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THE SOPHISTS

IN THIS ISSUE

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The Sophists is an original and innovative student magazine, which seeks to explore the interaction between law, politics and economics and its relevance to the modern individual. Its primary purpose is to offer readers a critical and engaging perspective on current affairs, whilst also providing them with a platform on which they can express their views and challenge deep-rooted and dogmatic assumptions, in the tradition of the Sophists of Ancient Greece.

"The Sophists" aims to bring out a QM publication of the standard of other prestigious university publications focussing on quality, content and relevance and improving skills such as writing, research, commercial awareness, attention to details and teamwork.

- The Sophists Founders

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The Founders

From Left to Right

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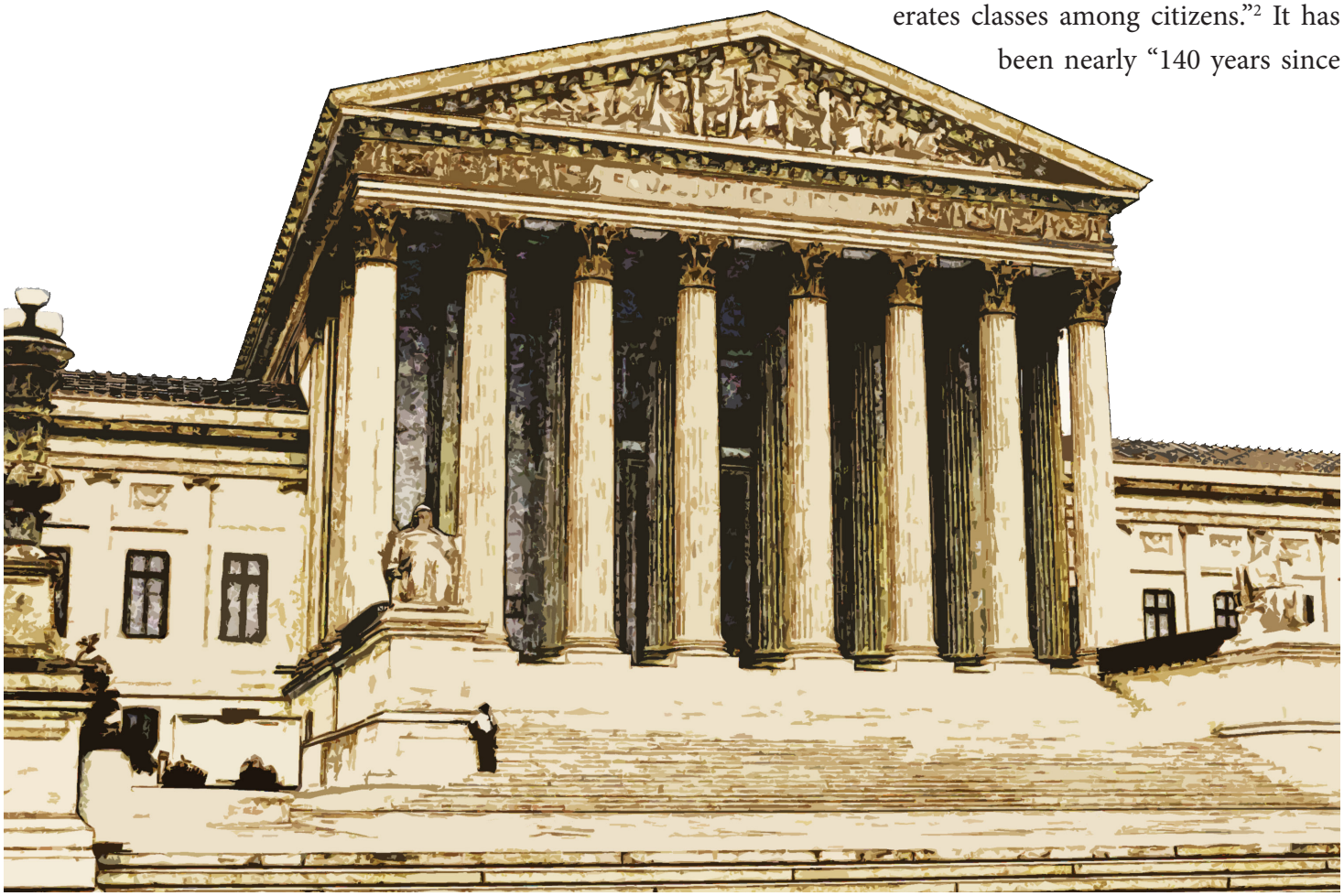
Revisiting Affirmative Action

Julianne Rodriguez, LLM International Business Law

In the study of benign racial classifications, the Supreme Court continues to face the challenge of attempting to redress past racial discrimination that is within the constitutional boundaries of the United States. Affirmative action continues to be the subject of controversy as a social policy implemented in public educational institutions. It is even more unsettled than at its outset more then thirty years ago. Many criticize affirmative action as a form of reverse discrimination. Its firm foundation as one of the most controversial topics continues to bring it under the purview of the Supreme Court. This is a policy paper discussing affirmative action in the Supreme Court of the United States and why the principles, which have arisen from case law, are no longer applicable.

O'connor's Twenty-Five Years Are Up

It has been a mere nine years since O'Connor's famous "twenty-five year" standard was first uttered. However, the U.S. has reached a point in its history where benign racial classifications can no longer persist. "The lesson of the great decisions of the Supreme Court and the lesson of contemporary history have been the same for at least a generation: discrimination on the basis of race is illegal, immoral, unconstitutional, inherently wrong, and destructive of democratic society."[1] The U.S. has faced difficulty in eradicating the effects of past racial discrimination and the sources that sustain its existence. Affirmative action policies create an advantage to students solely on race. Think about this – "Our Constitution is color-blind, and neither knows nor tolerates classes among citizens."[2] It has been nearly "140 years since



Frederick Douglass asked the intellectual ancestors of the Law School to "do nothing with us!" and the Nation adopted the Fourteenth Amendment."[3] As then Chief Justice Rehnquist so eloquently asked, how many more years do we wait for this principle of equality to be vindicated?[4]

There are two central arguments that support affirmative action policies. First, is an acknowledgement that despite several decades of progress to eradicate racism it persists. Also, advocates argue that a diverse educational environment in public education affords a better educational environment for all students. However, the time has come for our nation to reevaluate the justifications that affirmative action policies serve. The continued use of such policies will be fatal the U.S.'s ability to move past a history of racial discrimination. The rationale offering support for the affirmative action policies has weakened overtime and we have reached a point where Justice O'Connor's twenty-five years are up.

Justifying Affirmative Action

The justifications offered by the Supreme Court for the constitutionality of affirmative action policies have changed. Prior to the Grutter decision, affirmative action was premised on its need to eradicate the effects of past racial discrimination. It is important to note that past racial discrimination has not been entirely eradicated in the United States. This was seen as a "compelling governmental interest."[5] However, now, Justice O'Connor states that "obtaining the educational benefits that flow from a diverse student body" suffice as a "compelling governmental interest."[6]

By redefining the justifications for affirmative action it has offered a new way of viewing this social policy. How does "fostering a diverse student body" serve to eradicate the effects of past racial discrimination? It is quite apparent that it does not. Under these terms the primary role of affirmative action is to have racial minorities serve as a cultural experience for their white counterparts. The purpose no longer is solely to remedy the effects of past racial discrimination but rather affirmative action is maintained in order to bring a benefit to the educational experience for white students. In doing so, it perpetuates the idea that "members of the defined racial groups ascribe to certain 'minority views' that must be different from those of other citizens."[7]

"When there are more than a token number of minority students, everybody in the class starts looking at people as individuals in their views and experiences, instead of as races and sees that there is a diversity of views and experiences among the minority students, just as there is among white students."

A justification based on promotion of "diversity" hinders the ability of racial minorities to reach that proverbial concept of educational equality that our nation seeks to achieve one day. If the admission of racial minorities serves to create a cultural experience that helps to foster ideas, which otherwise would not exist in the classroom, how are they to be seen as equal? Even though minorities should benefit from this generated diversity it will hurt them in a way that their white counterparts are not. The minority students are being used as a pawn unlike the white students. There will always be another underlying argument for their presence in educational institutions aside from their own independent academic and personal achievements. The white students will not have this justification impressed upon them. This will inhibit minority student's ability to be viewed as equally academically qualified as their white counterparts. The social implications of this will have detrimental effects

on racial minorities in institutions of higher learning by creating an everlasting stigma. As well, it forces one to accept a stereotyped notion that all members of any given minority think alike.

Racial Diversity And Academia

Defenders of affirmative action state that racial diversity will "enhance the educational experience of students by creating academic or viewpoint diversity."[8] However, racial diversity does not necessarily correlate to viewpoint diversity in the classroom. There is a growing consensus that the racial composition of the student body does not affect the "academic diversity." Professor Terrance Sandalow, who is familiar with Michigan's educational policy, notes that:

"I cannot recall an instance in which, for example, ideas were expressed by a black student that have not also been expressed by white students. Black students do, at times, call attention to the racial implications of issues that are not facially concerned with race, but white and Asian – American students are in my experience no less likely to do so."[9]

Since white students also express many issues raised by minority students it is apparent that racial diversity is not imperative to generate various viewpoints in the academic setting. If there exists students from all racial backgrounds who hold the same view on issues, there is no true "intellectual" benefit for admitting one student over the other on the basis of viewpoint diversity.

In recognition of the difficulty of defending an admissions policy on the basis of viewpoint diversity, the University of Michigan School of Law argued that:

"The presence of a critical mass of minority students is essential to dismantling such stereotypes. When there are more than a token number of minority students, everybody in the class starts looking at people as individuals in their views and experiences, instead of as races and sees that there is a diversity of views and experiences among the minority students, just as there is among white students."[10]

Michigan's recognition has demonstrated that not all members of any given racial minority think alike. Moreover, the government maintains that there is no race-neutral means available to achieve these compelling interests. If the theory that viewpoint diversity correlates with racial diversity were to be adopted it would perpetuate a demeaning notion that certain minorities hold views that white students do not. The government would be able to blatantly prefer particular races because they possess certain viewpoints. It would "prove impossible to distinguish naked preferences for members of particular races from preferences for members of particular races."[11] Many minority students may just prefer a particular perspective on an issue but now the "minority view" will be pre-attributed to them solely because of the color of their skin.

As well, the Supreme Court of the United States has rejected this theory. The Constitution "provides that the Government may not allocate benefits or burdens among individuals based on the assumption that race or ethnicity determines how they act or think."[12] This perpetuates the notion that "diversity" rational is not a compelling governmental interest and cannot survive strict scrutiny. Moreover, other admissions policies have achieved a diverse student body without implementing affirmative action policies. The University of California, Berkeley School of Law, where California's Proposition 209 had barred Berkeley Law from "granting preferential treatment on the basis of race in the operation of public education" serves as an example.[13] Despite Proposition

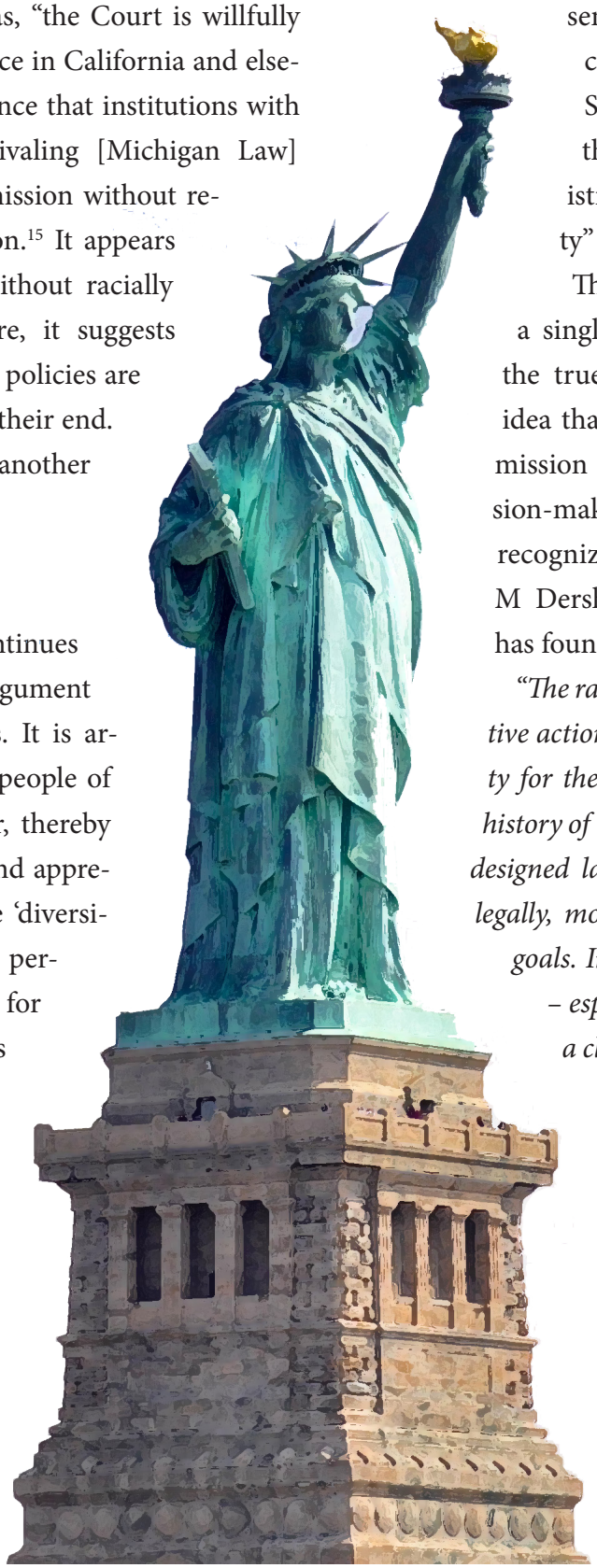
"The pursuit of "diversity" continues to serve as a foundational argument for affirmative action policies."

209, Berkeley Law achieves a diverse student body. In 1996, before the adoption of Proposition 209, Boalt Hall enrolled 20 blacks and 28 Hispanics in its first-year class. In 2002, without utilizing affirmative action policies, Boalt's entering class enrolled 14 blacks and 36 Hispanics.[14]

According to Justice Thomas, "the Court is willfully blind to the very real experience in California and elsewhere, which raises the inference that institutions with 'reputations for excellence'...rivaling [Michigan Law] have satisfied their sense of mission without resorting to racial discrimination.[15] It appears "diversity" can be attained without racially preferential policies. Therefore, it suggests that race-conscious admission policies are not narrowly tailored to meet their end. In other words, there exists another way of achieving diversity.

Diversity And Stigmatization

The pursuit of "diversity" continues to serve as a foundational argument for affirmative action policies. It is argued that "diversity" exposes people of different races to one another, thereby facilitating learning, respect and appreciation among the races. "The 'diversity' rationale suggests that it is permissible to use race as a proxy for experiences, outlooks or ideas and that the use of race as a proxy will ensure the different viewpoints are brought to the classroom."[16] However, does racial diversity really serve the purpose of institutional diversity? The defense of affirmative action programs on the basis that they will expose students of different races to one another "does not relate to a true interest in intellectual diversity – diversity of 'experiences, outlooks and ideas' that would otherwise be left out – but specifically in racial and ethnic diversity as such."[17] There are many characteristics or traits that make an applicant truly "diverse" in the non-traditional sense of race. By permitting a justification based on racial diversity the Supreme Court emphasizes race as the underlying "diverse" characteristic rather than attributing "diversity" to the whole individual.



The direct pursuit of diversity as a single characteristic – race – defeats the true definition and perpetuates the idea that educational diversity in the admission context is a cover for racial decision-making. Many law professors have recognized the same truth. Professor Alan M Dershowitz, of Harvard Law School, has found that:

"The raison d'etre for race-specific affirmative action programs has never been diversity for the sake of education. The checkered history of "diversity" demonstrates that it was designed largely as a cover to achieve other legally, morally, and politically controversial goals. In recent years, it has been invoked – especially by professional schools – as a clever post factor justification for increasing the number of minority group students in the student body."[18]

In the end, there is recognition that the pursuit of "diversity" is race-based in both its means and its ends. These programs prefer certain races without recognizing diverse qualities other than race. The pursuit of "diversity" inevi-

tably leads to an inability to distinguish it from racial quotas. The main problem is how the Supreme Court's upholding of affirmative action can be implemented in an academic institution. How do you achieve a critical mass? The Supreme Court has never explicitly defined what percentage of students constitutes a "critical mass." One must ask then, how do you tailor to the unknown? The only way to ensure adequate "representation" among the races at the end of the admissions process is to start with an definition of "diversity" that produces the desired proportions of racial representation in a class of admitted students.

By accounting for race through a means of "diversity" minority students are used as a pawn to formally implement racial quotas. Such action creates racial tension and generates a stigma that should no longer exist in our society. These racial preferences may lead to stigmatization of inferiority or even self-stigmatization by racial minorities.[19] Under affirmative action policies minority students are, by definition, not as prepared as the white students who are not entitled to the preferential treatment. This perception that racial minorities are inferior to their white counterparts imprints an everlasting stigma. As a result, many minority students may isolate themselves from the white students. This undermines the multicultural community that affirmative action policies seek to foster. Even with the "diversity" argument these racial preference program's primary purpose is to aid a preferred racial group. Its secondary purpose is to aid the student body as a whole.

Alternative To Affirmative Action

Many minority students are benefitting from affirmative action when they really are not the ones that need it. Should a wealthy Black or Hispanic student reap the benefits of an affirmative action programme? There are many white students who have grown up with limited resources and perfectly fit the definition of "disadvantaged." Affirmative action policies solely work to assist society's less-advantaged members from minority backgrounds only. This is allowing for those white students who are economically disadvantaged to be punished for the wrongs of their ancestors.

All too often, affirmative action policies are not helping those who have been harmed, but are providing benefits to those who no longer need them. In 2013, economics is a stronger tool to identify those who have unequal access to resources. By considering socioeconomic status alone you encompass those racial minority students who continue to have limited resources while accounting for white students who are in the same position.

The United States has reached a point where racism has dissipated, although not entirely disappeared. When affirmative action was first implemented, "the claim was that underprivileged minority students had been denied the conditions necessary to blossom, that they were, in effect and under a different metaphor, diamonds in the rough."[20] Affirmative action policies serve to remedy the past racial discrimination in an effort to alleviate the lack of educational resources for those racial minorities. However, these policies openly permit racial preferences to survive. There exists a plausible alternative that will enable minorities who truly need assistance to receive it without upholding a governmental policy that permits racial discrimination. Socioeconomic factors, such as parents' education and income, offer a better indication of a student's access to resources. There is a strong correlation between poverty and scores on standardized tests. Most disadvantaged students on average score 784 points lower on the SAT than those from the wealthiest and most educated families.[21]

To make affirmative action policies fair and effective they need to be reformed. Although, racial diversity is an important thing, students of a low socioeconomic status need an advantage in the system too. In the top 200 colleges, the amount of people from the bottom 25 percent of the income distribution is currently about three percent.[22] By reforming the affirmative action policies we will begin to help the right people and promote more fairness for access to higher learning in our nation.

Conclusion

The Court has held that racial classifications are "presumptively invalid and can be upheld only upon an extraordinary justification."[23] In my opinion, affirmative action policies can no longer survive strict scrutiny. The justifications that have been put forth in the Grutter decision are no longer applicable and thus Justice O'Connor's twenty- five years are up. As previously discussed, "diversity" is not a compelling state interest sufficient to justify admission policies which are race-based. As well, we have reached a point where remedying past racial discrimination is hindering our ability to move past our history of racial discrimination. As stated in Roberts' plurality opinion in Parents Involved in Community Schools v. Seattle School District, "the way to stop discrimination on the basis of race is to stop discriminating on the basis of race."[24]

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Interview | MR. PHILIP R. WOOD QC (HON)

Adebisi Sanda, LLM Law and Economics

Mr Philip Wood QC (Hon) is the Head of Allen & Overy Global Law Intelligence Unit, Visiting Professor in International Financial Law, University of Oxford, Yorke Distinguished Visiting Fellow, University of Cambridge and Visiting Professor, Queen Mary University of London.

Mr Philip Wood decided to become a lawyer following a discussion with his father, who was a lawyer in a leading law firm in Zambia. He vividly recalls the facts and decision in the leading case of R v. Dudley and Stephen, which also influenced that decision.

Between 2007 and 2008, he published nine books on finance with a total word count of about three million. He is presently working on the World Universities Comparative Law Project with students around the world from Oxford, Tokyo, Peking, Bangalore, Cape Town, Lagos, Kampala, Nairobi, Yangon etc. assessing and rating legal risk in their various jurisdictions.

What Are Your Thought's On Identity And The Rule Of Law?

I was brought up in Zambia. I was born by the Victoria Falls. My father was a lawyer and actually, I am very proud to have been born in Africa and that is because it resulted in my view of the world which is very different from people here. My parents were from Yorkshire, but I was born in Africa. I lived there for 25 years and the reason why it affected the way I think is because I never really developed that fierce, patriotic, chauvinistic emotion, which people usually have and that is partly because we were not supposed to be in Africa, but on the other hand I didn't know what Yorkshire was like. My parents always said what beautiful place it was, but I felt no relation. I only felt relation to Africa, and therefore, now in later life when I say 'we' I mean 'we on the planet'. I don't mean 'we in Zambia', or 'we in Yorkshire' or 'we in England'. Of course, if we are playing football, yes I like England to win, but otherwise for the really important things I think we should be saying we on the planet, because we should be operating as a unified group – the people of planet earth who are trying to survive. In the important things we should be cooperating. It is very important for us to survive, so I always enjoy being in a firm like this because we are all lawyers here. It never occurred to us to make distinctions, we are not tribalistic about law. We just looked at whether someone was a lawyer. It didn't matter where they came from, if they had the right qualifications. I fitted in very well with that.

The second thing, which I developed much later on, was a sense of the importance of rule of law generally and I don't mean rule of law in the sense of democracy or lack of corruption. But, in a much deeper sense, the rule of law is a universal secular religion. Everyone believes in it. Everyone in the world, except a few anarchists, believe that we need some law. How much, they disagree; what it should say, of course they disagree. But everyone believes in that idea. They can believe that alongside whatever religion they have. They can be Muslims, Christians or Bud-

dhists, but everyone believes in the law because they know it is necessary for survival.

I think a lot of people search for identity and an identity is very important to people. I understand that and I know how it drives a lot of people's desire to feel the closeness to feel they are a part of a team and to feel it is a common endeavour, which is much difficult to feel in a large group of people. Let me give you an example of what I think is identity and what I think is planet. There was a question about the euro. The currency was jeopardized by the bankruptcy of Greece. I acted for the capital markets, the bondholders, so we were ranged against Greece and the euro group. The transaction went very well, high standards and diplomacy. People were saying that the euro was going to break up and so I wrote a few papers about the euro and I didn't have a problem deciding which way I stood on that. First of all, I didn't think that anyone would think that 17 currencies were better than 1. I just didn't think that people wanted 17 currencies and not 1. Therefore, I thought that the euro should be defended at all costs. The second reason had to do with the rule of law. I didn't think that 17 central banks manipulating the price and amount of multiple currencies is a good thing.

You see how the rule of law and the one planet idea combined when I was writing a paper about the euro. So I said, keep the euro at all costs, it is very important to defend it. A lot of my colleagues didn't agree with that, but that was my point of view. So on things like that, where people say identity means we have our own currency. But I don't agree with that. I think there is much more at stake. Currencies are the commonest public utility and the more we reduce manipulation of currency by central banks, the better. The opposite is that eventually we get to a tyranny or despotism because there is only one person in charge of the currency. The Fed priced the U.S. dollar before the crisis. They priced it to nothing, effectively they weren't pricing their own money they were pricing someone else's money. Whose money? Depositors with the banks, the Feds were forcibly pricing depositors' money at nothing. It was as if the Fed had taken their car and sold it at half price. The Fed was doing that so that homeowners could borrow cheaply, so that corporate America could borrow cheaply, so that the US didn't have to pay too much to the Chinese on their debt and so on. All very good reasons. But, still there was still a manipulation of the price of money, which is a redistribution from creditors to debtors without them agreeing. I had big questions about that.

What Is Your View On The Currency Debate Between Scotland And The United Kingdom?

If they want to be independent, I know they would have to have their own currency. I know that would be a disadvantage as far as they are concerned. It is a very awkward situation, because if they want to remain part of a currency union, which is preferable in my view, it would mean there would be restrictions on their fiscal powers to tax, there would be restrictions on their ability to run up deficits, and there would be restrictions on their ability to incur debt. Why is that? It is because, as in the case of Greece, if you've got a member of a currency union who becomes bankrupt it could destroy confidence in the whole currency. That was the argument. Greece was only 3% of the GDP and Scotland would be, I don't know, 10% or something like that, but still big enough to call into question the stability of sterling. Therefore, it would be expected that the rump of UK would want to have control over the fiscal affairs of Scotland. Yes, they would.

Scotland could keep the sterling without a monetary union. Panama, Ecuador and Zimbabwe all use the U.S. dollar as legal tender. I don't know whether they asked the United States, but it doesn't matter. That is because it would be very difficult for the United States to stop that. Those countries are small. Their bankruptcy would not affect the U.S. dollar, because they are so tiny compared to the size of the U.S. dollar. So, Scotland could do that, but, it would mean that they don't control their fiscal affairs at all. So they would be less independent if they used the

currency contrary to the wishes of the UK. At least, people are getting into these issues now instead of just talking about nationalistic things.

The Scots have a fantastic history, with people like Adam Smith, James Maxwell, Faraday and David Livingstone. Incredible history and from a personal point of view, for them to go off would be an enormous loss for England. A huge loss in terms of the achievements of the Scots, which I think are tremendous.

What Are The Problems Or Challenges Facing International Finance And International Insolvency Law?

I think the main problem is that there is too much risk, too much legal risk. I think the legal systems have got out of control. Legal risks are now excessive and that legal risk is partly because of regulatory regimes. There are about 30 of them. You have immigration, financial regulation, anti-trust, sanctions, data protection and so on. The key feature, for all those regimes, is that most of them tend to have a single regulator who is the legislature, the executive and the judiciary in the sense of enforcement. The law is very heavily criminalized without the criminal protections and so although we have to have regulatory systems, nevertheless they need to be used with restraint and in some cases some of the regulators are not restrained. Some regulators don't use their powers bearing in mind that the actual regulatory powers are inconsistent with constitutional notions of how you apply the rule of law. So that is one reason

Another reason, is that at one time many jurisdictions didn't participate in the world economy. Communist Russia, large parts of Southeast Asia, large parts of Africa, large parts of Latin America 30 years ago were not really part of the world economy but now they are. You know, even Sao Tome is interesting, even Cambodia's got a stock exchange, so everyone is now part of the world economy. There are 320 jurisdictions, so you multiply by 320, and the law is not harmonizing; in fact it is breaking up. It is like a stone hitting a windscreen, splintering.

Third reason, is the pace of change, the volatility of the law, which crucial areas of law are changing quickly, especially bankruptcy law, which you know is very important as the bedrock of commercial law.

Another reason is exterritorial law, so you are getting layers of law, your law and another country's law. Another reason is the internal layering of legal systems. For instance, in this country we have got at least 25 bankruptcy regimes. Some are minor, for water companies and things like that, but lots are major. You've got one for investment banks, another one for ordinary banks and so it goes on. In security interests, we've got 8 tiers, all the way from settlement finality systems down to individuals. We don't need that. When you put that together, you have got a lot more complication and therefore more risk. If you have too much risk, I think that that is an infringement on the rule of law. It is an infringement because people are manacled, tied down and prevented by the fact that it is just too incomprehensible to deal with all this.

I think there needs to be a lot more harmonization of the law. Of course, people argue about what it should be, nobody can agree what should be harmonized. If you take a country like Russia or China, which came out of a period which they didn't really have market laws, such as a bankruptcy law. Then they introduced bankruptcy laws and they came to completely opposite solutions on some key indicators. How can that be? You would have thought that by now, the issues would have been resolved. Let us take, for example, the trust. The trust is very important. A clearing system is a trust. Depository Trust Corporation, which is the biggest trust in the world, owns 25 trillion of asset securities on the New York Stock Exchange. Euroclear is also a trust. We use it all the time. Now we've been arguing about the trust for a very long time. For at least a thousand years. Russia does not have the trust, China does. It is inexplicable. They couldn't agree on that either after a thousand years, still arguing, still the same incomprehension. It amazes me.

How Has Law Practice Changed From When You Started Over 40 Years Ago?

I mean obviously we do things slightly more quickly, I mean email and so on. Negotiations tend not to be personal. I don't think that's functionally as successful. I think negotiations done by email are less effective, I think they are slower and I think it is harder to get resolution. But that's a fairly minor thing. One of the things, which has struck me, is the absence of standardization. By the end of the 70's, I had been doing syndicated credits, I had been doing bond issues, I had been doing purchase agreements for companies and I thought this is very easy. After you've done 50, I felt, well, why don't we just standardize all these things? It would save lots of time, cost and all that and so I thought commoditisation would happen. But it never did and it never ceases to amaze me why not. There are some real reasons why not, they are complicated reasons, but one of them is that although the transactions haven't changed that much in their essence - a syndicated credit which I drafted in the early 70s is recognisably the same - they haven't changed all that much. But, the envelope around it has changed. Although there has been an IT revolution, there has also been a legal revolution and the legal revolution has been more ferocious, and moved forward more swiftly than the IT revolution which could hardly keep up. I think that's probably the secret why there hasn't been that degree of standardization. There's a whole list of other things that have to do with harmonisation of law, cultural differences, emotional things, costs, a lot of things. So things have changed much more slowly than I thought they would.

What Changes Can You Predict For The Practice Of Law And What Skills And Attributes Would Be Essential For Lawyers?

In 1995, we had 3 football fields of GDP of USD 10 trillion each. In 2010, we had five or six football fields of USD 10 trillion each, world GDP. The forecast for 2030 or 2035 is that there could be 12 to 15 depending on whether we have some political disaster. So, that means more prosperity, more transactions, more work for everybody round the world, more lawyers in various countries, which are 'under-lawyered' at the moment, like Nigeria for instance. But also, I think there would be more crisis and, therefore, probably more law, more complication and therefore my prediction is that - and of course I am not Isaiah, I am not Nostradamus, I don't know what the future is, I could be totally wrong, there is too much noise - but I think there is a distinct possibility that the world would need lawyers who could put it together, who have got that ability to see the patterns, master all these incredible details, much of which is quite unnecessary, and be able to make sure that the light does get switched on.

They need to be intellectually of a very high calibre to be able to work out patterns, to see what the formulae are, and how everything works, because it is only if you could see the structure of the law that you could actually handle all the detail. It is like a kaleidoscope, you have just these few colours, but you shake it up and then you get magical patterns. I think the law would also need people who are very tolerant in their views, able to deal with difficult situations with humour, and who treat people with courtesy, with politeness, who are able to get people, who might be very emotional, particularly if there is a crisis, to agree, and always to pursue policies which are both rational and emotional, as well, which are not just blindly functional, but which also meet the emotional aspirations of the people of the world. I think lawyers always have been a very senior profession and they certainly are going to be in the future, in my view. So when my father originally said to me being a lawyer is like being a priest, I think he was right.

The Financial Conduct Authority | Spotlight On Market Abuse

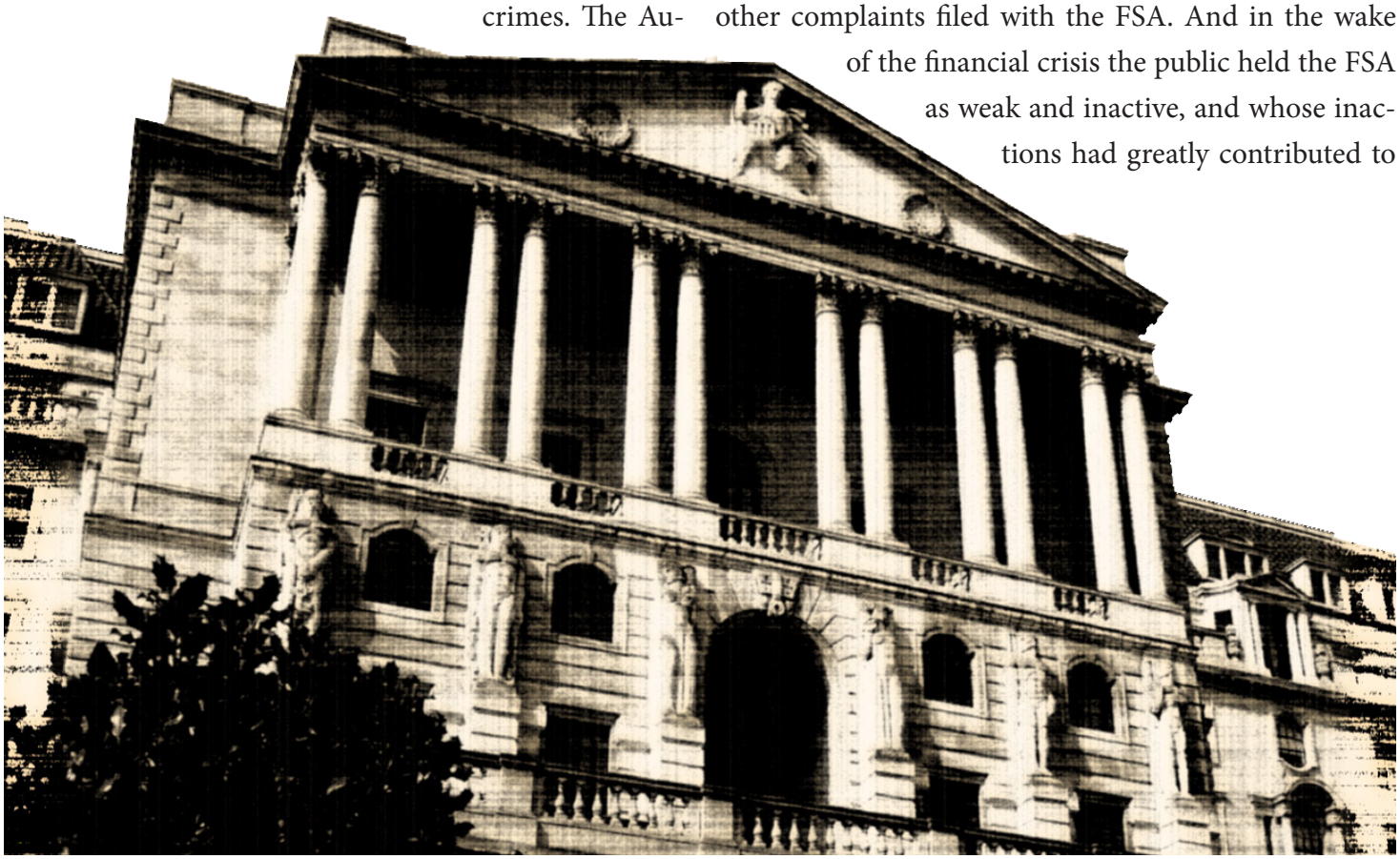
Joy Mutuku, LLM Banking and Finance

The 2007/2008 financial crisis left unimaginable losses to institutions, private persons and the economy as a whole. Regulators were embarrassed by their delayed reaction to the dreadful situation and there was widespread public backlash. This article probes specific institutions that the UK has put into place for regulation of the financial services sector, both past and present, and also looks into the measures the European Union has proposed to its members against market abuse aimed at ensuring market integrity and protection of investors across Europe.

In 2001, six years before the crisis, the Chancellor of the Exchequer charged the Financial Services Authority (FSA) with the mandate of regulating the UK financial services industry. The FSA had four core objectives: enhance stability of the UK financial system, maintain confidence in the financial system, secure an appropriate degree of consumer protection and reduce financial crimes. The Authority was set up as an independent institution to avoid government interference and was thus not accountable to Treasury. HM Treasury was only responsible for appointing the Board and identifying the scope of FSA activities but it was up to the FSA to decide on the appropriate regulatory regime and measures to adopt in enforcing their activities.

Shortly after its inception, however, the FSA faced pressure from various quarters for its ineffectiveness for handling complaints lodged against Legal and General,[1] Northern Rock's bank run weeks after the FSA Chairman had publicly announced that the bank had sufficiently met all capital requirements and was solvent,[2] complaints of the FSA disregarding grievances about Payment Protection Insurance.

In its lifetime the FSA successfully prosecuted only two insider dealing cases, both involving defendants who did not contest the charges, despite thousands of other complaints filed with the FSA. And in the wake of the financial crisis the public held the FSA as weak and inactive, and whose inactions had greatly contributed to



unemployment and the housing market fiasco.

Accordingly, in 2010 the Chancellor of the Exchequer announced plans to separate the FSA into two entities the Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA). In a White Paper in 2011 the government set out its plans to transfer prudential regulation of financial institutions to a subsidiary of the Bank of England, the PRA and the FCA was charged with focus on consumer protection and market regulation. A third leg, the Financial Policy Committee (FPC) was also to be formed to be in charge of macro prudential regulation and in April 2012 the new model came into effect.

The FCA's core objective is to ensure that markets work well by enhancing the integrity of the UK financial system, promoting effective competition in the interests of consumers and securing the appropriate degree of protection for consumers.[3] To empower the authority conduct its mandate effectively, the FCA has sufficient enforcement powers including power to suspend, prohibit, order injunctions, bring criminal prosecutions or take actions to prevent market abuse, make a public announcement when a disciplinary action against a firm or individual is began and publish warning notices.[4] This verifies that the FCA is not a dog without teeth. It is to be emphasised that the FCA and PRA are separate and independent both in their policies and decisions, however, the two may internally coordinate with each other when sharing information necessary to achieve the common goal of UK financial stability.

As mentioned above, one of the main objectives of the FCA is to ensure markets work well, devoid of any manipulation that would compromise the integrity of the financial system. This is a particularly important goal in view of the fact that the service sector dominates the UK economy with the financial services industry in particular being the highest contributor. The Bank of England reported that before the financial crisis, the financial services sector grew at more than double the rate of the UK economy as a whole.[5] From the wealthiest of investors dealing with exotic financial instruments to the unsophisticated worker merely utilising basic bank facilities, these two groups of people rely on the same financial system and both demand a transparent and robust system.

The 2007/2008 financial crisis was to some degree augmented by failure of regulators to detect and remedy market abuses carried out by financial intermediaries and sophisticated investors. These abuses were perpetuated both locally and extended to cross border markets as market manipulators could avoid sanctions by taking advantage of differences in market abuse law within member states of the EU. However, in 2005 in an attempt to have a unified EU Financial System, a proposal was made to have a common law against market abuse and market manipulation and in 2006, the Market Abuse Directive (MAD I) was introduced as a framework to harmonise core concepts and rules on market abuse and strengthen cooperation between regulators.

"The 2007/2008 financial crisis was to some degree augmented by failure of regulators to detect and remedy market abuses carried out by financial intermediaries and sophisticated investors."

MAD I was adopted by the European Parliament and Council in 2003 to replace the Insider Dealing Directive. It was introduced under the Lamfalussy process as a framework to harmonise core concepts and rules on market abuse and strengthen cooperation between regulators.[6] It took effect in 2005 and UK formally implemented it on 1 July 2005. It generally required member states to meet minimum regulatory standards by prohibiting market abuse at a national level with the aim of ensuring uniform sanctions across member states.

However, what really is market abuse in MAD I context? The term encompasses both insider dealing and

market manipulation as subsets of market abuse. Article 1 (1) of the Directive defines inside information as non-public information likely to have a significant effect on the prices of financial instruments.[7] On the other hand Article 1 (2) describes market manipulation as trades or orders aimed at misleading unsuspecting public of the true value of a financial instrument.[8] MAD I scope only extends to regulated markets where the definition of a regulated market borrows entirely from Article 1 (13) of Directive 93/22/EEC[9] and obliges member state to apply the prohibitions on instruments traded in regulated markets.[10] The Directive also allows member states to impose additional prohibitions or limit the scope of the Directive by designating certain practices as 'accepted Practices' if they so deem fit. On the other hand, to further enable national regulators monitor movement of sensitive market information the directive placed obligations on issuers of financial instruments to:

1. Publish inside information[11] (i.e. to inform the market)
2. To maintain insider lists[12]
3. Publication and notification of transactions by managers of issuers[13]

However, due to new market developments and significant advancement in Information Technology some of the Directive's requirements, offences and enforcement mechanism became out-dated and serious gaps in the Directive were apparent. Consequently, in 2011 a proposal was made to review the Directive and views from various groups were collected and considered. It became evident that there were gaps in the regulation of new markets, Over the Counter trading markets (OTC), commodities and derivatives markets, and regulators were generally ill equipped to enforce the Directive. It was thus necessary for the European Commission to re-evaluate the Directive and a decision was made to introduce Market Abuse Directive II (MAD I).

The new market conditions proposals for MAD II were designed to deal with market abuse by incorporating a wider scope of the definition of market abuse, offences that fall within the said definition and further amplifying the scope of financial instruments subject to regulation. It was also noted that there were no specific guidelines on criminal sanctions, especially for cross border market abuse, as a result of which market manipulators had avoided sanctions across member states. In 2012, a proposal was presented on Criminal Sanctions for Market Abuse Directive (CSMAD), which was aimed at strengthening the existing framework as provided by MAD 1. Recently, in February 2014 the CSMAD was approved by the European's Parliament plenary and member states have two years to transpose it into national law. The Directive provided maximum sanction levels of at least four years' imprisonment for insider dealing, market manipulation and recommending/inducing a third party to engage in insider dealing and two years for the unlawful disclosure of inside information.[14]

Vice-President Viviane Reding, the EU's Justice Commissioner and Internal Market and Services Commissioner Michel Barnier exultant with the European's Parliament approval said:

"Today the European Union is sending a clear signal: there must be zero tolerance for manipulators in our financial markets. The EU's new market abuse framework will ensure that those who commit market abuse will face huge fines or jail across Europe. We would like to thank the European Parliament, especially the rapporteur Arlene McCarthy, for its hard work which made the adoption of this important legislation possible."[15]

The proposed MAD II was later amended to take into account the widespread manipulation of benchmarks that had become synonymous with large financial institutions. The amended proposal included the definition of benchmarks and proposed widening the scope of market manipulation to include manipulation of benchmarks and/or attempted manipulation of benchmarks.[16] Because of the interconnectedness of financial markets and international banks borrowing and lending from each other, it was imperative to have a common approach, set at the European level, to deal with this unbecoming conduct and also have the proposal passed as a Regulation as opposed to a Directive in order to ensure

consistency among member states.

The manipulation of Inter Bank Offer Rate (LIBOR) and the European Inter Bank Offer Rate (EURIBOR) has sparked serious concerns about the integrity of benchmarks. This is because any manipulation of the benchmarks affects not just the big corporations, but also average consumers whose mortgage repayments or the returns from pension fund, all of which are referenced on the benchmarks, are negatively altered as the result of the manipulation. Recently, the media has been plagued by stories of LIBOR Scandals and the Chancellor was categorical in stating that any losses arising as a result of benchmark misconduct would have to be absorbed by the bankers and not the taxpayer.[17] It is regrettable that these scandals were propagated just when the economy was in the verge of recovery and the financial community was making all efforts to restore investor confidence.

The FCA has been instrumental in its quest to curb market abuse and recently filed eight counts of charges against Julian Rifat, a former equity trader at a U.S hedge fund Moore Capital for passing confidential and price sensitive information to an accomplice to his 'significant advantage'. It also secured conviction for Paul Milsom, a former senior equities trader of Legal & General and Martyn Dodgson, a former employee of Deutsche Bank. This is evident that the FCA is successfully enforcing its mandate and that with co-operation from others quarters more convictions for rogue traders and other intermediaries can and will be achieved.

The MAD II is expected to come into force in 2015 and Regulators are anxiously waiting for its implementation to further restore financial market integrity. Given the recent inception of the FCA and the substantial work has achieved so far we are optimistic of full market recovery and perhaps even more vibrant markets post crisis.

Sources:

1. Legal and General mis-sold mortgages to 'low risk' customers using improper procedures. Numerous complaints had been lodged with the FSA however the Authority did not act on the complaints.
2. The FSA ignored signals from the bank and allowed them to continue operating without a risk mitigation programme for months before the bank's collapse.
3. FCA Website, 2014 http://www.fca.org.uk/about/why-we-do-it/statutory-objectives [Accessed 25 February 2014]
4. Ibid
5. Bank of England website 2014, http://www.bankofengland.co.uk/publications/Documents/quarterlybulletin/qb110304.pdf [Accessed 25 February 2014]
6. The Lamfalussy process is generally the progress of development of the financial service sector regulations used by the European Union. The Markets in Financial Instruments Directive (MiFID) was developed following this process.
7. Inside Information is information of a precise nature which has not been made public, relating directly or indirectly, to one or more issuers of financial instruments or to one or more financial instruments, and which if it were made public, would be likely for have a significant effect on the prices of those financial instruments or on the price of related derivative financial instrument.
8. Market manipulation is described by Article 1 (2) as:- a.Transactions or orders to trade: which give, or are likely to give, false or misleading signals as to the supply of, demand for or price of financial instruments. Or which secure, by a person, or persons acting in collaboration, the prices of one or several financial instruments at an abnormal or artificial level, unless the person who entered into the transactions or issued the orders to trade establishes that his reasons for so doing are legitimate and that these transactions or orders to trade conform to accepted market practices on the regulated market concerned; b.Transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance; c.Dissemination of information though the media, including the internet, or by any other means, which gives or is likely to give false or misleading signals as to financial instruments, including the dissemination of rumours and false or misleading news, where the person who made the dissemination knew, or ought to have known that the information was false or misleading.
9. Directive 93/22/EEC 'on investment services in the securities field' defines regulated market means a market where the instruments listed in Annex B of the Directive are traded.
10. Article 3 sets down the specific prohibitions as Insider dealing, disclosure of inside information and recommending or inducing a third party, on the basis of inside information, to acquire or dispose of financial instruments to which that information relates. A fantastic example where the interpretation of inside information was tested was the case of Spector Photo Group NV V Commissie Voor Het Financie-en Assurantiewezen, c-45/08, the Court ruled that a person in possession of inside information who deals with financial instruments to which this information relates can be assumed to have 'used' such information.
11. This information must be publicly disclosed 'as soon as possible'. However delayed publication is allowed where the publication is likely to prejudice the issuer's legitimate interests as long as such omission is not likely to send wrong signals to the public and essentially mislead the public.
12. MAD I Art 6 (3) states that, the issuers ought to draw up a list of persons working for them who have access to inside information. The said list ought to be updated regularly and lodged with the competent authority on demand.
13. MAD I Art 6 (4), these include transactions conducted on their own account relating to shares of the issuer, derivatives or other linked financial instruments however there is a set threshold of EUR 5,000.
14. For corporate bodies the competent regulatory authority is to ensure that they are held liable for offences committed for their benefit/ on their behalf by any person who is authorised to represent such corporate body take decisions on behalf of such corporate body or exercise control over such corporate body.
15. Europarl.europa.eu.2014 European Parliament [online] http://www.europa.eu/press-release_MEMO.14-77_en.htm [Accessed 25 February 2014]
16. An index is a statistical measure, typically of a price or quantity, calculated from a representative set of underlying data. When this index is used as a reference price for a financial instrument or financial contract it becomes a benchmark. Notable examples are the London Interbank Offered Rate (LIBOR) and the Euro Interbank Offered Rate (EURIBOR) which serve as benchmarks for interest rates.
17. The Royal Bank of Scotland was fined £390M, Barclays was fined £290M, UBS AG was also fined £940M.

Interview | MR CHRIS WHITE

Ojasvita Srivastava, LLM Commercial and Corporate Law

Mr. Chris White is a qualified solicitor of England and Wales and the Founder of Aspiring Solicitors. He worked at Norton Rose Fulbright LLP in London for over 3 years having trained at US law firm Dechert LLP. He established Aspiring Solicitors in September 2013 to increase diversity in the profession by providing free access, opportunity and assistance to aspiring lawyers by informing and educating aspiring lawyers about diversity or via initiatives aimed at underrepresented groups in the profession.

Since he secured his training contract with Dechert in 2006, he has been passionate about assisting others to secure access to law. As a first generation law student, and having come from a working class family, he discovered how difficult it was to get experience in the legal profession. Since 2006, he has provided free assistance to aspiring solicitors with help on their CVs, applications to law firms, mock interviews and general mentoring. All of his assistance has been voluntary and has been completed in his spare time. He knows that there are aspiring solicitors who either are not appropriately informed or educated about diversity in the legal profession or who do not get access, opportunity or assistance as a member of an underrepresented groups. That is why he decided to set up Aspiring Solicitors.

Aspiring Solicitors is based on Principles implemented through five related headlights (i) academics, (ii) pro bono (iii) sector awareness (iv) employability and (v) equality diversity and social responsibility.

Please Tell Us About Your Journey So Far.

From a very young age, I decided to pursue a legal career. I didn't really know how to get into law, despite the fact that I wanted to pursue it as a career. Having been part of first generation to attend university I wasn't as well informed as others may have been. When I decided to study law at the University of East Anglia, I found a lot of City law firms didn't actually attend my university to give workshops and presentations like my friends from Russell Group universities received. So, I discovered I was in a bit of an indirect disadvantage as a result of studying in a non-Russell group university. I did a four-year course in law in American law with a year abroad in America. It was really because of that four year course that actually helped me secure vacation schemes, because in the first two years of university I was unaware of what vacation schemes were let alone when to apply to them. So, in my third year I decided to spend four months between November

and February applying for vacation schemes. I was fortunate enough to be able to secure a number of vacation schemes and subsequently a number of placements throughout the summer with a regional firm, a City firm and an American firm. The American firm was the one I actually pursued my training contract with and got an offer from which was Dechert LLP.

Having joined Dechert, I went to study the LPC at College of Law, Moorgate. Whilst I was there I set up the Social Society, an organisation aimed at increasing networking opportunities for lawyers, not just those with training contracts but deliberately those without. I put the two groups together and assisted students without training contracts in much the same way as Aspiring Solicitors does today. The two groups networked with each other through specific events. As a result, a number of individuals secured training contracts.

When I then started my training contract at Dechert, I was firmly involved in graduate recruitment opportunities and initiatives, and continued that when I departed Dechert on qualification to work for Norton Rose. Whilst I was at Norton Rose, I was heavily involved in graduate recruitment. I was on the interview assessment day panel, and also mentored vacation scheme students and trainees. I was also a PRIME mentor. I set up Aspiring Solicitors initially as a Facebook page because I decided to visit a number of universities in my spare time whilst at Norton Rose to students of unrepresented groups. The Facebook page grew terrifically quickly, about a 1000 followers in a month and a result of that I decided to create a website. That's how Aspiring Solicitors as an organisation was created. Aspiring Solicitors has been in existence since the 19th of September in the Facebook form and the website was launched on the 27th of January. Although I have been assisting students to enter the legal profession for seven years now. That's the background of Aspiring Solicitors today.

What Inspired You To Start Aspiring Solicitors?

Well that's quite easy for me to answer because the inspiration behind Aspiring Solicitors is born out of my own experiences as a state educated, working class, low income family member, first generation lawyer with an accent. I faced a number of barriers throughout my professional career. So, having experienced those issues regarding discrimination and prejudice first hand, it's a very passionate issue for me to try to overcome those barriers for students across the UK from all sorts of unrepresented groups not just those that I'm affiliated with. I love helping people. I get a lot of satisfaction out of knowing I'm able to affect people's careers and help people's lives in a positive way. As a lawyer, I believe you commit to a lifetime of service to others, not just your clients but to everyone else you can assist. That is what I have dedicated my career to achieve now through Aspiring Solicitors.

What Are The Challenges Facing Law Students In The UK In Your Opinion And How Does Aspiring Solicitors Plan On Helping These Students?

One of the biggest challenges facing law students throughout the UK is understanding and applying transferable skills which recruiters at law firms and organisation look for in their trainees. Those transferable skills will only develop with work experiences or opportunities and that's exactly what Aspiring Solicitors looks to provide to its members. Work experience opportunities whether it be actual work experience like at Barclays or legal opportunities like networking events to be able to develop those transferable skills that are so important. That's exactly what Aspiring Solicitors hopes to do. More generally, diversity is obviously an issue that a lot of organisations and law firms are looking to improve in jobs. Therefore Aspiring Solicitors is looking to take that responsibility on squarely by actually working with partnering organisations to assist Aspiring Solicitors to provide those opportunities and experiences.

What Are Your Future Plans For Aspiring Solicitors?

Future plans of Aspiring Solicitors

is to extend year on year access, opportunity and assistance to aspiring lawyers who are from unrepresented groups in the profession, but also to educate and inform the entire next generation of the legal profession about the importance of diversity. So for me in years to come I would like to be able to look back on Aspiring Solicitors and to point to the fact that the work we have done has helped increase diversity, not only through actual substantive opportunities to aspiring lawyers from unrepresented groups, but also by changing and helping to raise awareness of the importance of diversity throughout the entire legal profession. Quantitatively that would actually transfer to assisting or partnering with all the universities who have aspiring lawyers within it and also to increase the number of law firms and organisations that work Aspiring Solicitors to be able to offer more opportunities to those individuals.

What Is Your Vision For The Legal Profession In The UK?

My vision for the legal profession in the UK is to level the playing field in terms of access to the legal profession and to offer opportunities to those aspiring lawyers who have the ability to work within it. Obviously, not everybody can get training contracts. Not everybody can get pupillages. But, what I think is important is to enable students with potential to achieve those goals to achieve those ambitions. To be actually offered the opportunity to be access to those opportunities and to be given adequate assistance to pursue those goals is my mission.

What Message Do You Have For The Post Graduate Law Students Of Queen Mary?

Message to the postgraduate students of Queen Mary would be to first of all understand and be certain in your mind the area of law that you want to pursue, which will probably be affected by the course that you are pursuing anyway. Then to utilise your skill set, and your advanced education, to pursue an area of law, which you are going to enjoy and you are going to foresee a lasting career with it. The reason why I mentioned enjoyment is because it is so important in people's careers to not lose sight of what makes you happy and what would make you happy and to affect that happiness, I think it's extremely important. That would be my suggestion to everybody who is studying or looking to pursue a legal career.

Nigerian Refineries | A Case For Urgent Privatization For Better Management

Peter Olaoye Olalere, LLM Energy and Natural Resources

The economist, Jim O'Neill, who created the acronym, BRICS (Brazil, Russia, China and South Africa) about 13 years ago has categorized Nigeria amongst the MINT (Mexico, Indonesia, Nigeria and Turkey) countries, in his new acronym. O'Neill argues that the MINT countries are united by 'favourable demographics and large and youthful population', which are the key criteria backing O'Neill's forecasts that these four could be among the ten largest economies in the next 30 years.[1] In my view, another reason Nigeria made that list, is the economic development potentials inherent in the oil and gas deposit within its sovereign territory. However, leadership challenges with mismanagement of resources, corruption and inefficiency, are major challenges facing Nigeria's race to becoming one of the largest economies, as predicted. In recent time, these challenges are more pronounced in the downstream sector of the Nigerian petroleum industry particularly relating to the refineries. This article argues that total deregulation of the Nigerian petroleum downstream sector and privatization of the refineries' backed by government's political will and efficient management may galvanize injection of private investments into the petroleum downstream sub-sector, create employment for the large population of the youths, help in curbing corruption and ultimately ensure that the government owned refineries do not end up like the government's telecommunication company.

How The Telecommunication Company Failed

While liberalization and commercialization efforts of certain sectors of the Nigeria economy dates back to late 1980's under the Military Government,[2] the Government policy on privatization, commercialization of public enterprises, and deregulation and liberalization of important sectors, having earlier been suspended by Abacha regime in 1994, only took a better dimension upon the country's return to democratic dispensation in 1999. By Decree, 75 of the 1992 telecommunication sector was liberalized, Nigerian Communications Commission (NCC) was established and telecommunication licenses were handed by some private investors to offer telecommunication services and co-exist with the Nigerian Telecommunication Commission (NITEL). NITEL continued to perform extremely poorly until Econet (later Zain, Airtel etc), MTN and MTEL came into the market in 2001 and Glo Mobile in 2003. NITEL,

together with its mobile arm, MTEL could not survive competition and efforts to privatizing them failed on all occasions as Investment International London Limited, pentascop, Orascom, Transcorp, New Generation Communications Limited and Omen International Limited could not pull through the purchase of NITEL majority shares or management of NITEL for various reasons.[3] NITEL, at the time of writing this piece, is not only dead, its carcass (assets) has been buried in the annals of failed Nigerian public enterprises, and it has no place even in public discourse.

Policy Flip-Flop And Politics Of Refinery Privatization In Nigeria

Only the Nigerian government, through the Nigerian National Petroleum Corporation (NNPC), own and operate refineries in the downstream side of the Petroleum sector[4] and, like every such public enterprise, the refineries, which gradually started deteriorating long time ago, had reached its lowest by the time democracy returned in 1999.[5] Although, the federal government correctly diagnosed the number one killer of all public enterprises in Nigeria as "gross incompetence and mismanagement, blatant corruption, and crippling complacency",[6] the government appears to have always lacked the political will to rock the boat and do the right thing. Therefore, even though former President Olusegun Obasanjo doubled as the Minister of Petroleum for almost his entire eight years reign in government from 1999 to 2007, during this time the refineries' situation became worse.

Realizing the apparent failure to turn the situation around and not wanting to trust the civil servants with the revamp of the refineries, President Obasanjo privatised the majority shares in two of the four refineries to the duo of Femi Otedola and Alhaji Aliko Dangote (both Nigerian private investors) almost on the eve of his departure from office. The next administration of late Umar Musa Yar'adua immediately reversed the sale of the refineries upon taking office, the civil servants having convinced him that they could manage them profitably for the benefit of the nation. It was surprising that late President Yar'adua believed the assurances that the refineries could be turned around by the government. This has since turned out to be a lie.

Although, the federal government handed out 19 licences for private refinery operation (like it did in the case of NITEL) since 2011, no private refinery has come on stream. The main reason given by the investment community, including the major oil operators in the Nigerian downstream, for lack of private investments and participation in the refineries business in Nigeria is the petroleum products prices regulation and subsidy regime obtainable in the market. Under this arrangement, the government pays a part of the landing cost of petroleum products, which is generally imported as the local refineries cannot refine enough products for the local market, so that the local consumers may not be overburdened with the full amount.[7] The industry players, including the oil majors, have repeatedly argued that any refinery business under a subsidy regime is not bankable. The government has always made an attempt to remove the subsidy, so that the market force of demand and supply can control the price, without success due to the popular resistance by the labour and civil society.

"The subsidy regime has now grown to become a cobweb of racketeering and corruption of a proportion hitherto unknown."

Consequently, the subsidy regime has now grown to

become a cobweb of racketeering and corruption of a proportion hitherto unknown. More than any other time and events, the popular January 2012 protest, when government tried to remove the subsidy and increase the pump price of the petroleum products, exposed the lie called 'petroleum subsidy' in Nigeria. In recent time, the Central Bank Governor, Mallam Sanusi Lamido Sanusi (now former),[8] has alerted the President and the nation to the fact that the national oil corporation, the NNPC[9] has not been remitting all the money accruing to the nation to the federation account as required by the law.[10] The subsidy fund on a yearly basis runs into trillions of naira[11] and only a cabal share the fund amongst themselves; hence the recent heat on government to stop the corruption in the petroleum sector and save the economy from continuous bleeding.

Government Plans To Sell The Refineries: '...No We Are Not Selling Government Property'

It is in light of government's failure to properly manage the refineries that the news of intended sale of the refineries, or whatever remains of the assets, to private investors by the first quarter of 2014, as announced by the Minister of Petroleum, was received as good news.[12] However, in a swift reaction to the statement by the Petroleum industry union to go on strike if the refineries were sold, the federal government has again appeared to have retracted the planned sale. The Presidential spokesman, Dr. Reuben Abati, contradicted the statement made by the Petroleum Minister just days earlier, insisting that government will not sell any of the refineries as no approval has been given. It appears that for 2015 political expediency,[13] the government may lack the courage to go ahead with the privatization once and for all. It understands that the privatization of the refineries will be better for the Nigerian economy, however, there is lack of trust between the general public and the government as there is doubt that the benefits of such privatization will reach the ordinary citizen. President Goodluck Jonathan appears to have backed down on the privatization agenda, or at least has deferred it, because of the general election underway by February 14 2015.

"The privatization of the refineries will be better for the Nigerian economy, however, there is lack of trust between the general public and the government as there is doubt that the benefits of such privatization will reach the ordinary citizen."

Dangote's Refinery Project

The good news, which may make the refineries go the way of NITEL, is the announcement by the richest African and business mogul, Alhaji Aliko Dangote, during the celebration of his 57th birthday last year, is prepared to build an USD 9 billion oil and gas refinery in Nigeria,[14] in order to service not only Nigeria, but also the West African sub-region. With this investment, which is going on as planned, the landscape of the Nigerian downstream petroleum sector is finally about to change. Alhaji Aliko Dangote has been talking on how this investment will generate lots of employment for Nigerian youths.[15] Together with the support that other allied investments will benefit from the Dangote's refinery and particularly the direct influence of such investment on our electric power sector, there is bound to be improvements in the Nigerian economy. Subsidies will most likely be removed from the petroleum products, and when this happens, the other private investors who have been

licensed may likely build their refineries as well. Some of the large population of youths is likely to be gainfully engaged. Private investments will bring competition and help in curbing corruption and, ultimately, the Nigerian economy may actually take its proper place among the MINT nations with accelerated development.

The news of the coming of Dangote's refinery is definitely music to the ears, however, it can also be a death sentence to the government-owned refineries, which are being mismanaged daily at the moment, except urgently privatised. The government refineries together with the assets are likely to become worthless, if not sold immediately, and their carcasses will rest in pieces like that of NITEL. Will Mr. President order the sale of the refineries now to avoid such calamity? It is doubtful that privatization of the refineries can happen before the next general election.

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A Holistic Approach to the Effects of Privatisation | The UK

Mariano Gemignani, MSc Law and Finance

The public vs. private owned companies debate has been the core of every serious political discussion and should be considered as a vital issue by every political party. Regardless of which side one should pick and argue for, this is not a subject to be left aside. The aim of this article is to reshape this debate and depict from it several points of view in an attempt to broaden the horizons of potential future considerations.

The main reason why this is an essential dichotomy within every national state worldwide is related to the degree of state intervention. What many macroeconomic debates imply, in essence, is that a replication of the everlasting and fundamental contradiction between classic economists, such a as Adam Smith, David Ricardo as the pioneers, and interventionists, such as Karl Marx being the paradigm of the second group. However, within this scenario, this article will focus on one particular time period and its context. This time reference will be limited to the government of primer minister Margaret Thatcher (1979-1990), and the United Kingdom will be the geographical limit.

The reason behind this selection is far from arbitrary. This period can easily be presented as the strongest example of a keen tendency towards privatisation. Not only was this a key part of the governing programme from a practical point of view, but also from discourse. In a speech delivered at a conservative party conference in Bournemouth in 1986, Margaret Thatcher's words could not state it more clearly:

"Our opponents would have us believe that all problems can be solved by State intervention. But Governments should not run business.(...)From France to the Philippines, from Jamaica to Japan, from Malaysia to Mexico, from Sri Lanka to Singapore, privatisation is on the move, there's even a special oriental version in China".[1]

With a high contrast to the nationalizations that the labour party had enforced during the 1970's, the first great step towards privatisation was taken in 1981 through the IPO of British Aerospace. The state company that was devoted to the manufacturing of vessels, British Shipbuilders, was also privatised. And, in 1983, British Telecom followed the same path.[2]

Having stated these boundaries, this period can be analysed from different perspectives. A potential argument, which has been used previously to favour privatisation, is efficiency related to production, specifically when the privatised company refers to the supply of public services, such as electricity, water supply and other areas of the energy sector. The argument, in general terms, that companies managed under private capital deliver a service that show more stability, higher predictability and an overall increase in the production of the service, which eventually favours the users. However, this argument has proved not to go very far in terms of empirical evidence. Taking a look at two factors, such as labour productivity and total factor productivity, and compare these values regarding three firms for the periods of 1970-1980 and 1980-1990, the results are rather puzzling. Just as a fore note, labour productivity measures the growth of a particular company or country in terms of production of services and goods, whilst total factor productivity addresses a similar enquiry, however, with more factors being included, such as technology and efficiency being the most relevant ones.

In this frame of analysis, British Telecom, British Gas and the supply of electricity were observed. The first, British Telecom, had a higher labour productivity, however, showed a decrease in total factor productivity. British gas, on the other hand, showed no changes in labour productivity between 1970-1980, however, between 1980-1990 its total factor productivity declined. As for electricity supply, it showed a decline for both labour productivity and total factor productivity.[3]

There are, however, other factors to be considered when analysing how privatisation affects citizens. The key question to be asked is: what should be expected from modern democracies? This is an idea that requires further development.

For the sake of argument and debate, an assumption can be made that privatization would effectively incur an improvement of the service provided by the privatized company. The democracy-oriented doubt that arises naturally is how these improvements will be delivered to users, which in the cases previously mentioned will be the great majority of a national state's population. So, it would not be far fetched to say that within the policy making decision, which affects a public service, should necessarily be seen through the scope of how democratic the outcome of this decision will ultimately be. Just to clarify, this is not an argument for or against privatization. The aim of this article is not to be a manifesto.

Following the same train of thought, one of the variables which strongly affects a great extent of a state's population, and therefore how democracy effectively functions within a certain scenario, are social benefits. Be it in the way of financial assistance aiming to ease the cost of rent, providing the difference that one could need in order to achieve the minimum wage, or the assistance with expenses of raising a new-born child, the aim and the effect of social benefits as a whole is to attack the background situations that cause inequality within a society.[4]

Social benefits and their management and application by governments can provide a stepping-stone to identify the clear intentions of one specific political force. To put this in clearer terms:

"The requirement for benefits to be uprated in order to maintain their real value over time has given rise to the possibility of adjusting their real levels in response to changing political priorities and social pressures. This is seen clearly in respect of the variation in level between unemployment benefit and state pension, which were introduced at the same time at the same level, but now vary by more than 50%."[5]

"Social benefits and their management and application by governments can provide a stepping-stone to identify the clear intentions of one specific political force."

Even though it might not seem straightforward at the first glance, social benefits and privatization trends are strongly related and both deeply affect democracy. The reason for this is that these would seem to be distinct areas, however, each national state has one budget to allocate. The way in which this budget is distributed into these two areas can be a sensible indicator to attempt to decipher what the future beholds for the governed citizens. In the same way the national budget is one, each citizen's personal finances refer to a single amount of currency.

Needless to say, it is that any extreme would have undesired consequences. It is not the aim of this article to suggest what is the desirable balance between private and public control of companies and where should the social benefits be defined. However, there are no doubts that it is necessary to analyse thoroughly. This is where a comprehensive regulation of corporations, who develop

their commercial relations in this modern world, could prove to create a commercial environment that is attractive to both investors and consumers.

Price caps are mechanisms that have shown to be effective. Through a period of between four and five years, in most cases, companies will have to limit their price range to a certain quantity, which will be slightly less than the amount to which the CPI (Consumer Price Index) increases in the period. This restriction in the increase of prices can be profitable for companies, because it provides a tool for forecasting cost reductions and optimal performance. As to the consumer side, it nullifies any potential attempt of a speculative price increase on behalf of the company. It provides certainty to both ends of the commercial relation.

It is within this context that commercial success and true democracy can be taken as a feasible objective. There is no reason or evidence to assume that they should exclude each other. It is crucial to be aware that this is a complex debate. These factors are nowhere near exclusive, however, the ones that been have considered have exercised a key influence. As it has been said that this is a complex debate with many aspects to consider and to ponder. However, it is without any conceivable doubt a necessary questioning. Throughout this brief considerations this article has tried to present what privatising implies in terms of its correlation with the political, economic and social characteristics that modern day societies present, with the aim of encouraging a broad perspective and a rich democratic debate.

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Interview | MR AJIT MISHRA

Ojasvita Srivastava, LLM Commercial and Corporate Law

Mr. Ajit Mishra is presently the Co-Head of the India Desk with Wragge & Co, where he assists Indian businesses as they expand in the international market. He is a dual qualified Solicitor in India and in England and Wales. He is an alumnus of Queen Mary, University of London,where he completed his LLM in 2005. Post LLM, he worked with various British and Indian law firms assisting them and their clients in their Indo-UK business.

He is also the founding member and CEO of Power In-House, which is an endeavour to bring Indian In-house lawyers closer to other professional groups. They engage in Networking and Professional training.

Please tell us about your journey so far.

I was a middle-class boy from Delhi when in September 2004; I came to London to study at the Queen Mary College for the LLM program. Indeed 2004 – 05 was a very constructive phase of my life when I qualified as a Solicitor in England & Wales and got involved in various projects & publications at the University of London. Post LLM, I worked with various British and Indian law firms assisting them and their clients in their Indo-UK business. My current role as the Co-Head of the India Desk with Wragge & Co is very international and gives me an excellent opportunity to assist Indian businesses as they expand in the international market.

What are the problems or challenges facing international financial market?

Western economy has witnessed a series of financial turmoil between 2008 and 2012, but now the economy is showing positive symptoms of recovery. In 2008-10 there was bad news all over starting with the bankruptcy of Lehman Brothers, followed by the downfall of Icelandic banks, the Madoff Fraud, the sub-prime market collapse and the sovereign debt crisis (as they say 'double dip'). In these adverse situations, banks, financial institutions and especially the Government did a commendable job of taking tough actions, which were criticised at that time, but have now received international appreciation. We are operating in a very international and matured environment, which means the market will and has to a large extent kicked back into recovery. Having said so, I fell the biggest challenge for the financial market is to avoid mistakes of the past and regain confidence of the investors.

What are your views on the new rules on Mergers & Acquisitions in India under the new Companies Act, 2013?

The New Companies Act is a progressive legislation and has incorporated new provisions, like investment in Corporate Social Responsibility activities. However, I will restrict myself to M&A and restructuring provisions in the new Act. Broadly, there are three highlights in this reference:

1. M & A have been made more transparent and easier for the companies.
2. Indian companies are now allowed to merge with foreign companies, which was not allowed in the old Act. How-

ever, for the practical implementation of these provisions appropriate amendments are required in other legislations, including FEMA and IT Acts.

3. The new Act is good for Private equity investors wherein they can now enforce various agreements/clauses, which were not allowed in the old Act. For example, 'tag along' and drag along' clauses. As a result, Private Equity investors may now have a much easier exit from the business.

In a nutshell India may now witness a better and a more progressive investment climate which will encourage FDI inflow in various sectors.

What are your views on the new Telecom Merger and Acquisition Guidelines, 2014 issued in February this year in India?

This is a welcome news for the telecom sector. Consolidation in telecom sector is essential, but onerous rules were holding back larger companies from acquiring their weak rivals. In India, where major part of telecommunication spectrum is used by defence forces, M&As will serve as another way in which spectrum can be acquired. Consolidation will improve operating profitability and cash flow; and return pricing power to the larger operators in the medium term.

How has law practice changed from when you started practising?

I started my professional career in 2002 and since then things have changed drastically in India. When I started in the profession most of the Indian law firms were family controlled but now this model is seen as not sustainable. What the market needs is professionalization and a reduction of the sole proprietorship approach. Firms are adopting a corporate approach and lawyers are getting the opportunity to have a share in the equity of the firm.

Following the foot prints of their international clients, the Indian law firms are now getting involved in international transactions. This is not only bringing an international flavour to the practice, but is also exposing our lawyers to the international style of operations.

In the UK, the recent financial turbulence has been hitting British law firms very hard. Those firms, which were relying on the local market for their business, have either shut down or have sustained huge losses. As a result, law firms are trying to be more international and innovative in their approach to bring a better and more cost effective solution for their clients.

Please tell us a little about your initiative Power In-House.

Power In-House is an endeavour to bring Indian In-house lawyers closer to other professional groups. We engage ourselves in two main activities: (a) Networking and (b) Professional training, most of which are free for our members to attend. Our network has been well received in India and is still growing.

As a 'Role model for young lawyers', what message would you like to give to the students of your alma mater?

Law is a great profession to be in and the only key for success is 'reliability'. Be reliable to your clients and colleagues and I am sure success will chase you.

A Brief History | Commodities

Rumen Zhechev, MSc Law and Finance

Contrary to popular misconceptions, the term "commodity" is not limited to items such as coffee, barley and iron. Broadly, it extends to any good or substance for which there is a market demand. As such, commodities form the backbone of international trade, commerce and production; and in one way or another affect every major part of our modern and increasingly sophisticated lives. However, this was not always the case. The history of commodities trading provides a fascinating demonstration of human ingenuity, innovation and entrepreneurship in response to the most basic problem of economics, which is the problem of scarcity.[1] Of all widely reported commodity prices the two that receive the greatest media attention, and which typically cause the greatest public concern when their prices fluctuate unpredictably, are gold and oil. Their histories are particularly relevant in this context, not only because of the power and riches with which these commodities have been associated since their respective discoveries, but also because of the immense efforts with which they have been pursued throughout history, first by primitive societies and monarchies, and later by empires and corporations.

"The history of commodities trading provides a fascinating demonstration of human ingenuity, innovation and entrepreneurship in response to the most basic problem of economics, which is the problem of scarcity."

Commodities in general

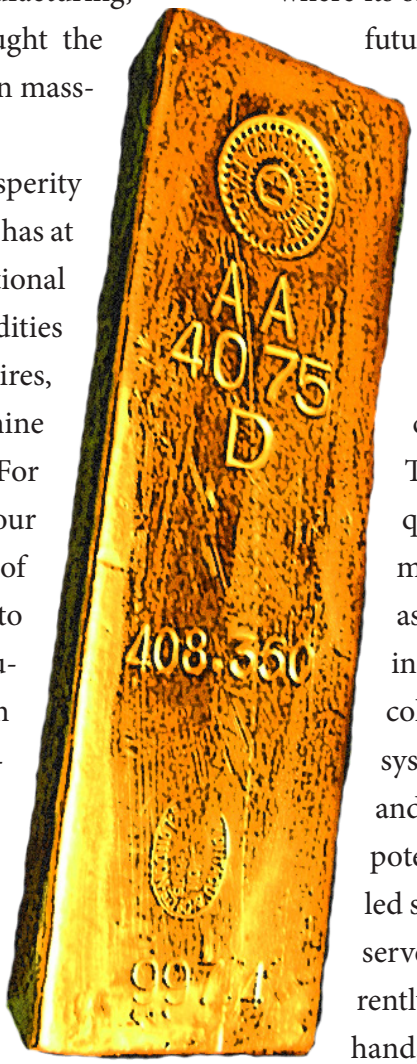
The importance of commodities lies in the fact that they are essential factors in the production of goods and services.[2] Some of the most widely reported commodity prices in the media are those for agricultural crops, metals, chemicals and fuels. However, virtually any physical substance used as an input in production can be considered a commodity.[3] This ranges from basic staple foods, such as rice, wheat and soybeans, to manufactured items such as aluminium, recycled paper and sulphuric acid. As a result of modern technological progress and financial innovation some economists now consider including certain financial products under the definition of "commodities", such as foreign currency, cell phone minutes and bandwidth, however this continues to be subject to intense debate.[4]

Throughout history, commodities have been the essential driver behind almost every major economic, cultural and social change, fuelling trade, co-operation and conflict between citizens, societies and nation states. Among the first commodities to be widely traded between organised communities were crops and cattle, and later were superseded by textiles, metals and furniture as economies diversified.[5] Long-range trade routes first appeared around 2000 BC, and by the time of the Roman Empire in the first century AD, there was a thriving international trade, which brought luxury goods such as silk and bronze mirrors, from as far away as India and China along the ancient Silk Road.[6] During much of the Middle Ages, the flow of spices into Europe from India was controlled by Islamic powers, which at the time made them some of the most valuable commodities in the world, often rivalling the price of gold.[7]

Following the discovery of the East Indies and the colonization of the new world, European traders brought new staple foods to the Old world such as tomatoes, maize, peppers and tobacco, which created new mar-

kets.[8] In particular, the introduction of the potato has often been credited as being responsible for around a quarter of the population increase in Europe between the 18th and 20th centuries.[9] The widespread public demand for sugar from the East Indies fuelled international trade during the 18th century, while British coal and American cotton were used to power the mills and factories of the Industrial Revolution during the following century when new forms of manufacturing, communication and transport brought the benefits of trade to the growing urban masses.[10]

Undeniably, the economic prosperity brought by the trade in commodities has at times come at a high price. International rivalry and competition for commodities has served to forge and destroy empires, as well as to wage wars and determine geopolitical relations for centuries. For example, the demand for cheap labour to work on the cotton plantations of the Southern U.S. States gave rise to the slave trade during the 18th century,[11] whilst the search of the European powers for new markets led to a series of bloody conflicts throughout the 19th century, such as the Opium wars.[12] Nevertheless, commodities have continued to shape political developments, and in doing so have continued to affect our everyday lives as investors, consumers and ordinary citizens.



The History of Gold as a Commodity

Ever since man discovered the craft of metalworking in the early Bronze Age, through to the time of the late 19th century Klondike gold rush, gold has had a unique place in popular imagination.[13] However, contrary to gold's semi-divine representations in myths and popular folk tales, gold as an investment suffers from a unique combination of high opportunity costs, limited practical utility and considerable price volatility. Accordingly, gold has limited appeal to today's private investors, who are typically looking for the higher returns and greater liquidity offered by stocks and government bonds.[14] Today, gold is traded much like any other commodity on metal exchanges, such as the London Metals Exchange, where its sale is typically carried out through the use of futures contracts, which standardise the quantity and minimum quality of the product being traded, so that its price fluctuates just as much as that of other precious metals.[15]

Additionally, in an age of fiat money where gold no longer acts as a universal monetary standard, the main actors on the international gold market are now mostly central banks and large investment funds.[16] The former collectively control around a quarter of all gold ever mined, around 33,000 metric tons, and the latter hold gold deposits as a form of insurance against possible hyperinflation or a natural catastrophe causing the collapse of their country's currency or financial system.[17] Indeed, the limited strategic use of gold and the possibility of accomplishing its hedging potential through alternative cheaper assets have led some Central banks to eliminate their gold reserves, including the Bank of Canada, which currently holds a mere three tons.[18] Oil on the other hand, is a distinctly 20th century phenomenon, which has only recently acquired its informal epithet as the "black gold".

The History of Oil

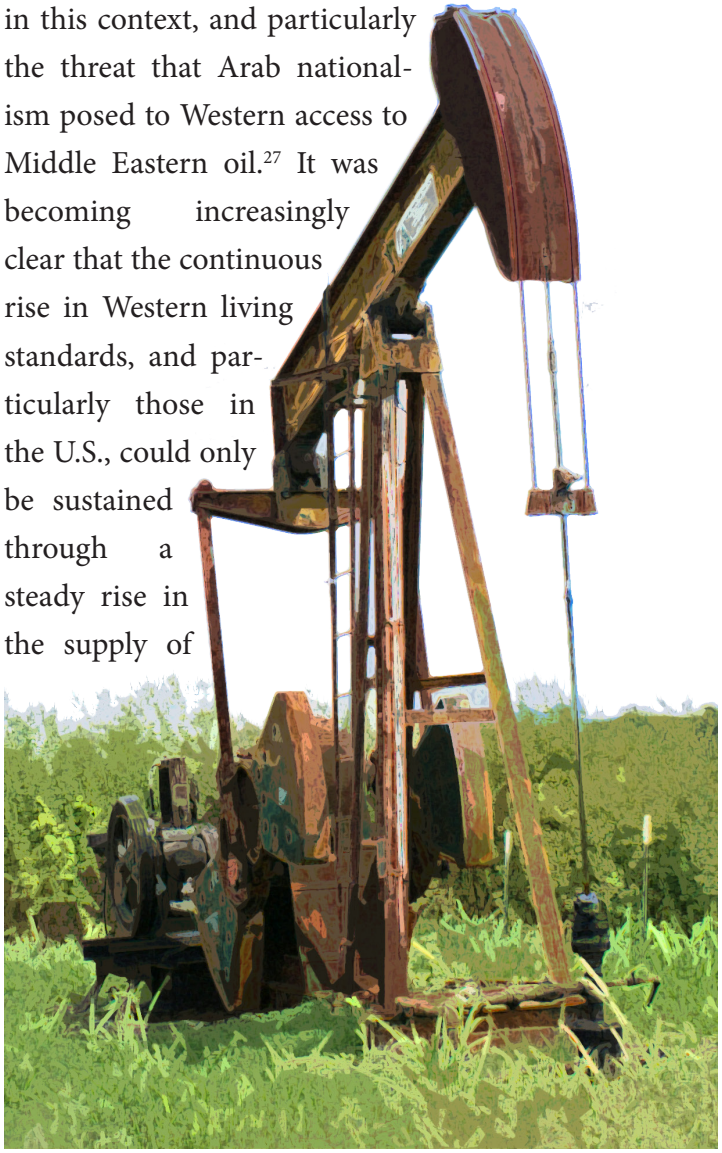
Petroleum as a portable, dense energy source powering around 90 per cent of the world's vehicles is one of the world's most important and valuable commodities.[19] The exceptional importance of petroleum products for a country's existence has been expressly recognised by

the European Court of Justice in its judgment in the Campus Oil case of 1984, where the court held that the actions of an EU member state to ensure a minimum supply of petroleum products is a legitimate defence to a breach of the fundamental principles laid down in Art.34-36 TFEU, which prohibit discriminatory barriers to trade.[20] Although oil production and its price volatility have only acquired a direct relevance in everyday life during the past century, some of the basic properties of oil have been known to humans since ancient times, reflecting the fact that the history of oil has been inextricably linked to the technological and economic progress of Western civilization itself. For example, as early as 3500 BC, early civilisations used asphalt as an adhesive for bricks and sealant for watercraft.[21] However, it was not until the rapid industrialization of the mid-19th century that people began to appreciate the strategic value of petroleum as a commodity. Partially, this was also due to the fact that economically viable quantities of oil could only be extracted after the technique of drilling using piping was pioneered, which prevented borehole collapses and enabled rigs to penetrate deeper and deeper into the ground in search for oil.[22]

The discovery of oil and its many uses has since revolutionized modern transport and made many individuals fabulously rich. In 1895 global oil production stood at 284,000 barrels a day and by the time that the first Ford Model T car emerged from the production line in 1908, U.S. oil production alone stood at around 170,000 barrels a day, overtaking Russia as the world's largest oil producer.[23] The astronomical rise in the number of newly chartered oil exploration companies led the U.S. authorities to take a more active approach towards regulating the new industry. In 1911, the U.S. Supreme Court declared that the Standard Oil Company was guilty of anticompetitive practices in "restraint of trade" under the Sherman Antitrust Act 1890, and ordered that the company should be dissolved into 34 smaller companies.[24] Two of those companies are today better known as ExxonMobil and Chevron Corporation.

However, many European governments felt the need to take greater control over their petroleum assets in light of their economic and strategic significance. For example, in 1913 the British government acquired a controlling interest in the Anglo-Persian Oil Company, which was later renamed as British Petroleum.[25] The Great Depression of the 1930s had a significant effect on the oil industry. As global production slowed down in the US and across Europe, commodity prices plummeted, and only the huge demand for oil during World War II stimulated the full recovery of the industry.[26]

The reconstruction of Western Europe and the survival of the new state of Israel became a priority for America's foreign policy during the 1950s, in response to the geopolitical threat posed by the growing influence of the Soviet Union. A series of crises during this period, including the Iranian crisis of 1951-54 and the 1956 Suez Crisis, illustrated the pivotal importance of oil in this context, and particularly the threat that Arab nationalism posed to Western access to Middle Eastern oil.[27] It was becoming increasingly clear that the continuous rise in Western living standards, and particularly those in the U.S., could only be sustained through a steady rise in the supply of



cheap oil. As U.S. oil production peaked in the 1960s, rising industrial and domestic consumption in the West created a growing dependence on the imports of oil from the Middle East.[28]

In the 1970s the conflict between the U.S. policy of supporting Israel and its policy of ensuring cheap oil imports from Arab countries came to the fore. The 1973-74 oil crisis was a watershed moment that provided a vivid illustration of just how dependent the economies of the U.S. and Western Europe had become to oil imports.[29] Several Arab oil producing countries including Egypt, Syria and Saudi Arabia proclaimed a complete embargo on oil shipments to the U.S. and several other Western nations, which were providing aid to Israel during the Yom Kippur War.[30] Without oil to power production, industrial output slowed dramatically, inflation spiralled out of control and the West slipped into the worst recession since the Second World War. The crisis showed clearly how the economic boom experienced by Western nations in the post-war years had been entirely dependent on their ability to dictate low fixed-rate prices to the oil-producing nations.[31]

During the 1980s, the price of crude oil fluctuated significantly due to spikes in interest rates, from the nominal price of $14 in 1978 to $35.00 per barrel in 1981, to around $26.00 at the time of the First Gulf War in August 1990.[32] As the U.S. entered the longest period of uninterrupted economic growth in its entire history during the 1990s, events in other parts of the world, such as the collapse of the Soviet Union and the East Asia crisis of 1997, caused the price of oil to contract several times in response to major macroeconomic and financial shocks.[33]

Two incidents in particular during the 2000s have highlighted the likely future challenges posed by our ever-increasing demand for oil, the first being the Iraq war.[34] Looking back at the conflict, it seems clear that there was never really any doubt amongst policy makers what the war was about.[35] Indeed, a number of leading political figures including the former Federal Reserve Chairman, Allan Greenspan, and current U.S Defence Secretary, Chuck Hagel, have since then publicly confirmed that the war was in the end, primarily about oil.[36] Before the war started, Iraq's oil wealth was estimated at 330 billion barrels.[37] Measured at the highest oil price of $130 per barrel in the summer of 2008, the value of these reserves was estimated to be in the region of $42.9 trillion or nearly three times the current United States' GDP of around $15.7 trillion.[38]

As a result, the major beneficiaries from the colossal $3 trillion cost of the war,[39] have been Western oil companies, such as ExxonMobil, Chevron and Shell, which have all since set up shop in Iraq. Despite the failed passage of the proposed Hydrocarbon law in 2007 due to widespread public opposition, which would have effectively privatized a large segment of the Iraqi oil sector, Western companies continue to operate under private contracts, which provide them with all the access and favourable treatment that the Hydrocarbon law would have offered.[40] Meanwhile, the price of Brent crude oil has risen to around $105 per barrel,[41] since the pre-war average price of under $25 per barrel in 2003.[42]

The second incident has been the environmental impact of the Deepwater Horizon oil spill, which remains the largest oil spill in history.[43] The Deepwater Horizon incident discharged around 4.9 million barrels of oil into the Gulf of Mexico in 2010, polluting an area of around 68,000 square miles.[44] The incident has since cost approximately $42.2 billion to BP in federal fines and civil settlements, illustrating the existing technological limits of producing ever-increasing quantities of oil, and has also renewed calls for tougher environmental protection and safety regulation of deep water and offshore drilling.[45] However, global demand for oil and competition for commodities are likely to intensify in the future as emerging economies such as China and India continue to grow their economies on fossil fuels.[46]

Why should we care?

What has been attempted above was an incomplete but short history of some of the main ways in which

humans have sought to acquire and utilise some of the most basic commodities throughout history, in order to satisfy their economic needs. Like the history of many other human activities the history of commodities trading has not always been a smooth one or even moderately successful in achieving the goals of its proprietors. However, commodities have always had a unique relevance to human subsistence and they continue to have a profound impact on international trade, geopolitical trends and economic development. In the end, if there is one thing that the history of commodities exemplifies, it is the universal truth in the words of the great classical economist and advocate of free trade David Ricardo that; "the exchangeable value of all commodities rises, as the difficulties of their production increase".[47] In an increasingly globalized world, where free competition and increasing demand consistently raise the price of commodities, these words echo a powerful warning of the need for policymakers to take more active measures to prevent the future crises which their scarcity is otherwise, likely to produce.

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