而且韋伯的作品本身反應著他終身研究馬克思的結果。這種提法相當有趣，但並非完全正確。原因之一為在韋伯學術生涯的第一個階段——他1899~1902年生病之前——馬克思的作品對他意義不大。他在1902年之前所做的乃是以一種特殊的方式應用馬克思體系中的範疇來從事他自己的研究（例如，有關古代世界衰落之社會原因這項小型的研究）。除此之外，他曾經提到支離破碎的馬克思科學體系，他認為這一體系乃是教條式地灌輸於當年的德國工人腦裡，而成爲一套意識形態。

在很多著作中，並無跡象顯示出韋伯對馬克思曾經進行了實際批判性分

析。韋伯所受的影響有其他的來源：孟森(Theodor Mommsen) 影響了他關於羅馬農業史方面的考察；麥琛(August Meitzen)影響了他關於日耳曼農業結構史方面的探索；此外歷史經濟學派則影響了他撰寫社會兼政治論文等等。然而，到了他學術生涯的第二階段，情況便完全改觀，從此韋伯開始為日後的作品建構理論兼方法論上的(theoretical-methodological)基礎，同時投身於其宗教社會學研究之浩瀚材料之中。這項工作的開展使得他必須去處理馬克思。韋伯的妻子瑪麗雅妮·韋伯 (Marianne Weber)曾經表示他在1918年提出了這個題目「對歷史唯物觀點之實證批判」(The Positive Critique of the Materialist Conception of History)。這並非韋伯對馬克思唯一的批判與討論。反之。由於此一作品的出現導致研究韋伯的學者產生普遍的看法：一方面，雖然兩人有著細節上的種種差別，但關於基本的方法論兼理論的預設，韋伯對馬克思沒有任何的拒斥。另一方面，人們幾乎一致認為兩人對相同的主題進行了實質的分析，這包括了所謂現代世界的結構、其發展情形、及其結果。我們可以援引兩位完全不同的作者在這一點上代表性的見解：熊彼得(Joseph Schumpeter)，在他的《資本主義，社會主義與民主》一書中寫道：「韋伯所有的事實及論證完全契合於馬克思的體系」。另一位作者，李希特海姆(George Lichtheim) 則堅持韋伯的作品可以輕易地輸入馬克思體系的術語中。

重要的是葛爾特(Hans H. Gerth) 和米爾士(C. Wright Mills) 也提出了相同的論點，他們的見解在很大程度上支配了美國的韋伯詮釋，並且也對戰後德國的韋伯詮釋有極大的影響。當然，近年來對韋伯的研究更加深入，不僅僅關連到馬克思，也關連到尼采。但基本的論題，例如鮑姆嘉騰 (Eduard Baumgarten) 及另一位孟森(Wolfgang J. Mommsen)所提出者，依舊是：韋伯和馬克思所提的問題是否相互一致——也就是說，關於對現代資本主義的詮釋，兩人是否在原則上相同。

透過對韋伯和馬克思基本觀點的比較分析，我們嘗試以此論題作為討論的主題。要達到這個目的有兩種可能的途徑。第一條途徑是確實地比較關於現代資本主義特質之起源及其結果方面馬克思和韋伯各自所作的分析。這項工作已由卡爾·路易特(Karl Löwith) 做成了典範。在此僅只重覆他的研究是毫無意義的，特別是如果我們不完全接受路易特觀點的話，則幫助更屬有限。另一種可能的方式是比較我們在馬克思和韋伯各自的作品中所發現的基



本方法論兼理論原則。值得注意的是，這樣的一種比較分析只有在將韋伯對馬克思明示或暗示的詮釋做為基礎的情況下，方才具有意義。韋伯對馬克思的詮釋是否適切這個問題，我們將在後面涉及其背景時才加以論述。以下我們把麥爾的觀點從五個方面來對馬克思和韋伯的學說加以比較、分析。

## 參、意識形態的問題

第一點是關於社會體系的結構以及意識形態的問題。我們都知道馬克思對社會體系區分為下層建築(substructure)和上層建築(superstructure)。所謂的下層結構，是指涉「生產力」以及矗立於其上的「社會生產關係」而言。「生產力」這個術語必須在最廣泛的意義上來加以理解，不僅僅是特定社會的科技這個意義，還包括自然、科學、技術，以及分工。同時，社會的「生產關係」，馬克思所理解的是以這些生產力為基礎，在社會的不同成員之間所發展出來的社會關係。簡單地（而且從法律的觀點）來說，他所指涉的是一種產權的情況，包括階級結構、最終的政治秩序，以及權力問題的解決。對馬克思來說，下層建築或基礎——偶爾也被稱為「實在」(reality)——乃是生產力和社會的生產關係一種特別的混合，有著極為複雜的性質。

另一方面，有所謂上層建築的現象，馬克思將其分成兩個層次。首先是關於社會秩序人們所發展出之較低層次的概念或理論，包括典章制度。其次則是一些較高層次、抽象的終極概念：關於人和世界的本質、形而上學、宗教、象徵符號的範疇等等。關鍵的問題是下層建築和上層建築之間的關係。以馬克思的觀點而言，我們可以說上層建築，在與下層建築相關連時，構成了意識形態。於是我們得到相反的兩個概念：由下層建築所代表的是實在；以及由上層建築所代表的是意識形態。面對著意識形態這個概念之極度複雜，及其各式各樣的用法，吾人應該釐清馬克思所指涉的對象。我們以為，藉此概念，馬克思自認為清楚地指稱兩件東西。

一方面，意識形態意味著：人們所擁有的理念，不論屬於思想的較高或較低層次，並不具有自主性的來源，而是得自於下層建築。引用馬克思的著名說法：「不是意識決定存在，而是存在決定意識」。馬克思如何進一步發揮此一論點是有爭議性的。我們發現，如「產品」(product) 的概念，有時

甚或有像「存有的展現」(expression of being) 這種說法。然而，清楚的是意識形態意味著缺乏任何自主性的人類理念。

馬克思意識形態的概念還有著第二層的意涵：理念（也就是最廣泛意義下的意識）不僅是由存在所決定，並且是不適切地反映此種存在。其結果，產生了我們所熟知的用語之「虛假意識」(false consciousness)，這也就是他所說的意識形態。換言之，上層建築並非安穩地矗立在下層建築之上。當然，此中的理由可以在表現於階級與階級結構之社會實在的特殊二律悖反(antinomic)底結構中發現。讓我們以馬克思如何應用意識形態的概念作為例子。馬克思本身的思想受到當時英國古典經濟學家很大的影響——只需考慮到李嘉圖(David Ricardo)對馬克思體系的深遠影響，便不難理解。馬克思完全樂意承認古典經濟理論適當、準確地表現了特定的社會關係。但他所批判並揭穿為意識形態的乃是，在他看來那些古典經濟學家將對於特定社會體系而言適當的範疇，變成絕對的，甚至扭曲成為不受時間的限定之「自然的」範疇。在此，根據馬克思的看法，理論的經濟學便變成了意識形態。或者，我們可以舉出第二個，甚至更重要的例子，它已經在早期馬克思的思想裡有了舉足輕重的地位：宗教或形而上學體系的問題。馬克思並未宣稱人們對於終極意義及人生目的所抱持的概念必然是虛假的。他所說的是這些概念（我們可以在例如基督教或觀念論哲學中看到）一旦將暫時有效的範疇轉換成永恆有效的範疇，就可能是虛假的。用另一種方式來說，它們乃是犯了實體化的謬誤 (the fallacy of hypostatization) (註9)。就是這種實體化形成馬克思對宗教性質概念的基礎，特別是對基督教的本質之批判。

從以上簡短的討論中可以得到初步的結論。對馬克思來說，科學不僅在描述社會的結構，也在於規定並解釋此一社會結構之特殊結合底方式；也就是說，他特別要證明人們所接受，視為永恆有效的觀點卻是超驗的幻覺(transcendental illusion)。然而，就如同康德可以揭露形而上學的超驗幻覺，馬克思也認為科學可以拆穿意識形態的超驗幻覺。但是科學並不能除去意識形態，因為意識形態是一種必要的元素，其功能在於支配階級需要意識形態來隱藏其利益。摧毀意識形態乃革命行動的任務。證明上層建築的意識形態性格則是科學理論的任務。馬克思相信他已經解決了這項科學問題。在這一方面，韋伯的立場如何？不消說，韋伯明白承認關於下層及上層建築的問題

（以及它們之間的關係）。韋伯也在實質分析中，用例如「實在的」(real)及「理念的」(ideal)元素這些概念來思考；韋伯同樣熟悉意識形態的問題——也就是說，對原本適切之理念的矯飾，它們在上述超驗幻覺中的扭曲。但在此我們看到了第一點的歧異——對韋伯而言，決定性的差別在於：儘管他承認下層及上層建築間的關係，儘管他接受意識形態作為特殊利益之表現的意涵，但是，形成上層建築之理念，其最終來源乃是具有自主性的，而不能從「社會存在」(social existence)加以引伸。

韋伯不接受馬克思「社會存在決定意識」的說法。當然，他並不宣稱意識決定存在。但是他表示，形而上學、宗教及神話的終極源頭，不能從社會存在加以引伸，它們有自主性的起源。

假如情況是如此，那麼韋伯面對著一個非常嚴重及困難的問題：怎樣解釋下層建築和上層建築之間，實在的與理念的元素之間的關連。無論如何，他不能回歸到單線因果論，回歸到人們談到馬克思的「相互影響」時亦無法祛除的因果解釋。這樣做毫無意義。在關閉了馬克思所打開的途徑，因果及直接衍生的途徑之後，韋伯如何解決這個問題呢？

韋伯並未提示對此問題系統性的解答。但是在其一般宗教社會學之中，有一些跡象提示到這個問題的處理。他的理論取向之基本概念散見其作品各個部分，卻未曾確實告訴我們他的指涉意涵。然而，在其系統性的宗教社會學中，我們可以從「選擇性近似」(elective affinity) 這個概念中發現其真實意涵。韋伯思考的脈絡並非相互因果關聯而是選擇性近似的概念——亦即在最普遍的意義下，存在與意識之間選擇性的近似。這裡不允許我們完整地處理這個課題。但可以這樣說：在其系統性宗教社會學中，韋伯做了如下的理論建構。首先，他指出社會團體及階層，探索它們的特殊利益何在。接著，在研究的第二階段，他研討隨著這些特殊利益而自然出現的是何種適當的世界觀，何種關於世界及人類本質的一般見解，這樣便能了解小農、工人、中產階級等等之世界觀。然後，他採取最後的、第三個步驟，並探問（借用謝勒<Max Scheler> 的一種說法）這些關於世界相對而言自然的面向，在何種程度下同那些自我演進的宗教系統及哲學兼形而上學的玄思之神學建構，相一致或是相衝突，也即研究前者怎樣有助於或妨礙到後者的出現與發展等等。

進一步說，選擇性近似的概念，亦為文學界所熟知。我們可以在哥德的作品中看到此一概念。有趣的是我們也能在早期化學元素之間吸引力及排斥力的概念中發現類似說法。韋伯用這個概念來解決上層和下層建築之間、實在和理念之間關係的問題，而此一問題，馬克思似乎以意識形態的概念予以解決。無論吾人如何看待這一韋伯式的解決，它和馬克思的解決方法有著根本的不同。我們不妨用另一種方式來說明其間的差異：馬克思體系的特徵可以說是一種登堂入室(access)的（註10）一元論的過程；韋伯基本上是一種曲折迂迴的二元論。以一個更流行的術語來說，對韋伯而言，在實在與理念的領域之間，乃是有著一種「本體性的差異」。

## 肆、社會行動的問題

我們想要考察的第二點是關於社會變遷以及一般行動與特殊社會行動解釋的問題。對馬克思而言，正如經濟決定社會結構，它也決定在這領域中出現的變遷。經濟變遷是這樣的一些變遷（根據馬克思在他《政治經濟學批判》導言中的著名段落），它們或慢或快地，帶動著巨大的意識形態之上層建築，並予以轉型。當然，馬克思承認經濟結構與變遷乃是人類行動的結果這個事實。他也同樣理解另一個事實：經濟變遷本身並不能帶來社會實體的變遷，這種變遷只有透過人類行動方才可能。但是——這一點，我們相信是相對於韋伯之關鍵所在——對馬克思而言，人類行動，無論如何必要，只是一個依變項，而非一個自變項。它們只是造成變遷的機制、手段、方法而已。

韋伯如何看待今天較不帶價值色彩的「社會變遷」這一術語所做的解釋呢？韋伯當然理解經濟變遷的深遠意涵，如果我們只考慮特定社會中廣義的變遷之意義。他也和馬克思一樣明瞭：變遷當然只有透過行動——人們的行動或群眾的行動——才能達成。關鍵性的差異在於：對韋伯而言，行動並非衍生自存在。它代表著一種獨立的變項。行動不僅僅是環境及其變遷的產物；換言之，行動有其自主的地位。再一次，這並不是說社會變遷可以單獨地從人們的行動加以解釋，或許如關於歷史的「偉人」理論所顯示者（註11）。其意義在於，韋伯視此一問題為一種二元性的問題，一種客觀既定的經濟事實（在此即社會變遷）以及人們以最完全不同的方式對其加以回應之交互關

係。在此有兩類因素，我們必須同時考慮到它們相對的獨立性，並設法解釋其相互關係。

韋伯未曾給予我們關於此種交互作用如何發生之具體答案。然而，我們可以看到許多修正的提法。首先，韋伯的理論告訴我們社會變遷應被理解為客觀環境與主觀行動間辯證的產物與結果。但這並非全部，我們還得考慮第二點，對韋伯而言，關於社會變遷的問題，有一種非凡的行動形式。我們可以看到普通、自然、正常的行動，然而我們也可以看到另一種非凡、反常、特殊的行動。對這一類型的行動，韋伯稱之為「卡里斯馬」(charisma)（當然是在不同的脈絡中，但在此無法深論）。我們常常看到，總是有一些人會以非凡的方式來作為。韋伯的論點是：在不同的社會體系，如果有某些類似「卡里斯馬」——也就是說，非凡的行動——那麼就可能產生歷史中基本上屬於質的變遷。

不論這種非凡行動的典型是冒險家（冒險家在資本主義發展上的意義是韋伯的特殊主題之一）或者是超越傳統限制，創新法律之先知或宗教的奠立者（這是韋伯所深入分析者）——這並無關緊要。關鍵的是這種非凡行動對我們稱之為「社會變遷」的現象所具有的意義。

為什麼會這樣？與馬克思相反，韋伯視社會體系的變遷不是正常、自然，以及理所當然的，而是反常、有爭議性的，因為在所有的社會體系中，傳統的因子都有著決定性的地位。這又產生了傳統、熟悉、重複性的行動如何被打破的問題。

韋伯將行動的決定論代之以非決定論。然而，這意味著科學並無法直接預測社會變遷是否發生、如何發生。這一點和馬克思形成對比，馬克思固然不認為科學可以告訴我們實際上人們怎樣行動，朝那個方向行動；但是，根據他的社會變遷理論，科學卻可以告訴我們這種行動必須採取何種形式才算正確的。對韋伯而言，科學地解釋正確行動的問題是不可能的；對馬克思而言，那卻是可能的。這是他整個體系中的基本立場之一。

## 伍、辯證法的問題

第三點是有關社會動力及辯證法的問題。相對於前述第二點矛盾，這裡

的課題不是社會變遷的原因，而是社會變遷的規律。在英語世界中，人們將其稱之為「社會變遷的模式」。就馬克思而言，其體系之基本特徵在於內部及外部的矛盾因素，或者是衝突所導致的各種社會因素之間的相互矛盾。事物之所以發展，其律則不是別的，而是辯證的過程。這種辯證的過程以下列方式自我展現：首先，衝突只是潛在地呈現並隱藏於相對和諧的利益之中。接著它變成爲相對立、不容調和的衝突之浮現。這種衝突形式不斷地升級，最後到達一個臨界點而衝破現狀。這就是革命的情境，此時只有藉著新社會體系的創造才能解決原先的矛盾與衝突。這種從一個社會體系向另一個社會體系的轉型，無論是否肇因於外部因素，或是以一種革命的形式來引發，都無關宏旨。

韋伯也見到了社會衝突這個問題對社會變遷的重要性。如果我們要加以分類，韋伯和馬克思一樣，屬於衝突論者，而不屬於和諧論者的陣營。到此爲止，韋伯和馬克思想法一致。馬克思和韋伯的差別開始於各別賦予衝突這個事實的意義。首先，韋伯決不理所當然地認爲衝突本身像前面所述及的方式來發展出一套內部的辯證動力。換言之，一個社會很能夠繼續存在，無論受到衝突多大的震撼，只要傳統持續發揮較大的影響力。其次，衝突可能在社會體系之內獲得解決。這至少是一種理論上的可能性。韋伯認爲只有在少數的例子才會發生那種馬克思視爲正常的，由舊社會轉向新社會體系的一種轉變。

顯然，這對於社會體系變遷理論的詮釋有著深遠的後果。簡單地說，我們可以將兩人的立場做成一個對比：馬克思是搞衝突辯證理論，可是韋伯卻持解決特定衝突之多種可能性的理論。

## 陸、進化的問題

我們將處理一個相當棘手的問題，那就是第四點涉及進化的問題。這牽涉到歷史變遷過程中，不同社會體系之間相互的關係。在此，我們探討的不是任何社會體系的內部變遷，而是社會不同的特定形態或階段之間的動態關連，這包含了進化問題。

有人指出馬克思不可能是個進化論者，因爲他提倡革命，而革命是是突

變的，這與漸進演變的進化不同；也有人說馬克思在原則上不會是個進化論者，因為他倡導的是衝突的辯證。這兩種否證，無論表面上多麼合理，在我們看來似乎都不正確。

進化與革命之間的對比其實並非一種二律悖反，也即並非完全互相排斥之物。進化的過程中可能利用革命作為手段。關於第二種論點，我們以為在馬克思有關社會體系內部變遷及不同社會體系之相互辯證關聯兩者之間，必須做一個斷然的分別。我們的論點是——這和熊彼得的觀點一致——馬克思用辯證法的原則來解釋社會的內部變遷，但在說明不同社會體系的前後關聯時，他則使用進化論的框架。這至少適用於下列構成進化理論的關鍵因素。

首先，每一個社會體系都在前一個社會體系中潛在地、逐漸地成形。馬克思應用了從舊社會的「子宮」孕育出新社會這個比喻。其次，每一個體系必然跟隨著前一個體系來出現，因為原先的體系不僅僅為其後繼者創造了條件，也是後者的起因。第三，在進化序列中的每一個體系是比其前一體系較為高級的一種形式，不僅僅在技術分化的程度方面，也是在絕然普遍的意義上：它代表在道德、智識、政治、經濟，及技術上發展的較高階段。馬克思確實是現代資本主義體系最尖銳的批判者。但不要忘記，沒有人會像他一般對資本主義發出如此肯定的讚語，要將這肯定的因素與批判的因素分離是完全不可能。批判指涉的是——資本主義還不是社會主義，僅只包含了其潛在性——這件事實。而讚語則是宣稱資本主義乃是代表著迄今社會體系發展歷史中的最高階段。

有趣的是，我們看到韋伯偶爾也應用進化論的架構。在關於古代晚期結構的精彩研究中，他探索在中古時期趨於成熟之封建制度的源起。但從這一點就下結論說韋伯是個進化論者乃是錯誤的。如以衡量馬克思是進化論者的標準來加以歸類的話，韋伯不是個進化論者。事實上，他激烈反對進化論的三個關鍵性特點，特別是當它們被應用於社會範疇之際。換言之，他反對後進的社會在前一個社會中先行成形的論點；他反對發展階段必然性的論點；而且，他特別反對技術上較為分化的社會也在其他領域——政治、智識及道德上——擁有更高價值的觀點。韋伯問道，我們如何可能將現代世界評價為優於古代世界？這一點對他來說是根本不可能的。無論如何，在科學分析的基礎上是不可能的。對馬克思而言，那是可能的，因為他是個進化論者。

## 柒、科學的範圍

現在到了最後一點，這關連到歷史兼社會發展的意義與目的，以及科學研究的範圍。「發展」這個字眼在此是完全不帶色彩、僅具形式的意義的。對馬克思而言，牽涉的問題是歷史所趨向的終極目標，以及在歷史發展過程中自身所展現的終極意義。我們知道，他相信他能夠同時解答這兩個問題，而且不是像玄思的哲學家或烏托邦社會主義者那樣，而是憑藉著科學的權威。他相信科學能夠針對歷史的終極目標與意義之問題提出清晰且客觀有效的解答。

為何如此呢？對馬克思而言，可以確定人類歷史原本就蘊涵著內在的目的性，而且會本性地實現此一目的。重要的是馬克思發現歷史的最後階段與冠冕乃是社會主義：這即是理論對當前特殊情境之應用。在此，關鍵性的問題為馬克思並非在宣傳社會主義，而是欲使社會主義自我顯現為歷史的必然歸趨，也是歷史的終極目標。

在這方面，馬克思有別於進化論者，後者倡言一種不斷提昇、無限的歷程。他給予歷史一個明確的終點：社會主義的特徵在於發展到極端，往後再也沒有任何事可以發生。同樣地，馬克思透過人的基本自由與異化間的鬥爭，或是支配與反支配間的鬥爭，具體地解答了歷史目的之問題。

韋伯與馬克思關鍵性的差異不在於細節而在於基本。問題不是社會主義與資本主義，或者支配與反支配間的對比，馬克思所堅持而為韋伯徹底反對的是到底科學足以解答社會歷史的終極目標及其意義。對韋伯而言，這超出了科學的領域。當然，在此我們可以看到韋伯的社會學及一般科學中著名的價值中立原則之濫觴。在韋伯看來，科學並沒有資格來解答關於歷史目的及意義的問題。面對這類問題，我們只能夠臆測性地思索。在這方面，韋伯以為馬克思與其他空想體系間並沒什麼差別，反而呈現形式上的一致。馬克思未能憑藉科學的權威解答烏托邦社會主義者所提出的問題。空想的社會主義和所謂科學的社會主義之間的區別於此已經泯滅，而無從分辨。



## 捌、成果及社會學的透視

有關馬克思—韋伯比較之主流意見，是認為兩人之間儘管有著細節上的差異，卻無原則上的區別。但在我們看來，情況正好相反，而應扭轉過來。除了提出問題的方式類似之外，可以正確地說：在許多重要細節方面，兩人英雄所見皆同；但在有關我們在社會科學中必須面對的關鍵性方法論的立場之上，兩者卻有著根本的差別。

在這篇短文中，麥爾只是提出問題，而不想批判分析或追問馬克思或韋伯誰才是對的。他質疑人們一定得決定比較喜歡誰嗎？也許有人，例如彼得·貝格(Peter Berger)，想嚐試結合馬克思和韋伯的宗教社會學，但我們以為他的工作雖然頗富挑戰性，最後卻不可能完成。此外，是否還有解除荊棘的第三種方法？馬克思和韋伯批判性比較研究的問題已超出了這些範圍。因之，麥爾想做的只是為此類批判分析提供一個基礎，然後也想提出兩點負面的觀察，來說明吾人面對問題時應留意之處。

在1970年代裡，馬克思主義者常常說，不論韋伯可能表達那些意見、立場，基本上韋伯誤解了馬克思。他們認為韋伯所分析、批判的是庸俗的馬克思主義；或者說，韋伯的批判涉及的是「庸俗的」，而非「真正的」馬克思。在韋伯過世，而馬克思早期作品越來越容易接觸得到，特別是著名的巴黎《經濟學哲學手稿》問世以後，這種意見更加普遍。他們說只有對這份手稿的詮釋才能提供我們對馬克思真正的瞭解，然而韋伯以及許多來自馬克思主義陣營（包括考茨基、普列漢諾夫、拉布里歐拉等等）的詮釋都只涉及到庸俗的馬克思主義，而不能代表真正的馬克思（註12）。

關於這一點，有兩件有趣的事值得我們注意：首先，無疑地，馬克思早期作品的重新發現給予馬克思研究新的刺激。然而，問題在於，這個刺激能否讓我們找到理解馬克思的鑰匙。1932年時，馬克思早期作品的編纂者（註13）表示了期望說：終於吾人可能像馬克思理解他自己般地理解馬克思，那麼如今針對後期馬克思之種種毫無結果的爭論便可以告一段落。

審視有關這方面的文獻，我們必須遺憾地承認這些期望並未能實現。首先，關於青年馬克思的詮釋，有著鉅大的分歧。想想看那些將青年馬克思理解為僅只是黑格爾之逆轉的詮釋，或者像馬孤哲(Herbert Marcuse)所為，

試圖將青年馬克思引領到現象學領域附近。事實上，迄今關於馬克思早期作品的正確詮釋，意見並非一致。而早期與晚期馬克思之間關係方面，看法甚至更為分歧。在很大程度上，只有後期的馬克思才是韋伯從事研究的根據。

相對於認為馬克思一生作品中呈現著統一性，而其早期作品乃是理解後期之線索的看法，則為阿圖舍(Louis Althusser) 的觀點。他以為青年馬克思和壯年馬克思之間有著基本上的矛盾。壯年馬克思並非青年馬克思之持續、發展與完成，而是全然地予以超越。根據阿圖舍的觀點，或許可以用現代結構主義來詮釋馬克思。必須交待的是關於在多大的程度上，這些討論、這些馬克思研究的新領域曾影響了韋伯對馬克思的理解。我們可以從三方面來討論這個問題。首先，我們以為早期和晚期馬克思之間是有著內在的延續性。我們也認為有一個基本的課題，就像任何作品的主軸一般，一直貫穿著馬克思所有的分析：人類無法避免的異化是如何發生，如何可能重新予以克服？這是長久以來西方哲人諸多討論涉及異化問題的根本。

其次，毫無疑問，韋伯未曾得見馬克思科學理論的這個層面——至少是看得不夠充分。這一點也不奇怪，因為當時還看不到那些重要的作品，而且少量關於資本主義社會商品拜物性格的評論在處理這個問題時並不充分，也不夠清楚。但因此就可以說（就像那些指控韋伯誤解於庸俗馬克思主義的人常常所做的），韋伯關於馬克思的方法論之基本原則所明示或暗示的見解是謬誤的嗎？韋伯的見解需要支持，需要哲學人類學的支持，這正如在馬克思本身所思、所言需要倚靠一樣。韋伯對馬克思方法論上的基本理解應屬大體正確。

第三，馬克思主義的擁護者對韋伯的進一步批判和反對剛好走錯了方向。他們並不宣稱韋伯誤解了馬克思。他們反而訴諸所謂的傳統意義上的「知識社會學」，也就是理念的社會學，包括那些在科學中發現其理論展示的理念。他們尋找證據來說明韋伯的觀點絲毫不代表任何學術，用馬克思主義的術語來說，反而是一種「意識形態」。有可能韋伯的作品代表著其資產階級侷限性之極端複雜的表述嗎？（正如我們所知，他把自己描繪為資產階級者）。他是否僅僅表述了現代中產階級市民的典型愚鈍，只是由於後者無法領會真理？在此，麥爾顯然反對馬克思主義者隨便把一頂意識形態的帽子拋給韋伯，因之他表示願意提出兩點知識社會學必須面對的問題來供大家討論。首先，

我們可能根據一件學術作品的社會根源而得到其客觀有效性的結論嗎？第二點，什麼才是學術足以成爲學術、學術研究成爲可能的社會環境？

## 玖·結論

上述兩點是麥爾相信在檢視反對韋伯時必須提出的問題。韋伯自己建構了相反的命題，認爲社會根源與科學研究之有效性完全是兩碼事。關於此，麥爾認爲吾人確信什麼是使學術成爲可能之社會環境此一問題，需要不同於馬克思主義者所提供的解答。

「馬克思與韋伯」，或稱是「馬克思或是韋伯？」的問題依舊存在。在回答這一問題時應根據他們具體的作品而後定。但有兩方面的問題。第一，對周遭的社會現實做出詮釋與描繪乃是一般社會科學，特別是社會學的任務。顯然，問題在於：究竟是馬克思還是韋伯誰給了我們對社會現象之描述與理解上較佳的線索？當然，在描述性的部分，我們從馬克思處所習得的極爲有限。描述乃是社會現象學範圍裡熟悉的事物。而在此一領域，韋伯告訴了我們許多的材料。至於關於各個層面（社會現實的起源、性質或結果）之詮釋問題，我們還得追問的是：如果我們想要掌握周遭的社會現實，無論是它的歷史起源或當下的現況，究竟是韋伯抑或馬克思的範疇對我們較有幫助？對於那些現代世界，尤其是現代資本主義歷史結果之起源，誰提供了我們較佳的訊息？對那些直接影響到我們的社會問題，例如資本主義與社會主義體系，誰做出了較佳的詮釋？我們相信這是必須提出來的問題，而其解答端賴於我們同馬克思或韋伯持有何種的關連。

最後，必須提出一個方法論上的問題，或者用韋伯的說法，一個牽涉到方法論作爲科學理論的問題。什麼是科學得以建立的哲學兼知識論原則？對馬克思而言，無疑地，這些原則完全是由黑格爾所建構。儘管馬克思終身有多少變化，在方法學上，他始終是一位黑格爾派人物。從上面的分析，麥爾認爲人們很容易就可以根據馬克思的進化觀和辯證法證明這一點。另一方面，韋伯則是個康德主義者。韋伯相信欲解決社會科學之基本哲學兼知識論問題，只有根據康德的知識論，也就是他的知識批判。康德問道：科學如何成爲可能，指涉的是自然科學。韋伯同樣追問：科學如何成爲可能，指涉的則是社

會科學。透過提示科學之可能性與其侷限，兩人都正面地回答了問題。在這一層面上的基本問題為：馬克思對比於韋伯，乃是黑格爾對比於康德的問題。

## 註 釋

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- 註 9：把抽象的概念當成實體來看待。
- 註10：對問題的切入，也即進入問題的核心之方式。
- 註11：歷史或社會變遷是由偉人偶然推動的。
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## 德國國會調查權的執行及其功能之研究\*

郭秋慶\*\*

### The Structure and Function of the Inquiry Power in German Parliament

by

Chiu-Ching Kuo

#### 摘 要

國會調查權作為國會少數的權力，是國會為確保有效對付政府與行政的控制權，雖然英國的巴力門是第一個行使調查權的立法機構，但是德國後來的發展，的確建立完善的制度規劃，亦發揮澄清吏治之效，而且進一步成立專案研究委員會，就立法調查未雨綢繆預防問題的產生，實在是實施國會調查權有成效的例證。

關鍵詞：調查權、聯邦眾院、委員會

Key words: inquiry power, Bundestag, Committee

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# 壹、前言

就歷史根源而言，國會調查權的性質乃是作為立法對行政不信任的工具。由於我國長期以來監察院職司調查權，西方國家的國會調查權遂較少受學者關注，近來我國憲法修正條文將民意代表機關的監察院，修改為由行政機關提名之準司法機關，而失去其民意代表性，立法院是否應擁有國會調查權遂日益受到重視，但是西方國家的國會調查權，真的有如論者所謂：「國會調查權乃是國會為行使制定法律、審核預算、檢討政策與監督政府，而對政府機關、官吏或人民實施必要之調查的權力，原就是實施立法權所不可或缺之一環。」如此闡釋國會調查權，實在模糊吾人對國會調查權的認識，無法令人苟同。如今大法官會議作成釋字第三二五號解釋，明示立法院為行使憲法賦予職權，在一定條件下得行使文件調閱權，可謂促成國會調查權初步的發展，因此立法院得完成「立法院調閱文件法」的工作，但是如何落實國會調查權，發揮立法控制行政的功能，完成整體的制度規範，實在有需要參照西方國家的經驗，尤其德國國會調查權並不是像英、美是默示權，有完善的規劃，且充分發揮澄清吏治的功能，其經驗值得借鏡。

## 貳、國會調查權的形成

國會調查權是國會最古老的權力之一，其性質是國會為確保有效對付政府與行政的控制權，在整個歐洲與北美的憲政發展上，是判斷行政與立法分量的可靠依據。就國會調查權的歷史根源而言，英國巴力門是第一個行使調查權的立法機構(Achterberg, 1984: 446)。早在一三四〇年英國巴力門即設立特別委員會作為解決「政治的樞機主教問題」之主要輔助工具，其後在一六八九年的權利法案中更確立選任委員會(select committees)的作用，並於平民院正式展開調查愛爾蘭戰爭失利，以總督Lundy有叛逆嫌疑，而上奏英王，從此開創出巴力門行使調查權的先例，其後選任委員會的功能逐漸形成，並且面對皇室委員會(royal commissions)(註1)與部會委員會(departmental committees)擁有優勢的地位。再者，平民院選任委員會的重要性變成駕凌貴族院選任委員會。不過，巴力門要真正掌握調查權有兩個重大標誌，即調

閱權與證人審訊，這在當時仍受到限制（註2）。一九四五年王座法官科爾雷茲(Lord Coleridge)在霍華德對科色特(*Howard vs. Gosse*)一案中謂：「凡與公共福利有關之一切事項，而為巴力門議員應知曉者，巴力門均有權加以調查」，這的確對於強化巴力門擁有調查權具有重大意義，因此一八五八年貴族院便開始可以自主地進行審訊證人，一八七一年平民院亦通過「巴力門證人宣誓法」(Parliamentary Witnesses Oath Act)，讓選任委員會有執行證人宣誓的權利，又證人作偽證或不到場，亦得處以輕蔑國會的罪刑(Sontheimer/Röhring, 1977: 594-96；江大澍，1992：224-25)，此時英國國會調查權的發展可謂相當成熟了（註3）。

德國由於受到英國這一老牌民主國家與法國孟德斯鳩與盧梭的影響，國會調權首先於一八一六年薩賀森－威瑪－艾舍那賀(Sachsen-Weimar-Eisenach)憲法第九十一條中提及，其後一八四八年法蘭克福國民制憲會議提出的憲章，就表達出國會要求對政府與行政的資訊權與控制權（見第九十九條），乃引發德國境內活躍地討論國會調查權，進而載入各邦國的憲法之中，但是有鑒於當時行政強大的地位與政府僅對君主負責，國會調查權實在無法隨著政府的政治權力一起成長，另一方面各邦國君主主導下的政府還通告議員，「調查原則上祇是行政管轄下的行政行為而已」，政府有權拒絕國會調查委員會的詢問，造成法定的國會調查權遂無從發揮作用。基於這種情況，一八六七年北德意志聯邦憲法與一八七一年德意志帝國憲法就不再明載國會調查權了(Engels, 1991: 21；Kessler, 1979: 182)。

自從一次大戰以來，德國國會調查權呈現出自主的發展，其中關鍵性人物就是韋伯(Max Weber)，其被稱為德國國會調查權之父(Sontheimer/Röhring, 1977: 596-97；Kessler, 1979: 182)，這是因為他影響威瑪憲法、波昂基本法（憲法），以及一九一九年與一九四五年之後各邦憲法採納國會調查權的規定。韋伯一九一七年夏季以「新秩序下的德國國會與政府」為題，在法蘭克福報撰寫系列文章，一年後以「內政」(Die innere Politik)文集出版(Weber, 1971: 36)。依照他的看法，德意志帝國時代帝國眾院並沒有積極參與政治領導，而被置於「負面政治」之中：批評、控訴、協商、修訂、與通過政府草案，也就是說帝國眾院視行政領導有如敵人，而行政領導認定帝國眾院為阻撓的、無力的、好抱怨的、以及自以為是的人士之集會場所，常

以有限的資料對它加以搪塞。基於這種背景，韋伯乃欲提昇國會積極領導的角色，因為當國會能夠發揮有效的控制權，政治上才會出現負責任的領導者。其後韋伯對於威瑪憲法草案的協商，就提出帝國眾院中的少數有權利要求設立調查委員會，乃決定性地影響威瑪憲法第三十四條的制訂（註4），從此德國國會調查權的憲法化作法，便與英、美、法各民主國家採取默認（或固有）權完全不一樣。

依照威瑪憲法第三十四條，其稱：「帝國眾院經五分之一議員動議成立調查委員會，若非有三分之二調查委員會成員要求，應在公開討論下提出證據。帝國眾院議事規則規定調查委員會的人數與程序，法院與行政機關必需配合調查委員會提供檔案資料。調查委員會的調查適用刑事訴訟法，但是不能影響通郵、電報、與電話秘密。」具體言之，此條文針對國會調查權，(一)以設立臨時委員會的方式，將少數權(Minderheitsrecht)予以具體化；(二)國會調查權沒有固定的限制；(三)應用刑事訴訟程序提出證據。如此的國會調查權有如「一支魔杖，已足以強迫行政首長答辯」，祇不過並沒有成功地運作，即使小黨能夠透過調查權監督政府，但是威瑪共和最後幾年在多黨林立的情況下，國會調查權被濫用，變成激烈黨團毫無顧慮的鬥爭工具，還好戰後並沒被廢止，仍繼續透過基本法（憲法）第四十四條來實行國會調查權。

## 參、戰後國會調查權的發展

德國國會調查權以兩種形式來呈現，一個依照基本法（憲法）第四十四條的調查委員會方式進行，負責揭發政府與行政弊端與醜聞，由反對黨與執政黨之間的論爭與對質來表現，多少代表黨團政治地位的爭戰。調查委員會是聯邦眾院除了建設性不信任投票（基本法第六十七條）、預算審查權（基本法第一一〇條）、以及備詢權（基本法第四十三條第一項）之外，一種行政的控制工具。另一種依照聯邦眾院議事規則第五十六條的專案研究委員會(Enquete-Kommission)方式進行，負責預先蒐集資訊，調查事情狀況，供作立法預備，有可能同心協力處理專業性問題，而且工作上十分具有未來性。專案研究委員會是聯邦眾院嘗試利用自己的分析與知識，擺脫行政官僚所提供的統治性知識，無疑是國會控制權的另一種表現方式(Sandhövel, 1989:



92-97)。

## 一、聯邦眾院調查委員會的執行

### 1. 聯邦眾院調查委員會的程序與例證

戰後德國聯邦眾院調查委員會的設計，有意遵循威瑪憲法第三十四條的規定，一九四八年八月十日召開的赫聯金湖(Herrenchiemsee)制憲代表會議，即建議採納國會調查權於新憲法之中，至波昂制憲大會(der parlamentarische Rat)時，在社民黨議員卡茲(Katy)的提議下，為改善調查權像過去威瑪時代被激烈的少數濫用，而難於運作，決定提高設立調查委員會所需人數由五分之一提高到四分之一的議員，最後以基本法（憲法）第四十四條作成決議，國會調查權便成爲至今有效的憲法權，其原文是：

- 一、聯邦眾院有設置調查委員會之權利，經四分之一議員動議即有義務設置，調查委員會應舉行公開會議聽取必要證據。會議得不公開。
- 二、調查準用刑事訴訟程序之規定。通郵、電報與電話秘密不受影響。
- 三、法院及行政機關有給予法律及公務協助之義務。
- 四、調查委員會之決議不受司法審查。但法院對調查所根據之事實得自由評價、定斷。

此基本法（憲法）第四十四條給予聯邦眾院一加重的質詢權與控制權，以便使聯邦眾院在獨立於政府、行政、與法院等國家機關之下，進行質問與調閱檔案文件，以第一手資料自主地檢驗事實真相。一般相信，調查委員會的設立是一少數權(Busch, 1983: 95-96；Abitz, 1989: 66-69)，需由黨團名義向聯邦眾院議長提出，自從第四屆聯邦眾院以來，其正式成爲反對黨的「專業領域」，此不外乎大都由反對黨要求設立，其中以第十屆聯邦眾院成立四次算是較多的，申請設立的程序如下所列：

我們現在提出11／1680印刷品上的基民／基社黨與自民黨黨團提案。調查委員會是由四分之一議員提出申請的，因此聯邦眾院依據基本法（憲法）第四十四條第一項有義務成立。親愛的女士們、先生們！您

們反對調查委員會以基民／基社黨與自民黨黨團提案中所提之證據來設立嗎？是否有異議？——不是這樣的話，那就決議設立。(Engels, 1991: S.55)

調查委員會的組成，要先經過黨團之間的協議，通常由當前的基民／基社黨、自民黨、社民黨、和綠黨等四個黨團協調調查委員會的成員，各黨參與的人數比例是按照黨團勢力分配（註5），人數多半介於七位與十一位之間，偶而有高達十三位，像最近的「商業合作領域」調查委員會，不過人數過多並不利於調查的進行。待黨團之間對調查委員會成員協調通過後，提交聯邦眾院議長任命。至於主席人選，由資深委員會(Ältestenrat)決定，依聯邦眾院議事規則第十二條規定，調查委員會主席以黨團勢力決定，藉由 Sainte Lague／Scheper的數學比例程序來完成，通常最大黨團的議員成爲主席，形成執政黨的調查委員會主席執行反對黨提出的國會調查程序(Engels, 1991: 63-70)。

當調查委員會進行調查程序，即表示其進入實質的事務性工作，調查工作耗時不一，有的像達布希(Dahlbusch)礦災調查委員會祇召開三次會議，而有的像傅立克(Flick)調查委員會需召開八十五次會議，才能結束調查。調查對象就人證方面而言，調查委員會依據刑事訴訟法第四十八與七十二條有權進行傳訊證人與專案的聽證，主席在審訊開始時，先向證人陳述所要調查的相關資料，接著提出爲了解真相的問題，但不能逾越舉證的範圍，然後進行交替審訊，首先由大黨的黨團督導(Obleute)提出，再由第二大黨的黨團督導提出，如此交替乃是爲顧及「攻擊者與防禦者」各有不同的利益，並藉此協助進一步了解事實真相，有時審訊過程比法院更爲激動（註6）。如果是專家的聽證，由於是屬於作理論的陳述、背景事實的解釋、或對具有複雜關係的事務作澄清，通常在安靜的氣氛下進行，有時還會略顯枯燥，例如對住宅公共福利權或對原子科技問題的詳細解釋，實在不像具有公開傳遞的政治與實質論爭(Kiβler, 1976: 231)。

調查對象就物證方面而言，調查委員會依據刑事訴訟法第七十二條有權向政府與行政進行文件的調閱，並且是以多數議決證據的蒐集，像一九八六年六月新家園(Neue Heimat)調查委員會主席通告經濟部、聯邦審計處、布

萊梅赫芬(Bremerhaven)市住宅興建局、以及營建公司等呈送下列文件至該會，即一切檢驗報告、一切由經濟部協商計劃下的經濟情勢專家鑑定書、一切年度報告、業務報告、以及社會報告、甚至一切監事會、顧問團、以及工作會的紀錄，總計新家園調查委員會調閱的文件超過十萬頁，不過一九八三年五月傅立克調查委員會調閱的文件卻高達一百萬頁(Engels, 1991: 148-55)。

實際上，調查委員會的舉證權真的可以全然貫徹嗎，其實它被普遍接受成法律定律是經過漫長且歧曲的道路，這由下列三個連續的程序可以看出，第一個是一九七八年的史特勞斯／夏納格爾(Strauß/Schönberg)調查委員會，其要查明國防部長史特勞斯與新聞編輯夏納格爾通話中有否被非法監聽，需要向國防部長調閱其業務範圍內的文件，可是國防部以文件的公佈有礙國家福祉，而不願意提供文件，但是調查委員會認為該文件本來就存放在波昂檢查署，不致於有危及國家福祉之慮，而且調查委員會表示將依照聯邦眾院保密的規定處理文件，仍然不為國防部首肯，調查委員會不得不在其期末報告中表示，國防部長已經侵犯到聯邦眾院的權利(Engels, 1991: S.108-114)。

第二個是一九八二年的勞辛巴赫(Rauschenbach)調查委員會，其為澄清東德國民軍勞辛巴赫中校越界進入西德與再度返回東德的經過，需要向政府調閱文件，可是不受首肯，於是申請成立調查委員會的基民／基社黨黨團便採取行動向聯邦憲法法院提出機關控告(Organklage)，祇因為第九屆聯邦眾院提前結束，基民／基社黨變成了執政黨，經撤消控告後，聯憲法法院也就不作出判決(Engels, 1991: S.108-14)。

最後一個是一九八三年的傅立克調查委員會，其為查明傅立克工業控股公司與政府官員、議員有否勾結，需要向政府調閱文件，可是政府以包含稅的秘密之相關文件是涉及個人的基本人權，而拒絕提供有關文件，於是申請成立調查委員會的社民黨與綠黨黨團便向聯邦憲法法院提出機關控告，誠如聯邦憲法法院在判決文所云：「在聯邦政府的義務範圍與界限下，必需詳細地提供書面文件給聯邦眾院調查委員會」。是故，要求聯邦政府提供文件的權利，不但是調查權的核心，而且具有憲法的位階，因為文件是在調查過程中一個特別重要的證據，它面對證人的供詞，原則上有更高價值性，因此聯邦憲法法院的判決成為國會調查權發展上新的里程碑。此後調查委員會向聯邦政府調閱文件，祇要(1)調查委員會依規定設立；(2)文件適合作證據；(3)證

據的主題不是政府正在處理的項目；(4)證據內容不是行政方面獨有負責的核心項目，均有義務提供。

萬一由於國家福祉而需要保密，此為遵循刑事訴訟法第九十六條規定：「若政府機關的最上級表示公佈政府保管的文件或書面資料，將不利於聯邦或邦的福祉時，即不需要向外界提供。」聯邦眾院調查委員會也就無法獲得文件。如果遇到像史特勞斯／夏納格爾調查委員會所顯示的，聯邦政府為排拒提供文件，乃高舉「國家福祉」的情形，調查委員會現今可以用聯邦眾院議事規則的保密規則(Geheimschutzordnung)對付之，依聯邦憲法法院之意，聯邦眾院的保密規定優於刑事訴訟法第九十六條的規定。

又萬一基於保障基本人權，而需要對私人與民間企業的文件加以保密，依照聯邦憲法法院的傅立克判決文所示，聯邦眾院調查委員會的調閱權能夠以基本人權限制，但是這並不表示基本人權的保障是駕凌國會調查權，祇是應該尊重一般的人格權與財產的確保(Ismayr, 1992: 437)。

基本上，調查委員會完成調查程序後，必需向聯邦眾院院會提出報告，其內容不外乎(1)描述整個程序；(2)基於蒐尋證據做成事實的認定；(3)提出政治評判；以及(4)向聯邦眾院與聯邦政府建議採取何種措施以資因應。待院會討論後，有可能作正式的決議，或祇是了解報告即繼續回到議程，此報告祇要不妨礙保密的規定，均得以聯邦眾院出版品印行。

調查委員會就其性質而言，基本上是控制性調查，或帶有政治宣傳的控制性調查。首先就控制性調查而言，一九七八年的史特勞斯／夏納格爾調查委員會便是一例證。這是由於南德日報曾經重點式地刊載基社黨主席史特勞斯與拜恩邦通信(Bayernkurier)編輯夏納格爾電話談論洛克希德事件的紀錄，依據史特勞斯的說法，此電話談話記錄有一部分是真實的，其他則是被捏造，因此引發有否被聯邦辦公室(Bundesdienststelle)監聽的問題，為此基民／基社黨黨團提案申請成立調查委員會，經決議由三位社民黨、一位自民黨、以及三位基民／基社黨議員組成，展開澄清行政上可能產生的弊端(Busch, 1983: 95-96)。

其次就帶有政治宣傳的控制性調查而言，一九八三年六月的傅立克調查委員會便是一例證(Strawn/Hogan, 1985: 13-15)。這是由於全國最大的傅立克工業控股公司每年大約以一百萬馬克捐給設於波昂附近聖奧克斯汀的史代

樂(Steyler)佈道團，總計十年的捐款達一千萬馬克，稅務稽查員發現實際上史代樂佈道團僅獲得二百萬馬克，而且相關文件載有傅立克的名字，因此前往傅立克工業控制公司設在杜塞多夫的總部，由會計長迪爾(Rudolf Diehl)要到一把鑰匙赴德勒斯登銀行開啓保險箱，意外發現一張所謂「迪爾名單」(Diehl-Liste)，上面登記有捐款給基民黨、基社黨、社民黨、以及自民黨的政治人物，引發對傅立克免稅問題產生懷疑，因為一九七五年傅立克曾經賣出賓士(Mercedes-Benz)公司股票二十億馬克，他爲了免除約八億五千萬馬克的稅，利用所得稅法對於特別值得籌設的投資，與對外投資法對於增進技術交流的投資設有的免稅規定，以期達到減少稅的負擔，然而這種免稅需要經濟部長裁決(當時經濟部長是自民黨的藍斯道夫(Otto Graf Lamsdorff)，所以有可能傅立克爲此捐款給政黨的重要人士。爲此綠黨黨團首先提案申請成立調查委員會，不過並沒有獲得多數接受，於是社民黨黨團再度提案申請成立調查委員會，經決議由五位基民／基社黨、一位自民黨、四位社民黨、以及一位綠黨議員組成，展開澄清傅立克如何對聯邦眾院議員與聯邦政府官員發揮政治影響力，特別是經濟部長基於什麼理由同意傅立克免稅。

傅立克調查委員會的實際調查工作，舉行了六十六次會議，審訊的證人包括現任總理與兩位卸任總理，以及基民黨、基社黨、自民黨、與社民黨的重要政治人物，成爲一次耗時最長(達二年八個月)與調查最高層級人士的調查委員會(註7)。該調查委員會首先並沒有進行證人審訊，且限制自己調閱文件的範圍，不過當經濟部長與財政部長基於稅的保密，拒絕提供有關傅立克方面的文件，一九八三年九月出現執政黨與反對黨之間的爭辯，於是社民黨與綠黨向聯邦憲法法院提出「機關控告」，獲得正面的回應。當一九八四年一月展開證人審訊前，波昂檢查官在新聞記者會上表示將控告曾任傅立克經理的布朗齊希(Eberhard von Brauchitsch)與尼敏茲(Manfred Nemity)賄賂，與控告自民黨經濟部長藍斯道夫與自民黨前經濟部長斐德利希(Hans Friederichs)，於是調查委員會開始審訊證人，第一位即是斐德利希，沒想到藍斯道夫不久就宣佈辭職，他說：「我的律師通知我，波昂法院接受檢查官對我的指控作爲主要的討論對象。我此後……將辭呈遞交總理」，不過隔天，傅立克的前會計長迪爾在調查委員會的說明，卻動搖檢查官對藍斯道夫的指控，因爲迪爾表示並非「迪爾名單」上提及的人士(此乃檢查官指控的依據)，

都是接受款項者，而且他並不重視此名單。

一九八四年十月由於「星期天的世界」(Welt am Sonntag)與「明鏡」兩個雜誌，披露聯邦眾院議長巴色爾(Rainer Barzel)自一九七三年至一九八二年間經由一家律師事務所的顧問契約，迂迴地獲取來自傅立克財團一百七十萬馬克，而再度引起媒體的關注。社民黨認為巴色爾議長的行逕被證實後應該辭職，同時咬定基民黨黨主席與總理接班人科爾(Helmut Kohl)與此事件有關連，造成基民黨陷入空前的輿論壓力，十月底巴色爾議長在調查委員會當證人，否認與傅立克財團有金錢的關係，然而隔天曾任傅立克財團股東的帕夫根(Max Paefgan)在調查委員會作證時卻反駁說，傅立克付款給該律師事務所是與巴色爾議長之間有關連的：巴色爾議長向我說他進入律師事務所後，在股東圈裡作成決議，並與律師事務所簽訂顧問契約，當天巴色爾議長在基民黨黨團中便不再獲得支持，不得不宣佈辭職。隨後調查委員會被反對黨利用成攻擊科爾總理的武器，社民黨的調查委員會成員儲克(Peter Struck)公開勸科爾總理充分準備再赴調查委員會接受審訊，綠黨的調查委員會成員希利(Otto Schily)也宣佈科爾總理將進入「瞄準器」之中(Schily, 1986: 93)，造成調查委員會的氣氛出現兩極化的情形，因為基民／基社黨提及「一次史無前例的戰役，其由一半真實與一半謊言的細密設計下形成。」祇不過科爾總理的審訊並沒有出現轟動的新聞(Germis, 1988: 125；Fabris, 1981: 239-64)。

最後值得一提的是，一九八四年十一月調查有關傅立克與捐款事件，出現政黨在政治宣傳上利用醜聞成爲對抗政敵的工具。社民黨將基民／基社黨與自民黨的聯合政府描繪成大工業的政府；綠黨的希利議員表達相同看法，且指出大工業的總理(Kanzler der Gro ß industrie)被大筆鈔票犧牲掉；基民／基社黨則朝向反擊社民黨，稱「社民黨從傅立克與德國總工會獲得金錢，變得金光閃閃，然而社會主義的士氣毫無受損。」

此外，一九八六年六月的新家園(Neue Heimat)調查委員會亦是帶有政治宣傳的控制性調查(Kusch, 1986: 12)。這是由於一九八二年初一位曾爲建商的職員，在長期蒐集工會經營的新家園股份有限公司賄賂證據，並將其賣給明鏡雜誌，而引發所謂「新家園醜聞」。基民／基社黨爲報付社民黨提議成立傅立克調查委員會，以及看準新家園醜聞與社民黨脫不了關係，爲作爲

一九八七年聯邦眾院選舉話題，藉以發揮政治宣傳效用，乃與自民黨黨團於一九八六年六月共同提議成立調查委員會，成為首次以私人企業的業務活動作為調查對象，調查過程中曾調閱不少的業務報告、監事會文件、檢查報告、貸款文件、與契約等，以了解有否保障承租人，抵觸聯邦建築法，以及對造成的損失有否採取補償措施等(Ismayr, 1992: 430 ; Richter, 1991: 13)。

## 2. 聯邦眾院調查委員會功能的分析

戰後聯邦眾院成立後八年，由於多數黨與反對黨之間對於重大政治問題立場差異大，也就是政治陣營之間具有高衝突性，因此第一屆與第二屆聯邦眾院分別成立高達九次與三次的調查委員會，而且大都針對國防與軍事領域的行政與政府控制（參考下一單元）待反對派的社民黨於一九五九年提出哥德斯堡黨綱(Godesberger Programm)，開始適應向西方靠攏政策(Westintegration)與社會市場經濟，增進對重大政治問題的共識，由對抗變成合作的反對黨，遂減少申請成立對抗政府的調查委員會次數。不過，自從一九六九年出現首次政權輪替，基民／基社黨變成反對黨，聯邦眾院政治勢力的衝突再度惡化，然而此時基民／基社黨並沒有善加利用成立調查委員會對抗政府，這一方面因為基民／基社黨在聯邦參院擁有多數，足以確保對立法的影響力；另一方面由於有不少議員陸續背叛執政的社民黨與自民黨投入基民／基社黨；因此基民／基社黨採取合作的反對黨策略，期待儘快取回政權，成立調查委員會對抗政府對他們而言，就變成不太有意義。然而一九八三年第二次政權輪替，基民／基社黨成為執政黨，導致聯邦眾院政黨之間政治衝突又呈現惡化之勢，由於此時社民黨不同於過去的基民／基社黨，不可能利用聯邦參院發揮對立法的影響力，加上綠黨以反體制的姿態進入聯邦眾院，在野的政治勢力自然利用成立調查委員會的機會公開地對抗政府，以彰顯自己是替換執政黨的最佳選擇對象。

一般而言，調查委員會的作用是調查政府與行政的弊端，藉以發揮國會控制權，然而一旦進入實際調查工作，就會在提出調查報告之前，對受調查者的行為產生不可避免的壓力，此時就呈現出調查的實際作用(Stadler, 1984: 120-22 ; Schleich, 1985: 18-22)。換句話說，國會調查權的重心本來是控制性調查，實際運用時卻往往夾帶政治宣傳，其目的是要促成輿論強烈的關注，

進而爭取選民的認同，因此所謂的政治醜聞就成為當今國會調查權受矚目的對象。基本上，「醜聞」本身是對公共生活的個人一種遣責的表現，完全是人格的問題，個人化的情況是減少了問題的複雜性，而增加民眾對調查的興趣，以及強化政治宣傳的作用，當然比起行政機關弊端的調查更容易引起高度的注意力(Germis, 1988: 125)。此外應該了解「政治是相當需要利用宣傳以贏得權力」的道理，調查政治醜聞必然會帶有大肆宣染的傾向，何況調查委員會就是一個政治宣傳的適當工具，因為政治醜聞被當作制度化下衝突的主題，提昇了新的論爭層面，少數黨自然會對政敵展開政治宣傳的攻擊，藉以擴展媒體與輿論的重視(Steffani, 1960, S.153；Schick/Zeh, 1993: 58)。

## 二、國防委員會作為調查委員會與例證

在德國有關國防、軍事領域的調查，聯邦眾院並無權成立臨時性的調查委員會，此國防、軍事的調查涉及安全政策應予以保密，改由國防委員會負責。基本法（憲法）第四十五 a 條稱「國防委員會享有調查委員會之權利。如經委員四分之一的動議，有對特定事項進行調查的義務。」基本上，如此此安排一方面為促成國會控制與政府的國防、軍事計劃與措施保密之間有所妥協；另一方面國防委員會成員較專精於軍事防禦問題，比由黨團任命所組成的臨時調查委員會，更適合貫徹調查程序。

當四分之一國防委員會成員決定針對特定事項展開調查，其是享有調查委員會的權利。在調查程序中，可以執行調閱權與審訊證人，同時也可以向法官申請蒐索與扣押證物，如果涉及國防機密，可經決議以秘密方式審理，最後呈遞院會一份報告而結束調查程序，但並不是每個調查程序均會提出報告，院會祇准依據國防委員會的報告內容進行討論。不過國防問題多年來有一「基本共識」，即國防委員會扮演調查委員會的角色時，首先作為國防的協助者，然後才是政府與行政的控制者(Busch, 1983: 71-76)，因此在這種克制的情況下，反對黨爭論國防、軍事問題的空間就被限制下來，迄今國防委員會是十分有限的使用這一權利，其中以第二屆與第八屆聯邦眾院的四次與二次是較多者。

有關從事調查工作的國防委員會，一九八四年一月調查弗納／屈斯林(Wörner/Kießling)案件便是一例證。這是由於國防部有一樁關於屈斯林將



軍的流言，指出屈斯林將軍有同性戀傾向，因為他與一位上校的親密行為被看到，使得他不再被北大西洋公約總司令羅格斯將軍召見。國防軍安全局史勒德上校指示設在杜塞多夫的軍事反間諜中心負責查明事實，怡代(Idel)上士是此專案的調查人，他被科隆警察局告之，一九八三年九月五日深夜兩位刑警在科隆地區追緝殺人嫌犯時，由愚斯登同性戀咖啡廳老板得知他認得十二年前一位名叫屈斯林的客人，而且由Tom-Tom同性戀咖啡廳男侍獲得一張團體相片，其中有位自稱是「國防軍的Güntor」之老顧客。怡代上士獲知此情報後，立即向國防部參事華得曼報告，華得曼要求提出書面報告，怡代上士就在證據不充足的情況下向國防部提出報告。

一九八三年九月十五日屈斯林將軍被國防部長弗納約談，雖然屈斯林將軍亟力反駁指控，且表示願意用名譽來擔保，可是國防部長弗納不予採納，要他以長期病假的方式於明年三月三十一日退休。當一九八三年十一月三日國防部常務次長希勒接到這個案子，建議屈斯林將軍提早於十二月三十一日退休，國防部長後來也同意此建議，祇不過他並沒有通知屈斯林將軍此一決定，待屈斯林將軍接到國防部頒發退役證書，立即提出公職人員違法亂紀訴訟，為證明對他的遣責並不成立。

一九八四年一月五日南德日報頭版報導「弗納免職屈斯林將軍」，此事件就開始公開化，依其報導認為三位四星上將當中以屈斯林將軍最可能昇為北大西洋公約組織副總司令，祇因為他與北大西洋公約組織總司令羅格斯之間一再存有摩擦，這十分可能是屈斯林將軍遭免職的原因，但是隔天Bild畫報卻報導，軍事反間諜中心有屈斯林將軍同性戀傾向的資料，逼得國防部長弗納不得不在一九八四年一月十二日表示，屈斯林將軍出入愚斯登與Tom-Tom同性戀咖啡廳，其同性戀為遭免職的關鍵原因，然而當天晚上ARD電視台報導國防部認定出入同性戀咖啡廳的那個人，是與屈斯林將軍面貌極為相似，從此國防部長弗納免職屈斯林將軍的決定受到民眾的懷疑，此事件也就愈加擴大。社民黨首先要求國防部公佈決策內容，不過國防部長弗納不作回應，社民黨乃要求弗納辭職，弗納就赴聯邦眾院為自己強力辯護，反對黨無力回應，社民黨祇好於一九八四年一月二十日向國防委員會提議進行調查，「謂祇有如此作，一切對於部長應否承擔的政治責任的評判，在憲法的規定下得以公開地確立與討論」，於是在綠黨的支持下，國防委員會採取調查委

員會的方式，展開調查屈斯林將軍被免職的事實與法律基礎。由於調查委員會的成立，社民黨成功地將屈斯林事件轉化成弗納事件，十天左右的調查中，弗納始終無法提出令人信服的理由，最後才在科爾總理決定屈斯林將軍復職與國防部長留任的情況下，平息這樁醜聞(Berg, 1984: 26; Germis, 1988: 104-14)。

### 三、立法調查權的執行

聯邦眾院調查委員會的運作，如今實際上成為調查弊端與醜聞，而聯邦眾院議員在立法調查上，仍有義務未雨綢繆以預防問題的產生，因此利用學者、專家服務立法，不使立法單方面由行政提供資訊，立法的實務便有自主的理論性知識支撐，而且議員與學者專家共同研商，亦能激發探討未來的議題(註8)，所以立法調查走入對話式的政策諮商(Politikberatung)之路，成為德國國會史上，首次出現議員與學者、專家合作有制度化的發展(Hampel, 1991: 68-69)。

立法調查權的制度化的肇因於一九六四年第四十五屆法界人士大會(Juristentag)中，恩克(Horst Ehmke)強調「立法調查與事實調查無法由當今的調查委員會勝任，應予以重視」；其次薛弗(Friedrich Schäfer)一九六七年出版「聯邦眾院」一書，亦建議未來可能的話，聯邦眾院應設立由議員與學者、專家組成的委員會，藉著向學者、專家諮詢以處理立法的重大問題。」(Schäfer, 1982: 298-302)後來在大聯合政府時代，社民黨莫姆(Karl Mommer)議員的提案，有助於聯邦眾院設立專案研究委員會(Enquete-Kommission)，莫氏的理由是：「聯邦政府可以設立由社會各界代表組成的小組從事立法諮詢，有時並沒有立法者的託付，便將立法草案交付聯邦眾院審議，然而聯邦眾院並不清楚這些小組成員的實際狀況。」(Mommer, 1969: 161)從此社民黨黨團就在一九六九年三月十九日正式提案要求在「小型國會改革」中納入成立專案研究委員會，所以新的議事規則第七十四 a 條規定：「一、聯邦眾院為處理涵蓋面廣泛的與富有意義的事物，經四分之一議員動議，並附帶委託事由，得成立專案研究委員會；二、專案研究委員會由黨團協調下任命，若不同意，則由黨團依議席多寡決定成員，非議員部分以九名為限；三、每個黨團至少派遣一名議員參加，但在聯邦眾院決議下，亦可派遣多名議員參加。」

待一九八〇年修改議事規則時，第七十四 a 條的內容轉化成第五十六條，對原條文略有增修，學者、專家的人數有增加，但議員人數應該在專案研究委員會中占優勢，且立法期間結束前提出報告，若在立法期間無法完成任務，可以在下屆聯邦眾院再度成立。

自從一九六九年以來，專案研究委員會從事以下的議題，如「未來核能政策」、「憲法改革」、「基因技術」、「新媒體與資訊技術」、「保護大氣層的預防措施」、「愛滋病的危險與有效預防途徑」、「婦女與社會」、「未來教育政策—公元二千年的教育」、以及「對外文化政策」等，其中像「愛滋病的危險與有效預防途徑」專案研究委員會，由四名基民／基社黨、三名社民黨、一名自民黨、與一名綠黨議員與八名學者、專家組成；「未來教育政策—公元二千年的教育」專案研究委員會，由四名基民／基社黨、三名社民黨、一名自民黨、與一名綠黨議員與八名學者、專家組成。論時間長短，「對外文化政策」專案研究委員會持續達五年、「婦女與社會」專案研究委員會持續達六年。此外，至一九九〇年總共計成立十七個專案研究委員會，其中五個由兩個黨團共同申請成立，七個由反對黨黨團申請成立，與五個由執政黨黨團申請成立(Schick, 1993: 49)。

### 1. 專案研究委員會的程序與例證

聯邦眾院經四分之一議員動議得成立專案研究委員會，對反對黨而言，是一項控制政府行動與資訊的凸出工具，祇不過它有非議員身份的學者、專家參與，性質上不像純粹聯邦眾院委員會(Schmittner, 1972: 503)。依據聯邦眾院議事規則第五十九條規定，專案研究委員會應具有議員身分，如同聯邦眾院議長是不以政黨立場主持會議，會議中學者、專家與議員擁有相同的權力。雖然專案研究委員會不像調查委員會有嚴謹的舉證權，但是藉著舉辦公聽會與採納學術機關的專家鑑定書，有助於深入了解變遷社會的需求與獲取專門知識，進一步研判析議題，像「基因技術」專案研究委員會便舉辦十八次公聽會，其中四次是公開舉行，並接受四份專家鑑定書，甚至派代表團赴日本參訪。同時，專案研究委員會可以設立工作小組(Unterkommission)，以減輕專案研究委員會對特別問題的負擔。最後，專案研究委員會應以簡明的方式提出報告，作為聯邦眾院決議的依據，而且此報告由聯邦眾院出版，

方便民眾與有關團體作為參考資料。

有關專案研究委員會的立法調查，一九七〇年十月八日成立的「憲法改革」專案研究委員會與一九七一年三月一日成立的「對外文化政策」專案研究委員會均是良好的例證。「憲法改革」專案研究委員會首先由基民／基社黨黨團提案，接著社民黨與自民黨黨團再度共同提案，在聯邦眾院決議下正式成立，其中有多位基民／基社黨、三位社民黨、與一位自民黨議員，以及七位由邦議會任命的人士與五位國家法學教授，受委託面對德國迅速的社會與政治發展，基本法（憲法）應如何秉持憲法基本原則，繼續適應憲政實際。

「對外文化政策」專案研究委員會由基民／基社黨黨團提案，在聯邦眾院決議下正式成立，其中有二位基民／基社黨、二位社民黨、與一位自民黨議員，以及四位學者、專家，受委託調查當今德國對外文化政策的目標、內容、與成效，供未來聯邦眾院對外文化政策的立法參考(Schmittner, 1972: 210)。

## 2. 專案研究委員會功能的分析

專案研究委員會不同於調查委員會，它通常致力於實質性工作，多數形成意見，不是黨團間政治地位爭鬥的場所，其僅就受委託的主題，經由議員與學者、專家在各自「自主領域」的互助下，儘可能蒐集資訊，以有利於聯邦眾院的知識與分析，擺脫行政官僚體系的統治知識，不但預備聯邦眾院的立法工作，而且可以協助政治計劃(politische Planung)，足以強化調查委員會與公聽會的功能，實在是一種政治與學術合作的「實用模式」。

依照布拉斯(Heiko Braß)的看法，專案研究委員會對以下聯邦眾院功能有裨益：一、就代議與匯聚的功能而言，過去聯邦眾院成立多次有關技術性的專案研究委員會，相當程度彌補了聯邦眾院本身對自然科學與專門技術的貧乏。再者，被選派進入專案研究委員會的專家，時常都能夠體會公益的重要，特別是在「基因技術」與「未來核能政策」專案研究委員會的公開討論中，有代表性的觀點都能夠反應出來。二、就統合的功能而言，像「基因技術」與「保護大氣層的預防措施」專案研究委員會，使醫學或自然科學的專門知識、經濟利益、與政治目標在公開討論下統合在一起；「憲法改革」專案研究委員會透過新的憲法與國家權解釋，強化了人民對基本法（憲法）的共識(Braß, 1990: 92-95)。

## 肆、結論

國會調查權由聯邦眾院兩個委員會執行，由於它們的任務不同，帶來組織上、工作氣氛上、以及協商過程有所差異。調查委員會對於政府與行政控制，尤其適合弊端的揭發，因為有媒體的公佈，其控制的效果不容低估；專案研究委員會從事立法與事實調查有助於提高立法品質。

雖然國會調查權的功能顯著，其執行上仍出現有待改革之處。就調查委員會而言，晚近有私人的經濟領域成為調查程序的對象，如何確立私人的權利與義務，以及保密範圍的法律規範，是不容吾人忽視的(Richter, 1991: 96-118)。其次，就專案研究委員會而言，其成立與運作既不是由憲法，亦不是由聯邦法律加以規範，僅由聯邦眾院議事規則扼要地說明，而回顧過去專案研究委員會的成立，不過部份上實現預備立法與計劃的功能，不少專案研究委員會對立法調查的建議，並沒有促成聯邦眾院採取立法措施(Thaysen, 1972: 1-20)。為此，在野的社民黨黨團早在第五屆聯邦眾院就提出專案研究委員會職權草案，而且七〇年代初在野的基民／基社黨黨團也對於技術結果的評估，主張設立常設性諮詢機構，像美國國會的「科技評估局」，祇不過當時要不是爭論頗多，就是意見無法一致，遂無疾而終。如今對於專案研究委員會的改革，至少應付予其類似於調查委員會或訴願委員會在法律上有消息與控制權(Auskunfts- und Kontrollrechte)，以發揮對外的影響力(Ismayr, 1992: 505)。

## 註 釋

註1：由政府選派若干超黨派之專家組成，採自願的作證程序，針對特定事項之真相，提出調查報告，供國會立法參考。見Kurt Sontheimer/Hans H. R{hring (hrsg.)，德國政治體系手冊(Handbuch des Politischen Systems der BRD)，München 1977, S.594.

註2：像證人的審訊需在院會中以準司法方式進行，見前揭書。

註3：今天，英國國會選任委員會由於將自己的任務轉讓給政府設立的部會委員會與君主召集的皇室委員會，其實際上並沒發揮作用。若從司法功能角度來看，重要性亦不高。見Philip Norton, *The Changing Nature*

of the House of Commons: External Challenges -- Internal Reinforcements', in: Herbert Döring, Dieter Grosser (hrsg.), 英國—接受考驗的政策體系(Ein Regierungssystem in der Belastungsprobe), Opladen 1987, S.79-82. 江大樹，國會調查權與聽證制度，載於林嘉誠等著，民主制度設計，業強出版社，民國81年。

註4：其實作為威瑪憲法草案擬定者的普路仕(Hugo Preuß)，在一九一七年時亦曾要求帝國眾院應擁有調查權。見Carstem Germis，國會調查委員會與政治醜聞(Parlamentarische Untersuchungsausschüsse und politischer Skandal), Frankfurt/M. 1988, S.33-34).

註5：對第12屆聯邦眾院是有例外，因為1991年2月21日聯邦眾院的院會決議，雖然聯盟九十/Bündnis 90與民社黨並不具備黨團地位，仍各給一個參與調查委員會的名額，以協助調查工作。

註6：迄今祇有印刷媒體記者能夠進入調查委員會的公開會議，電子媒體像收音機與電視則並未獲准進入。見Dieter Engels，國會調查委員會—德國聯邦眾院的基礎與實際，(Parlamentarische Untersuchungsausschüsse -- Grundlagen und Praxis im Deutschen Bundestag), Heidelberg 1991, S.67-69.

註7：Alfred Grosser稱這是一個在法國幾乎不可想像的過程，其對德國民主政治是一個正數。見Alfred Grosser，西方國家中的德國(Deutschland im Westen)；München 1985, S.132.

註8：聯邦眾院的學術服務(Wissenschaftliche Dienste)機構與此功能不同，其僅作為補充議員資訊之用。

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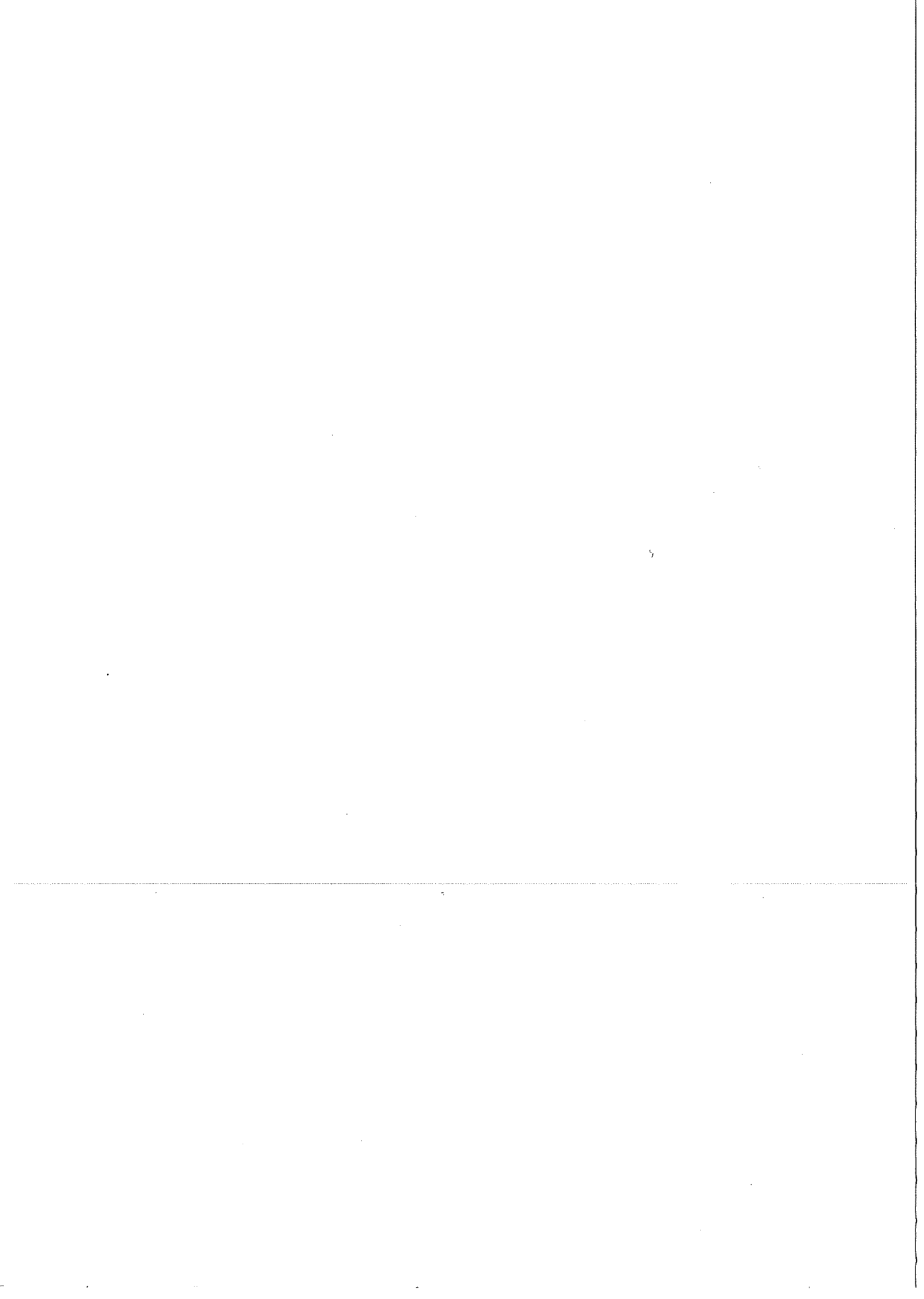
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## The Role of New Germany in Political and Economic Perspectives

By

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### 由政治與經濟層面論新德國之角色

許仟\*

#### 摘 要

德國統一的過程並非只是前西德與前東德新聞之總和，檢視各階段的德國政策，皆能提供我國統獨抉擇的參考價值。德國問題也不因統一而結案，統一後新德國因經濟與社會問題遲遲無力改善，而將新德國的政治危機推到了高點，新德國借國營企業託管局是否能改善德東境內的經濟困窘；而「歐洲的德國」或是「德國的歐洲」之國際新秩序，究竟是英美諸國的悲，抑或是德國的喜，皆值得深一層的探索。

Key words: unification, integration, German Question, German Policy

關鍵詞：統一、整合、德國問題、德國政策

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## **PREFACE**

The China fever that started from the beginning of 1990s affected and is still affecting Islanders as well as Mainlanders. Many on Taiwan believe that their island is too small to play any major international role but their businessmen and technocrats could make China a superpower in the twenty-first Century. Yet there remains a question of national identity, because of the Japanese colonialism, and the Cold War as well as the total estrangements for most of the postwar era. Due to the fact that the DPP enshrined its intention of building a Taiwan Republic into its party's charter by means of interpellation and debating in the National Assembly and the Legislative Yuan, and staged massive street demonstrations, it makes independence of Taiwan or unification of China a very important subject for both Chinese governments and all Taiwan residents.

In the history of the 20th Century, there have been three divided countries which confronting reunification issues: China, Korea and Germany. The two Germanies were unified on October 3rd, 1990. The German experience might not be the best model of unification, but it is the only one that succeeds. Still it remains great significant to analyze the objective and subjective circumstances of two German nations and the important factors in the process before and after the reunification in order to find out any possibility for or contra the integration of China.

## **HISTORICAL COMPLEX OF GERMAN QUESTION**

The whole research of the German reunification focuses on the so-called "German Question" which means "German Unification Question" in a political sense. From the historical point, since the foundation of the Roman Empire till the unification of the two Germanies, the German his-

tory seems to linger between integration and disintegration. Hence how divided nations can reach unification becomes the nuclear issue of the "German Question". The German Empire, or "the First Empire", was founded in the 9th Century by the Emperor Charlemagne (Karl der Grosse) and was dissolved by Napoleon in 1826. The Prussian offered the plan of unification and through hard measures of Otto von Bismarck and three crucial battles, the German nations again combined together when the four southern states joined the empire in 1871. This was the Second Empire, which went to an end after the first world war. The following Weimarer Republic was unstable and gave Adolf Hitler the opportunity to take over the political power. Hitler proclaimed nationalism and obtained the support from German people; therefore under the leadership of Nazi, it seems that Germany was unified again, and it was the Third Empire.

After the second World War, under the control of the alliance headed by the Soviet Union and the United States, Germany was divided into two. There were, however, subjective factors in the cause of the bigger difference after the separation. First, there was the formation of different economic policies and social systems because of the different political ideology. As for politics, the West Germany adopted the policy of West integration,<sup>1</sup> joined the NATO in 1955, the European Coal & Steel Community in 1952, the European Economic Community in 1958, the European Atomic Energy Community in 1958, and established the European Community in 1965. That is to say, West Germany entered into the western alliance positively. In 1955, West Germany proclaimed Hallstein Doctrine and insisted the Federal Republic of Germany was the sole legitimate state for Germany. Any country (except the Soviet Union) which had any diplomatic ties with East Germany would not be recognized by West Germany. As a result, West Germany gave up diplomatic links with Yugoslavia in 1957

and those with Cuba in 1963. On the other hand, East Germany took part in the Warsaw Pact five days after West Germany had joined the NATO. As soon as West Germany joined EC, East Germany participated in the COMECON led by the Soviet Union. Consequently, the two Germanies' conflicts and opposition make it impossible to reconcile and reunify.

However, the two Germanies had already begun economic cooperation and trade with each other under the 1951 Berlin Agreement. Civilian, cultural and communication exchanges were steadily maintained even in the 1950s and 1960s when the ruling Christian Democratic Union undertook a policy vis-a-vis East Germany. The Treaty of Rome which has created the European Economic Community regarded the inter-German trade as an internal rather than international commercial activity.<sup>2</sup>

With the emergence of the Willy Brandt's administration in 1969, the inter-German relation began to extend its scope on the basis of the functionalist approach.<sup>3</sup> Chancellor Brandt, with a new policy called Eastern Policy (Ostpolitik), which was carried out according to the concept of Egon Bahr's pragmatic politics, had established de facto relations with East Germany, the Soviet Union and the other East European countries.<sup>4</sup> Normalization of the inter-German relations was progressed through the reconciliation toward each other as an independent state with legal personality, respect of each other's territorial integrity and noninterference with the other's political policy. At last, they signed the Basic Treaty (Grundvertrag) on December 1972 accepting (Annehmen) but refused to recognize (Anerkennung) the fact of separation.

Since Brandt's policy was to keep close contact with East Germany and to improve bilateral relations from being separated to cooperated gradually by adopting the "peaceful change" (friedlicher Wandel),<sup>5</sup> he emphasized the significance of communication between the culture and economy

of the two states. The more they communicate, the more they depend upon each other. Consequently, it is more likely to integrate.<sup>6</sup> Therefore, the "two states in one nation" policy was adopted to launch the German method of reunification called "a prior national unification, a posterior state unification."<sup>7</sup>

In May 1989, Hungary opened its boundary; people from East Germany could take its way to West Germany through Hungary and Austria, asking for political asylum. Since refugees fled from East Germany to West Germany in waves, the Kohl-government was forced to confront the unification issue because of the huge expense for settling the refugees. Presumed that the two Germanies unified, then refugees from East Germany would no longer be refugees and people would stay in East area. Until the beginning of 1990, the estimated result showed that unification was more economical than accepting refugees from Eastern. West Germany's government, therefore, put unification into practice positively. It supported the 18th March East Germany election, helped the East German CDU become the ruling party, established the East and West economic and currency system, and proclaimed reunification of both Germanies on October 3rd. As for East Germany, after the communist (SED) general secretary E. Honecker was forced to step down, E. Krenz and H. Modrow continued one-party dominant for only four months respectively.<sup>8</sup> The internal power struggle among the high-ranked communist and demonstrations in Berlin and Leipzig urging for economic reforms by the people in the square, compelled the government to change its attitude.<sup>9</sup> Starting from the 7th of November in 1989 when Berlin Wall was opened to the year of 1990 when the 23rd article of the Basic Law was ratified, East Germany blended West Germany's political system and reunification was achieved rapidly.<sup>10</sup>

## COMPETITION OR COOPERATION

Germany, being the defeated nation, was co-managed by England, the United States, France, and the Soviet Union. Owing to the conflicts arising from interest gains between the four countries, different political considerations and political, economic, social problems of Germany itself, divided into two. East Germany became the satellite state of the Soviet Union and West Germany a member of the western countries. Nevertheless, Berlin was divided and the Berlin question revealed the confrontation between the West and the East significantly. The four superpowers had great influences upon this unification issue, and the objective and subjective conditions in Germany were also key points. The whole unification process started with opposition, followed by the detente of the two sides, then came to the co-existence period. Under so many advantageous preconditions, thousands of negotiations and compromises, the two Germanies were integrated.

Ever since the birth of the nation-state, its history has been one of competition, rather than cooperation. Nations have vied with each other in trade. One state has tried to impose its own religion on another. Empires have been created by strong countries dominating the weak. Where cooperation has occurred, it has nearly always been on the basis of national self-interest and rarely in any altruistic, international sense. The reunification of Germany is a recent historical fact, achieving its success only within eleven months after the fall of Berlin Wall. In fact, the process of reunification is relatively complex and complicated. There are many points that should be studied meticulously, like the remarkably influential role of the Soviet Union in the reunification of the two Germanies; the comparison of the sound strategy for reunification issue of the two German governments; the unquestioned and formative influence of the interdependent relationship



of East and West German economy; the enormous significance of the collapse of East German Communist in prompting reunification; the change of attitude of the Communist during the continuing process of reunification; the marked interrelation between East European democratic reforms and German reunification; the spreading influence of German reunification to the European Community; the evident relation between the reunification of Germany and the integration of Europe, and also between the reunification of Germany and the security of Europe and so on. They are all the main theme for research.<sup>11</sup> Yet, in a general view, we can conclude the conditions of German Reunification as the pragmatic foreign policy of West Germany, the great effect of the frequent cultural and economic exchange between East and West Germany and the conflicts within the communist party of East Germany, as well as the mutuality of the international situation, especially the Gorbachev's perestroika.<sup>12</sup> Three factors particularly important to the Unification were: "a regional milieu conducive to the development of inter-German relations, the mutually pragmatic interaction of the two German government and the East Germany's fragile power base".<sup>13</sup>

## **MAIN CONSIDERATION OF GERMAN POLICY AND ITS CHARACTERISTICS**

The German policy is created and executed by six actors: West Germany, East Germany and the four superpowers. The German policy of West Germany concerns people's living quality in both sides of Germany, the cultural, economic and political aids for East Germany and manifests the belief of softening the tense atmosphere in Germany, declares to increase the self-recognition and acknowledgement for Federal Republic of Germany, emphasizes the intimate relation between the East and West Germany, at last, it proclaims to the world its determination of unaccep-

tance of German disunion.<sup>14</sup> The German policies of East Germany are divided into three epochs: the Unification policy (Wiedervereinigungspolitik), the Division policy (Abgrenzungspolitik) and the Convention policy (Vertragspolitik).<sup>15</sup> And the German policy of the four superpowers are determined by their respective power, political values and the belief of constructing a secure Germany and maintaining perpetual peace in Germany. The question of "What is Germany" goes through the whole German history and is a perpetual one. Germany Question is not only a unification question, but also the historical, national consciousness and recognition. Following the continuous division, German people face a dilemma in choosing between one Germany and two Germanies. An investigation from 1989 to 1991 revealed that the historical consciousness is totally different in East Germany and West Germany. West German people do not want to hear about Nazi anymore but accept absolutely the special responsibility generated from Nazi delinquencies.

In East Germany, history was defined as a functional factor. Only the materialistic history was legal, and the government did not allow people to have historical consciousness. Thus there is no confident information to know the orientation of people's historical consciousness. For German people, the cultural nation and nation state are two different notions. Although two Germanies have conflicting ideas of Nationalism, they possess the same national consciousness based on common language, culture, religion, pedigree, social, and political ideal. This common opinion decrease the obstacles in the process of unification.

The definition of divided nations comes from the legal position of the national sovereignty. There are constant disputes over "One country-one nation," "One state-two nations," and "Two states-two nations." Generally speaking, the one state-two nations is adopted by Federal Constitution Court

(Bundesverfassungsgericht) of West Germany. Its explanation considers that the whole Germany still exists as a country in the significance of international law, but it does not have real acting ability and the four superpowers are in a position of trustee to govern the whole German nation-state. Therefore, East Germany and West Germany are merely the actors of partial laws and orders under the roof of the whole German nation-state. German unification policies were developed upon this legal basis. Reconciliation policies and Contract policies are the two main contents of the German policy. The former ones are aimed at pursuing stability in bilateral relations and expelling the military measure.

The model of German reconciliation is accompanied by the functioning of agreements for purpose of gradual nearness of bilateral positions. From 1970 to 1980, many official or non-official treaties and other agreements sustained the relations between the East and West Germany.<sup>16</sup> Some of them are about people's interests or diplomatic policies, and others are about the regulation of political, economic and social system. German Treaty, Paris Agreement, Basic Treaty, London Agreement and Unification Treaty are the most important ones that facilitated the German unification.

## **INTEGRATION OR UNIFICATION**

The Western Policy promoted by West Germany government leads to the normalization of relations between the two Germanies. It was meant to admit the different political, economic and social systems of both sides and co-exist peacefully in order to avoid more separation.<sup>17</sup> In East Germany, the bureaucratic system was too rigid to suit the changes in the world; and the economic development was especially limited by ideology and could not improve people's life. Furthermore, the democratization of east European countries caused the multi-party democracy in East Germany and offered a

precondition for unification. Besides, the loose policy of the Soviet Union on German unification question, and the economic and monetary integration of the two Germanies are all crucial factors.

There was an enthusiastic response for East European democracy.<sup>18</sup> East Germans fled into West Germany asking for democratic freedom. It was, however, not the real purpose. What people really wanted was marketing freedom and having the same rich material life as West German. "Going out by Mercedes" was the true motivation why East German asked for reunification.<sup>19</sup> West German people were not very interested in reunification, especially before 1989. Rational German understood reunification would break the calm and steady pace of life that West German used to be. Nevertheless, at the midnight of November 8th, when one could climb up the untouchable Berlin Wall, West German went crying and crazy. The expectation rate of reunification raised quickly; however, it didn't mean agreement on reunification, for West Germany was one of the democratic and progressive countries, whose public policies could be mirror of the willing and desire of the people. The change of East German Government, however, was too fast though the Soviet Union had promised on recognizing the German unification. West German Government was afraid that the East Germany and Soviet Union would change their mind; in case of losing this chance, Kohl drafted the reunification plan and achieved it.<sup>20</sup> If the West German people could have joined in this public decision-making and had expressed their own idea, the unification process would have slowed down and have avoided many loopholes. The government, however, made the decision too fast for the people, as a result, new German society has nowadays many social and economic problems, such as government's fiscal problem, abatement of economic power, increasing of inflation, unemployment, hostility of the East and West district, indulging in drinking, drugs

psychological addiction, criminal rate, and also other mental imbalance. It is clear that there was an urgent need for education and vocational training, but it could not succeed at the first try.

Although all these showed the disadvantages of reunification, German did not deny the positive significance of reunification itself because it would bring New Germany a bright future: Since it seemed that the dream of the German nations have fulfilled, moreover, it could contribute to the economic prosperity in a near future and the international political role would be confirmed positively.<sup>22</sup> It would also bring a more steady European Security System and additionally form a new situation for the movement of European Integration.<sup>23</sup>

## **NEW GERMAN QUESTION AFTER THE UNIFICATION**

The rapid birth of New Germany brings joy for German people, the predictable wealth, and power of the whole nation. However, problems generated after the unification, because the social system of the West Germany interferes with the ideology and lifestyle of East Germany all at once. Unemployment, foreign labor problems, xenophobia, public facilities, and education are all under management.

For the new German government, it is one of the main tasks to privatize and internationalize those state-owned enterprises of Ex-East Germany in order to solve economic and social problems in whole Germany. The Government mandated a special institution, the Treuhandanstalt (Trust Fund/Agency), to fulfill this mission. There are three essential tasks of the Treuhand: privatization (Privatisierung), turn-around (Sanierung) and closure (Stillegung). The organization of the Treuhand includes the Central Treuhandanstalt in Berlin leading by Mrs. Breuel<sup>24</sup> and 15 offices in the five new states (Bundeslaender), as well as 8 overseas offices.<sup>25</sup> Much

more important is the control during their operation. They are: The Treuhand's Supervisory Board, Ministry of Finance, the parliamentary Treuhand Committee, the Federal Audit Office, and the Federal Cartel Office as well as the European Union.

There are certain contributions the Treuhand has made during these four years, for example, convoking negotiations dealing with the privatization and turn-around of industries with investors, which is one of the most important operations for the Treuhand after the divisions<sup>26</sup> of companies. There are still some problems to be solved in the eastern area, like the lower productivity, less employment, work attitude and so on. Perhaps we shall not forget the vocational training, which is the main factor for the human resource and can improve the economical and social situation in eastern area positively. As for Treuhand itself, it has accumulated a deficit of 250-270 billion DM since its operation, which can be seen as a serious burden of German government.<sup>27</sup>

As far as economic structure is concerned, the former East Germany, owning the most advanced chemical and optical industries among socialist nations, had sound economic strength in Eastern Europe Bloc. At the same time, East Germany is situated at the central point of Europe. This geographic advantage is considered more significant after the East and the West had reached reconciliation and begun to have bilateral economic exchange. However, there were still many invisible difficulties in the economy of East Germany:<sup>28</sup> Due to the decline of people's education, working quality has been worsening and most of young people or those with specialties devoted themselves in military, police affairs and political propaganda, and thus caused a serious waste of human resources. Besides, people are accustomed to Planned Economy and lack the dedication in their jobs which influence greatly the value and production of output. Furthermore,

East Germany's economic policy inclined to develop heavy industries omitting the need of people's livelihood. Also East Germany lacks foreign exchange reserves and the credibility and mobility of the currency. Lastly, East Germany's industries remain the wartime standard which are not competitive enough when facing other western countries. The unsolving problems are the decline of productivity, the over-concentration of industry, the disparity in industrial technology, and the lack of marketing skills.<sup>29</sup>

In the privatization process, especially according to the principle of management-buy-outs and management-buy-ins, the investors preferred the smaller enterprises such as drugstore, restaurant, hotel and the other tobacco or clothing-shops in consideration of small capital and less employees. These are over 70% among the total companies and enterprises.<sup>30</sup> Their contribution wouldn't show a distinctive productivity in whole. The eastern area needs the bigger chemical, optical and automobile investors. But even the Mercedes-Benz and Volkswagen have desponded of their factory-investment.<sup>31</sup> Due to the difference of management concepts between the western German employer and the eastern German employees, it causes conflicts and complaints. It is known that the dissatisfaction with the productivity from the western manager and at the same time the complaints from the eastern director in an IG-Metall factory in Dresden<sup>32</sup> were heard frequently. It seems hardly to find any possible solutions for such disharmony.

There have been four years since the two Germanies were unified. But the industries in eastern area have to advance to higher degree, the enterprises have to become privately owned. That is why we find there are one state but two nations in Germany. And many problems emerge such as inflation, increase of taxation of the Kohl government, appearance of the demonstrations from the workers, violence from the skinheads, neo-nazis,

Republican and the other people who support the extreme right wing. These problems will include the different ideologies, the different ways of working and psychological unfitness between the western and eastern Germans. They can hardly be solved only by investing more financial and manpower resources from the Treuhandanstalt.

## **CONCLUSION**

Since the Middle Age, when the Emperor Charlemagne became the first German emperor of Europe, a kind of special world view gradually formed among German people. They concluded that maintaining the existence and prosperity of Europe was their holy mission. But many times they did not know whether they should fulfill this mission by political or economic measures. And at the last moment, the military measure was their choice. From those wars, we can congregate especially the German national character. The self-esteem generated from national consciousness, the capability of developing high-tech industries and the merit of obeying rules, laws and order. Above mentioned points are the main factors why Germany could survive after world wars and continue its leading role in world politics.

In 1990, everyone thought that the German unification was impossible, but the great changes in Eastern Europe and the collapse of the Soviet Union made such expectation come true. For the Western Germany, it had prepared well both for unification and independence, and maintained conditions like the continuous growth in economy, a stable social security system, and pragmatic diplomatic policies. Like in Eastern Policy, West Germany possessed a humble posture of pro-western countries in a way, and on the other hand it expressed skillfully its national dignity and the principle of Eastern Policy. Such diplomatic hardship is beyond that of R.O.C.



German people can definitely attribute unification to frequent interchanges and investment in unification researches.

In the future international system, it is definite that the unified Germany is willing to play an important role and be responsible for the reconciliation of the East and the West and to try to solve the south-north economic confrontations.<sup>33</sup> However what the new Germany should take into consideration now is not its international role, but those problems in domestic affairs after the unification. As far as economy is concerned, unemployment rate is relatively high and inflation is serious. These will influence the political environment and attribute to the redistribution of power. "If the problems of domestic affairs...cannot be appropriately disposed, it will cause the excessive tenseness. Then Germany would probably lead a war to divert the public attention, just like in 30' Hitler tried to solved the social problems by leading a war."<sup>34</sup> The possibility is tiny but is still shadowed Europe.

After the unification, German people choose Berlin as their capital. The difficulties and controversy about this decision are in budget, construction, and the complex of thousands of federal officials. Moving the capital from Bonn to Berlin contains high political significations: it is to inherit the tradition of the German empire; it is an alienation from west European countries and regional organizations; and it shows concern to people in East Germany. But if the economic and social problems could not be solved, the German Question still exists.

## ENDNOTES

1. Frank R. Pfetsch, "Deutschlandpolitik 1949-69," in Werner Weidenfeld, & Karl-Rudolf Korte, eds. *Handwoerterbuch zur deutschen Einheit* (Frankfurt/M, New York), pp. 171-75; also Renata Fritsch-Bourbazel, *Europa und die deutsche Einheit* (Muenchen: 1991), pp. 160-69.

2. Frank G. von der Dunk/Peter H. Kooijmans, "The Unification of Germany and International Law," *Michigan Journal of International Law*, Vol. 12, No. 3, Spring 1991, pp. 533-43.

3. The functionalist approach was actively discussed during the post-WW II period when the Organization for European Economic Cooperation (OEEC) and the Council of Europe (CE) were established. This approach was supported by England and the Nordic countries; it contrasted with the federalist approach which was promoted by France, West Germany, and other European countries in the continent. Whereas the former attempted to enhance cooperation between the member countries in the nonpolitical areas such as economic, cultural and academic sectors; the latter argued to establish an European federal system, like the United States, through a political integration. Later, the proponents of federalism changed their stance to take the functionalist approach as a gradual method to fulfill the goal of the political integration of Europe. Such a new approach was then called the neofunctionalist approach. During the process, the European Economic Community was established in 1958 and its fundamental purpose was also the integration of Europe. Kim Cae-One, "A Proposal for Inter-Korean Economic Integration and Reunification: With Special Reference to the German Case," *The Journal of East Asian Affairs*. Vol. 5, No. 2, 1991, p. 351; for further reference, see E. B. Haas and P. C. Schmitter, "Economic and Differential patterns of political integration," in A. Etzioni, ed., *International Political Communities* (Garden City: Double Day, 1966) pp. 259-69; M. Palmer, Lambert and others, *A Handbook of European Organizations* (New York: F. A. Praeger, 1968), p. 75; J. S. Nye, *Peace in Parts* (Boston: Little, Brown and Co., 1971), p. 51; M. Haas, *International Systems: A Behavioral Approach* (Chandler Publishing Co., 1974), p. 210.

4. Dieter Blumenwitz, *Denk ich an Deutschland* (Muenchen: 1989), pp. 101-8.

5. *Ibid.*, pp. 116-19.

6. Harald Kleinschmid, "Kulturbeziehungen," in W. Weidenfeld & K.-R. Korte, ed., *op.cit.*, pp. 454-55.

7. Germany and Austria used to have close relationship in history, language and culture. Nowadays, although they have intimate economic relations, these two states have respective sovereignty, this couldn't be deemed as a condition of unification nor division. Perhaps, the Austrian model could be one of the integration model and of course, more efforts

should be put in this field. For further reference to the case of Austria vis-a-vis Germany, see Cal Clark & Steve Chen, "China and Taiwan: A Security Paradox," *The Journal of East Asian Affairs*, Vol. 5, No. 2, 1991, p. 497.

8. The analysis of communist polity of East Germany in this study still has suspicious points. This phenomenon can attribute to the lack of true information about communist parties. Many experts, scholars of West Germany admit that the decomposition of East Germany polity and their promotion for unification are beyond their expectation and investigation. The writer translated the headlines of the main newspapers in both West and East Germany before unification and found out that before the opening of the Berlin Wall, East Germany still proclaimed the existence and insistence of Communism and Marxism. Basically many experts and scholars over-assess the tenacity of communist countries, the fact is that the administrative system in these countries often lack reasonable operation and ability for crisis management. This incompetence of collective leading is the result of the dictatorship. For further reference: Klaus C. Hsu, *The German Government and Politics: Division and Unification* (Taipei: 1993), p. 350; Dietrich Staritz, "Ursachen und Konsequenzen einer deutschen Revolution," in *Der Fischer Weltalmanach Sonderband DDR* (Frankfurt/M, New York: 1992), pp. 15-22.

9. Although people gathered together for manifestations and protest in East Berlin and Leipzig before unification, it is hard to explain that is the main reason the centralized authority declared to give up its power. We can observe from many examples like the Hungarian coup in 1956, the Prague Spring in 1967, the Tien-an-men Square massacre in 1989, that the communist government can put down easily this kind of protesting movement by force. Thus, we can indirectly get to know that the reconstruction of East European countries (including East Germany) was due to power contention of the upper class or due to the manifestation of new political ideology. The so called "Civil revolution" started by people is only a side factor acting in coordination with the political changes. Klaus C. Hsu, "The German Reunification and Chinese Integration: A Comparative Study," *China Tribune*, 1/1992, pp. 22-23.

10. Georg Ress, "Grundgesetz," in W. Weidenfeld, & K.-R. Korte, eds., op.cit., pp. 356-62.

11. Klaus C. Hsu, "The US-Diplomacy to the New Germany," *China Tribune*, 11/1991, p. 99.

12. Klaus C. Hsu, "The Political Significance of German Reunification for the Integration of China," in *Europe Beyond 1992* (Taipei: 1992), pp. 375-76.

13. Lin Yu-fang, "The German Unification Model: Applicable to China and Korea?" *Issues & Studies, A Journal of Chinese and International Affairs*, Vol. 5, May 1992, p. 89.

14. Klaus C. Hsu, *The German Government and Politics: Division and Unification*. op.cit., p. 145.

15. Ibid., pp. 154-59.

16. West Germany has invested inestimable efforts and financial resources in the research and conversation between two Germanies. Only in the bilateral conference had almost 2000 cooperation and circulation treaties been signed. Peter-Jochen Winters, "Vertraege und Vereinbarungen," in W. Weidenfeld, & K.-R. Korte, eds., op.cit., pp. 723-25.

17. This research has analyzed and investigated German unification and division from many angles such as historical complex, national consciousness, governmental policies and international relations. At the same time, the cultural-economic interchanges between East and West Germanies which are viewed as a crucial role that should not be ignored.

18. Those great changes in Eastern Europe include not only political reforms and democratization but also the collapse of Planned Economy which plays a leading role in the collapse of socialist empires. Beginning with economic reforms and spillover to political sector, such model of socialist reform seems to be a good one, and Hungary is an example. We can't conclude whether this model is the best one or not but it is for sure that it can compare with Communist China's economic reform, so as to acquire more knowledge in Chinese Unification Question.

19. Emil Huebner, Heinrich Oberreiter, *Parteien in Deutschland zwischen Kontinuitaet und Wandel* (Muenchen: 1992), p 159; also Dietrich Staritz, op.cit., p. 19.

20. Helmut Kohl, "Erklaerung vom Helmut Kohl ueber die Gespraechе mit Gorbatschow und Modrow vor dem Deutschen Bundestag am 15. 2. 1990," in *Der Fischer Weltalmanach Sonderband DDR*, op.cit., p. 363.

21. Hans-Joachim Maaz, "Innere Verluste," *Spiegel Spezial*, 11/1990, pp. 130-215.

22. Renata Fritsch-Bournazel, op.cit., pp. 213-15; also Gerhard Diemer,

"Weltpolitischer Horizont der politischen Bildung," in Manfred Haettich, ed., *Politische Bildung nach der Wiedervereinigung* (Muenchen: 1992), pp. 96-101.

23. Heinz Laufer, *Das foederative System der Bundesrepublik Deutschland* (Muenchen: 1991), pp. 247-51; also Konrad Stollreither, *Das vereinigte Deutschland-Grundlagen und Veraenderungen* (Muenchen: 1991), pp. 158-60.

24. The presidents of the Central Treuhandanstalt were/is: Dr. Peter Moreth (March-June 15, 1990); Dr. Reiner Gohlke (July 16-August 20, 1990); Dr. Detlev Karsten Rohwedder (August 20, 1990-April 1, 1991) and Birgit Breuel (April 13, 1991- ).

25. The 8 offices are in London, New York, Madrid, Milan, Vienna, Tokyo, Paris and Copenhagen.

26. The division of companies is according to the Law of Division (Spaltungsgesetz vom 4. 5. 1991).

27. Financial Result of Treuhand (1990-1994) (in billion DM)

Revenues -----	
By selling Enterprises income	68
Outlays -----	
Debt Management Fund	21
Interest payment	46
Debt take over	80
Privatization, turn around, liquidation	136
Economic sanitation	44
Miscellanea	16
-----	
minus	275

28. Klaus C. Hsu, *The German Government and Politics: Division and Unification*. op.cit., p. 263.

29. Many problems emerge after the unification of the two Germanies. In comparison with West Germany's industries, those of East Germany drag defects as followings: 1) Decline of productivity: Most of the industries in East Germany are of labor-intensive kinds and on the other hand, as a result of the implementation of Central Planned Economy, many supernumeraries have been created in the work force. In 1988 the industrial value of East Germany was about only a quarter of that of West Germany. As for productivity, East Germany can merely reach the 1/3 of the West. 2)

Over-concentration of industry: East Germany put too much emphasis on producing machines, vehicles and chemical industry, which occupied 40% of all products. Other industries, especially light industries are too far away behind international standard. 3) Disparity in industrial technology: East Germany's industrial productions concentrated in some stereotypes as West Germany inclines to elevate diversity and quality of products. Most of the factories in East Germany were equipped with old facilities. 4) Lack of marketing skills: Because enterprises in East Germany didn't construct a good supply-network, it is impossible to compete with other western countries. Ibid., p. 264.

30. Treuhandanstalt, *Informationen Ausgabe*, 12 March, 1992, p. 2.

31. *Der Spiegel*, 40/1992, pp. 150-55.

32. *Der Spiegel*, 41/1992, pp. 154-58.

33. In investigating the international role of new Germany, the German scholars have diversified theories and points of view. The scholars in southern Germany have strong concept about regions and boundaries. The pro-government scholars exalt the conception of "European Germany" and ignore the offensiveness of the new Germany in order to smooth the suspicion of other countries.

34. Klaus C. Hsu, "The Relationship between Europe and U.S.A.: From the Perspective of C.S.C.E.," *America Monthly*, Vol. V, No. 9, 1991, p. 84.

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## **Social Movements and New Institution Building for Peace in Korea**

by  
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### **韓國社會運動與新和平機構的建立**

吳昌憲

#### **摘 要**

本研究檢視韓國社會運動的經濟與政治面，探究其貢獻與所面對的問題，並提出不同的策略建議。人權與民主化運動大大促成韓國的民主化，但是由於國家的壓制、社運團體內部的分裂、以及大眾的支持日降，因此其力量有極限。

Key words: Korea, Social movement, Democcatization  
關鍵詞：韓國、社會運動、民主化

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## **INTRODUCTION**

Korea has been known well for her economic success. Unlike many other Third World countries that suffer from chronic economic underdevelopment, Korea has achieved rapid economic growth since the 1960s based upon export-led industrialization. It has been also pointed out that Korea does not have a serious economic inequality that many other developing countries have. Politically, democratization since 1987 seems to suggest to many that finally Korea can have a level of "political development" that is congruent to that of economic development.

However, there are many problems and issues that should be dealt with to make Korea more democratic and better society. These problems and issues include socioeconomic inequalities, social violence, environmental problems, political authoritarianism, and military confrontation with North Korea. Social movements, defined here as conscious, organized, and collective efforts to change society,<sup>1</sup> are partly a reflection of these problems and issues which in turn have appeared in part as negative consequences of capitalist development in Korea. On the other hand, there are important political variables that have affected social movements.

In studying social movements in Korea, I have focused on both these political and economic variables. I will also look at the contribution of social movements to Korean development and the problems they are facing at the present time, and propose an alternative strategy for social movements.

## **EXPORT-LED INDUSTRIALIZATION AND ITS CONSEQUENCES**

The labor-intensive, export-led industrialization pursued by the Park regime since the early 1960s produced one of the most rapid economic



growth rates in the world and a steady rise in the living standard of virtually all social groups. The average annual growth rate in real GNP for the First Five Year Plan period (1962-1966) was 7.8 percent; and the rate for the Second Five-Year Plan period (1967-1971) was 10.5 percent.<sup>2</sup> Per capita real income rose from 87 dollars in 1962 to 293 dollars in 1972.<sup>3</sup> The rapid economic growth in Korea accompanied a decline in the number of people in absolute poverty and the maintenance of a relatively equal income distribution. It was estimated that the "absolute poverty class" was reduced from 40.9 percent of the whole population in 1965 to 23.4 percent in 1970.<sup>4</sup> The unemployment rate dropped from 8.3 percent in 1963 to 4.5 percent in 1971. During this period, Korea was transformed from one of the world's poorest countries that seemed to offer little hope for economic progress to one of the most successful developing countries that achieved a rapid economic growth with a relatively low level of economic inequality.<sup>5</sup> Consequently, Korea was now beginning to be regarded by many as an economic model for other developing countries.<sup>6</sup> This general characteristics of Korean economic performance sharply distinguished it from most other developing countries during the period.

However, socioeconomic problems remained substantial and social marginalization increased in some area. Economic development disproportionately benefitted upper and upper-middle class, while certain sectors in society such as farmers, urban poor, and workers received less benefits from economic growth. Rapid urbanization produced influx of rural people to the major urban area creating a serious problem of urban poor. Environmental problems also emerged as pollution and urban congestion increased.

The weakness of social movements until recent time, despite these economic structural and policy problems, is partly due to the authoritarian control of civil society for the sake of economic growth first strategy. Be-

sides there is a political context of weak society in Korea, which can be examined by looking at the kind of anti-Communist state that was established after the liberation from the Japanese colonial rule in 1945.

## **SOCIAL MOVEMENTS UNDER THE STRONG ANTI-LEFTIST STATE**

For an adequate understanding of the social movements in Korea, it is important to look at the nature of the anti-Communist state that had been particularly pronounced before democratization which began in 1987.

The anti-Communist state that was established after the liberalization from the Japanese colonial rule was an outcome of the operation of political and external variables. In other words, it was a result of the incorporation of Korea in a bipolar international political system after World War II. Korea was occupied by the U.S. and the Soviet Union, which for their geostrategic interests, structured the power relationship among political and social groups in each of their occupied territories. The experience of the Korean War, and the subsequent ideological and military confrontation with North Korea, furthered the trend toward a rigid anti-Communist state with very strong coercive instruments and a broad conception of national security.

The anti-leftist state has had a dominant impact on social movements in Korea. The strong state restricted political rights and freedoms and eliminated the possibilities of the emergence of any significant leftist forces and political mobilization of popular classes. It should be also mentioned that society itself was dominated by the conservative forces after the end of the Korean War.<sup>7</sup> Many Koreans considered that even moderate leftism was not acceptable in Korea given its national security dilemma. In sum, Korean political system was dominated by the conservative forces. Consequently,

social movements, particularly the progressive and popular movements, have been weak. Thus weak social movements in Korea was not due to the absence of socioeconomic problems but a result of the strong control by the state. And the state control of society was motivated not only by the economic structural requirement of preventing the autonomous mobilization of the popular classes, but by the rigid conception of the national security. The authoritarian regimes also used the national security issue for the political purpose of repressing political opponents to maintain its rule.

Of course, the economic structural requirement to control the popular classes was more or less satisfied by the institutionalization of the anti-leftist state.

## **THE YUSHIN SYSTEM AND THE SOCIAL MOVEMENTS**

It was during the highly authoritarian *Yushin* regime (1972-1979) under president Park Chung Hee that social movements in any significant sense emerged. Most important of these movements were human rights and democratic movements that were organized by university students, intellectuals, Christians, and the press. Among these, students played the most important role in challenging the authoritarian rule. Mobilization of Christians was particularly significant in that it was unprecedented in the history of the Republic Of Korea. The increasing opposition activities of the Christians in 1974 was the result of the arrests of the prominent religious leaders that was unprecedented in the pre-1972 period.<sup>8</sup>

Given the pre-Yushin experience with democratic institutions and the lack of what Alfred Stepan calls the project, the harsh repression of the political opposition by the coercive instruments of the state increased the political discontent of the public.<sup>9</sup>

While the basic demand of the political opposition was political liberalization and democratization (as the popularly used term "restoration of democracy" clearly indicates), many members of the opposition were deeply concerned about the socioeconomic problems that emerged as consequences of capitalist industrialization.

During the *Yushin* period, Korea continued the rapid economic growth based upon export-led industrialization. The average annual growth rate in real GNP during the period was 9.6 percent, one of the highest in the world. Per capita real income rose from \$318 in 1972 to \$1,640 in 1979.<sup>10</sup> The economic development benefitted, in absolute terms, most people across the socioeconomic strata.

However, the rapid economic development and improvement in the living standards during the *Yushin* regime did not improve the problem of economic equality and created issues in some other areas of living. In fact, economic distribution deteriorated somewhat during the 1970s. The subjective feeling of economic inequality was probably greater. By the end of the 1970s, the rise of the real estate price, the emergence of high-rising, upper-middle class apartment complexes, and the increasing number of cars probably increased the perception of the relative inequality among the poorer, particularly in major urban area.<sup>11</sup>

The urban-rural gap, while there was some improvement, remained substantial during most of the 1970s. In proportion to urban household incomes, the average incomes of the rural households, which had been 83.0 percent in 1972, increased to 104.6 percent in 1974, but declined to 84.7 percent by 1979.<sup>12</sup>

In the case of the workers, despite the improvement of the living standard in absolute terms, the wage increase lagged significantly behind the increase in labor productivity. Also, the monthly incomes of the average

workers remained less than their monthly household expenses.<sup>13</sup> Because there existed a big difference in one's income depending on the educational level and sex, the female workers and/or those with low education received less benefit of the economic growth.

In addition, there continued to be a problem in working hours and conditions. According to the International Labor Organization, Korean workers in the manufacturing sector, by working 52~53 hours per week, had one of the longest working hours among the countries that provided data.<sup>14</sup>

While the workers were generally very weak in their capability of challenging their employers and the state, and did not cause a threat to the political and social disorder, some labor movement with new characteristics emerged among a small portion of the workers. This is related to the emergence of the church-based organizations, such as the Urban-Industrial Mission (UIM) and the *Jeunesse Ouvriere Chretienne* (JOC), that attempted to raise the "consciousness of the workers" by teaching them the labor standard law, and helping workers to organize autonomous labor unions. Due to the lack of viable activities by the officially recognized labor union leaders, a small segment of the workers looked at the UIM and the JOC for support.

The UIM activists concentrated their efforts on the mobilization of female workers in light industries. It is pretty clear that the workers' involvement in these organizations heightened the awareness of their economic interests and labor rights, because most of the intense labor protests under the Yushin regime were led by some female workers of the light industries, who were associated with the UIM and JOC.

While there emerged labor protests (largely by some female workers in labor-intensive, light industries) with new characteristics during the *Yushin*

regime, they did not have much impact on political and economic development due to the effective control by the regime. Unlike the case of the political opposition, the regime successfully contained the labor activists without triggering major labor protests. The workers did not participate in anti-regime activities and did not constitute a major political opposition.

Most opposition members were critical about the economic policies of the Park regime that seemed to solely focus on rapid economic growth. They pointed to the various problems such as the economic inequality, urban-rural gap, low wage for the workers and their working conditions, the concentration of the business, the increase in foreign debts, dependence on the Japanese economy, and the import of the pollution industry from Japan. The intensity with which the opposition to the regime was based on these issues was widely different with various groups.

In the case of the opposition activists, many, if not most, of them were deeply concerned about the socioeconomic issues, and severely critical about the economic policies of the government. But those who put the Korean economy in extremely negative terms composed only a small minority of the political opposition. Those who seemed to go beyond the criticism of the government policies to advocate the overthrow of the capitalist system were virtually insignificant in their numbers. Even the UIM and the JOC groups, who were often attacked by the regime as pro-Communist were not revolutionary but reformist.<sup>15</sup> Many opposition members criticized the negative Japanese economic influence on Korea (some opposition activists calling it Japanese neocolonialism), but there was no visible anti-Americanism except the complaint about weak U.S. support for democratization.

## **KWANGJU UPRISING AND THE RADICALIZATION OF THE OPPOSITION**

After the death of Park Chung Hee and the breakdown of the Yushin regime in 1979, most Korean people wanted a democratic regime to be restored. However, another authoritarian rule was imposed after a brief interlude of uncertain period. In the process, there were violent clashes between the military and citizens in Kwangju city. There was a brutal repression by the military of the Kwangju democratic movement. The repression of the Kwangju uprising had a great impact on social movement as it radicalized opposition activists, particularly students. One can say it is a classic example of a crucial effect that a specific political event has on a country's political development.

After the experience in Kwangju, there emerged a strong anti-Americanism among the students, because they thought that the U.S. supported the military's suppression of the Kwangju uprising. Anti-Americanism was clearly seen in March 1982, when 3 students burned the American Cultural Center in Pusan. In May 1985, 73 students occupied American Cultural Center in Seoul demanding the U.S. to apologize for its apparent involvement in the "Kwangju massacre" and to end its support for the military rule in Korea. They viewed the American imperialism was responsible not only for the authoritarian rule but for the division and confrontation between South and North Korea. For this reason, the "liberation from the U. S. neocolonialism" was thought essential for democratization and peace. Student radicalism also involved an increasing adoption of the Marxist perspective among more active members. They viewed that the structural problems of capitalism can not be solved by reformist measures. This is partly due to their frustration with the fact that despite rapid economic

growth, the interests of the popular classes had not been served and the problem of economic inequality remained. They thought that a genuinely democratic society was not possible without a socialist revolution in which popular classes, particularly the workers participate as the main force. Although activists' attempt to build alliance with the workers were not very successful, they influenced labor movement to some degree during this period. And their active anti-regime activities made an important contribution to democratization in 1987.

## **DEMOCRATIZATION AND ITS IMPACT ON SOCIAL MOVEMENTS**

Democratization which began in 1987 has had important impacts on social movements. The opening of the political space provided for more opportunity for the articulation of the interests and views that had been suppressed under the previous authoritarian regimes. Important groups in civil society were mobilized to make demands and to establish independent organizations which are not under the state control.

Student activists, based upon their Marxist and radical nationalist view have increased their voice on the issues of unification, imperialism, and capitalist contradictions.<sup>16</sup>

The labor, many members of which were now organized under independent unions, became mobilized demanding primarily a higher wage and better working conditions. In January 1990, *Chunguk Nodong Johab Hyu-peuihoe* (All Nation Labor Union Association) was organized by the labor activists. And the activization of the farmers led to the establishment of an autonomous nation-wide farmers' association. Also, school teachers have attempted since 1989 to organize an independent teachers' union (*Chungyohyub*). The basic goal, according to the participating teachers, was to



promote democratization in the area of education. Environmental protection groups and urban popular movements have been growing although the number of them are still rather small.

So, compared to the period of the authoritarian rule, civil society increased its power to some extent, and popular sector has become more autonomous and better organized. Particularly, the activation of the labor movement led to the rapid increase of the wage to the extent that the wage increased more than the productivity, creating a problem for the international competitiveness of Korean products..

However, there has been a clear limit to the growth and strength of radical and progressive social movements. While the state has become more democratic, the regime has not yet tolerated any significant force that would present a fundamental threat to the capitalist development or the basic structure of the state. Thus the Rho Tae Woo regime has arrested many radical activists, and also virtually dismantled the independent teachers' union (*Chungyohyub*) by firing from school more than 12,000 teachers who had been actively involved in the organization.

In addition to the state control and repression, the division within some major social movements surfaced. In January 1989, the Federation of National Democratic Movement (*Chunminryon*) was organized to unite several progressive movements. It included various progressive labor, rural, and religious organizations. *Chunminryon* was considered the biggest social movement organization since the end of the Korean War. However, it suffered from internal disagreements. One of the main causes of the disagreements involved the issue of participation in the upcoming national elections. Consequently, the organization has been unable to demonstrate its political strength.

After the initial mobilization, the labor has become more moderate in

its demand, as it saw the increasing national economic difficulties and faced with the public criticism that the workers should consider "national interests". But labor became more autonomous and better organized.

Finally, there is a problem of the low level of public support for the radical and progressive movements. While many members of the public think that Korea should become more democratic society, the public and the press have become increasingly critical about a minority of radical activists, who were engaged in extremist tactics with radical slogans. Most Korean people do not support the leftist revolutionary movement particularly in view of the North Korean military threat and the recent collapse of communism in the Soviet Union and the Eastern Europe. There have been many arrests of the radical and progressive activists during the Rho regime, but this has not created a serious opposition by the attentive public. Unlike the Park and Chun regimes, thus, the repression of the opposition activists have not created an expansion of the political opposition. In fact, the support of the public for the newly emerged progressive parties has been very low in the elections held since democratization.<sup>17</sup>

Since early 1990, the strength of radical social movements began to decrease as the number of people participating in those movements declined. Only a small minority of well-organized activists now participate in the protests. It seems that there is virtually no possibility that their leftist revolutionary vision will be realized in the foreseeable future.

## **AN ALTERNATIVE STRATEGY FOR SOCIAL MOVEMENTS**

If radical social movements do not give much hope, is there any alternative that would contribute to socioeconomic equality and peace in Ko-

rea? In my view, although many members of the public are critical about the existing socioeconomic inequalities, they do not view that the current situation is bad enough to require a revolutionary change of society. Thus, opposition activists need to take a more realistic approach for social change: they should moderate their view and ally with the progressive middle class, and redirect their energy to the specific issues they have relatively neglected but are important to the quality of democracy in Korea. While this reformist movements may not bring a revolutionary social change, it would lessen the state repression, and would provide a springboard from which a more ideal society may emerge in the future. Given the existence of the North Korean threat, a radical movement would result in the repression by the state and achieve nothing but failure and frustration.

In fact, movements focusing on specific issues have become more prominent in recent period. One is the environment protection movement. There has been increasing public attention to the pollution problem.<sup>18</sup> This is largely due to the steady decrease in the environmental quality of life. One can argue that in a sense the pollution aggravates economic inequalities. For example, those who are better-off can take more effective measures against water pollution by buying water purifiers or natural water while the popular classes generally cannot do better than drinking the boiled water. The environmental issue is one of the issue areas in which social movements can contribute greatly.

Urban popular movements have also grown. Often led by the popular movement activists, they struggle for important rights and material improvements. They attempt to improve urban living conditions, usually through demands on the state for public services.

Finally, one should recognize that the control of the state by social

movements is not a panacea for the political problems in Korea. The improvement of democracy involves a crucial issue of overcoming sociocultural obstacles such as uncompromising factionalism (based upon power calculation rather than policy matters), authoritarian relations in society, and oppositionist attitudes.

## **CONCLUSION**

Social movements in Korea has been affected not only by the necessary structural requirements for the export-led industrialization but by the political structure and events. Despite the existence of the negative consequences of the capitalist industrialization, social movements in Korea were very weak due to the strong control of the anti-leftist state. The state did not allow the mobilization of significant radical and popular forces not only to pursue economic growth but to maintain the anti-Communist political system and the authoritarian rule. And what is peculiar about Korean social movements is the degree to which they were affected by the latter.

Social movements in Korea have contributed to democratization in Korean society and politics. Social movement leaders were most active in demanding democratization and suffered greatly under the harsh authoritarian rule. They have also pointed to the important socioeconomic problems and issues that Korean society should deal with to become more democratic society.

Democratization, while providing more space for social movements, created dilemmas for radical and progressive social movements. In addition to the state repression and the division within the movements, the popularity of radical social movements declined.

To make contribution to a more democratic and better society in the future, social movement activists should moderate their view, ally with

progressive middle class, and deal with the specific issues. These issues would include rising housing price, urban poor, corruption, abortion, ecology, and authoritarianism in society.

Given the strong anti-leftist nature of the Korean state, as well as the existence of the North Korean military threat, a violent social movement based upon radical ideology would result in the repression. More importantly, the radical movement would not draw the public support. Although many members of the public are critical about the existing socioeconomic inequalities, they do not view that the current situation is bad enough to require a revolution. In fact, the radical opponents of the regime have greatly overestimated the revolutionary potential of the masses.

In fact, Given the conservative nature of Korean society, there is virtually no possibility that their revolutionary vision will be realized in Korea. Radical social movements will decline, and various new social movements focusing on specific issues aiming at the improvement of the quality of life will expand. The Korean polity will be challenged and, if managed properly, enriched by these movements.

## ENDNOTES

1. This definition is similar to that of Paul Wilkinson. According to Wilkinson, a social movement is defined as "a deliberate collective endeavour to promote change in any direction and by any means, not excluding violence, illegality, revolution or withdrawal into 'utopian' community..... A social movement must evince a minimal degree of organization, though this may range from a loose, informal or partial level of organization to the highly institutionalized and bureaucratized movement and the corporate group.....A social movement's commitment to change and the *raison d'être* of its organization are founded upon the conscious volition, normative commitment to the movement's aims or beliefs, and active participation on the part of the followers or members." Paul Wilkinson, *Social Movement* (London: Paul Mall), 1971. p. 27. For a brief survey of the re-

search on social movements, see for example, Sidney Tarrow, "Social Movements" in Albert Bergesen, ed. *Studies of the Modern World-System* (New York: Academic Press), 1980. pp. 226-30.

2. Economic Planning Board (EPB), *Major Statistics of Korean Economy*, 1977 (Seoul, Korea: EPB, 1977), p. 3.

3. *Ibid.*, p. 3.

4. Doshio Nishimura, *Taeman dae han'guk: kyungje bigyo* [Taiwan and Korea: Comparison of Economy] (Seoul: Tadog, 1983), p. 136.

5. The poverty of Korea in the early period was indicated by the annual "spring hunger," when considerable numbers of rural Koreans ate grass and tree bark for want of grain. This did not end until the mid-1960s. Donald S. Macdonald, *The Koreans: Contemporary Politics and Society* (Boulder, CO: Westview Press, 1990), p. 121.

6. See for example David C. Cole and Princeton N. Lyman, *Korean Development: The Interplay of Politics and Economics* (Cambridge: Harvard University Press, 1971).

7. For an analysis of the nature of the anti-leftist state in Korea, see Chang Hun Oh, "A Study of the Dynamics of an Authoritarian Regime: The Case of the Yushin System under Park Chung Hee, 1972-1979," Ph.D. dissertation, The Ohio State University, 1991, Chap. 2 (pp. 39-78).

8. For detailed examination of the opposition movements during the Yushin regime, see for example, *Ibid.*, pp. 194-288; and Seung Hun Han, ed., *Yushin ch'eye wa minju-wha undong* (Seoul: Samminsa, 1985).

9. According to Stepan, "In any regime, but especially in a BA regime the capacity to lead the regimes's political allies depends on the degree to which the regime has both 'defensive' and 'offensive' projects that potential allies consider to be feasible, crucial for the preservation and advancement of their own interests, and dependent on authoritarian power for their execution." Alfred Stepan, "State Power and the Sterength of Civil Society in the Southern Cone of Latin America," in Peter B. Evans, Dietrich Rueschemeyer, and Theda Skocpol, eds., *Bringing the State Back In* (Cambridge: Cambridge University Press, 1985), p. 320. For more discussion of the reasons why the Yushin regime had a difficulty in its institutionalization, see Chang Hun Oh, "A Study of the Dynamics of an Authoritarian Regime," Chapters 4 and 5 (pp. 128-291).

10. For major economic trends during the 1970s, see Economic Planning

Board, *Major statistics of Korea Economy*, 1987, p. 3, p. 7, and pp. 287-89.

11. Throughout the 1970s, air and water pollution, and urban congestion also increased due to the rapid industrialization and urbanization. The rate of the traffic accidents became one of the worst in the world. Because the regime considered that exposition of the pollution problem would be harmful to economic development, a serious discussion of the pollution issue was practically not allowed.

12. Economic Planning Board, *Major Statistics of Korean Economy*, 1987, p. 71. Because rural households had generally large family members than urban ones, per capita income in the rural area was still lower in 1974.

13. Han'guk kidoggyo kyohoe hyupui-hoe inkwon wiwon-hoe (NCCCK), *Nodong hyunchang kwa cheungun* [Workplace and Testimony] (Seoul: Pulbit, 1984), p. 185.

14. International Labor Office, *Year Book of Labor Statistics, 1987* (Geneva: ILO, 1987), pp. 674-79. Not only in manufacturing but also in other non-agricultural sector, the working hours were one of the longest. See, *Ibid.*, pp. 669-73.

15. One observer says "It is an illuminating irony that the UIM and JOC groups.....did not attempt to translate specific industrial demand into general, political demands and question capitalism and the capitalist ethic or to offer any other alternative ideological orientation." Choi, "Interest Conflict," p. 128.

16. Many of the radical students seem to have a sympathetic view regarding North Korea. It is believed that there exist some underground organization that support Kim Il Sung's Self-Reliance Ideology. They have influenced student and labor movement. See, Eui-Bong Hwang, "Underground Organizations of Self-Reliance Ideology," *Shin Dong-A* (August 1991), pp. 366-81. Self-Reliance Ideology is the North Korean state ideology, which is supposedly made by Kim Il Sung.

17. There is a clear limit in the alliance between students and the labor. The discontent of the labor is economically oriented. The workers are basically conservative in the sense that they do not want revolution. The massive labor mobilization in 1987 was the explosion of the demand that had been suppressed under the successive authoritarian rule.

18. Lately news coverage has been replete with the pollution and other

environmental problems. There were some incidents that awakened the seriousness of the pollution problem.



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## The Emergence of Basque Nationalism in Spain: An Examination of Some Explanatory Variables\*

by

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### 西班牙巴斯克民族主義的興起： 對於一些解釋變數的檢視

施正鋒

#### 摘 要

本研究探討西班牙巴斯克民族主義在何種情況下發展出來的。在構築了一個族群運動的模型後，我們檢視了幾項重要因素：文化上的差異、中央集權化、經濟因素、政府的壓制、現代化過程、族群菁英的操弄。

Key words: Spain, Basque Nationalism, ethnic relation

關鍵詞：西班牙、巴斯克民族主義、族群關係

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## **INTRODUCTION<sup>1</sup>**

We are used to the notion that the world is made up of "nation-states," where, however, the boundaries of political states and those of ethnic groups are rarely congruent. Politicized ethnic sentiment is invariably blamed as one of the most disruptive forces leading to political instability. Even in the Western World, where nationalist leaders in the Third World seek models of the classic nation-state, political strife resulting from politicized ethnic nationalism is far from being avoided.

How have objective cultural distinctions been transformed into subjective ethnic consciousness? Why have some ethnic sentiments been successfully politically mobilized? Particularly, how has Basque nationalism in Spain emerged?

We shall start with the stipulation of an overall, if not general, framework of ethnic nationalism and its political mobilization, and then look into how those factors identified in our model are useful, with some modifications, in explaining the emergence of the Basque nationalist movement. After scrutinizing those variables, we will conclude with the examination of how our original framework of the rise of ethnic nationalism fits for the Basque case.

## **AN OVERALL PICTURE OF THE CAUSAL LINKS**

We deem the formation of ethnic nationalism and its politicization as a sequential process. It starts with the existence of some cultural distinctions or certain common historical experiences, followed by a feeling of relative deprivation perceived by those who share these objective manifestations, including both the elite and the mass of the ethnic group. Without that deprivation, be it economic, political, or cultural, subjective ethnic

awareness and the concern with welfare of the group can not emerge. Finally, with appropriate manipulation by the ethnic elite, ethnic loyalty may be mobilized into political activity.

However, there is no guarantee that those objective cultural and/or historical attributes will lend themselves to relative deprivation, which is usually the result of the gap between the expectation and reality. While the favorable international conditions<sup>2</sup> create some expectation, three sources contribute to the formation of reality -- governmental policy, economic discrepancies, and modernization process. As a result of the gap between reality and expectation, a feeling of relative deprivation is formulated.

The modernizing states make all attempts at political integration, economic development, and social mobilization, seeking the goals of centralization, assimilation, and modernization. Since the process of development is not necessarily even, many a time, economic discrepancies among regions are inevitable. In addition, modernization tends to create cultural anomie and psychological alienation among those who share common cultural characteristics.

The elites, who themselves have perceived relative deprivation as a result of the gap, play a crucial role in politicizing ethnic sentiments among the ethnic mass. Their goals may be the protection of ethnic culture and/or the redistribution of political power or economic resources. The process is depicted in Figure 1.



tion of cultural differences here is to apply them as a potential but indispensable basis for the purpose of political mobilization.<sup>3</sup> As we would find, the Basque nationalism, resulting largely from socio-economic changes, must grounded itself at least on certain ethnic essence.

The distinctive Basque cultural identity is essentially based on *Euskera*, or the Basque language, which is believed to be the last remaining pre-Indo-European language in Europe. Although there have been fewer and fewer Basque speakers, its uniqueness makes it an easy symbol of Basque ethnic solidarity. The language has also been an important agent for political expression. Since the late 19th century, it has been the rallying point for Basque nationalists. And one chief feature of the Basque nationalist movement has been the concern of Basque nationalists over preserving their distinct identity in the face of assimilation pressures, initiated by the central government for nation-building.

The Basque Nationalist Party (*Partido Nacionalista Vasco*, or PNV), found in 1894 by Arana, was partly a reaction to the denationalization force upon the Basque country. One indicator of such an alarming process was the declining use of *Euskera* since the 16th century. Two factors are accountable. Firstly is the deliberate policy of cultural assimilation pursued by the central government in Castile, aimed at diluting, if not eradicating, the cultural identity of the Basques, in order to foster an identification with the Spanish nation-state. To reduce the use of *Euskera*, Castilian had been exclusively used for public education since 1850. Nowadays, only 20% of the Basques are able to speak *Euskera*, and no more than 12% can read and write it (Ramirez & Sullivan, 1987: p. 122). In reality, Castilian has long become the *lingua franca* in the Basque country, and *Euskera* survives only in some fishing and farming villages, and small rural towns.

The second factor is the influx of immigrant workers from other parts

of Spain into Vizcaya and Guipuzcoa of the Basque country. Whether deliberately encouraged by the center or not, immigration has also contributed to the dilution of Basque culture. The worsened situation is particularly conspicuous in the use of language, since *Euskera* is difficult for immigrants to learn. If a bulk of the Basques themselves are giving up *Euskera*, it would be much more difficult to persuade non-Basque immigrants to learn it without any incentive. As a result, the original agenda of the PNV took a strong racial element of exclusiveness against immigrants.

However, as we have pointed out earlier, cultural attributes, such as linguistic differences, are but the necessary conditions and by no means the sufficient condition for the genesis of ethnic consciousness. For one thing, ethnic awareness entails a subjective identification with the ethnic group, which demands political manipulation exercised by the ethnic elites. Further, in order for the elite to feel frustrated and thus recognize the urgency to pursue political mobilization, there must exist some catalysts, such as psychological alienation or cultural anomie resulting from the process of modernization.

In our case, the Basque nationalists felt obliged to embark on the Basque nationalist movement to preserve their language, or more generally, their ethnic identity, which was threatened by deliberate governmental policies and by socio-economic changes resulting from modernization. Thus, as Shabad and Gunther (1982: p. 453-54) conclude from their study, linguistic cleavage may be related to ethnic nationalism, but is not its cause. In other words, although linguistic differences may potentially constitute the foundation for political expression, by themselves they are not only passive but also precarious.

We must caution that cultural difference is not a relative phenomenon. In other words, the existence of any slightest cultural distinction may make

up the base of a would-be ethnic nationalist movement, even though the process of linguistic assimilation has been largely successful, as the Basque case has demonstrated. Furthermore, since the affective essence remarked by they both is non-observable, it would have little, if any, explanatory utility.

## **CENTRALIZATION PROCESS/HISTORICAL EXPLANATION**

The rise of the Basque nationalism may be interpreted as the result of the provocative efforts at nation-building by the modernizing state. Da Silva (1977: p. 99) thus deems the Basque nationalism as the legacy of the attempt of the Spanish Liberals to centralize the state in the last century. Taking a more general perspective, Linz (1973) characterizes Spain as a case of "partial early state-building in Castile and delayed state-building of Spain." More specifically, he attributes the emergence of regionalism to the failure of nation-building after the process of state-building has been complete. In other words, although territorial unification has long been accomplished, Spain has never completed its political, social, or cultural integration.

The sequence of state-building and nation-building is relevant here. As Lopez (1985: p. 237) rightly points out, unlike many other European states, the Spanish state emerged long before the era of nationalism. During the age of nationalism, while challenged by external and internal difficulties, Spain was unable to offer any incentive in any form to its peripheries (Linz, 1973: p. 99). On the contrary, the Basque country entered the stage of industrialization in the 19th century, and thus gained economic power to challenge the center (Lopez, 1985: p. 238). The process of nation-building had never had its chance in Spain once regionalism combined with cultural identity were rooted. Timing is thus a crucial factor.

The approaches adopted by Castile to accomplish territorial unification also mattered. The aggregation of territories into a confederative monarchy were done through dynastic marriages and inheritances, or military conquest. While Alava was incorporated in 1322 and Vizcaya in 1370, the Kingdom of Navarra was conquered by force in 1512. Nevertheless, facing the military threat from France, the monarchy decided to grant the Basque country autonomy and allow for the retention of local institutions and privileges (or *fueros*) in exchange for its loyalties (Greenwood, 1977: pp. 90-92). For instance, the Basque country was allow to collect its own tax, and the Basques were exempted from military conscription. Paradoxically, these concessions allowed for the development of a distinct sense of history in the peripheries, which was later turned into an ideology by ethnic leaders in the late 19th century (Linz, 1973: p. 48).

When the confederative monarchy was transformed into an absolute one, administrative centralization was actively pursued. At a time when the military position of the Basque country seemed unimportant, the state regretted its earlier concessions. However, the centralizing attempts of both the Spanish Habsburg dynasty and the Bourbon dynasty only exacerbated the fragile relationships between the center and the periphery, which made the later state-building attempt in the 19th century more intractable (Linz, 1973: p. 49).

After the Napoleonic invasion, the Liberals, allied with the military, attempted to centralize the state fashioned after the French political and administrative model. The Liberal centralism began to challenge Basque autonomy in the 1830s, which led to the First Carlist War in 1833-39. At the end of the Second Carlist War (1872-76), the Basque country was deprived of most its traditional privileges, except fiscal and administrative autonomies. The exemption from taxation and from military conscription, for



instance, were outright rejected in 1878. As Greenwood (1977: p. 99) points out, the rejection was also perceived as a rejection of the Basques' claim to their cultural dignity. Once ethnic identity was thus defined and fused, it itself became the focus point, regardless of what policies were taken later.

In the 17th and 18th centuries, the Basque country was ruled by the foral government. Each province had its own *fueros*, worked out between the provincial rulers and the Spanish monarch. These charters (or customary laws) provided each Basque province special privileges to have its own legal, financial, and administrative structures. These medieval and pre-modern institutions largely remained intact until the 19th century and served as one valuable base for the emergence of Basque nationalism. The defense of these institutions became an ideological foundation for Basque resistance.

In their earlier resistance against the centralizing attempt from the center and in their defense of traditional rights, the Basques undertook the negotiation, documentation, compilation, and interpretation of *fueros*, which in turn reinforced their determination to preserve the historical tradition of Basque autonomy (Greenwood, 1977: p. 94). Under mounting pressure of centralization, the Basques felt that they were being deprived of their historical rights. This feeling of deprivation and grievance added a historical ingredient to the distinct Basque consciousness (Coverdale, 1977: p. 58).

It is noted that violent conflicts in the 19th century were originally not related to regional or linguistic disputes (Linz, 1973: p. 49). Rather, it began with Carlism, a relatively widespread popular movement starting with the monarchical dispute between Isabella and Don Carlos. The Two Carlist Wars happened to be fought in the Basque country. And when the Basques were defeated, the presence of "foreign invaders" and the deprivation of autonomy led to a novel Basque identity, which was the blend of tradi-

tional Basque values as well as conservative Carlist ideals (Ramirez & Sullivan, 1987: p. 126).

However, although Basque nationalism may be said to have grown out of Carlism, they were not the same. The Carlists were primarily preoccupied with the restoration of the *fueros* and against the unilateral abrogation of local rights by the Liberals. Since they were not committed to the idea of a separate Basque nation, it would be misleading to qualify them as Basque nationalists (Medhurst, 1982: p. 238).

Further, Carlism was not a holistic nationalist movement, judging from the characteristics of its loyal followers, Basque peasants in rural areas. For them, the Carlist Wars were to defend the traditional institutions and their communal interests during the process of centralization and urbanization. Against them were urban Liberals, who deemed the existing administrative arrangement an obstacle to their economic interests. Actually, the Carlist Wars may also be treated as the Basque civil war (Medhurst, 1982: p. 237).

Nevertheless, the rise of modern Basque nationalism owed much to Carlism, in so far as the latter provided the element of resistance to the center. Arana, the founder of the PNV, was from a Carlist family and carried Carlist ingredients, such as the recovery of *fueros*, into the Basque nationalist movement. The defense of traditional rights was thus transformed into the protection of Basque cultural identity.

## **ECONOMIC EXPLANATIONS**

By and large, this perspective states that manifest ethnic aspirations and ethnic conflicts are basically the results of economic discrimination, or cultural division-of-labor. Being a catalyst, uneven economic development may aggravate pre-existing cultural distance. Thus it lays emphasis on the inter-

action between economic and ethnic factors.

However, the causal link may not be handily applicable to the Basque case. Among the four Basque provinces that had attained industrialization with enormous revenues from iron export in the 19th century. Vizcaya, for instance, was not only the center of iron and steel, of ship building, and of shipping, it also became the financial center of Spain. It is noted that these industries and firms were owned by Basque capitalists, not by Castilians. Further, the growth rate and the per capita income of the region had been in general superior to those of the national average.

Actually, the climax of Basque nationalism was reached in the 1960s, when Spain was experiencing rapid economic expansion, rather than stagnation (da Silva, 1975: pp. 239-40). If the economic perspective is valid at all, it was in the 1970s, when the Basque country was challenged by the eroding international economic situation, gradual depletion of natural resources, and noticeable exodus of capital. These worsened economic conditions did provide Basque nationalists another favorable opportunity to fuel their dissatisfactions.

Therefore, if the economic factor is relevant in the development of Basque nationalism at all, it lies in the discrepancy between economic power and political status. More specifically, regions with a higher living standard may also nourish ethnic discontent (Connor, 1984: p. 345), as the cases of the Basque country and Catalonia as opposed to Castile have demonstrated.

As Urwin (1983: p. 241) suggests, such an economically superior periphery as the Basque country would have more resources to challenge the economically weak but politically strong center. For the Basque elites, their national interests would be better served with a political arrangement where they could enjoy more political power and prestige. Actually, the rise of

Basque nationalism was positively related to economic improvement, rather than under-development. A more general conclusion for our model would be that economic change, rather than economic inequality, may act as catalyst of ethnic nationalism.

## GOVERNMENTAL REPRESSIVE POLICY

Generally speaking, the deliberate policy adopted by the central government is observed to operate at every stage of the development, or transformation, of Basque nationalism. It not only played a crucial role in determining the emergence of the Basque nationalist movement, but also delimited its content and strength.

Three broad categories of policy attempted by the center in the past are relevant in our case. The first is the centralizing effort to deprive the Basque provinces of their autonomy. As we have discussed earlier, those various attempts to suspend traditional institutions and tax and military privileges had in the last century drawn Basque resistance, which paved the way for the rise of modern Basque nationalism.<sup>4</sup>

To destroy cultural identity of the Basques, the policy of forced assimilation was deliberately pursued by the central government, which nonetheless reinforced Basque identity, it is true that some unplanned factors may also have contributed to the declining use of *Euskera*, such as industrialization and modernization. But there was also a purposeful encouragement of non-Basque immigrants into Vizcaya and Guipuzcoa (Mayo, 1974: p. 111). Still, the most threatening force is the purposeful governmental policy to reduce the use of *Euskera*. For instance, public education has been in Castilian since 1850.

After the Civil War, the Franco government made all efforts to prohibit all manifestations of Basque culture. During the period between 1937

and early 1950s, public use of *Euskera* was totally suppressed. The cultural repression helped to reinforce Basque awareness that it was designed to eradicate. Ramirez and Sullivan (1987: pp. 136-37) raise the question: why Basque nationalism was not born in rural areas of the French Basque region but in industrial areas of the Spanish Basque country, where *Euskera* was rarely used? His explanation is that there was no reason for resistance in the French Basque region since France allowed for Basque cultural manifestations. On the other hand, Basque nationalism was easier to draw sympathy under repression.<sup>5</sup>

The third type of repression was the execution and imprisonment of Basque nationalists after the Civil War. The reprisals helped to produce the popular feeling among the Basques that they were a "defeated nation." A new wave of Basque nationalist activities, initialed by ETA (*Euzkadi ta Askatusuna*, or Euzkadi and Freedom), occurred in the 1960s. Facing mounting labor strikes, demonstrations by the Basque clergy, and violent actions, the government reacted with indiscriminate repression, which helped to draw sympathy for ETA and foster identification with the Basque nationalist movement among the Basque mass. In fact, Franco's brutal repression contributed to broadening the social base of the Basque nationalist movement, including middle and lower middle classes, and even the Catholic clergy. The movement hence moved successfully from urban areas into rural communities (Medhurst, 1982: p. 246).

Nonetheless, de Silva (1975: pp. 247-48) challenges that Basque nationalism actually occurred in fairly democratic regimes, such as the Restoration in the 1876-1923 period, the Second Republic, and the Franco regime since the 1960s. He thus suggests that political relaxation corresponded with the rise of Basque nationalism (p. 232). If we agree with his characterization of these regimes as more democratic,<sup>6</sup> we have to look into

the causal link and time lag between political freedom (or oppression) and Basque nationalism. Although grievance could have been suppressed and cultural differences prohibited during political oppression, the feeling was nourished rather than eradicated. Once the restraints were lifted, all manifestations of Basque nationalism were released. Therefore, Basque nationalism is not a new phenomenon developed under democratic environment as suggested by da Silva.

Da Silva also argues that Franco's political repression in the Basque country was no worse than that in other provinces. He thus implies that governmental repression is not a satisfactory explanatory variable for the rise of Basque nationalism. However, he seems to have neglected that there is a powerful cultural, or ethnic, element involved in the Basque case. Further, it is not the absolute degree of repression that matters; rather, subjective perception by the Basques of the repression is more crucial. Similarly, he contends that although Primo de Rivera abolished Basque political organizations along with all other political parties, he allowed for the expression of cultural differences. Again, we must note that the perception of suppression is not a matter of degree but a matter of presence or absence.

## **PROCESS OF MODERNIZATION/SOCIO-ECONOMIC CHANGE**

Though modernization<sup>7</sup> is generally pursued by national leaders as an indispensable goal in the process of nation-building, scholars disagree upon what role it actually plays in the formation of ethnic nationalism when there already exist ethnic differences.

Some argue that modernization would promote assimilation and facilitate integration. In his formulation of the theory of modernization, Deutsch,

for instance, posits that increased inter-group contacts through effective communications in the process of modernization would encourage national assimilation. He thus optimistically recommends a deliberate policy to eradicate ethnic distinctness. This is what the Spanish center had tried to accomplish but without much success.

On the contrary, some students of ethnic politics contend that modernization would increase ethnic consciousness. Connor (1977: p. 29) observes that increased contacts between ethnic groups could only reinforce their ethnic awareness and in turn exacerbate ethnic conflict. The relationships between the Basques and the Castilians seem to attest to the validity of his argument.

Modern Basque nationalism, emerging after the decline of Carlism, was unequivocally the direct result of profound social and economic changes in the late 19th century. Modernization sharpened Basque ethnic identity in a region where there had already existed distinct cultural differences.

Until the late 19th century, as we have noted earlier, the Basque country enjoyed a certain degree of autonomy. After the last Basque *fueros* were abolished in 1876, the Basque country not only lost its autonomy, the whole economic structure also underwent drastic and extensive transformation. With the exploitation of iron ores, the Basque country embarked on its first phase of industrialization. For the first time, iron ore was exported from Bilbao to Great Britain in exchange for inflows of capital. With custom stations moved from the Ebro River to Basque ports, Basque industries could enjoy the protection of high Spanish tariffs, while Basque consumers had to pay high prices for imports. Further, new tax arrangements from the *conciertos economicos* were favorable to the industrial class and upper bourgeoisie (Clark, 1981: pp. 98-99).

As a result, the Basque provinces, especially Vizcaya, experienced as

industrial boom. Based on the iron and steel industry and on large-scale heavy industries, the Basque region became one of the richest region in Spain. Having been industrialized, the Basque provinces benefitted disproportionately from the vast expansion of Spanish economic activities. Leading Basque financial and banking entrepreneurs even successfully extended their concerns all through Spain. Their interests were so tied to the center that they severed their links with Basque nationalists during the dictatorship of Primo de Rivera in the 1920s, and identified themselves with the conservative Castilian elite (Medhurst, 1982: p. 240).

Economic development may have been beneficial to the Basque country as a whole. Except for the upper class, however, most of the Basques felt vulnerable to the disruptive forces of socio-economic changes and reacted violently to them. The middle class, the most ardent followers of the PNV, found themselves trapped between the Basque industrialists and bankers and the rising Socialist-oriented immigrant working class (Lannon, 1986: p. 233). While perceiving that they were thus rendered powerless, they were also afraid that their traditional values and Basque society would be destroyed by the disruptive forces of large-scale industries and class struggles (Medhurst, 1982: p. 241).

Most of the PNV leaders were drawn from the alienated middle class. Arana, the founder of the PNV, spoke to *Euskera* and knew no Basque history. Caught up in crises of personal and group identity, he concluded that "cultural identity, material development, and moral and religious solution could be achieved only through the realization of exclusive Basque nationalism" (Payne, 1971: p. 35). His aim was to establish an independent confederation of the seven Basque provinces.

Other segments of Basque society, including lesser bourgeoisie and local professionals, were also frustrated. They discovered that while they had



paid much, they had gained little from the industrialization process. Realizing that their interests and values were threatened, they thus turned to the ethnically based PNV for "psychic comfort" (Clark, 1980: p. 87). The socio-economic upheaval also contributed to the disruption of Basque rural areas. Fearing that traditional Basque culture would be ruined, the Basque peasantry, small town people, and even the rural clergy all acted against any further industrialization.

Another direct impact of industrialization in the Basque country was the emergence of an immigrant working class, which made early Basque nationalism in the 19th century painted with a hostile element of racial exclusiveness. Although some workers needed for industrialization were introduced from Basque rural areas, the majority were recruited from other parts of Spain. Dwelling in segregated communities of urban industrial centers, these non-Basque immigrants were not assimilated and did not identify themselves with Basque identity. At the turn of 20th century, 70% of the population in Bilbao were non-Basques. Many of the Basques thus thought that they were a minority in their own homeland.

Further, immigrant workers were organized by the Spanish left, whose anti-clericalism was antagonistic to the Basque Catholic population (Medhurst, 1982: p. 240). The desire to maintain their cultural distinction hence made Basque nationalism a populist movement. The determination against denationalization was even linked to the preoccupation with "ethnic purity of the Basque race" (Coverdale, 1977: p. 58). The racial attitude was so strong that Arana himself was against intermarriage, and even advocated the expulsion of non-Basque immigrants.

## **ETHNIC ELITES' MANIPULATION**

Except for political, social, and economic changes, which we have

discussed earlier, Basque ethnicity is also strongly linked to efforts at mobilization by the Basque elites. As Greenwood observes, "ethnicity is highly malleable and responsive to the circumstances in which groups find themselves" (cited in Urwin 1983: p. 25). According to Linz (1985: p. 229), Basque ethnicity "is not simply a reflection of descent, birth, or length of stay in the Basque country." Rather, "the political and ideological climate to which different generations have been exposed is beyond doubt also strongly related to identity." Since the mass generally lacks continued interests in political issues, ethnic sentiments may be less salient at the mass level than at the elite level. Ethnic consciousness may thus be the unmediated outcome of the mobilizing efforts by the ethnic elites.

As we have posited, that the elites are much disposed, if not enthusiastic, to lead the way is probably due to their perceived relative deprivation, which results either from unequal distribution of political power or economic resources, or from psychological alienation. The elites may thus wield, if not play on, ethnic sentiment in their wrestle with the elites in the center. Before so doing, they have yet to persuade the mass that their interests can only be protected and served through ethnic solidarity.

In the Basque case, we need to delineate what kind of elites is involved here. Since the Basque upper class finds its interests in forging alliances with the Spanish national elites, there is no need for this class to secure economic resources by taking a Basque nationalist stance. Further, as the Basques from this class were at times invited to take political positions in the national government, it was unnecessary for them to join Basque nationalist movement.

On the other hand, leaders of the PNV, mostly from the middle class, were more concerned with cultural relations with the center. Economic or political interests, if any, may have been another justification to rally popu-

lar support for nationalist cause. Base on Carlism, which was more concerned with the defense of local rights under a traditional monarchy, the early PNV asked for outright independence of the Basque country. To emphasize that the Basques constituted a separate nation and thus deserved the right of self-determination, a racial element was added, or invented: the Basques were superior to the Spaniards.

Early Basque nationalist movement was under the auspice of the PNV. To rally popular support, the PNV endeavored to cultivate the perception that the Basques were a "defeated nation" (da Silva, 1975: p. 232). Facing constant pressure of cultural assimilation, the PNV made all efforts to stimulate interests in Basque culture. Plebescite on autonomy in the Basque region was accepted by residents in Alava, Guizcoa, and Vizcaya, but not in Navarra, the stronghold of conservative Carlism. Conservative as it was then, the PNV joined the Popular Front government, and secured the permission of Basque autonomy in 1936, which lasted for less than one year.

After the downfall of the Basque country in 1937, the PNV took refuge in France and established a government-in-exile. The PNV leaders maintained close relationships with the Western Allied powers during World War II, in the hope that the Allies would support Basque self-determination after the war. However, with the inception of the Cold War, Franco was eventually accepted by the United States, which made international solution to the status of the Basque country exceedingly unimaginable. Domestically, because of Franco's severe reprisals of Basque nationalists, nationalist activities had to go underground, which was a tremendously difficult task for an exiled organization. Under such drastic changes in political environment, the PNV lost its political relevance in the Basque nationalist movement.

Frustrated by the inability of the PNV in leading underground operation, ETA, a dissident group made up of students, seminarians and workers,

was founded in 1959. With the hope to establish a socialist Basque country through social revolution, ETA laid much emphasis on Basque nationalism. Its strategy was to use urban guerilla operations to provoke Franco's repression, hoping to attract sympathy from the alienated Basques. Although internal disputes over goals and strategies had in the past precluded the possibility of maintaining a hegemonic nationalist movement, the success of its strategy in winning widespread sympathy for its cause should not be dismissed.

## **OVERALL EVALUATION**

We find that the formation of Basque nationalism and its politicization have been a sequential process. It began with pre-existing cultural differences, followed by feelings of relative deprivation perceived by Basque elites in the process of modernization. The frustration was exacerbated by attempts at administrative centralization and cultural assimilation by the central government. With deliberate manipulation by the Basque elites, Basque ethnic awareness was sharpened and ethnic solidarity was mobilized to partake in political activities. Therefore, the evolutionary process we have generalized in the model is in the main valid in the Basque case.

Cultural differences, particularly linguistic ones, were indispensable for the formation of Basque nationalism. Without this underlying base, conflicts between Basque and Madrid would have been either social or economic ones. Nevertheless, there is no guarantee that these distinct attributes will lend themselves to relative deprivation on the part of the Basque elites. Some other factors are needed for such a feeling to come about. Favorable international conditions created such an expectation that the Basques deserved the right for self-determination. Three intertwined factors have contributed to the formation of reality: centralization process, governmental

policy, and modernization process.

As the modernizing state made all efforts at political integration, economic development, and social mobilization, the enshrined goals were centralization, assimilation, and modernization. All these together created dramatic socio-economic changes, which in turn led to cultural anomie and psychological alienation among the Basque elite. As a result of the gap between reality and expectation, a feeling of relative deprivation was developed.

Governmental policies had its relevance at this juncture. If the center had adopted a federal arrangement, and had allowed for cultural pluralism, the only facilitating factor left would be modernization. However, the Spanish national elite seemed determined to attain their goal of centralization and nation-building. In the process of abolition and recovery of *fueros*, embryo Basque consciousness was gradually rooted. Moreover, challenged by violent Basque reactions, they used brutal reprisals to eliminate Basque nationalist activities, which only reinforce Basque solidarity.

The most intriguing explanatory variable are the perception and the behavior of the Basque elites. Initially, they felt deprived by policies undertaken by the center. On the one hand, in order to bring Basque identity into life, all efforts were made to enshrine the so far non-existing Basque nation, or race. Basque history was reinterpreted, and racial fiction was made that the Basques were superior to the Spaniards. On the other hand, attempts were made to politicize awaking Basque identity. To draw public sympathy and to rally popular support, they initially portrayed the Basques as a defeated nation and the Basque country as an occupied territory. Later on, their strategy of provoking governmental cruel reprisals through violence also broadened the base of the movement.

Finally, the only futile explanatory variable is economic discrepancies,

since the Basque country has so far benefitted much more than most other regions have in the process of Spanish economic expansion.

## ENDNOTES

1. An earlier version of this study was presented at the XV General Conference of the International Peace Research Association, October 31-November 4, 1994. Funding for this research was provided by the National Science Council, Taiwan (NSC 82-0301-H032-014).

2. As we have observed elsewhere (Shih, 1994: p. 23-24), three favorable international conditions may be conducive to the rise of ethnic nationalism: the change in the international political environment, the movement to democracy since the 19th century, the diffusion of the ideology of self-determination, and the demonstration effect of successful nationalist precedents.

3. Not all students of ethnic nationalism agree with the importance of objective manifestations of cultural differences. Connor (1972: pp. 336-37), for example, distinguishes two dimensions of ethnic nationalism: the overt characteristics of cultural uniqueness and the psychological essence of self-differentiation. He complains that tangible distinctions are usually mistaken as the explanatory variables because it is much easier to observe them, and because they are actually used by ethnic leaders for political mobilization. He even claims that the psychological sense of uniqueness may come into being without any tangible cultural distinction. In other words, ethnic consciousness may "transcend" objective cultural differences. Following Connor's argument, da Silva (1975: p. 237) similarly argues that cultural distance is not an important factor underlying Basque identity, since the Basques and the other Spaniards share the same Catholic faith, and since the majority of the Basques speak Castilian.

4. Although autonomy was offered to the Basque region during the Second Republic era, it was swiftly deprived again by Franco in less than one year.

5. Since the early 1950s, the Franco regime began to loosen its tight control of Basque cultural expression. Voluntary part-time schools teaching *Euskera* were allowed since 1968.

6. Since the last *fueros* were abolished in 1876, for instance, it would be difficult for the Basques to deem the era as relatively democratic.

7. The process of modernization is concomitant with several sub-processes, including industrialization, urbanization, standard education, and the progress of communication and transportation facilities.

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## The Structural Adjustment Program of the World Bank and the IMF in Ghana

### 世界銀行與國際貨幣基金會在迦納 所主導的結構性調整計畫

by

Ho-Won Jeong\*

#### 摘 要

迦納自從1957年獨立建國以來，長久經歷經濟衰退與政治不穩定，民選文人政府不時在經濟動亂中被軍事政權所取代。洛林政府在1981年的軍事政變中崛起，除了在外交上與社會主義陣營國家維持親密經濟關係，對內則實施激進的平等主義政策。在實驗民萃式經濟政策一年後，迦納政府改採新古典式的經濟政策，稱為「結構性調整計畫」。此項世界銀行與國際貨幣基金所主導的政策，給迦納社會帶來直接的影響。本文研究此政策的目標、本質、及其對迦納經濟結構的建議。

Key words: Ghana, World Bank, IMF

關鍵詞：迦納、世界銀行、國際貨幣基金會

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## **THE STRUCTURAL ADJUSTMENT PROGRAM OF THE WORLD BANK AND THE IMF IN GHANA**

Ghana has experienced prolonged economic decline and political instability since its independence in 1957. Civilian governments elected by popular votes were frequently replaced by military coups in the midst of economic chaos. The Rawling's regime emerged after a military coup in 1981 which destroyed the government led by Hilla Limann who was elected in 1979. The initial economic strategy of the new regime was to pursue radical egalitarian policies along with efforts to build close economic ties with Socialist bloc countries. After experimenting with populist economic policies for a year, however, the Ghanaian government adopted a structural adjustment program in 1983.<sup>1</sup> Since then, Ghana remains one of a few low income African countries that have sustained internationally supported structural adjustment efforts.<sup>2</sup>

Deteriorating economic conditions forced the revolutionary Rawling's regime to give up a socialist economy and look for external financial assistance from the West. The adoption of the structural adjustment program of the World Bank and the IMF and dependence on external financial resources brought about many changes in the economy which have direct impact on society. Ghana's structural adjustment program known as the Economic Recovery Program (ERP) has re-directed Ghana toward a market oriented economy. Despite recent economic difficulties, Ghana's commitment to liberal economic policies is still strong. This paper examines policy goals, nature of the structural adjustment program, and its implications for the structure of the Ghanaian economy. The case study of Ghana can help us evaluate the impact of World Bank and IMF policies on social and economic welfare of populations in many Third World countries since the

early 1980s.

## **ECONOMIC PROBLEMS BEFORE THE ADOPTION OF THE ERP**

The ERP became necessary not only because of the steadily deteriorating economic situation in the 1970s and early 1980s but also because of the ineffective and ad hoc economic measures that previous governments employed to improve the economy.<sup>3</sup> The trends in key economic indicators between 1970 and 1982 show cumulative effect of the downward economic spiral. Domestic savings and investment declined from 12 percent and 145 percent of GDP, respectively, in 1970 to almost insignificant levels while per capita real income declined by 30 percent. Real export earnings fell by 52 percent, and import volumes dropped by a third.

The period between 1970 and 1982 observed a significant decline in the agricultural, mining, and industrial sectors of the economy which generate almost all of the country's foreign exchange earnings. Cocoa production declined from about 425,000 tons in 1981-2 to 158,000 tons in 1982-3. The share of the cocoa sector in total GDP dropped from about 14 percent in 1970 to 2.6 percent in 1983. The manufacturing sector suffered decline of its share of GDP from an average of 11.4 percent in 1970-2 to an average of about 6.2 percent in 1980-2. A similar decline took place in the mining and timber sectors. Whereas timber production in 1982 was one-tenth of the level in 1970, gold production of about 230,000 fine ounces in 1982 was about a third of the production in 1970 (Addo, 1990: p. 85). The main cause of this decline was heavy dependence of the sectors on imported inputs in the middle of an acute shortage of foreign exchange and unfavorable international economic environment for export.

The poor performance of the export sector protracted foreign exchange

sector, and adverse terms of trade hampered the country's capacity to import raw materials, consumer goods, and spare parts. Since external trade provided the bulk of government revenue, the declining export sector also eroded the tax base of the government. To finance budget deficits caused by the poor revenue source, the government had to resort to excessive borrowing, largely from the banking system. As a result of this, rapid monetary expansion was inevitable as a situation of acute supply shortages aggravated inflationary pressures in the economy.

The economy got worse in the early 1980s when a prolonged and severe drought created the worst food shortages since independence in 1957. The increase in petroleum prices combined with softening prices of major exports such as cocoa and gold further deteriorated the external terms of trade. In addition, the food and employment situations were strained by sudden return of over a million Ghanaians from Nigeria in 1982-3.

In the World Bank's analysis, the decline of the Ghanaian economy was the direct outcome of misguided macroeconomic policies pursued by the government. Inappropriate industrialization led by the state, strong biases against agriculture and other labor-intensive sectors, and too much emphasis on capital and import-intensives were attributed to inflation, the failure of growth, huge debt, inflation, and other economic problems. Most importantly, the failure to achieve balance of payments and to eliminate government budget deficit have become a serious concern.

The World Bank's analysis correlates a poor policy environment created by the government to negative economic growth in Ghana (World Bank, 1984: p. 10). More specifically, first, a highly overvalued currency discouraged the production of tradable commodities which can generate export revenue. For instance, the exchange rate of the cedi was officially adjusted only twice over the ten year period from January 1973 to March

1983. The real cedi value in 1981 was overvalued by 816 percent from 1983, and this reduced the export value of cocoa internationally. Second, an inefficient tax system discouraged the production of export goods, which led to an increasing tax deficit. Third, in order to overcome budget deficit the government overtaxed export crops, especially cocoa, and this reduced the incentive for production. Fourth, the country's infrastructure deteriorated to a dismal state, and this had a devastating effect on both agricultural and industrial production. Bad road conditions, for instance, made the movement of agricultural products from major production centers to consuming centers difficult. Lack of investment for maintaining existing infrastructure was caused by the fact that many projects in the past were undertaken without much consideration of potential resources in the future. Fifth, rural development was neglected in the government's programs, and this accelerated rural-urban migration. As a result, labor became scarce and a major constraining factor for agricultural production. Sixth, an overstaffed civil service sector had redundant workers who were on government payroll. This severely strained the budget and caused fiscal imbalance. Seventh, the general deterioration in the economy generated the exodus of a large number of the country's educated people to other countries. This exodus worsened administrative capability of government ministries (Okyere, 1990: pp. 74-5).

## **ECONOMIC RECOVERY PROGRAM I AND II**

Ghana's structural adjustment program started with a short-term stabilization program supported by the IMF in April 1983. The goal of the program was to reestablish economic growth and development by reversing the poor policies of the previous 10-15 years. It stressed the creation of "a growth-oriented, competitive, efficient and integrated economy" (Government of Ghana, 1987: p. i). The three-year Economic Recovery Programme I

(1984-86) was backed by the World Bank and other donors as well as the IMF. The ERP I focused on the achievement of macroeconomic balances, including the elimination of price distortions. The ERP II (1987-90) emphasized improved growth capacity utilization of the existing capital assets as well as liberalization and relaxation of controls on prices. The third phase (1991-93) of the ERP has given a high priority to improvement in an incentive structure for stimulating growth with continuing stress on the elimination of government intervention in a market mechanism. These phases are, however, overlapping, and "the policy norms impinged on the objectives of stabilization, rehabilitation, liberalization and growth simultaneously" (Tabatabai, 1986: p. 401).

The ERP was designed for improving the competitiveness of and incentives for export by devaluing the exchange rate, and removing tariffs and other impediments to free trade. Reducing fiscal deficit and controlling inflation are needed to restore fiscal and monetary discipline. Improving efficiency in the use of domestic resources requires removal of subsidies on food and fuel and elimination of administered pricing systems. Also important in the ERP are rehabilitating the country's productive base and economic and social infrastructure, and encouraging private investment.

The main economic objectives of ERP I are to arrest and reverse the decline in production, especially in agriculture, control inflation, stimulate exports, rehabilitate the productive and social infrastructure, and mobilize both domestic and foreign resources for improving the living standards of Ghanaians (Government of Ghana, 1987: p. 3).

In 18 months after the adoption of the ERP, the cedi was devalued to be worth 5.5 percent of its prior normal value, and the government allowed the real costs of imports to rise more than 18 times. The most dramatic was a steady increase in the producer price of cocoa and cash crops. The



producer price of cocoa went up from 4,000 cedis per ton in 1981 to 12,000 cedis in 1983, 56,000 cedis 1985/86 and to 85,000 cedis in 1987. The price increases of cocoa and devaluation were designed for increasing cocoa production. Price controls remained on only seventeen widely used essential commodities. In addition, subsidies on fertilizer and petroleum have been removed, and utility rates and fees were raised by several hundred percent (Tabatabai, 1986: p. 401).

For the implementation of the ERP, the Bank and the Fund provided sectoral adjustment loans such as two Reconstruction Import Credits in 1983 and 1985 and an Export Rehabilitation Credit in 1984 as well as a structural adjustment loan in 1986 which was designed to support more comprehensive macro-economic policies. In the beginning, the IMF lent SDR 179 million under a compensatory financing facility, and drawings on an IDA facility totaled US 662 million dollars with US 347.8 million dollars in project lending and US 314.2 million dollars for balance of payments support (Addo, 1990: p. 91).

The first phase of the Ghana adjustment program has been successful in controlling inflation and achieving balance of payments in government budget. Improved food supplies helped decelerate inflation from 122 percent in 1983, the first year of the ERP to 10 percent in 1985 in terms of the average consumer price index. The export sector also improved due to the sharp rise in dollar value of exports between 1984 and 1986. Cocoa production increased by 6-7 percent per year. Ghana's growth rates averaged 5.1 percent between 1985 and 1988. Major reductions in balance of payments and budgetary deficits generated an environment for the future growth (World Bank, 1987).

Based on gains of the first phase of the ERP, the ERP II, which was implemented between 1987 and 1989, attempted to ensure substantial growth

at around 5 percent per year, maintain the balance of payments, stimulate substantial increases in the levels of saving and investment, and improve public sector management. With its focus on medium and long term policies, the ERP II added growth element to stabilization unlike other Bank/Fund adjustment programs.

In ERP II, a three-year Public Investment Program (PIP) formalized government investment plans with projects yielding a high return. Some projects were aimed at generating high employment, improving rural incomes or furthering community participation. Regional balance was also considered in the program. Beginning in 1986, a rolling three-year investment program was prepared for rehabilitating key sectors such as gold mining and transport infrastructure.

Prior to the introduction of the ERP, layoffs were not permitted except with the prior approval of the government, and it made lay-offs of workers more difficult. However, the retrenchment of workers in a public sector became "necessary evil" under the ERP due to their low productivity and government budget deficit. By the second phase of the ERP, more firm decisions were made for retrenchment of employees of civil service, local government, and state enterprises. The plan was based on the anticipation that the private sector would absorb the laid off workers in the public sector with progress in privatization of government owned industries and increase in self-employment in agricultural and other sectors (Jonah, 1989: p. 141).

Previously the government often approved across-the-board wage increases, but, to maintain fiscal balance under the ERP, it began to be more concerned with the need to balance wage increases against the control of inflation and public expenditure. A more major shift in government wage policies was made in the second phase of the ERP. To provide incentives

for expertise, the World Bank pushed the government to raise the wage gap in favor of higher officials along with reducing the work force. The government abandoned its previous emphasis on narrowing the income gap between the rich and the poor which gained popular support for its first two years in office. The wage and salary gap increased from 1.8 to 5 percent and more during the period of the ERP II (Jonah, 1989: p. 145).

Since 1987, the ERP has been implemented through structural adjustment loans with two IDA credits and cofinancing from bilateral and multilateral sources. The financial assistance was used for 1) stimulating growth, savings and investment, 2) improving resource mobilization and utilisation, and 3) strengthening the balance of payments position (World Bank, 1991b: p. 33). An Extended Fund Facility and a Structural Adjustment Facility credit from the IMF, in particular, focused on relieving import constraints and immediate debt-servicing problems. Unlike other Fund loans such as the Standby Arrangement, the Extended Fund Facility offers more generous terms by allowing repayment of loans between 4.5 and 10 years after being first drawn. The Structural Adjustment Facility is drawn over three years but has highly concessional terms (Loxley, 1988: p. 44).

## **THE CURRENT FOCUS OF THE ECONOMIC RECOVERY PROGRAM**

The ERP II was succeeded by the third structural adjustment program that aims to maintain an incentive framework for stimulating growth, encourage savings and investment, as well as strengthen the balance of payments. Other program objectives include maintenance of fiscal and monetary stability, improvement in resource use of the public sector, and, more importantly, achievement of environment for private sector development (World Bank, 1991a: p. 224).

Trade and exchange rate reforms continued to be a dominant issue in Ghana's structural adjustment program. After official and auction exchange rates were unified at cedi 150 to a US dollar in February 1987, the government also permitted banks and authorized dealers to establish foreign exchange bureaus and buy and sell foreign exchange at freely determined prices. The unification of foreign exchange markets in April 1990 led to free determination of the exchange rate through weekly wholesale foreign exchange auctions.

The import duty tax, covering nearly all imports, was reduced to ranges from zero to 25 percent. The government also lowered the "super sales" tax on imports of a wide range of mainly luxury consumer goods from rates between 75-500 percent in February 1990 to 10-100 percent in 1991. Since the import licensing system was abolished in January 1989, importers are now required to submit only an import declaration form.

The cocoa sector is still central to Ghana's economy both because of its contribution to tax revenues, export performance, and because of its generation of rural employment and incomes. Considerable efforts were made for improving cocoa producer incentives and lowering the costs of the Ghana Cocoa Board. The farmers share of cocoa sales profit has increased from 25 percent in 1984-85 to an estimated 47 percent in 1990-91. The operational costs of Cocoa Board were trimmed through retrenching about 17,000 workers between 1987 and 1989 and eliminating subsidies on inputs to cocoa farmers by 1990. In addition, the privatization of 90 plantations was planned, and 52 plantations of them already ceased to operate (World Bank, 1991a: p. 224).

Despite initial difficulties in the divestiture program, the government has made some progress in achieving reforms in the parastatal sector.<sup>4</sup> In recent years twenty three parastatals have been liquidated, and another fif-

teen enterprises were scheduled to be sold to a private sector. The Divestiture Implementation Committee approved divestment of about forty additional enterprises in late 1990. The government is expected to reserve only 18 high priority industries such as the electrical utilities and Ghana airways out of approximately 235 state owned enterprises.

The third phase of the ERP continues to depend on retrenchment of employees at a low level and increases in salaries of senior government officials for improving civil service efficiency. The government laid off over 12,000 staff in 1990 following retrenchment of about 14,000 in 1989. General pay increases were combined with further stretching of pay differentials in the 1991 pay package. Salary differentials were widened from the 1990 level of 9.4:1 to 10.1:1 for 1991 (World Bank, 1991b: p. 43).

Public expenditures have been restructured to allow increased investment in sectors of health, education and agriculture. Public investments rose from negligible levels at the beginning of the economic recovery plan to 7.4 percent of GDP in 1990. To improve investment planning for rehabilitation of economic and social infrastructure, the government strengthened the planning units of sector ministries, and a project selection committee has been established within Ministry of Finance and Economic Planning to ensure that investments meet established criteria and support sector strategies (World Bank, 1991a: p. 224).

Since 1988, the IMF supported the ERP through the Enhanced Structural Adjustment Facility (ESAF) carrying SDR 388.6 million. Ghana's outstanding use of IMF resources reached SDR 523 million as of December 1990. The second year programme of the enhanced structural adjustment facility (ESAF) helped unification of the auction and foreign bureaux exchange rates in June 1990 (Economic Intelligence Unit, 1990: p. 17). The third year of the arrangement covered macro-economic policy reform

during the period of January-December 1991.

Ghana has implemented the economic recovery program for more than ten years. Since 1989, the macro-economic environment has become worse, and the economy faced some serious setbacks in the 1990s. Economic growth slowed, and fiscal policy deteriorated with the acceleration of inflation. Overall growth in the manufacturing sector considerably declined because of a credit crunch in 1989 and lagging investment outside of mining (World Bank, 1991a: p. 225). The tax revenues fell to 11.2 percent of GDP, because of a slowdown in economic activity, lower tax rates, and a drop in receipts from cocoa taxes. The government's revenue was short of the targets in 1990 due to unanticipated expenditures. The aggressive fiscal and monetary policies did not stop rising inflation level, reaching an annual average rate of about 37.2 percent in 1990. Despite general increases in investment levels since the ERP in 1983, the flow of private investment into the economy has been disappointing outside the mining sector (World Bank, 1991c).

## **EVALUATION OF THE ERP**

Compared with other adjustment programs, Ghana's adjustment efforts include a growth element and have been more generously funded by the World Bank and the IMF. The emphasis of the program shifted from short-term stabilization and recovery to a sustained, long-term growth approach. It also tried to achieve economic stability through a concerted attack on some of key longer-term constraints to sustained development (World Bank, 1987: p. 25). Structural adjustment policies have become more comprehensive as external and internal constraints were viewed as severe. In addition, the implementation of the ERP is based on rapid and simultaneous policy changes on a number of reform fronts. The Bank and

the Fund believe that this strategy of rapid implementation of the structural adjustment program would be more likely to succeed. Most importantly, the program established a political and financial context for the restructuring of the Ghanaian economy.

Strong donor support was represented in generous balance of payments assistance and concessional financing. External support helps reduce deficit and pursue rehabilitation projects which are essential for expanding the export sector. Ghana currently faces large deficits on the services account, mainly because of interest payments as well as trade deficit. With the absence of foreign exchange reserves and commercial payment arrears, the external financial support was critical to the success of the ERP. Financial assistance from international financial institutions have facilitated the import of essential machine parts and raw materials which are needed for increased capacity utilization of Ghanaian industries. In addition, external finance supported the expansion of foreign trade, and it would be able to generate increases in government tax revenues.

### **i) Achievement of the ERP**

The ERP has been successful in satisfying many of its immediate objectives such as achievement of macro-economic balances (Frimpong-Ansah, 1992: pp. 144-55; Hutchful, 1989: p. 114). A more realistic exchange rate was established, and government budget deficit improved through the removal of subsidies in many areas. The increased spending on rehabilitation of transport infrastructure facilitated more production in the cocoa, timber and mining sectors. Rigorous management of monetary, fiscal, and external debt during the first several years of the program brought about stabilization of the economy. More positively, the program stressed increasing rather than reducing real imports, and stabilization took place without a

reduction in GDP, in total or per capita (Loxley, 1988: p. 26).

## **ii) Problems**

On the other hand, the structural adjustment program in Ghana did not solve some serious problems inherent in the economy, including deteriorating external terms of trade, inadequate private investment levels, and insufficient implementation capacity. The export emphasis at the centre of the ERP has emerged as "the Achilles' heel" of the programme (Hutchful, 1989: p. 115). It appears that overemphasis on exports, especially with heavy concentration on cocoa, would not be so reliable in a long run.<sup>5</sup> Because of large market surpluses and a major slump in world prices, the expansion of cocoa exports with big price incentives to producers turns out to be a very vulnerable economic strategy. In August 1988, world cocoa prices reached the lowest point in twelve years, and it is related to serious conceptual problems in the design of structural adjustment programs. The World Bank stressed too much raising cocoa production, and advised other cocoa producing countries like Brazil, Ivory Coast, and Indonesia to adopt similar export-based adjustment policies (Hutchful, 1989: p. 116). Therefore, overproduction of cocoa and price declines in the world market are not accidental. Ghana's increase in its cocoa production in the midst of fall in its world prices is explained in terms of lack of visible alternatives to cocoa. Some also argue that increase in the production of cocoa would still be in Ghana's interest since Ghana has a comparative advantage in cocoa production with its low cost of production compared with other major producers (Okyere, 1990: p. 82). Recently timber and gold production was increased to compensate for the loss of cocoa export, but their export earnings are far below those of cocoa export which account for over 60 percent of the country's entire export revenue.



Another area of concern lies in the external debt implications of the ERP. Compared with debt service ratio at only 10.7 percent of exports in 1982, Ghana's debt servicing burden had risen to over 50 percent of annual export earnings by the end of 1985, and the country's growing debt burden consumed 60 percent of export earnings throughout the second phase of the programme between 1986 and 1988. The World Bank and the IMF assumed an increasingly large proportion of Ghana's debt, and it now constitutes non-renegotiable debt. Service on World Bank credits makes up 25 percent of total debt service. More serious debt problem comes from expensive, short-term IMF Standby Credits cumulated during the first three years of the ERP. Over half of the debt-servicing burden in 1987 and 1988 fell on account of IMF charges and repurchases. Since 1988, Ghana has received support from the IMF through the Enhanced Structural Adjustment Facility (ESAF). However, concessional new financing has been offset by outflows for debt servicing and repayment of arrears. Net transfers from the IMF are expected to be negative after the early 1990s. It is estimated that the negative transfer would average US \$80 million per annum for the 1992-95 period. Such a high level of debt servicing with weak cocoa prices in the world market can constrain the economy by limiting the import capacity. The Minister of Finance and Economic Planning Botchwey recently revealed that the high debt-service ratio led to net transfer of US 375 million dollars from Ghana to the industrial countries in the first three years of the economic recovery program. Now he is worried about the size of the net outflow of resources to the IMF as Ghana should meet its debt repayment obligations (World Bank, 1987: p. 5).<sup>6</sup>

The inadequate level of private investment is another serious concern. Since a significant level of rehabilitation and higher capacity utilization have been realized, private investment needs to be raised for economic growth.

The government is making a major effort to promote higher levels of private investment through privatization of government enterprises, but the response of foreign and domestic investors has been very slow. Direct foreign investment in 1986 remained only one quarter of its 1981 level, and much of that was not utilized for investments in new industrial production but spent on rehabilitating old gold mines which promise higher levels of profit earnings. With respect to investment in former state industries, on the other hand, there is a concern that the liquidity squeeze and exchange rate depreciation may lead mainly to the purchase of state enterprises by foreign companies rather than Ghanaians. The slow response to investment need was, in part, caused by excessive credit restrictions which precipitated recessions in the industrial sector. The limitation on credits led to even underutilization of quick disbursing credit of the Bank for reviving various productive sectors. The mobilization of local funds for investment in industrial production has been more difficult along with the increases in the costs of imports in the depreciated currency.

Compared with emphasis on export promotion and trade liberalization, little attention has been paid to domestic industrialization. For instance, the public investment program 1986-87 allocated less than 4 percent of total investment to the industrial sector (Loxley, 1988: p. 50). In addition, the government's efforts to cut budget deficits involved drastic cuts in already low capital investment. In Ghana's circumstances, unmodified import liberalization could undermine potentially viable local industries that were already crippled by tight credit and competition from foreign "brand name" goods (Weissman, 1990: p. 1626).

One of the most ignored areas in the ERP is the protection of environment. The expansion of cocoa production and logging destroyed the country's forest cover and is likely to exacerbate the high ecological costs.

The promotion of cocoa and timber exports weakened the capacity of the environment to sustain food self-sufficiency and production. Serious concern with further destruction of Ghana's tropical rain forests is supported by the estimate that the high forest zone (HFZ), which suffer from extraction of hardwood timber and the support of cocoa farming, is destroyed at the rate of 4.5% annually. The method of logging is often wasteful. Large unprocessed trunks are often abandoned after marginal operators saw off contract sizes (Hutchful, 1989: pp. 119-20).

There is also a concern for too excessive outside intervention. The lack of administrative capacities for economic planning has resulted in the intervention of international development agencies. The economic policy making of structural adjustment in Ghana is based on highly conditional terms. Ghanaian officials argue that excessive outside intervention jeopardizes administrative viability. On the other hand, Bank and IMF officials, who push for liberal economic reforms in multiple sectors, argue that little would get done without their pressure.<sup>7</sup>

There is a wide spread criticism that the adjustment program in Ghana may have put unrealistic demands on a state structure which does not have enough technological competence.<sup>8</sup> Some think that the Bank's programs demand too quick result and expect too broad changes with limited resources. Especially, the comprehensiveness of systematic institutional reforms could easily overload a public sector capacity.<sup>9</sup>

## **THE ERP'S IMPACT ON LIVING CONDITIONS**

The distributional impact of the ERP on population generated lots of concerns. It is generally agreed that distributional effects did not get a fair attention in policy design. In fact, structural adjustment programs do not have much emphasis on poverty alleviation since macro-economic issues are

major concerns. Economic losses from layoffs and limited access to schools, health facilities, and food subsidies fell heavily on the poor who are estimated to be one-third to one-half of urban Ghanaians (UNICEF, 1984). Wages and salaries were not raised sufficiently to cover the vastly increased prices. Real wages of manual workers in 1982 were only 16 percent of their 1975 level. Though the minimum wage, under strong union pressure, was increased from 12.50 cedi per day to 70 cedi per day in December 1984, the increase did not offset inflation with leaving wage and salary earners worse off than they were in April 1983. In response to these issues, the World Bank seems to believe that the improvement in living conditions of the poor will be eventually produced by economic growth (Lachenmann, 1988: p.74).<sup>10</sup> The ERP tries to deal with social welfare issues through increased growth, improved rural-urban terms of trade, and more efficient allocation of public expenditure. The negative impact of the ERP on living standards is considered only transitory and inevitable (World Bank, 1991b: p. 33).

However, the ERP put urban Ghanaians in a dramatically disadvantaged position. While the salaries of higher-income groups have risen faster than other groups, quite a large number of work forces in the public sector were laid off, and others saw reductions in the overall wage bill. The situation was worsened since import liberalizations cost jobs in private sectors, especially, textile and other areas which are vulnerable to foreign competition. In addition, the control of monetary expansion severely depressed the consumption for low income groups.<sup>11</sup> Very stiff increases in charges for public utilities and basic services have led to the decline in the living standards of the poor and marginal groups who are not able to defend their income levels. For instance, the introduction of health fees in 1985 reduced the use of health services by the poor while utilization of health care in-

creased for the more advantaged populations.<sup>12</sup>

Certain structural adjustment policies have negative impacts on the rural poor in food producing areas. The increase in the prices of consumer goods and agricultural inputs followed dramatic devaluations. Stringent credit restrictions were caused by a sharp rise in interest rates. In contrast with export crop sectors, food self-sufficiency and security did not attract much attention either in terms of inputs or credible price supports. The growth in food production was slow and not even. For instance, the production of cassava, the main staple, has actually declined since 1984 (Weissman, 1990: p. 1625). The real per capita income of about 82 percent of farming households, which do not cultivate cocoa, appears to have stagnated since 1984.<sup>13</sup> The stagnating food crop economy seems to hurt especially poor women and children since they rely on food trading and production.<sup>14</sup>

Problems with food production include inefficient overall credit, lack of access to credit, inadequate supply of productive technologies, absence of regional and local market development, and lack of storage infrastructure for effective price stabilization. There have been no effective policies to confront such problems beyond privatization or restructuring of the inefficient government fertilizer and seed companies. Overemphasis on market principles led to the underdevelopment of policy agendas in a food agricultural sector. It has been assumed that the relative shortage of food will be overcome by increases in production which result from high food prices. Food producers were adversely affected by policy changes since 1983. But the Bank sees the negative impact on food production as short-term and believes that market liberalisation and price incentives will trigger appropriate supply responses.

## **THE PROGRAM OF ACTION TO MITIGATE THE SOCIAL COST OF ADJUSTMENT**

Concern for the poor was generated by some international donors. Especially, UNICEF has been pressing for building social welfare components into the ERP with the support of Ministries of Education and Health and other UN agencies such as UNDP, WHO, and ILO. The UNICEF concern is reflected in its own studies dating back to 1984 (UNICEF, 1984). Some government officials and major donors initially considered that raising the welfare issues would generate the opposition to the ERP. Because of difficulties to completely ignore depressing economic and social conditions for the urban poor, however, the government began to work with UNICEF from 1983. It took four years to formulate the Program of Action to Mitigate the Social Cost of Adjustment (PAMSCAD). Finally, US 85 million dollars were pledged for PAMSCAD at a special donor meeting in February 1988.

PAMSCAD has become the first program in Africa to deal with the negative impact of structural adjustment programs on the poor. Its objectives are to redeploy laid-off workers, initiate public works programs, and improve nutrition, literacy, educational facilities, water supplies, and health care. The largest single component is employment generation. It accounts for three quarters of expenditures. A relatively large amount of money was allocated for the project on redeploying laid-off civil servants and former employees of state owned enterprises. The job creation project was given a high priority because of lack of job opportunities in the private sector. The component is also viewed as a political concern for those losing their jobs (Loxley, 1988: p. 40). The urban un-employed and under-employed were helped by "priority public works program" which was specifically targeted at the urban poor. The program focused on completing infrastructure and

housing projects and improving communication networks in the Eastern and Northern Regions with the use of labor-intensive construction techniques. PAMSCAD also contains some basic needs components that include essential drug programs linked to primary health care, treating parasitic diseases of school children, and supplementary nutrition enhancement.

Even despite positive aspects of PAMSCAD, it is not clear, however, that these measures will result in significant poverty alleviation. The negative ramifications of original structural adjustment policies such as fiscal restraints on social welfare were not sufficiently addressed. Social concerns of PAMSCAD were not directly built into adjustment program but were considered complementary to it. PAMSCAD has been treated as being attached to the end of the body of the liberal reform package in response to pressure from some multilateral agencies concerned with poverty issues. Some main donors such as the IMF, however, did not even send a representative to the meetings in which PAMSCAD was developed. Overall, it appears that the study of UNICEF and Ministries of Health and Education on social and economic conditions of the vulnerable facilitated PAMSCAD but was not able to change priorities of the ERP towards more investment in welfare and equal share of economic growth.

Some argue that PAMSCAD did not pay enough attention to the food production sector. While food-for-work programs are viewed as a significant step toward improving the rural poor, the government failed to formulate detailed action plans for a food sector. There is also some concern with informal bias towards concentration of projects in or near urban centres. PAMSCAD does not appear to be reaching poorer, rural and marginal communities. This means that PAMSCAD did not benefit the rural poor and the Northern peasantry as the primary target group even though they suffer from a higher proportion of rural poverty than other regions.

## CONCLUSION

Since the economic conditions in Ghana were so bad, it may, in fact, have been easier for Ghana to adopt a more strict orthodox structural adjustment program (Herbst, 1993: pp. 33-37). The program led to broad economic policy changes which include devaluation, increases in domestic currency prices for exports, reduced budget deficits, price liberalization and increased incentives to the private sector. The successful implementation of liberal macro-economic policies in early program years is contrasted with current difficulties in achieving more sustainable macro-economic balances. Renewed inflation and reduced revenue from cocoa export over the last several years generated a question of whether or not the program would be able to survive. The input of foreign financial resources is thus critical for the very sustainability of the program although it may not be an ultimate solution to such problems as deteriorating balance of payments and foreign debts. In considering that Ghana has so far enjoyed being considered the economic "model" of most poor African countries, "the country will perhaps not be failed by those outside who have a large stake in the outcome" (Tabatabai, 1986: p. 411).

There is a very valid skepticism from Ghanaian intellectuals about the basic wisdom of structural adjustment programs (Sawyer, 1988). Structural adjustment programs are viewed as reinforcing traditional dependence on external financial flows along with the external orientation of production and trade. The program justifies a tendency to "surrender control" of critical areas of national economic policy to foreign lenders (Sawyer, 1988). One crucial concern is "Ghana's ability to break its dependence on cocoa and become something more than economically healthier producer of raw materials" (Herbst, 1989-90: p. 11). From this perspective, it is not clear if



World Bank/IMF structural adjustment programs offer a long term view of what the economy of Ghana and other African countries should look like.

## ENDNOTES

1. The populist economic policies adopted by the government in 1981 and 1982 failed due to lack of economic assistance from socialist bloc countries (Rimmer, 1992: p. 180).

2. Structural adjustment programs were introduced by the World Bank and the IMF since the early 1980s in response to growing debt, government deficit, imbalance of payments in many developing countries. The programs normally prescribe major currency devaluations, elimination of price controls, cuts in subsidies to prices of food and other basic necessities, etc. For more details on structural adjustment programs, in general, see Helleiner (1992).

3. The unstable political environment and declining economy had a negative impact on institutional and human resource development (Akuoko-Frimpong, 1994: pp. 25-26).

4. Institutional reforms such as privatization of state industries and retrenchment of workers are normally more difficult than price reform (Toye, 1992: p. 95).

5. Cocoa is the most important agricultural product in Ghana. Cocoa occupies about 25 percent of the cultivated land area and employs about 20 percent of the country's labour force (Okyere, 1990: p. 74).

6. The situation has been worse recently as Ghana has suffered 35 percent deterioration in its terms of trade since 1988. In addition, trade deficit from higher than expected petroleum prices aggravated debt situations.

7. The state is often viewed as the key obstacle to liberal economic reform by World Bank and IMF officials (Kliksberg, 1994).

8. Especially, the upper-middle levels of the bureaucracy are viewed as incompetent (Toye, 1992: p. 95).

9. Comprehensive reforms are more difficult to implement since they involve more agencies and technical complexity, and require new tasks, roles, and procedures (White, 1990: p. 11).

10. However, this trickle-down approach has proved wrong in the past.

Economic growth does not necessarily guarantee appropriate sharing for the poor. For more explanation, see Cornia, et al., 1987.

11. There are two problems related to this. First, decline in popular consumption is not justified by too heavy dependence on monetary contraction. Second, this approach ignores that supply constraints are also responsible to domestic inflation and balance of payments difficulties as well as the money supply. It does not consider that sustainable equilibrium requires changes in the underlying structural causes of balance of payments equilibrium. Changes in domestic structures of production and demand are needed for a sound solution for balance of payments. The design for tackling a balance of payments problems should include measures to stimulate output and productivity and eliminate constraints within the productive system. Demand management measures should be more cautiously applied (Hutchful, 1989: pp. 114-15).

12. One study reports that less poor people are now able to visit two public health clinics in lower income areas of Accra after health fees were introduced (Weissman, 1990: p. 1626).

13. However, there is also income gap among cocoa farmers. "According to the recent World Bank-Ghana Government Ghana Living Standards Survey, 18 percent of farming households grow cocoa." A 1987 survey conducted by an Overseas Development Institute-- University of Ghana team in four representative villages of the Ashanti region discovered that 32 percent of the cocoa farmers received 94 percent of gross cocoa income while the remaining 68 percent of farmers received only 6 percent of the income." (Weissman, 1990: p. 1625)

14. Representatives of several nongovernmental organizations working in rural areas observed that low incomes reduced women's ability to purchase fruits and protein-rich foods and to retain enough staples

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