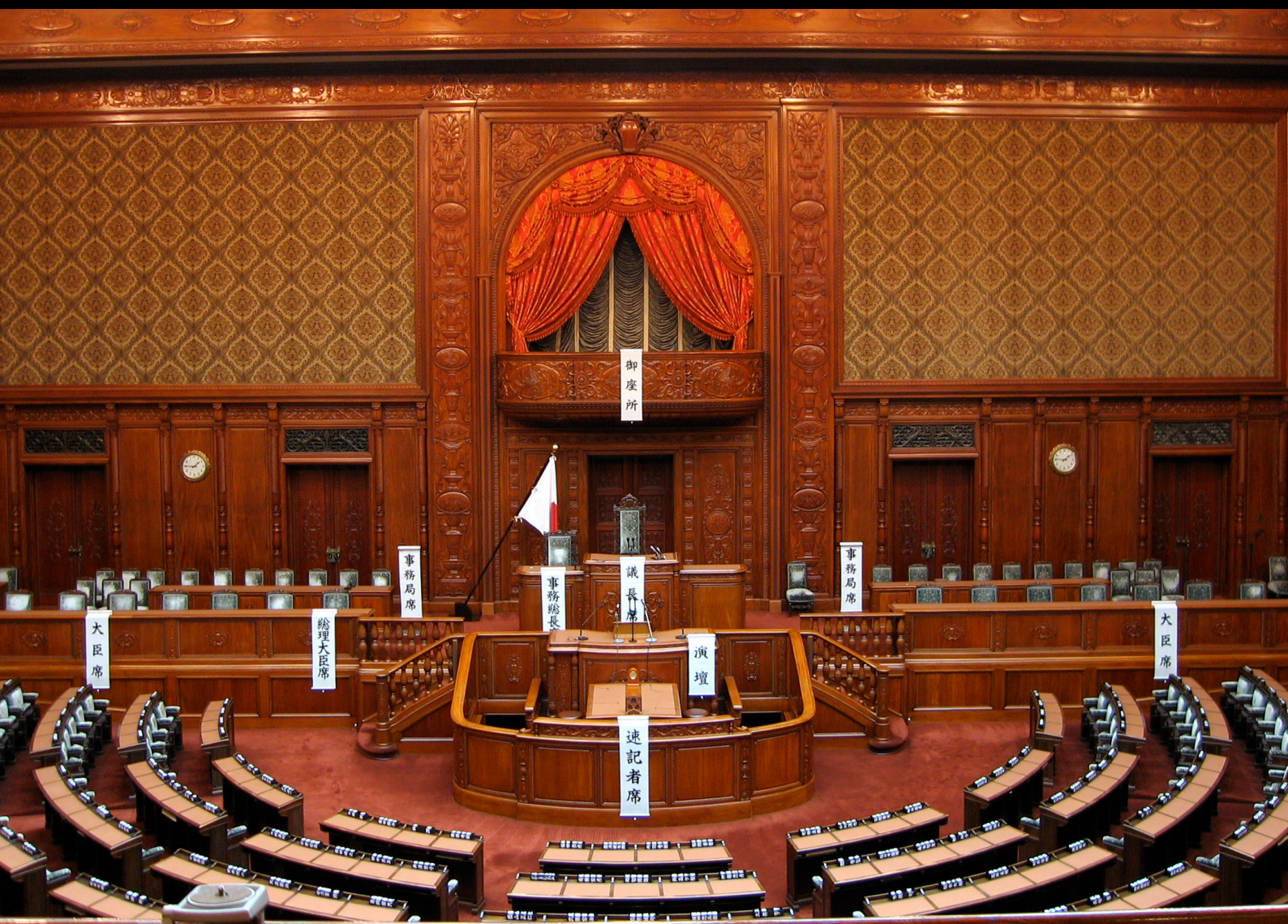


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The IAFOR Journal of Politics, Economics and Law

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Notes on Contributors

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international agencies, including: the Bank of Thailand, Ministry of Labor, Ministry of Education, Bank for Agriculture and Agricultural Co-Operatives, Health System Research Institute, the World Bank, and the International Labour Organization.

Introduction

It is a pleasure and privilege indeed to introduce the first issue of the IAFOR Journal of Politics, Economics & Law, joining its stable-mates of the peer-reviewed academic journals published by the International Academic Forum (IAFOR). Politics, economics and law are highly interdependent disciplines at the essential core of the social sciences, addressing issues central to determining the stability and welfare of the world.

In both contemporary international, and domestic politics in many countries, continual crises are being confronted. In economics, the uncertainty wrought in the wake of the Global Financial Crisis of 2008, and the challenges and opportunities presented in emerging markets are still unfolding. In law, various debates in domestic and international jurisprudence demonstrate the complexities of reflecting and pursuing justice. The IAFOR Journal of Politics, Economics & Law will thus provide opportunities for scholars around the globe to contribute their expertise, through original research to these vital debates.

Reflecting the interdisciplinary approach of IAFOR, this journal aims to display a representative sample of distinguished papers selected mainly, but not exclusively, from the already impressive submissions to the proceedings of IAFOR's series of Politics, Economics & Law conferences, plus papers submitted externally. This issue is the first modest presentation of these endeavors, which will be built upon in future volumes. The selection of articles for this first journal aims to reflect this interactive cross-over, displaying how the three fields are inevitably interdependent in their research and analysis.

The four papers which have been subject to a peer review process and selected for inclusion in this first issue reflect these ambitions; as well as their academic insights, one can detect in these valuable pieces of original research a firm sense of social justice motivating the authors:

Susan Kennedy critiques the treatment and status of stateless peoples under contemporary Australian law concerning asylum seekers and refugees;

Jerzy Kaźmierczyk, with co-author Przemysław Macholak, utilize their original survey-based research to assess the effect of outsourcing on the Polish banking sector;

Chu-cheng Huang's article examines the complexities and difficulties in applying Taiwanese copyright law to protect the intellectual property of its various indigenous peoples;

and Kiatanantha Lounkaew applies econometric analysis towards the impact of the Thai student loans system on health and economic outcomes for disabled people.

Sincere thanks goes to the contributors, the reviewers, the advisory Board members, Assistant Editor Dr Shazia Lateef; and also deep appreciation for the invaluable advice and support of the IAFOR publication staff, and the confidence and support of the IAFOR Board. I hope all readers find some provocative enlightenment in this inaugural issue, and in future volumes to come.

Craig Mark
Editor

Statelessness matters 10 Years on from Al-Kateb: Statelessness in the Australian Context

Susan Kennedy

Abstract

This year is the tenth anniversary of the final decision on *al al Kateb v Godwin* (2004) HCA 37), a landmark case in Australian migration law. The Australian government sought to indefinitely detain al Kateb, a stateless Kuwaiti, after refusing his application for asylum. The High Court ruled in favour of al Kateb on the basis that indefinite detention of a stateless person is unlawful. Since then, Australian law on statelessness has failed to develop to the extent that the Australian government has not legislated on a determination procedure for stateless people. Australia does not provide protections under United Nations Convention on the Status of Stateless Persons (1954) to which Australia is a signatory. This paper discusses sources Australian Country Advice KWT39495 to describe how concepts about stateless communities might develop within the Refugee and Migration Review Tribunals. It challenges the veracity of the Country Advice information based on its use of sources. It explains the reasoning behind American and UK positions on statelessness in Kuwait in the Country Advice, which influences determinations on asylum claims, in the absence of a procedure to determine and resolve statelessness. It concludes that not only are the Australian Country Advices in need of update, there is also a need for the quality of evidence sourced and the interpretation of that evidence, to be reviewed

Keywords: Statelessness, human rights law, refugee law

Introduction: Why Statelessness Matters

I will discuss why statelessness matters in the Australian context of the Australian Department of Immigration and Citizenship's sources of advice on Statelessness, the two main sources of the advice, and the two trends emerging that are positioning the stateless population claims. There are approximately 22 million stateless people worldwide (UNHCR 2013). Most of these people are not displaced refugees, but remain in their countries of origin for generations (Refugee Appeal No. 72635/01, 2002). One of the reasons for this is that if they cross a border from their home country, they will not be allowed back in. The systematic exclusion of stateless people from legal frameworks in their own nations leads to some stateless people taking the risk of travelling, and this manifests as asylum flows to adjacent nations and also further afield. Stateless, they cannot leave the second country, since they have no nation to be exited to. Under Australia's new offshore processing procedures for Irregular Maritime Arrivals, stateless persons who do not make successful claims as refugees are left on Manus Island or Nauru.

However, as at 15 May 2012, there were 555 people in detention centres in Australia who identified as being stateless, 114 of whom had been detained for over a year and a half (Australian Human Rights Commission 2012 at 6.4), ten years after the *al Kateb* case (*al Kateb v Godwin* (2004) HCA 37) had decided that stateless asylum applicants should not be left in indefinite detention.

When his case first came to the attention of the Australian media, Ahmed al Kateb was a stateless Kuwaiti of Palestinian descent languishing in indefinite detention in South Australia (Zagor 2006). The Kuwaiti Bidoun Jinsiya provide a particularly compelling example of statelessness as, until 1986, this group were treated as citizens in Kuwait, while their claims to human rights and citizenship-like benefits are today made in competition with more recent arrivals from other regions of the Arab world ('Kuwait issues 80,000 identification cards to stateless Arabs', *Arabian Business*, 20 January 2013). A discussion on how the problem developed is beyond the scope of this article, suffice to say that the Kuwaiti government has called on the international community to treat this problem as an international issue, rather than a purely Kuwaiti one (Kuwait Government Response to Human Rights Watch, 2011).

Stateless Kuwaitis seek asylum in nations such as Britain, Canada, New Zealand and Australia (*Statement of Changes in Immigration Rules*, UK Border Agency, 2013; Research Directorate, Immigration and Refugee Board of Canada, 1999 and 2001; *DZABG v MIAC* (2012) FMCA 36; *MRT Case 1218580* (2012); Refugee Appeal No. 72635/01, 2002). The international flow of stateless populations changes the complexion of statelessness in Kuwait from a domestic problem into an international issue. The current Australian approach to the Convention on the Status of Stateless Persons (1954) has seen Australia fail to implement the Convention, despite being a signatory to it. The failure of the Australian government to implement a procedure to determine statelessness is the most significant problem for stateless asylum applicants in Australia, as they cannot have their stateless status resolved under Australian law. This failure means that stateless people have only the Convention Relating to the Status of Refugees (1951) under which to apply for protection. The means of protection for stateless persons under international law for those who do not qualify for refugee status remains denied to stateless people who apply for asylum in Australia. This creates a situation where stateless people and their legal counsel are

left to 'fit' their circumstances into a case for refugee status, although according to their circumstances, they are eligible for protection from Australia under the Convention on the Status of Stateless Persons (1954).

This leads to the second reason for the failure of stateless people to have their cases resolved under Australian law. While stateless people's asylum claims can only be processed as applications for refugee status, these are often rejected. This leaves their cases unresolved if they cannot be returned to their home country (the al Kateb case *al Kateb v Godwin & Ors* [2004] HCA 37 established that the return of stateless Kuwaitis and others is usually refused by the home country from which they came). The decisions of the Australian Migration Review Tribunal and the Australian Refugee Tribunal, including the rejection of refugee claims by stateless people, can be related to evidence from documents issued by the Australian Department of Immigration and Citizenship (now known as the Australian Department of Immigration and Border Control). As discussed above, because Australia has not implemented a statelessness determination procedure, the Refugee Convention is the only convention under which asylum seekers can apply for asylum. In Britain, asylum seekers can now apply for refugee or statelessness status according to either the Convention on the Status of Refugees (1951), or the Convention on the Status of Stateless Persons (1954) respectively. Asylum claimants in Australia must demonstrate that they are being persecuted in a particular way, according to the 'well-founded fear' test, to 'fit' their case to the definition of the Convention on the Status of Refugees (1951) (refer to the Australian government's Guide to Refugee Law: Chapter 3: Well-Founded Fear, September, 2013; *Refugee Appeal 72635/01*, 6 September 2002 provides a judicial analysis of how the test was applied regarding a stateless Kuwaiti).

If a claim for refugee status is based on membership of a particular group, claimants must demonstrate that they are members of that group, and that this group has been subjected to persecution, having experienced prejudice or discrimination. This means that their cases put forward by solicitors rely on proof of difference of race, religion or affiliation upon which claims of persecution are constructed. Where the status of a person's membership of a group subject to persecution cannot be decided, or if the existence of that group is not accepted, the claimant's case is unlikely to be deemed to satisfy the definition of a 'well-founded fear' of persecution. Where Country Advice documents issued by the Australian Department of Immigration and Citizenship questions or denies the status of stateless groups, which are subject to persecution, according to the group members' 'sameness' or 'difference', this has the potential to negatively influence determinations on cases brought before the tribunals. Such claims about the group identity of stateless Kuwaitis were found in Australian Country Advice *KWT39495*.

This article analyses sources Australian Country Advice *KWT39495* to describe how concepts about belonging and the identity of stateless communities subject to persecution have developed. It explains the reasoning behind what appears to be two conflicting positions on statelessness expressed in Kuwait in the Country Advice. The positions relate to stateless Kuwaitis' claims to belong to a group that is discriminated against or persecuted. I challenge the veracity, quality and context of information from American sources used in the Country Advice, used to assert that the stateless people of Kuwait are the same as Kuwaiti citizens, and that stateless people have no

distinct identity or culture. On the other hand, information in the Country Advice based on British sources supported assertions that stateless people of Kuwait have a distinct identity, and a rightful claim to refugee status. The UK information was downplayed, despite its better quality and contextual fit. This raises questions about the sources and the interpretation of sources in the Advice. The Country Advices influence determinations on stateless person's asylum claims in Australia the absence of a procedure to determine and resolve statelessness, where stateless applicants are expected to prove refugee status in order to be granted protection.

The Department of Immigration's Sources of Advice on Statelessness

Australia has had so many stateless asylum applicants from Kuwait that it began issuing summaries to migration department staff via the Australian Country Advice, regarding the 'Bidoun Jinisya,' people without nationality. Numbers of stateless people arriving or staying in Australia from particular countries of origin are not published by the Department of Immigration and Migration Australia (now known as the Department of Immigration and Border Protection) or the Australian Bureau of Statistics. Therefore, I am unable to suggest just how many Kuwaiti stateless applicants for asylum in Australia there have been. However, as at mid-2013, there were four advices listed on the Australian Migration and Refugee Review Tribunal website, including Australian Country Advice: *Kuwait KWT37495* (2010), *KWT37848* (2010), *KWT38627* (2011) and *KWT38642* (2011). The Advices described various issues arising in appeal cases relating to identity, culture, society and politics. Country Advice KWT39495 was particularly significant, because it discussed at length claims to identity made by stateless asylum applicants. The two main pieces of evidence used in the Advice were:

- *About Being Without: Stories of Statelessness in Kuwait* by Refugees International 2007;
- *UK Home Office Operational Guidance Note – Kuwait, March, 2009* (hereafter referred to as OGN 2009).

About Being Without: Stories of Stateless in Kuwait, Refugees International, 2007

Regarding the abovementioned Refugees International (2007) source information, Refugees International is a Washington-based advocacy organisation that has produced a number of field reports on the Stateless in Kuwait (see Refugees International 25 July 2007, 2 September 2009, 12 September 2009, 17 October 2011, 5 March 2012 and 12 May 2012). Ironically, the publication referenced in the Country Advice is probably the least rigorous research publication on Kuwait that the organisation ever produced. The document did not even claim to be a fact based report. It was a monograph of six 'stories', over just fifteen pages, with large photographs filling the pages, constructed by a field worker who flew into the site for around two weeks.

While the research method used to produce *About Being Without: Stories of Statelessness in Kuwait* (Refugees International 2007) included interviews to construct a life history of participants, a method used frequently in the qualitative social sciences, the manner in which the author used this data to analyse and construct 'results' was creative (in a creative writing sense) rather than rigorous (in an academic or humanitarian advocacy sense). The interview data was pieced together to create

general biographical life stories, including life stories of individuals and life stories of families. The family research comprised interviews with only certain individuals in the group, which were presented as providing a portrait of sorts, of the entire group.

The first story, 'A Family Destroyed' concluded with: "Mohammad remembers that he lay awake all night, repeating the word 'bidun' and wondering what it meant." (*About Being Without: Stories of Statelessness in Kuwait*, Refugees International 2007 pp.5).

Principles of beneficence were adhered to by the researcher so loosely in interpreting and reporting the results, that I believe readers would likely come away from reading the work with a somewhat tainted or negative impression of stateless people. For example, in the first story quote above, the married couple's divorce for the purpose of obtaining free schooling for their five children was described by the researcher while the couple's daughter tried to put forward an argument about the discrimination she had experienced that prevented her education. I believe that application and disclosure of research methods is a significant concern in humanitarian research on statelessness in the Middle East. In *Stateless Aesthetics, Feminist Human Rights Discourse on the Stateless in Kuwait* (Kennedy 2013), I explored the use of feminist methodology to produce results and make recommendations that run counter to the principles of beneficence in the research carried out on stateless people in Kuwait. In *About Being Without: Stories of Statelessness in Kuwait* (Refugees International 2007), the author relied on sensational language and unverified data to craft his stories on statelessness.

UK Home Office Operational Guidance Note – Kuwait, March, 2009

Regarding the British source of information for the Country Advice on Kuwait, the OGN (2009) issued by the UK Home Office was compiled by the British Asylum Policy Directorate. It drew on information from the British Foreign and Commonwealth Office (citing humanitarian and diplomatic efforts in the Middle East), Freedom House (another Washington-based rights group, whose mandate is similar to Refugees International), the US State Department, The National News service (a Middle East daily news source), the World Health Organisation, and case law from three British law cases on stateless asylum claims. The sources of information were authoritative and well spread across a number of genres.

Two trends emerge positioning the stateless population claims

Emerging from the Country Advice are two apparent positions: a British position and an American position on Kuwaiti statelessness. The Washington-based Refugees International (2007) work was held out to be comparable with the OGN (2009), in terms of the evidence from each publication being used to weigh up claims about the stateless Kuwaitis' cultural identity. I explained in the textual analysis why the stories by Refugees International (2007) was not of a comparable quality to the Guidance Note, and nor did it seem intended for the purpose of helping a Tribunal to decide on an asylum claims. A field report by Refugees International (2008) was quoted out of context, and used to support the 'sameness' argument, while in fact it argued the stateless were treated with discrimination based on their status of statelessness.

On the other hand, the US Department of State (2010) information was used to support a claim of 'difference,' but it did so by claiming that the Kuwaiti stateless

community is Iraqi. If this line of argument was developed fully, it would substantiate that the stateless in Kuwait are culturally distinct, but are nevertheless unwelcome foreigners. Even the Kuwait government acknowledges that there are stateless populations in Kuwait of Kuwaiti descent (*Kuwait Government Response to Human Rights Watch* 2011). It is also well-established that many stateless Kuwaitis were left trapped in Iraq and unable to return to Kuwait as a result of the Iraqi invasion of 1990 (al Najjar 2001).

The authors of Country Advice *KWT39495*, having elaborated on the Refugees International evidence (2007), but not the UK OGN (2009) evidence, appeared to favour the American viewpoint that would lead to a negative decision on asylum claims. Had the authors of the Country Advice checked with the sources for the UK Home Office Operational Guidance Note (2009) (that is said did not elaborate further), it would have found there was ample evidence available to counter the American views expressed in the Country Advice. In *BA and others UKIAT [2004] 00256 CG*, expert witness Dr Abbas Shiblak addressed in detail the issue of stateless people in Kuwait being Iraqis. He soundly refuted the claim, making reference to the change in composition and numbers of stateless Kuwaitis in the population over time, which he argued justifies the diverse cultural heritage that is shared by Kuwaiti citizens with others across the Gulf and the Middle East.

It is not known how the Country Advices are constructed, or how evidence is evaluated and selected for inclusion. One wonders then, why the opinion of the UK Home Office (OGN 2009) was not explored more thoroughly when it supported the claims of stateless Kuwaitis to asylum. Ten years on from *al-Kateb v Godwin and Ors [2004] HCA 37*, it appears little has been learned in Australia about the protections that all stateless people are provided under International Law, whoever they are, and wherever they are from. After an update on Country Advices was recommended during the 2013 Australian federal election campaign, in order to reduce the number of positive Iranian refugee determinations (Hawley, S and Norman, J, 2013), the Australian Country Advices on Kuwait were removed from the Australian Migration Review and the Australian Refugee Review Tribunal website. There was a message on the website requesting inquiries about the Advices to be emailed to the Tribunal. The Tribunal did not respond to my email requesting a copy of the previous advices, and a copy of any new advices being used by the Tribunal.

Conclusion

Despite the success of the *al Kateb* case (*al-Kateb v Godwin and Ors* (2004) HCA 37), which remains a landmark case in Australian immigration law, Australia has failed to develop law on statelessness and asylum seekers who continue to languish in detention or in the community with unresolved cases. There are two main reasons why cases are not being resolved. The first is due to the lack of a statelessness implementation procedure with which Australia can apply protections under the Convention Relating to the Status of Stateless Persons (1954). The second reason is that stateless persons' claims for asylum are often unsuccessful under the 'well-founded fear' test, according to the definition in the Convention Relating to the Status of Refugees (1951). The Convention Relating to the Status of Stateless Persons (1954) is designed to address the special context of stateless persons under international law. Where stateless persons cannot access this Convention (as is currently the case under Australian law), the applicant and legal counsel are made to

‘fit’ their case into the alternate Convention. Australian Country Advices provide information for the Migration Review Tribunal and the Refugee Review Tribunal, which is used to determine refugee claims for all applicants, stateless, refugees or both.

A close reading of a Country Advice *KWT39495* on Kuwaiti statelessness found that two different arguments emerged from the sources that could influence decision making on asylum claims, where stateless applicants apply for protection as refugees on appeal. It was found that not only is there is an urgent need for Australian authorities to update and publish new Country Advices, but there is also a need for the quality of evidence used in the advices to be reviewed. Since writing this paper, the Australian Country Advices have been removed from the Australian Migration Review and Refugee Review Tribunal website. As yet, they have not been replaced. One wonders what new Advices are being used by the Tribunal, if any. This is an unsatisfactory situation ten years after the success of *Al-Kateb v Godwin and Ors* (2004) HCA 37.

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For M. M. al Anezi.

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Outsourcing in the Banking Sector (The Polish Banking Sector Case)

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Abstract

The last few years have brought significant changes to the functioning of banks. One of the most important ways of adaptation to the changing economic environment that reduces operational costs is outsourcing. In this paper, we describe changes in the institutional shape of the Polish banking system after the Global Financial Crisis, and the role of outsourcing processes in it. We examine the literature concerning outsourcing; reasons for implementation of outsourcing, and the factors influencing the success of outsourcing will be defined and discussed. The paper also explains the most important risks and challenges of outsourcing. Furthermore, based on the objective data from reports, strategies and other documents of banking sector institutions, and on the results of a pilot study questionnaire for banking professionals, we discuss the role of outsourcing in Poland in several aspects, and from different perspectives. Finally, we assess the place of Poland in the web of global banking outsourcing, and postulate deeper analysis of ethics and morality in outsourcing processes.

Keywords: Banking, outsourcing, human resources

Introduction

The last few years have brought significant changes to the functioning of banks. Doctrinal concepts such as "too big to fail" have lost their crucial significance. Some internationally well-known banks failed, but the Polish banking sector has avoided bankruptcies. As a result of the global economic crisis, many foreign customers have lost their mortgages and residencies. Mortgage-based loans are the best payoff credits in Poland. Banks have adapted to changes in the environment, quickly cutting the costs of their activities. Since staff costs are a very important part of the operating costs of banks, during the crisis, these reductions were popular. Another way to reduce operational costs is outsourcing. For some banks, outsourcing has become a means to reduce costs, whereas for others it was used to improve management. The first mention of outsourcing dates back to the turn of the 1970s and 1980s, but its actual popularity occurred in the first 90 years of the twentieth century - especially in the Polish economy, which was a centrally planned economy up to 1990. Interestingly, in contrast to many other management tools coming from the West, the growth of outsourcing was simultaneously popular in Poland and in the West. This reflects the relatively short history of outsourcing used in practice.

This article examines the literature concerning outsourcing. Reasons for implementation of outsourcing, and factors influencing the success of outsourcing will be defined. Furthermore, the methodology of research presented and final empirical research results will be analyzed.

The need for outsourcing and factors of success – a literature review

Outsourcing, most often, is understood as the contracting out of a business process to a third-party, with participation in a separate organizational unit, or without participation. There have been many reasons for outsourcing selected in the literature, but the first position extends to striving to reduce operating costs. When a range of activities are outsourced, organizational problems can be gotten rid, and the core business can be concentrated on. It is significant that, at least in some jurisdictions, like in Poland, when business is outsourced, the vendor is commissioned, and also the legal services, and there is no interest in social issues in the outsourced spheres. Using outsourcing, additional labor costs can be reduced, such as social services. Cost savings are made in some cases by reducing both direct and indirect remuneration of persons who ultimately perform outsourced tasks. Furthermore, the vendor assumes much of the risk associated with the ongoing maintenance and management of employees. The principal act of payment and possible consequences of problems with the staff, etc. focus on the vendor. Sometimes an outsourcing vendor is a big player with special equipment or experience that cannot be afforded by a small client, possessing a technological advantage. A. A. Gokhale assesses that: "...offshore providers, who are at work while U.S. workers are sleeping, enable faster turnarounds during crunch time, quicker than most firms can deliver internally" [A. A. Gokhale, p. 11]. It can be concluded that the main reasons for outsourcing are: cost reduction, risk reduction, striving for elasticity of resources, growing of the quality of resources, and access to resources.

According to A. M. Porter's studies, the tasks assigned to outsourcing concentrated on three areas: information technology (30%), human resources (16%), and marketing & sales (14%) [A. M. Porter, p. 47]. Many factors influence using outsourcing – encouragement, or dealing with some trouble. Outsourcing can be contracted-out to

entities operating in the same country, or entities operating in another country. India is one of the most notable countries that has established vendors of outsourcing. The increased interest in Indian outsourcing services results not only from the lower cost of providing such services, but also from satisfactory quality of services, which is directly related to the increasing level of education in the local society. Another, perhaps less well-known, but still growing, Business Process Outsourcing (BPO) center is Central and Eastern Europe, including Poland. Polish scholar ratios are one of the highest in the world, and Polish people, especially the young, are generally well educated (although the quality of education is influenced by demographic depression – a reduction in the population growth rate).

Table 1. The reasons for implementation of outsourcing ¹

No.	Author	Reasons
1.	S. Chatterjee, R. Chaudhuri	Internal organizational stability and flexibility in obtaining improved satisfaction and better service with the outsourcing project
2.	J. Harasim	Willingness to get rid of burdensome administrative tasks
3.	Z. Shi et al.	Assemble knowledge from suppliers
4.	J. T. C. Teng et al.	Lack of resources
		Resource gaps
		Acquiring resources from outside the firm boundaries by sourcing arrangement
5.	A. Vashista, A. Vashista	Lower labour costs
		Technological advances

Table 2. Factors influencing success of outsourcing ²

No.	Author	Factors
1.	P. Babcock	Growth of education in the developing

¹ Source: S. Chatterjee, R. Chaudhuri, A System Theoretic Analysis of IT/IS Outsourcing: A Case Based Approach, *Journal of Modelling and Simulation of Systems* (Vol. 1-2010, Issue 2), p. 132; J. Harasim, *Bankowość detaliczna w Polsce*, CeDeWu, Warszawa 2005, p. 264; Z. Shi, A. S. Kunnathurb, T. S. Ragu-Nathan, Is outsourcing management competence dimensions: Instrument development and relationship exploration. *Information & Management* 42, 2005, p. 901-919; J. T. C. Teng, M. J. Cheon, V. Grover, Decisions to outsourcing information system function: Testing a strategy-theoretic discrepancy model. *Decision Science*, 26(1), 1995, p. 75-103; A. Vashista, A. Vashista, *The Offshore Nation*, New York, McGraw-Hill, 2006, from S. Kumar, E. C. Aquino, E. Anderson, Application of a process methodology and a strategic decision model for business process outsourcing, *Information Knowledge Systems Management* 6 (2007), p. 325.

² Source: P. Babcock, America's newest export: white-collar jobs. *HR Magazine*, 49(4), 2004, p. 6; S. Chatterjee, R. Chaudhuri, A System Theoretic Analysis of IT/IS Outsourcing: A Case Based Approach, *Journal of Modelling and Simulation of Systems*, Vol. 1-2010, Issue 2, p. 142; A. Gurung, E. Prater, A Research Framework for the Impact of Cultural Differences on IT Outsourcing, *Impact of Culture on IT Outsourcing*, *Journal of Global Information Technology Management*, 2006, Vol. 9, Issue 1, p. 24; J. N. Lee, The impact of knowledge sharing, organizational capability and partnership quality on is outsourcing success. *Information & Management*, 38(5), 2001, p. 323-335.

		countries
2.	S. Chatterjee, R. Chaudhuri	Flexibility
3.	A. Gurung, E. Prater	Cultural factors
4.	J. N. Lee	Knowledge sharing by client and supplier

However, while the history of outsourcing is short, this management tool is still changing. As mentioned by A. Gurung, E. Prater, "...managing outsourcing relationships is becoming increasingly complex. Contracts have moved from a focus on cost savings to include value-based outsourcing, equity-based outsourcing, and business process outsourcing" [A. Gurung, E. Prater, p. 29]. Both outsourcing vendors and commissioners learn how to cooperate. The length of term of cooperation is at a high level, dependent on the quality of that relationship [T. Kem].

The same characteristics, mentioned as an advantage of outsourcing, could be a disadvantage, if they are not satisfactory. For example, growing educational levels in the developing countries conducive to outsourcing implementation can be an advantage, but when the same outsourcing vendor is not ready to anticipate new technological changes, it can be a reason for a collapse in vendor and principal cooperation. The same problems can occur in the field of language, with communication barriers [T. Nolle]. All of them are connected to risk.

Table 3. Risks and challenges in outsourcing³

No.	Author	Risk
1.	R. Aron, E. Clemons, S. Reddi	Long-term intrinsic risks of atrophy
2.	B. A. Aubert, M. Patry, S. Rivard	Cultural dissimilarity
		Delayed delivery of data
		Slow implementation
3.	R. Click, T. Duening	Human capital risk
4.	M. J. Earl	Not enough edge expertise of providers
5.	T. Herath, R. Kishore	Knowledge hoarding
		Loss of core group
		Loss of core capability
		Disparity between what it negotiated and what is delivered
		Cost escalation
		Vendors providing legacy technology
		Operational risks due to vendor locations
		Risks due to environmental, cultural, legal differences
		Deliberate underperformance by vendor
		Reverse engineering of critical business processes, stealing and/or using proprietary information for secondary purposes
		Lock-in situations
		Loss of bargaining power leading to disputes and litigations
		Antiquated communication infrastructure
		Complexity in codes
		Conflicting standards
		Poorly articulated requirements
		Incompatible development tools
		Forgoing the development of the knowledge base
6.	N. Kakabadse, A. Kakabadse	Underestimation of the time and skills

³ Source: R. Aron, E. Clemons, S. Reddi, Just right outsourcing: Understanding and managing risk. Paper presented at the Proceedings of the 38th Hawaii International Conference of System Sciences (HICSS), January 3-6, 2005, Hawaii; B. A. Aubert, M. Patry, S. Rivard, Assessing the Risk of IT Outsourcing, IEEE Proceedings 31st Annual Hawaii International Conference on System Sciences, 6, 1998, p. 685-692; R. Click, T. Duening, Business Process Outsourcing, The Competitive Advantage, New Jersey, John Wiley & Sons, Inc., 2005; M. J. Earl, The risks of outsourcing it. Sloan Management Review, 37(3), 1996, p. 26-32; T. Herath, R. Kishore, Offshore Outsourcing: Risks, Challenges, and Potential Solutions, Information Systems Management, 26, p. 316; N. Kakabadse, A. Kakabadse, Critical Review-Outsourcing: A Paradigm Shift, The Journal of Management Development 19(8), 2000, p. 670-728; N. V. Oza, T. Hall, A. Rainer, S. Grey, Trust in software outsourcing relationships: An empirical investigation of Indian software companies, Information and Software Technology, 48(5), 2006, p. 345-354; W. E. Sullivan, O. K. Ngwenyama, How are public sector organizations managing is outsourcing risks? An analysis of outsourcing guidelines from three jurisdictions, Journal of Computer Information Systems, Spring 2005, p. 74; A. Vashista, A. Vashista, The Offshore Nation, New York, McGraw-Hill 2006.

7.	N. V. Oza, T. Hall, A. Rainer, S. Grey	The degradation of service
8.	W. E. Sullivan, O. K. Ngwenyama	Opportunistic behaviour by the vendor
		Vendor's lack of experience
		Vendor's financial instability
		Vendor performance monitoring
		Contract horizon and technology discontinuity
9.	A. Vashista, A. Vashista	Loss of proprietary information
		Country risk
		Intellectual property protection

Outsourcing risk factors may be classified into four groups: vendor attitude problems, vendor competence problems, vendor coordination problems, and in-house competence problems [N. Gorla, M. B. Lau, p. 91]. It seems, however, that division does not cover all types of risk, with lack of reference to the employee. Benefits and costs of outsourcing implementation appear on both on the employers' side - the entity that has decided to outsource some of the tasks outside the organization, as well as on the staff side. Employees who expect their employer intends to subcontract parts of tasks beyond the organization, often expect that it will cause a reduction in employees. As with any other redundancies, it can cause a series of negative consequences. Employees are likely to increase competition among themselves; they will use more or less ethical moves designed to keep their jobs. Some of them (including those more productive) will decide to anticipate the movement of the employer and they may begin to look for another job. Certainly, a reduction period is also characterized by increased stress and anxiety about the future, which is not conducive to building a culture of trust and cooperation.

Methodology

The article uses objective data from reports, strategies, prospectuses and other documents of banks, the Polish central bank, the Polish banking supervisor (KNF – *Komisja Nadzoru Finansowego* – Financial Supervision Commission) and near-bank institutions from Poland. All publicly available documents were analyzed regarding outsourcing. Other methods were also used: a questionnaire survey of employees in banks in the Wielkopolska region, and the results of in-depth standardized interviews with seven randomly selected HR managers and staff members of the boards of banks operating in the Wielkopolska region⁴. Interviews conducted in 2010 were used to interpret the results of the survey.

The 2010 survey examined the opinions of bank employees on employment in the sector. Each survey question was analyzed using several criteria. The questionnaire consisted of three essential parts, relating respectively to the economic, social and technological determinants of employment. A pilot study (130 questioned) was conducted among the employees of the banks. It was not possible to determine the total number of employees in banks in the Wielkopolska region, and the structure of employment in the banking sector in Wielkopolska. In view of the above problems,

⁴ Additional results of research on determinants of employment in the banks were presented in: J. Kaźmierczyk, *Technologiczne i społeczno-ekonomiczne determinanty zatrudnienia w sektorze bankowym w Polsce*, CeDeWu, Warszawa 2011.

the author decided finally to use a non-random sample selection. A ‘snowball’ technique was used in the main study – participants were asked to fill out the questionnaire, and to ask other bank employees to take part in the questionnaire. A very effective source for obtaining respondents turned out to be the goldenline.pl portal, bringing together staff economists. Among those registered on the portal, which were proposed to take part in the survey, 8.79% expressed their willingness to fulfill the survey. Two different questionnaires - for managerial employees and non-managerial employees, were used. More than 9,000 inquiries were sent to banking employees in the Wielkopolska region (using goldenline.pl, e-mails, etc.). Two series of reminders about the study via e-mail were organized. Responses were received from 342 employees of banks (of which 17 questionnaires were rejected, due to their low accuracy and reliability). It should be noted that the banks which were surveyed control more than 90% of the assets of the entire banking sector in Poland, and employ more than 74% of all employees in the Polish banking sector [The report about the banking system situation in 2009, p. 20-23]. The analysis excludes the central bank – the National Bank of Poland, because of its superior character in comparison to other banks, and its specific functions.

Outsourcing in the Polish banking sector

Outsourcing is commonly used by many Polish banks (see Table 4). The vast majority of managerial employees (77.97%) and non-managerial employees (76.32%) recognized that outsourcing is used in their bank. There were no significant differences between responses of the managerial and non-managerial employees. The same applied generally to all the survey questions concerning outsourcing. Answers confirming the use of outsourcing were dominated by almost all of the analyzed criteria. It was often the result of the engagement of foreign capital, which was transferring know-how to Polish banks.

Table 4. Using outsourcing in banks ⁵

All respondents	A. Yes, outsourcing is used		B. No, outsourcing is not used		C. It is difficult to state		No response	
Managerial employees								
266	203	76.32%	36	13.53%	26	9.77%	1	0.38%
Non-managerial employees								
59	46	77.97%	12	20.34%	1	1.69%	0	

From the foundations of the literature analysis, it can be concluded that areas such as: security, safety, transport, legal services, and social and technical IT issues were often transferred beyond the organization [W. Baka, p. 250]. What we should emphasize is that every Polish bank must obtain permission from the Polish Financial Supervision Authority for outsourcing business [W. Wielanek, p. 17]. Employees who had been 'kicked-out' of the organization were then often at the beginning of the outsourcing process implementation employed in so-called 'near-bank' companies, usually owned

⁵ Source: J. Kaźmierczyk, Technologiczne i społeczno-ekonomiczne determinanty zatrudnienia w sektorze bankowym w Polsce, CeDeWu, Warszawa 2011, p. 150.

by that bank [A. Janc, *Współczesny...*, p. 16-17; A. Janc, *Bank...*, p. 79-90]. In some cases, banks legally and organizationally separated a narrow range of tasks (e.g. security), in order to sell the separated company. Moreover, as noted by J. Harasim, e-banks outsource some part of their activities to reduce costs [J. Harasim, p. 148, 152].

Sometimes, outsourcing is a result of a merger or acquisition of banks. For example, closing the transaction between PKO BP SA and Nordea was dependent on the closing terms and conditions specified in the agreement; these included providing IT services by the Nordea Group under an outsourcing agreement, so as to ensure the safe operation of Nordea Bank Polska SA in the period preceding migration to IT systems of PKO Bank Polski SA. The same bank used outsourcing to limit its exposure to operational risk [The PKO Bank Polski SA Group Directors' Report for the Year 2013, p. 77]. Outsourcing also plays the important role in organizations of risk management within banks. As we can read from a report of the PKO – the biggest Polish bank – "The first line of defence is being performed particularly in the organizational units of the Bank, the organizational units of the Head Office and the external entities to which the Bank outsourced other banking activities and concerns the activities of those units', cells and entities which may generate risk. The units and entities are responsible for identifying risks, designing and implementing appropriate controls, including in the external entities, unless controls have been implemented as part of the measures taken in the second line of defence" [Financial Statements of PKO Bank Polski SA for the Year Ended 31 December 2013 (In PLN Thousand), p. 96].

The same applies to Bank Handlowy:

"The Group intends to use the possibility of outsourcing activities relating to banking activity, particularly in areas of information technology and in cases where outsourcing is justified by business needs and at the same time does not endanger secure operation of the Group. As outsourcing involves not only benefits but also increased risk, which the Group can be exposed to in its operation, the Group takes measures aimed at mitigating that type of risk, particularly by ensuring compliance with legal requirements and internal regulations, operating an effective system of internal control, and monitoring co-operation with third parties, security of processed information and privileged banking information" [Annual Consolidated Financial Statements of the Capital Group of Bank Handlowy w Warszawie S.A., for the financial year ended 31 December 2013, p. 98].

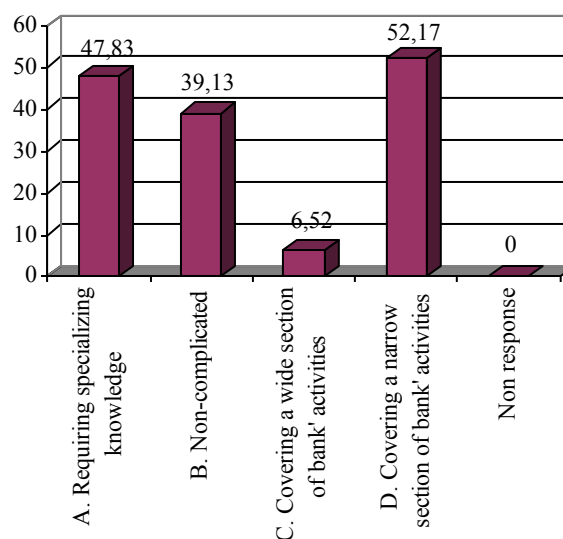
While some banks are part of a bigger international group, such as the case of BPH (GE Capital Group), one of the fundamental rules claims that: "the Bank does not outsource any risk management processes" [Annual Consolidated Financial Statements of the Bank BPH SA Capital Group for 2013, p. 88]. WBK has outsourced call centers, contact centers, and HR management to Holicon Group SA [Consolidated financial statements of BZ WBK Group for 2012, p. 65]. WBK expanded outsourcing of IT services, and application development raised IT usage costs. One of the features of the target telephone banking model of the Bank Zachodni WBK will be outsourcing of the selective executive structures [Management Board Report on Bank Zachodni WBK Performance in 2012, p. 48, 60]. ING pinpointed that one of the main areas of interest of corporate banking operations within ING in 2014

will be extending relationships with international entities acting as business process outsources [Management Board Report on Operations in 2013, ING Bank Śląski S.A., p. 64].

Reorganization of outsourcing services was an important part of overall gains from investment security in mBank. Demand from outsourcing centers for office space in Poland drives growth in smaller cities such as Olsztyn and Bydgoszcz, and leads to changes in the property market. The office space market remains a tenant's market, while the retail space market shows symptoms of saturation in the segment of large-format properties [IFRS Consolidated Financial Statements 2013, mBank S.A. Group, p. 13, 97]. Postal Bank has entered into an agency agreement with the Polish Post SA, and a number of outsourcing contracts with subsidiaries of the Bank; ie Operations Center Ltd., and Postbank Distribution Company Ltd. [Sprawozdanie finansowe za rok zakończony 31 grudnia 2013 roku, Bank Pocztowy S.A., p. 134].

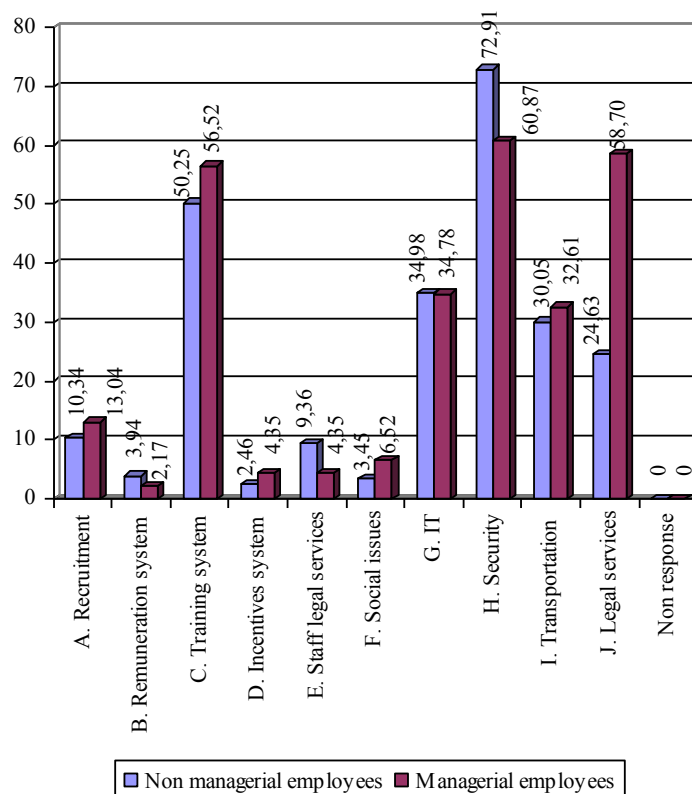
These surveyed managerial employees, who recognized outsourcing in their bank, mostly indicated that their bank outsources a narrow range of activities (52.17%), and activity requiring technical knowledge (47.83%). Simultaneously, the difference between answers 'A' and 'B' was not significant (Diagram 1). Security, legal services, and training systems were indicated as the most outsourced functions (Diagram 2).

Diagram 1. The spheres outsourced by banks (according to the opinion of managerial employees, in %) ⁶



⁶ Note: 46 managerial employees answered the question.

Source: J. Kaźmierczyk, Technologiczne i społeczno-ekonomiczne determinanty zatrudnienia w sektorze bankowym w Polsce, CeDeWu, Warszawa 2011, p. 151.

Diagram 2. The functions outsourced by banks (in %) ⁷

In the theoretical part of the article, we raised the aspect of incentives which determine the use of outsourcing in banks. Some researchers have pointed out that there is a fundamental importance in striving to increase quality of services. However, surveys and interviews with bank recruiters shows that the main factor of outsourcing in Poland is still striving to reduce costs (82.61%; Table 5). This applies to most of the analyzed criteria. Only higher level managerial employees, and the managers of cooperative banks pointed out that the most important factor was striving to increase of the quality of services (respectively 88.89% and 60%). As previously stated, some banks separated certain operational areas (function, range of tasks), to allow to operate as a separate company in the future (e.g. security). This process was more popular in banks with a predominance of foreign capital (54.05%) than national capital (6.67%) (Table 6).

⁷ Note: 203 non-managerial employees and 46 managerial employees answered the question.
Source: J. Kaźmierczyk, Technologiczne i społeczno-ekonomiczne determinanty zatrudnienia w sektorze bankowym w Polsce, CeDeWu, Warszawa 2011, p. 152.

Table 5. Factors of using outsourcing in banks (according to the opinions of managerial employees) ⁸

Criterion	All respondents	A. Striving to reduce costs		B. Striving to increase of the quality of services		No response	
All banks	46	38	82.61%	16	34.78%	1	2.17%
Commercial banks	37	34	91.89%	11	29.73%	0	0
Cooperative banks	5	1	20%	3	60%	1	20%
Higher level managerial employees	9	4	44.44%	8	88.89%	0	0

Table 6. Separation of the operations area from a bank (in the opinion of managerial employees) ⁹

Criterion	All respondents	A. Yes, an area was separated		B. No		No response	
All banks	59	23	38.98%	29	49.15%	7	11.86%
Banks with domestic capital	15	1	6.67%	13	86.67%	1	6.67%
Banks with foreign capital	37	20	54.05%	11	29.73%	6	16.22%

Summary

The results should be considered a starting point for further in-depth analyses. Due to the reluctance of banks to provide information about their activities, and also because of current Polish law, one problem is how to implement the research, as representative for all the Polish banking sector. Moreover, there is not enough official data concerning the structure of employment in the Polish banking sector.

Analysis shows that the main reason for the application of outsourcing by Polish banks was striving to reduce operational costs. The first phase of outsourcing in Poland was to reduce employment, and outsource some tasks beyond the organization. That is why outsourcing is associated by employees with dismissal. The demand for outsourcing in banks in Poland has been influenced by many factors. Apart from the focus on cost reduction, there was a significant increase in the level of education among employees, which allowed for the employment by vendors of new staff with the right skills.

⁸ Source: J. Kaźmierczyk, Technologiczne i społeczno-ekonomiczne determinanty zatrudnienia w sektorze bankowym w Polsce, CeDeWu, Warszawa 2011, p. 152.

⁹ Source: J. Kaźmierczyk, Technologiczne i społeczno-ekonomiczne determinanty zatrudnienia w sektorze bankowym w Polsce, CeDeWu, Warszawa 2011, p. 153.

We also see potential growth in the significance of Poland in the web of global banking outsourcing. This assumption is based on the analysis of comparative advantage of the country, often mentioned in World Bank reports, such as: well-qualified workers (high level of schooling, high learning ability, easy access to capital from European Union funds on entrepreneurship-supporting programs); political stability; benefits for foreign investors (i.e. Special Economic Zones); the developing of infrastructure; and overall development of the banking sector. This was done on a secure and sound basis, accurately supervised by the Polish Financial Supervision Authority. However, there is still much to do in cases like: easing the taxation system, running business procedures, and getting access to building permits.

Another issue that very clearly appears when we consider outsourcing, is the ethics and morality of its customers and outsourcing vendors. Many questioned bank employees pointed out that the theoretical reasons for outsourcing implementation were different from the outsourcing they have seen in their banking branches. It requires further analysis in the future. The differences between the responses of the managerial and non-managerial employees were not significant. The question about the differences between the above-mentioned groups need additional study.

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Legalizing Community Resources — Experiences Learned from Implementing the Indigenous Traditional Intellectual Creations Protection Act (ITICPA)

Chu-Cheng Huang

Abstract

The indigenous societies in Taiwan have passed through the era which used to assert them as barbaric and uncivilized 'Others', and were officially de-colonized with promulgation of certain legislation such as the Indigenous Fundamental Law. However, they can still not formalize their customary laws, which are prerequisite to their entitlement of community resources, such as indigenous traditional knowledge and cultural expression. In December 2007, a *sui generis* regime to the civil law intellectual property regulations, the Indigenous Traditional Cultural Expression Protection Act (ITCEPA), was promulgated. ITCEPA was the very first law in Taiwan to substantiate diversified modes of indigenous cultural expression, such as songs, dance, weaving, dyeing, ceremonies, and even witchcraft as community resources entitled to the tribal unit. When certified and registered, these collective rights will be legalized retrospectively. Any established acquisition and exploitation of the resources by non-indigenous peoples will be revoked, no matter in what form (copyright, or trade mark). Yet to implement the ITCEPA, a tribal units' based decision making process and management plan are needed, since the *sui generis* rights are entitled to the community only. But with extended prewar Japanese colonial rule, and the consequent encroachment of Christian missionaries and mainstream political institutions over their communities, primitive tribal leadership barely survived. This article will show how twelve indigenous Taiwanese tribes have attempted to reestablish and re-integrate their political organizations and decision making processes.

Keywords: Indigenous rights, intellectual property, copyright law

The indigenous community in Taiwan and the protection of their resources

Taiwan is an inherent multi-ethnic nation-state, yet it did not adopt formal multiculturalism until the year 2000, when the 1949 Constitution was amended. Assimilating the indigenous peoples into mainstream society has constantly been followed by successive rulers over the island before then. Japanese authority and the post-War Kuomintang (KMT) regime stuck with the same strategy. Aside from fierce suppression waging armed force, academic disciplines such as anthropology or museology are also employed to officially characterize aboriginality as a symbol of under-civilization and subordination. Since aboriginality was de-contextualized as exotic and deviant social behavior carried on by a group of marginal 'Others' (Hu, 2004; 2005), compulsory assimilation became requisite. Police powers then were heavily used to civilize the savage compatriots through education and sanitization, and finally large scale migration and isolation was applied. The result is, with no surprise, the dissolution of indigenous polity and, most important, their community resources.

The waking of indigenous rights in Taiwan was at about the same time as the democratization movement of the 1980's. Through the process of liberation from the KMT's dictatorship, re-habitation of oppressed sectors such as the domestic petty-bourgeoisie stimulated that of the indigenous communities. Blocs of indigenous representatives were elected to public office, and strived to congregate a new constitutional moment. In 2000, an Amendment to the Constitution which symbolized an epoch of indigenous renaissance was inaugurated. Article 10(10) avows Taiwan as a multicultural nation-State: "the State affirms multiculturalism, and positively assures the development of language and culture of the indigenous peoples." Then, an innovative, ground-breaking Indigenous Fundamental Act was later adopted to substantiate the above Amendment in 2005.¹

One can perceive the Fundamental Act as a semi-treaty based constitutional rewrite (Huang, 2009). Pursuant to the act, the central government is obliged to respect the will of indigenous peoples in terms of their status and future development, while coordinating with civil society, and eventually lead to an autonomous entity (Article 4).² The substantive aspects reflecting these prospects will be to regain control over their traditional knowledge and intellectual cultural creations. Under Article 13³ and Article 20⁴ of the Fundamental Act, the central government is commissioned to adopt laws to protect the indigenous entitlement of their land and natural resources, together with traditional bio-diversity knowledge and intellectual creations, and to promote

1 The Indigenous Fundamental Act was promulgated on February 05, 2005, and includes 35 articles.

2 The Indigenous Fundamental Act, Article 4: "The government shall guarantee the equal status and development of self-governance of indigenous peoples and implement indigenous peoples' autonomy in accordance with the will of indigenous peoples. The relevant issues shall be stipulated by laws."

3 The Indigenous Fundamental Act, Article 13: "The government shall protect indigenous peoples' traditional biological diversity knowledge and intellectual creations, and promote the development thereof. The related issues shall be provided for by the laws."

4 The Indigenous Fundamental Act, Article 20:"

(1)The government recognizes indigenous peoples' rights to land and natural resources.

(2)The government shall establish an indigenous peoples' land investigation and management committee to investigate and manage indigenous peoples' land. The organization and other related matters of the committee shall be stipulated by law.

(3)The restoration, acquisition, disposal, plan, management and utilization of the land and sea area owned or occupied by indigenous peoples or indigenous persons shall be regulated by laws."

their future development. Furthermore, while conducting research in the areas subject to indigenous title, the government or private parties are obliged to consult indigenous peoples and obtain their consent or participation, and share with them benefits generated from land development, resource utilization, ecology conservation and academic research derived from Article 21(1)⁵.

The above articles have provided themselves as a guideline for the exploitation of indigenous cultural heritage and nature resources, though specific and workable regulations are still needed to provide a due course of actions, either in transactions or in the courts, which, however, proves to be a difficult task. According to the Fundamental Act, nominally at least six laws covering different aspects are requisite to substantiate the admitted rights. Only half of them have been enacted.

The ITICPA and its major features: The aim of the ITICPA

The traditional cultural creations of indigenous peoples, including their music, dance, songs, graphics and folk art and other objective cultural expressions, had long been regarded as *res nullius* due to their incompatibility with the necessary conditions for Intellectual Property (IP) protection (Lucas-Schloetter, 2008: 383-393; UNESCO & WIPO, 1985:par.3). Copyrightable expression, for example, is required to fulfill the condition of containing the minimum creativity or originality (Farley, 1997: 9-11; Gervais, 2003). Yet most of the indigenous traditional cultural expressions are bound to fully replicate the traditional elements inherited from generation to generation, even if the sheer creativity or deviant could not, or in most cases, is not allowed to be generated.

The individual nature of private property is another hurdle to recognize indigenous IP. Under Article 18 of the Copyright Act of Taiwan:

“[t]he protection of moral rights of an author who has died or been extinguished shall be deemed to be the same as when the author was living or in existence and shall not be infringed upon by any person.”

The author needs to be an individual person endowed with moral rights. Authors such as a group or community, such as indigenous tribes, cannot enjoy their moral right over traditional intellectual creations as a whole, yet for them the individual member is not allowed to claim the rights.

The limited duration of civil law IP also casts doubt on its applicability over indigenous intellectual creations. Article 30 of the Copyright Act of Taiwan indicates that the IP:

“[e]ndure for the life of the author and fifty years after the author's death. Where a work is first publicly released between the fortieth and fiftieth years after the author's death, the economic rights shall endure for a term of ten years beginning from the time of the first public release.”

Since most of the indigenous traditional intellectual works have no traceable date of

⁵ The Indigenous Fundamental Act, Article 21(1):” The government or private party shall consult indigenous peoples and obtain their consent or participation, and share with indigenous peoples benefits generated from land development, resource utilization, ecology conservation and academic research in indigenous people’s regions.”

public release, or have to trace back to time immemorial, their duration of protection will instantly expire if applied. Not to mention a common essence of current living, the indigenous traditional intellectual creations can never expire unless all of the peoples are extinguished.

On 7th December 2007, the Indigenous Traditional Intellectual Creations Protection Act (hereinafter ITICPA) made its way through the Legislative Yuan (the House of Congress) as an answer to the above Article 13 of the Indigenous Fundamental Act. With the ITICPA as a formal law of the State, the indigenous traditional intellectual creations are no longer left in the plight of no protection (Huang, 2010).

The subjects protected under the ITICPA

The traditional intellectual creations protected under the ITICPA include subject matter such as traditional religious ceremony, music, dance, songs, sculptures, weave and dye, graphics, wardrobes, and folk art. An open-end, catch-all clause is also introduced to the Article so all other expressions of cultural activities of the indigenous peoples can be protected once they are certified and registered (Article 3).

Unlike the copyright laws, to receive protection from the ITICPA, the creations need to be certified and registered through the administrative agency, *i.e.*, the Indigenous Peoples Council of the Executive Yuan (Article 4⁶, 5⁷, 6⁸). Once the certification process is completed, the indigenous peoples and tribes registered will be entitled to proclaim the exclusive right over the registered creations (Article 7), *i.e.*, a unique form of community resources. The exclusive rights include the right to stop and prevent any false attribution, distorting, mutilating, modifying, or otherwise changing the content, form, or name of the work that damages the author's reputation, and to litigate against any above activities that infringe the registered context (Article 10).

All the *sui generis* rights protected under the ITICPA shall take effect retrospectively, which means there will be no vested rights for the current civil law IP which may contain indigenous intellectual creations registered. Trademarks or copyright-protected works exploiting the *sui generis* rights without lawful licensing will be declared void, notwithstanding its legality while admitted. This is a typical application of general theory of inter-temporal law, *i.e.*, a necessary result of transformative justice (Huang, 2010). Current practice adopted by the IP Bureau of the Ministry of Economy actually complies with the above reasoning. A consultation process will be a prerequisite before issuing any indigenous related trade-mark.

6 ITICPA, Article 4: "Intellectual creations shall be recognized by and registered with the competent authority so as to be protected by the Act. The criteria for recognizing intellectual creations mentioned in the previous paragraph shall be determined by the competent authority."

7 ITICPA, Article 5: "The competent authority shall recruit (assign) personnel of related institutions, specialists, scholars and aboriginal representatives to undertake the recognition of intellectual creations in addition to any matters stipulated in other regulations. At least 50% of these personnel shall be drawn from aboriginal representatives."

8 ITICPA, Article 6: "(1) The applicant for any intellectual creation shall provide a written application, a specification, necessary graphics, images and related documents or provide audio-visual creations in order to apply for registration with the competent authority. (2) The applicant mentioned in the previous paragraph is limited to aboriginal groups or tribes and a representative shall be elected to take care of all matters arising. The regulations of electing representatives shall be determined by the competent authority."

The rights entitled to the indigenous peoples under the ITICPA is not individual property, but collective in nature (Huang, 2010:24-26). Therefore, they are rights parallel to civil law IP (copyrights, patents and trade-marks). The latter may still be entitled to individual members of the tribe or ethnic unit registering the *sui generis* rights. Such a special character of the community resources is also evidenced by Article 22 of the ITICPA: “The provision of ITICPA shall not affect the rights of the exclusive right owner of the intellectual creation and the third party derived from other laws.”

The applicant of this *sui generis* right, according to the ITICPA, will be limited to the (official) indigenous ethnic groups or tribes (Article 6(2))⁹, although they may eventually be found not as the proprietor, or have to be co-entitled with other non-applicant ethnic groups or tribes, which is a decision made by the reviewing board. Experience learned from mootings shows no such surprises have ever happened, since it is a consensus-oriented community property.

The entitlement of rights under the ITICPA

Provided under scrutiny no specific ethnic group or tribe is the legitimate proprietor, then the right shall be entitled to the indigenous peoples of Taiwan as a whole, and take effect immediately after the date of registration (Article 7(3)). *I.e.*, no subject matter will be characterized as *res nullius* or public domain, even if it cannot be found attached to any ethnic group or tribe, and the proprietors entitled will include the applicants, non-applicant indigenous ethnic groups or tribes, and the indigenous peoples of Taiwan as a whole. When pursuing the rights through the courts, an official representative of the proprietor, instead of an individual member, will have the exclusive *locus standi*.

Given its nature as collective rights, the rights entitled under the ITICPA can only be exercised, unless provided by laws or contracts otherwise, by the registered indigenous ethnic groups or tribes, or indigenous peoples as a whole exclusively. The rights include to exploit and usufruct the propriety rights, and moral rights to a due attribution (Article 14 (3)). An individual member of the proprietor, however, is free to exploit and usufruct the registered intellectual creations (Article 14 (4)), which makes the collective rights subject solely to the customary rules applied by the proprietor, and eventually legalize the community resources. One may therefore conclude that the ITICPA is a leverage to prevent the false exploitation of indigenous traditional intellectual creations by non-indigenous users. With the compulsory discourse¹⁰, the proprietors can assure that all the utilization will be conducted through authentic cultural discourses.

Implementation of the ITICPA - the prerequisites

Though it substantiates the *sui generis* rights recognized by the Indigenous Fundamental Act, the ITICPA *per se* can only provide minimum and very general

9 According to Taiwan’s indigenous ethnic policy, only the indigenous peoples or tribes officially recognized by the government have official status. There are many tribes still struggling for recognition from the government. See Shieh (2008).

10 According to Article 1 of the ITICPA, the legislative purpose of the Act is: “In order to protect the traditional intellectual creations of indigenous peoples, and to promote the cultural development of indigenous peoples, this Act is set forth according to Article 13 of the Indigenous Fundamental Act.”

conditions to the processing and certification of them. Since there are 14 indigenous ethnic groups officially recognized in Taiwan, the abundance of their cultural diversity and ethnic significance make it barely possible to provide regulations for each of them respectively. Yet while implementing the rights, these general regulations need to be translated into some workable models. Noting this technical requirement, four articles of the ITICPA authorize its administrative agency to promulgate bylaws, which covers the process of electing the representative of the applicant and proprietor to be (bylaws No.1), the procedure for the certification, registration and revocation of the *sui generis* rights (bylaws No.3), the standard of certification (bylaws No.2) and the management of funds generated from licensing (bylaws No.4) (Huang, 2010).

Taking the aforementioned open-ended and catch-all clause covering “all other expression of cultural activities of the indigenous peoples” in Article 3 of the ITICPA as an example, there is no rigid definition over the indigenous traditional intellectual creations in any article of the ITICAP. The certification committee needs a guideline to follow before it can admit any right and entitle it to the legitimate proprietor, such as for how long shall the intellectual creation exist and be possessed by the applicant, and with what conditions shall it be recognized and certified.

As a group right, the applicant of certification and its proprietor will be limited to the (official) indigenous ethnic groups or tribes. Yet before the ethnic groups or tribes can be recognized as legal persons, a natural person representative of the applicant or proprietor is needed to file application and litigation. Then who shall be eligible, and through which process who is to be elected as the representative? The bylaw is supposed to provide an answer.

Currently the second and refined drafts of the four bylaws are completed and being withheld by the Indigenous Peoples Council for further review. The following is a brief introduction of its drafting principles. On the process of electing the representative of the applicant and proprietor to be, the draft bylaw chooses not to provide respective conditions for each indigenous ethnic groups or tribe, of which the governing structure of polity may be highly different, instead leaving it to be regulated by the customary laws the polity has long applied. The only compulsory restriction is the representative must be the member of the applicant, so to prevent the intervention from outsiders such as IP brokers (bylaws No.1).

As to the definition of the protected intellectual creations, the draft defines the indigenous peoples as a group of people who identify themselves as an organized single polity with inner coherence. The shared common languages and customs which form an indivisible foundation to such coherence could be traced back to time immemorial, but within a lineal timeframe. Therefore, any rights entitled to the polity as a whole is of the nature of continuity. The right protected under the ITICPA then must be an existing right blended with such a significance carried and applied by the applicant. Its context is allowed to evolve along with the technical development, provided the above indigenous significance is not extinguished (bylaws No.2). With this definition, subjects used to be conceived as public domain could be protected under the ITICPA, such as linguistic structure and grammar, names of certain indigenous ethnic groups or tribes, and common symbols which possess the above characteristics.

The authentication of cultural representation: lessons learned from the moot program

To accelerate the preparation period psychologically, the Indigenous Peoples Council has launched a semi-experimental program as the “Demonstrative Application Program on the Exclusive Rights of Indigenous Traditional Intellectual Creations” since 2012, so to further assure (to itself and other Authorities) the feasibility and practicability of the draft bylaws and the overall infrastructure which may in the near future undertake the true operation of the ITICPA.¹¹

The demonstrative program allows 14 local indigenous NGOs to voluntarily represent indigenous ethnic groups, tribes or sub-sections within their jurisdiction to undergo a moot application procedure. The chosen NGOs represent 12 official indigenous ethnic groups, including the Sakizaya, the Seediq (two teams), the Truku, the Tsao, the Shao, the Bunun, the Kavalan, the Dayan, the Tao, the Amis, the Rukei and the Paiwan (two teams).

Under the program, the NGOs will undertake the responsibility, under traditional customary law or current legal procedure, to re-assemble the tribal congress or assembly and obtain their consensus over issues such as choosing the traditional intellectual creations recognized as the most representative, yet severely-threatened or exploited. In the meantime, a historic and cultural review over the origin and preservation of the targets, namely the history, exploitation taboos, and cultural implication of the expressions, together with field investigation such as procurement of oral evidence from elders, will all be conducted by the NGOs. At the final stage, the 14 NGOs will follow the application procedures under bylaw No.3 to file for certification and registration with the gathered references. Since it is a moot application procedure, the *sui generis* rights will not be entitled with any tribes, yet the applications and the registered propriety under the moot program will be officially acknowledged by the Indigenous Peoples Council retrospectively, once the bylaws are approved.

Throughout the program, certain authenticity issues never conceived either by mainstream anthropologists or regulation drafters are revealed. Taking the ITICPA itself as an example, the Act provides that only the (official) indigenous ethnic groups and tribes can be the legitimate applicants and proprietors. However, the moot practice proves that to certain indigenous polity, this is not a true statement. Among the moot application team, one NGO from the official Paiwanian indigenous ethnic group vowed to represent not the official ethnic group or tribe as a whole, but their own noble-caste family (the Pakedjavai Family). The 12 glass beads (the Muljimuljidan, the Luseqnaqadaw, the Kurakurau, etc.), traditional home and the sacred songs they applied for protection belong solely to the noble family and the tribal head due to this unique Paiwanian caste system, which is largely followed by the ethnic group nowadays. Only the entitled caste families can legitimately utilize (including, if necessary, licensing out) those creations.

A similar situation could be found with another moot team from the Tsao ethnic group

¹¹ The author and the co-author are currently the Project Manager and Chief Investigator of this semi-experimental program. See the program website at: <http://ctm-indigenous.vm.nthu.edu.tw/>.

in Chia Yi County. The applicant applied for protection over their famous tribal worship rituals Mayasvi and Miyapo. Both rituals are popularly known and documented by anthropologists as enjoined by all of the tribal members. Yet through the consensus assembly, it is decided that only the two major tribes (Hosa) possess the legitimacy to their narrations and representations, including interpreting the meanings, taboos and due process of the ritual. Therefore, if certified, the objects will be entitled to the tribes only, not the whole official tribe.

Notwithstanding the impact of the ITICPA over the reconstruction of indigenous cultural integrity, and even the prospect of political autonomy through the above moot applications, or eventually if the Indigenous Peoples Council will continue to subsidize such a *sui generis* rights management, the process allows, for the first time in history, for indigenous peoples to actively participate as a subject with the establishment of a practical set of authentic cultural representation, which is a core to the community resources. In the meantime, the collection and construction of the history, taboos, and cultural implication of the target expressions motivated by the indigenous politics themselves also help to pave ways for a more equal and balanced discourse between the indigenous peoples and non-indigenous community.

A Tentative Conclusion: authentication of indigenouness in research and archive disciplines as a necessary consequence of legalizing the community resources

Before the introduction of the ITICPA, the Copyrights Act of Taiwan and its bylaws were the only applicable regime, creating certain legal difficulties for the archive program. To prevent itself from the risks of infringement of rights, the program tends to archive objects whose copyright protection has expired, or have fallen into the public domain before any due diligence could be completed. Many indigenous related objects were among these preferable targets, since the dates of their creation are since time unmemorable, or the proprietor is unknown.

However, the above strategy was forced to change after the adoption of the ITICPA. According to its Article 3, the protected indigenous intellectual creations are very comprehensive, which include the traditional religious ceremonies, music, dance, songs, sculptures, weaving, patterns, clothing, folk crafts or any other expression of the cultural achievements of indigenous peoples. Fulfillment of the authentication and registration process under Article 4 with the competent authority are the conditions to vindicate the rights. The official ethnic groups, tribes, the sub-sections of them, e.g., family groups as mentioned above, and the whole indigenous people then will become the proprietor of the moral right, which includes the right to publicly release the work, to be nominated, and to prohibit others from distorting, mutilating, modifying, or otherwise changing the content, form, or name of the work¹². Property rights are also granted to exclusively use and profit from the registered objects¹³. The above rights

12 ITICPA, Article 10(2):"The owner of an exclusive right to use intellectual creations enjoys the following moral rights of intellectual creations:

1. the moral right to publicly release the work.
2. the moral right to indicate the name of the exclusive user.
3. the moral right to prohibit others from distorting, mutilating, modifying, or otherwise

changing the content, form, or name of the work, thereby violating the author's reputation."

13 ITICPA, Article 10 (3):"The owner of the exclusive right to use intellectual creations shall

are neither transferrable nor subject to any pledge or taking and will be protected for goods. At the first glance most of the archived indigenous contents are candidates to the *sui generis* regime.

Propriety under the ITICPA is collective in nature (Huang, 2005:32-37), *i.e.*, an inherent community resource. Proprietors are ethnic groups, tribes, family groups, or the whole indigenous people instead. Therefore, the legitimate means of procurement such as acquiring prior informed consents from their individual member who physically possess the objects, or through a sales transfer, will no longer validate the assessment. Authorization is needed from the registered legitimate proprietors if the archives would be publicly released, either through exhibition in museums or virtual libraries. There is no specific formality requirement for the necessary authorization, yet one can imagine a prior informed consent obtained through comprehensive and diligent discourse will be the bottom-line before any bylaws or model form is issued by the Authority.

An instant example of the above turnover could be found in its business application. In 2009, glamorous female indigenous singer Chang Hui-mei (Amei) issued a new album titled 'Amit'. The album tagged itself as a unique charm because it includes three songs derived and modified from traditional Puyumen rhythms. Even though the ITICPA was implemented at the time, the record company still managed to seek for a semi-collective authorization from the council of the tribe in which the singer grew up (Chen, Wei-Jen, 2009). There was no information about the terms and conditions of the authorization though.

The above incident evidences the intrinsic difference between copyright and the *sui generis* rights under the ITICPA. A prior consent to access is requisite not only from the individual possessor, but the community unit the former belongs to. Certainly, it is not very clear with which unit the archivists will negotiate the consent, since the political institutions of these potential proprietors vary all the time, due to current indigenous self-government policy.

Workable data collections and a user-friendly interface both symbol the versatility of an archive. A competent archivist needs to retain the ability to design a resilient metadata, which incorporate both original context and historical lineage. However, when applying the said qualifications to the indigenous related archive, one may encounter two major issues. The first one is to provide a publicly accessible interface to equally publicly release the contents, which requires authorizations from the *sui generis* moral rights proprietors. The second is to categorize and make functional the archived indigenous contents, which could have touched the thin red line as "distorting, mutilating, modifying, or otherwise changing the content, form, or name of the work, thereby violating the author's reputation (ITICPA, Article 10)". A "notice to the website viewers" standard-clause containing key languages of the ITICPA, *e.g.* the moral and property rights are entitled exclusively with certain ethnic groups or tribes, and authorization is requisite in case of utilization, is designed as a dialogue box located at the front page of the archive site, so to substitute every individual licensing (Huang, 2011:60-64). Only when the viewer reads through and clicks the

exclusively use and profit from the property rights of such intellectual creations on behalf of specific ethnic groups, tribes or the entire indigenous peoples, unless otherwise stipulated by law or agreement, and shall exercise the rights mentioned in the previous paragraph."

agreement below can they access the archive contents¹⁴. Viewers' IP will at the same time be located by the webmaster, so to monitor any possible infringement.

As to the relief for the second concern, the archivists are advised to consult with proprietors over the adequate ways of handling any culturally sensitive contents, before constructing the metadata. If a taboo or restricted ritual or lyric is archived, a comprehensive discourse over the adequacy and formality of public release should be conducted beforehand (Huang, 2011:66-68). The proprietor will have the right to request instant removal of any content from the site if they found the exhibition poses a threat to their cultural integration.

As mentioned above, social application of the archive contents is a planned and indivisible phase of the program. Licensing and transferal of the archive contents are always conceived as the necessary means to implement the application. However, under the ITICPA, the archiving institutions are not proprietors of the possessed indigenous archive contents, which are not transferable, even if the transferred portion is only an edited copy, or images which might still be part of the exclusive rights of the entitled ethnic groups or tribes. Currently, archivists have started to prepare a revised version of model licensing clauses to cope with the challenge (Huang, 2011:64-66). In the meantime, they are urged to actively consult with related ethnic groups, tribes and experts, and to initiate a comprehensive discourse over issues such as public release, ways of nomination, mode of application and benefit sharing schemes, although sometimes the tribes may not be the proprietor, or a collective consensus is not obtainable through established mechanisms.

14 See the website of the Digital Music Archive Project for Taiwanese Indigenous People: <http://archive.music.ntnu.edu.tw/abmusic/index.html>. (Project investigator: Prof. Chien Shan-Hua (錢善華), college of music, National Taiwan Normal University)

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How Much Do Student Loan Sizes Affect Returns on Tertiary Education for Thai Persons With Disabilities?

Kiatanantha Lounkaew

Abstract

This paper is motivated by the fact that there were about 1.5 million disabled persons in Thailand in 2011. A year later, 234,390 of them had died; many of the deaths were premature. The major causes of their deaths could be traced back to deprived socio-economic conditions. At present, registered disabled persons are entitled to a monthly payment of 500 Baht (17 USD), and have access to low cost medical services. It is inevitable that a new initiative is needed to promote better quality of life. Access to tertiary education is one of the viable options. Disabled persons are usually credit constrained; access to sufficient student loans is, therefore, a pre-requisite to access tertiary education. Using a unique health literacy data set of Thai persons with disabilities, this paper examines how different student loan sizes affect returns on tertiary education. Propensity Score Matching is used to estimate the differences in the log of earnings between disabled persons with tertiary degrees, and disabled persons with basic education qualifications. A subsequent exercise on the effects of different loan sizes is conducted using the Thai Student Loans Fund (SLF) arrangement. The exercise reveals that rates of returns do not vary significantly with loan sizes. These findings suggest that promoting greater access to tertiary education for disabled persons will be beneficial to individuals, as well as the society at large. Supplementary in-depth interviews highlight the importance of post-graduation placement services.

Keywords: Disabled rights, education policy, student loans

Introduction

Based on the National Office for Empowerment of Persons with Disability figures (NOEPD), in 2011 there were about 1.5 million disabled persons in Thailand. A year later, 234,390 of them had died. Many of them died prematurely due to lack of proper care and severe poverty. At the time of writing, disabled persons are entitled to a monthly allowance of 500 Baht (17 USD)¹. By and large, disabled persons' educational attainments rarely go beyond basic education. They are either unemployed or only marginally attached to the labor market, with typical jobs being lottery sellers, basic handicraft makers or massagers (National Office for Empowerment of Persons with Disability, 2013).

The above overview raises two interesting issues. The first relates to the insufficiency of the monthly allowance, which precludes them from acquiring proper health care and nutritional food to sustain their health. Raising payments requires that additional public resources must be diverted from elsewhere. Such a diversion often comes with opportunity costs. The second issue is the low level of educational attainment. Researches in the field of education and labor market outcomes have consistently found that more education allows individuals to be more productive; as a result, they will also enjoy higher earnings throughout their working lives (Psacaropoulos and Patrinos, 2004). The second issue also implies that education can be a powerful instrument to help disabled individuals who are able and willing to undertake such an investment, to achieve a better living standard. Being able to support themselves also helps to free up public resources, which can be made available to other disabled persons.

Such an initiative, however, has to be supported by hard empirical evidence on whether such investment will yield positive returns. Another related empirical issue stems from the fact that many disabled persons are in poverty. They do not have sufficient resources to undertake such an investment. In addition, without proper collateral, they are denied access to commercial loans. One of the promising avenues for the disabled in Thailand is to undertake this investment by borrowing from a public student loans scheme, called the Student Loans Fund (SLF). Again, the empirical question is whether borrowing from the SLF to cover their tuition fees and related expenditures is an economically sound decision. This paper attempts to address these two empirical issues.

The remaining sections are organized as follows: Section 2 provides the historical background and payment arrangements of the SLF; Section 3 lays out a conceptual framework relating education to health outcome and potential earning; the research methodology will be discussed in section 4; data and results are offered in section 5; section 6 concludes the study.

History of the SLF and Its Arrangement²

The idea of making student loans available to the poor was formed in 1995, while the Democratic Party was leading the Thai government. The Student Loans Fund (SLF) was set up in 1996, while the Chart Thai Party was the leading party of the government. The main objective of the SLF is to foster access to upper secondary and

¹The exchange rate is approximately 30 baht to 1 US dollar.

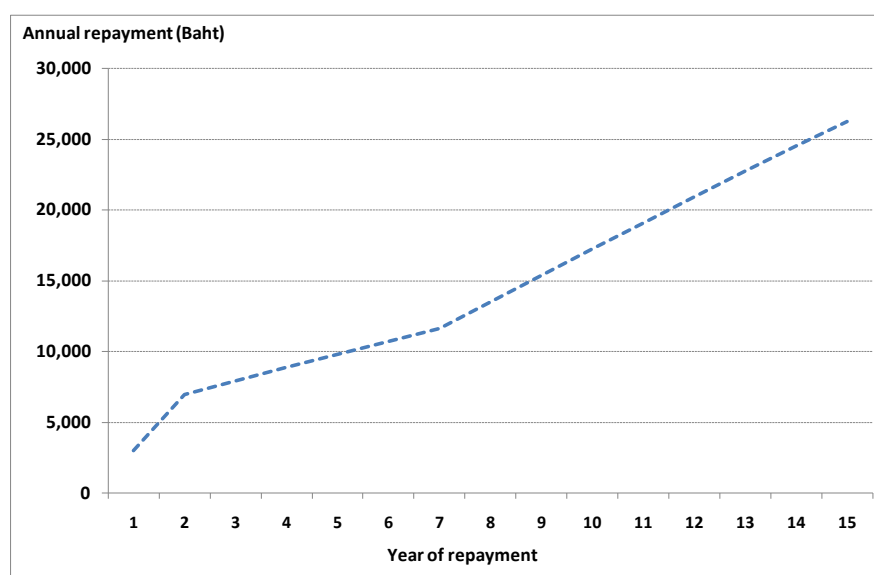
²This section is based on Chapman and Lounkaew (2009) and Chapman *et al* (2010).

higher education for students from low-income families. It is believed that greater access will eventually reduce inequality in education opportunities between the rich and the poor. An increased stock of graduates will also increase the country's competitiveness, and hence sustain economic growth in the long-run. To accomplish the above objective, the SLF provides loans for upper secondary, vocational and undergraduate education to students whose family income does not exceed 200,000 baht per annum. The average public fund allocated to the scheme is around of 27,000 million baht per annum (Office of Student Loans Fund, 2007).

Essentially, the SLF is a mortgage-type loan, with a maximum repayment period of 15 years. Annual repayment is an increasing proportion of the loan size, ranging from 1.5 per cent in the first year of repayment, to 13 per cent in the last repayment period. The nominal interest rate charged on the loan is one per cent. There are two types of grace period built into the SLF. The first interest rate grace period is before the interest rate begins to accrue two years after graduation, or termination from the program enrolled. Therefore, for a four-year program, the interest rate grace period is six years. Second, there is also a two-year repayment grace period after graduation, or termination from the program enrolled.

The loans cover tuition fees as well as living expenses. The loan ceilings for tuition fees differ depending on the field of study; the loan ceilings for tuition fees vary from 60,000 Baht per year for social sciences and humanities, to 150,000 Baht per year for selected science and medical programs. Loans for living allowances are limited to 26,400 Baht per year.³ Figure 1 illustrates a repayment pattern for a loan size of 200,000 Baht, or about US\$6,450.

Figure 1: SLF Repayments for the Debt of 200,000 Baht (about US\$6,450)



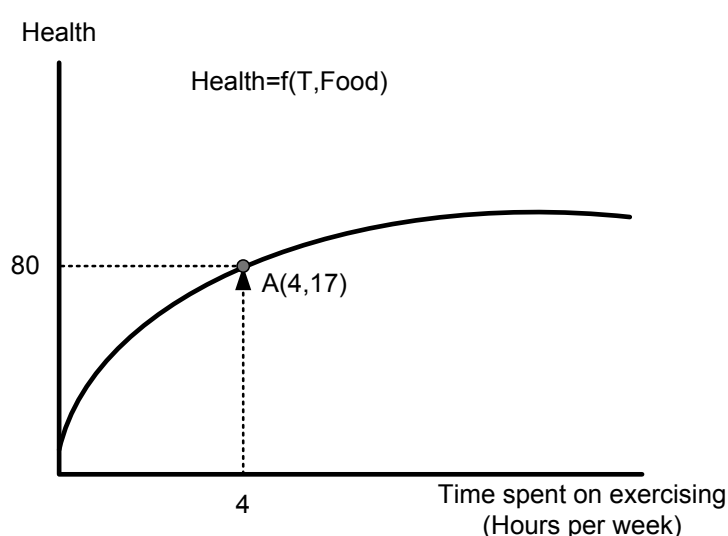
Conceptual Framework

The production of health will be measured to illustrate these points: under the assumption that health can be measured in unit terms, where a higher value of health

³ See Office of Student Loans Fund (2007) for details.

corresponds to better health condition, two inputs are used to produce health. The first is food intake per week; the second input is time spent on exercising per week. An increase in either input will increase health outputs. Figure 2 depicts the production function of health, using time spent on exercising per week as an argument on the horizontal axis. The more time is spent exercising, the higher are the health outputs. However, the production function is concave, to reflect the fact that the improved health outcomes gained from the first few hours spent on exercising are greater than the gains from the 22nd hour spent exercising.

Figure 2: Health Production Function



The positive relationship between schooling and health is empirically well-documented (see for example, Donald, 1991; Cheolsung and Kang, 2008; Mary, 2009). By and large, schooling can improve the health capital of an individual directly and indirectly. The direct influence of better schooling channels through individuals' health-related behavior, such as smoking, drinking, eating habits, amount of time devoted to exercise, ability to observe one's health, and the ability to find access to appropriate health care services. Indirect channels come in the form of a better working environment, better peer group, higher income, and hence, a better standard of living.

Conceptually, if more schooling leads to better productive efficiency, then this additional schooling shifts the production function upward; consequently, a similar mix of inputs corresponds to a higher output lying at the frontier of the new production function. This is shown in Figure 3. Prior to attaining more education, 4 hours of exercising and 17 units of food per week produces 80 units of health outputs. More schooling shifts the production function upward. With the new production function, a similar mix of inputs now produces 100 units of health outputs.

Figure 4 demonstrates the situation in which more schooling leads to better allocative efficiency. Prior to attaining more education, 3 hours of exercising and 20 units of food were used to produce 80 units of health outputs. New insights are gained from more education results in the new input mix of 4 hours of exercising and 17 units of

food; the new health output is 100 units. This is the maximum attainable level of output.

An econometric model to test productive efficiency involves the use of a simultaneous equation to approximate the production function. The model predicts that, holding all other inputs constant, the schooling coefficient is positive. Alternatively, the allocative efficiency model predicts that there is no direct effect of schooling on health output, if all other inputs relevant to the production of health are included. It should be noted, however, that both approaches predict positive relationships between schooling and health outcome in the reduced form health equation (Grossman, 2006).

Figure 3: Illustrating Productive Efficiency

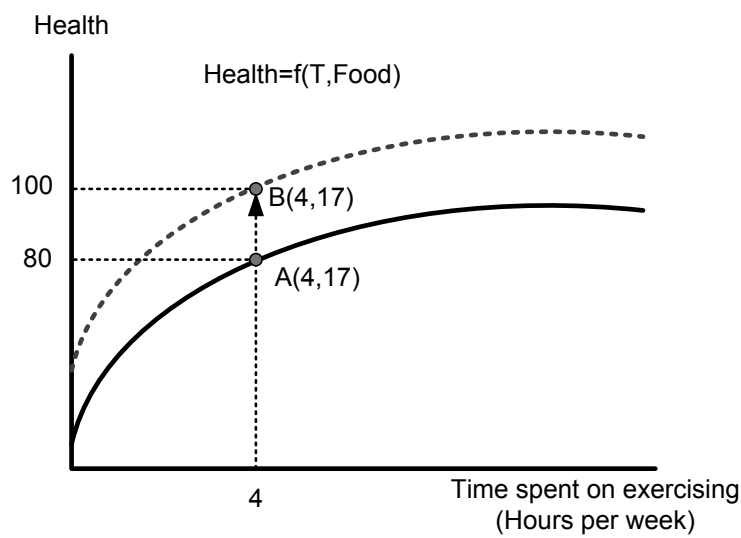
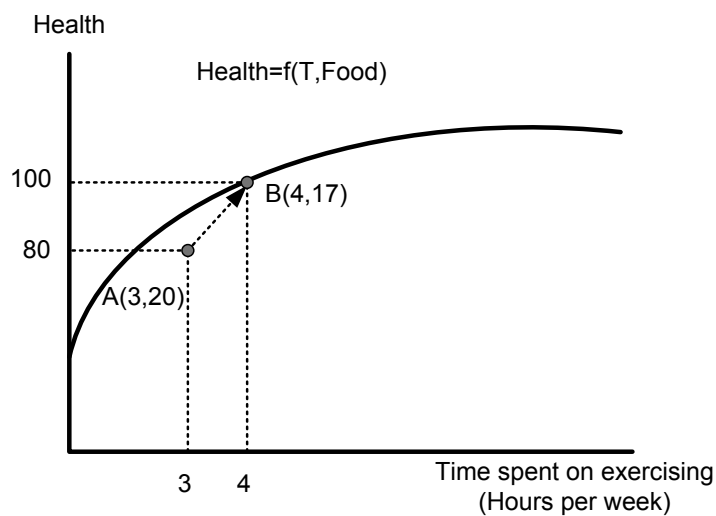


Figure 4: Illustrating Allocative Efficiency



In the context of this study, the positive contribution of schooling on health outcome enables a disabled individual to be more productive, and be valued more highly in the labor market. In addition, better education empowers them to take better care of themselves; this also increases their health capital. To formalize this, let Z be the level of non-health human capital; H is the level of health capital. Then, annual wage increases can be accounted for by changes in human capital and changes in health capital, as shown in the equation:

$$\Delta\%w(t) = \alpha\Delta\%Z(t) + \beta\Delta\%H(t)$$

The Data and Methodology

This section begins with a discussion on the basic information of the Thai health literacy data; the most recent and most comprehensive data set available for a study of this nature. Then the empirical method - Propensity Score Matching (PSM) - employed to estimate the percentage differences in annual income, will be elaborated.

Data

Data on persons with a disability are scarce. In Thailand, the Thai Health System Research Institute (HSRI)'s health literacy⁴ data set is the most recent and most comprehensive data on persons with disability - blind, deaf and otherwise handicapped. The data, collected in early 2013, contained 1,600 samples of persons with a disability nation-wide. The challenge of this exercise was that there was no unified record of disabled persons in Thailand. HSRI contacted major disability associations to request access to their records. These records were then combined; whenever a name was repeated, only one would be kept. Participants in this survey were then randomly selected from this unified list containing 12,245 names. The key information relevant to this study are: types of disability, gender, age, educational attainment, total personal income, self-rated health condition and health literacy. Table A1 in the appendix provides the details of the variables used in this study.

Figure 5 and 6 provide an overview of the data. It can be seen that only about 15 percent of persons with a disability surveyed have tertiary qualifications. A weighted average of the annual income of a tertiary degree holder is about 2.3 times higher than those with basic education.

⁴According to the U.S.'s Centers for Disease Control and Prevention (CDCP), Health Literacy is the capacity to obtain, process, and understand basic health information and services to make appropriate health decisions (CDCP, 2013).

Figure 5: Distribution by Education

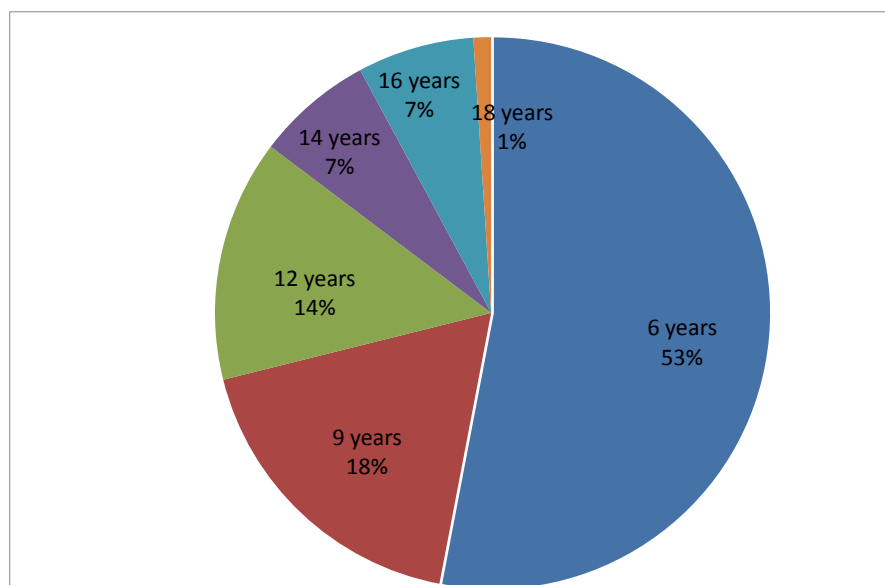
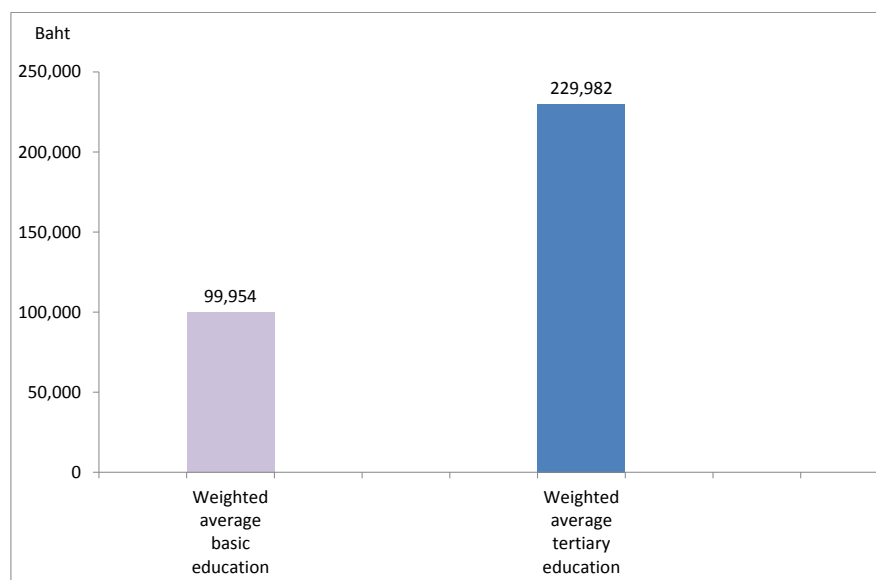


Figure 6: Weighted Average of Annual Income



Empirical Method

A typical approach to estimate returns on education relies on the Mincerian earning function. Years of schooling is used as a one of the regressors to capture the effect of additional years of education on earnings. It is a well-known fact in economic labor literature that the schooling coefficient is contaminated by bias introduced by omitting certain variables such as individual ability and attitude towards learning (Griliches, 1977; Berger and Leigh, 1989; Card 2000). Attempts have been made to address these issues; yet none of them has been satisfactory.

Another approach which allows us to address such bias is to frame the exercise in the context of a treatment-control research design. In an ideal setting, we can randomly assign disabled persons with access to tertiary education into treatment and control groups. In such a randomized control exercise, the difference in average earnings is

caused by the treatment. Unfortunately, it is not possible to conduct such an exercise. The second-best approach is to carry out a quasi-experimental design which mimics as closely as possible the characteristics of a randomized control experiment. PSM is one such approach (Morgan and Winship, 2007; Brand and Xie, 2010). This approach is now discussed.

In essence, PSM creates a statistical comparison group based on a propensity score - the probability to participate in a treatment. The probability estimate is based on the observed characteristics of participants. Participants and nonparticipants are then matched by their propensity scores. The average treatment effect of the program can be estimated by the differences in the mean values of outcomes between these two groups. It should be noted that, in practice, PSM is most useful when observed characteristics have sufficient influence on the program participation decision. Sufficient characteristic information also helps to minimize bias inherent in the program (Rosenbaum and Rubin, 1984; Dehejia and Wahba, 2002)

In the context of this study, omitted variable bias is more pronounced because of the design of the health literacy survey. The primary purpose of this survey was to collect data on health literacy, without much attention paid to collecting socio-economic background information. Consequentially, Mincerian estimates will suffer from omitted variable bias, possibly to a greater degree than typical estimates using labor force survey data. The question is whether PSM would help to mitigate such bias.

The answer to the above question is positive. The health literacy data contain some basic characteristics; in addition, the data also contains disabled persons' self-rated health status, as well as health literacy scores. Conceptually, health literacy helps to make appropriate health decisions. Persons who score higher in health literacy are more likely to be capable of looking after themselves. Unobserved characteristics that influence one's decision to undertake tertiary education correlate with health literacy scores. Including health literacy scores into the estimate of propensity scores will, therefore, increase the accuracy in matching characteristically identical individuals in the two groups.

To obtain returns on tertiary education – defined as percentage differences in annual income- between tertiary degree holders, and those with basic education, a log of annual incomes is used as the dependent variable. The key to this exercise is best viewed in a quasi-experimental context. The first step is to make use of data on individual characteristics, geographical information and health-related data, to construct an overall propensity score for each individual. These scores are then used to match individuals with similar overall characteristics whose only differences are educational attainments. The matching process artificially assigns educational attainment as the treatment. If tertiary education leads to higher earnings, then on average, a person with such qualification should earn more than a person with a similar propensity score with basic education.

The effect of student loan sizes on returns on education is estimated by deducting the annual payment required to service the loans from the annual income of tertiary degree holders, prior to commencing the PSM exercise. The amounts to be deducted are based on the repayment schedule of the SLF. Three loan sizes are used in the

estimate: 200,000 baht, 300,000 baht, and 400,000 baht. The estimate is also restricted to include only those aged between 25 and 50.

Results

The result from the PSM estimate of the average treatment effect of having a tertiary degree is shown in Table 1. It can be seen that a person with a disability with tertiary education enjoys about a 29.5 percent higher annual income, compared to a person without such a qualification. The difference is statistically significant. This confirms the argument developed in section 3 that education, after controlling for health and other characteristics, determines one's total human capital, and hence one's income. Table 2 compares the results obtained from this study with two previous findings by Lamichhane and Sawada (2013), and Mori and Yamagata (2009). It can be seen that the Thai estimate in this study is consistent with the two previous findings; the estimates of the returns on tertiary education are in the order of 30 percent.

The effects of student loan sizes on returns on tertiary education are calculated as previously described. The results in Figure 7 show the effect of borrowing from the SLF to finance their education. The baseline estimate for the debt size of 200,000 baht, which is a typical debt size for a normal person borrowing from the SLF, reduces the return to 22; further increases in debt to 300,000 and 400,000 baht reduce the returns further to 18 and 14 percent respectively. Thus it can be concluded that while higher loan size does affect returns on education for persons with disability, they can still enjoy considerable returns on such investment; investment in tertiary education is a worthy investment and will surely help to improve the quality of lives of those who have successfully undertaken it.

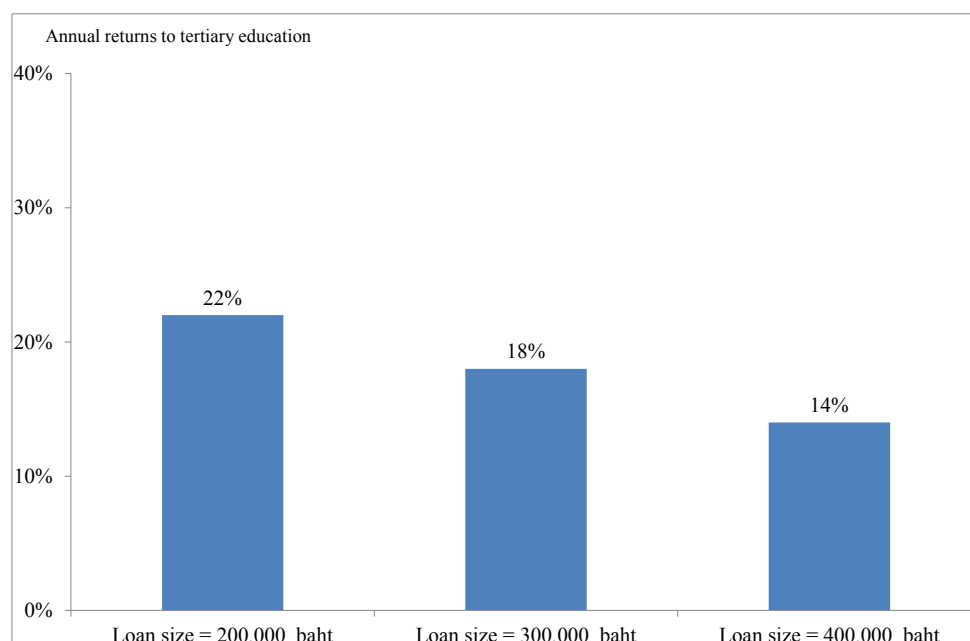
Table 1: Propensity Score Matching Estimates

Variable	Mean value			S.E.	T-stat
	Tertiary education	Basic education	Difference		
Log of annual income	9.240	8.945	0.295	0.142	2.09**

** Statistically significant at $\alpha = 0.05$

Table 2: Comparisons to Previous Studies

Author (s)	Country	Returns to education
Lamichhane and Sawada (2013)	Nepal	30.4%-33.2%
Mori and Yamagata (2009)	Philippines	24.7%-30.1%
This study	Thailand	29.5%

Figure 7: Effects of Student Loans Sizes on Returns on tertiary Education

Conclusion

This paper is motivated by the fact that there were about 1.5 million disabled persons in Thailand in 2011. A year later 234,390 of them had died; many of the deaths were premature. Education seems to be one of the candidates that can help some of the more able disabled persons to come out of deprived situations. Such an initiative, however, has to be supported by hard empirical facts as to whether such an investment will yield positive returns. This paper addresses this question by providing estimates of the returns on tertiary education for persons with disabilities.

The Thai health literacy data is used to undertake this exercise. As dictated by the nature of the data, PSM is used to estimate the returns on education. It has been found that returns on education for tertiary education are at about 29.5 percent. When taking into account the fact that disabled persons have to rely on student loans to commence such an endeavor, returns on education fall to around 14 to 22 percent, depending on the loan size. The results confirm that tertiary education is a worthy investment, and will surely help to improve the quality of lives of those who have successfully undertaken it.

There are two other critical challenges that must be addressed in conjunction with promoting access to tertiary education. The first stems from the fact that disabled graduates cannot compete with typical graduates in the labor market; policies to promote hiring disabled graduates will greatly improve their success in the labor market. The second challenge is the perception toward persons with disability. They have long been stigmatized as having to constantly rely on public support. Such a negative perception may hinder their progress in the workplace, and climbing social ladders. A new fact-based perception that disabled persons are valuable members of our society must be promoted. By addressing these two challenges appropriately, education will be the key to ensure that they can contribute productively to society.

Acknowledgements

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Appendix

Table A1: Summary of Variables

Variable	Description
Individual characteristics	
Age	Measured in years
Sex	Male = 0 Female = 1
Numbers of household members	Numbers of persons
Occupations	1 = Unemployed 2 = Employee 3 = Business owner 4 = Agriculture 5 = Government or public enterprise officials 6 = Others
Income	Personal income from work only, measured in Baht per annum.
Education	Basic education = 0 Tertiary education = 1
Geographical variables	
Urban	Rural = 0 Urban = 1
Regions	1 = Central 2 = East 3 = South 4 = North 5 = North east
Health-related variables	
Self-rated health	1 to 10
Health literacy	1 to 10
Types of disability	1 = Chronic 2 = Blind 3 = Handicapped 4 = Deaf

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