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IMF conditionality and rule of law: exceptional powers and banking in Malaysia and Venezuela

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IMF CONDITIONALITY AND RULE OF LAW: EXCEPTIONAL POWERS AND BANKING IN MALAYSIA AND VENEZUELA

A thesis submitted in fulfilment of the
requirements for the award of the degree

DOCTOR OF PHILOSOPHY

UNIVERSITY OF WOLLONGONG

GABRIEL GARCIA
LLB (*magna cum laude*, Central University of Venezuela), LL.M (Boston
University)

FACULTY OF LAW

2009

CERIFICATION

I, Gabriel Garcia, declare that this thesis, submitted in fulfilment of the requirements for the award of Doctor of Philosophy, in the Faculty of Law, University of Wollongong, is wholly my own work unless otherwise referenced or acknowledged. The document has not been submitted for qualifications at any other academic institution.

Gabriel Garcia

January 2009

ABSTRACT

The 1990s was a decade marked by the implementation of market reforms worldwide. Countries in Latin America and Asia experimented with neoliberal programs sponsored by international financial institutions (IFIs) in order to adopt the arrangements required for the functioning of a market economy. The International Monetary Fund (IMF) joined in these efforts and incorporated structural requirements in its programs as conditions for the provision of financial assistance, including requirements associated with the strengthening of governance and the rule of law that limited the scope of *ad hoc* decision making schemes. However, by the end of the 1990s the results of IMF-sponsored reforms were controversial.

This thesis explores, from a legal perspective, IMF conditionality as a mechanism to strengthen the rule of law and the relations between these two concepts and exceptional powers in the banking sector. The main argument developed in this thesis is that in spite of the official discourse regarding the promotion of governance and the rule of law, IMF conditionality did not contribute to strengthening this notion in the 1990s. In contrast, conditionality was involved with episodes of instability and the invocation of states of emergency in some developing countries.

The analysis is undertaken through a comparative case study approach in which the legal responses of the governments of Malaysia and Venezuela to address the financial crises that affected those countries in the 1990s are examined. Malaysia declined the help of the IMF during the crash and instead it implemented its own program to manage the financial turmoil. The Malaysian solution provides useful insights and differences from the *ad hoc* legal management crisis style employed by the Venezuelan government that had the technical and financial assistance of the IMF.

Overall, the findings of this thesis suggest that in the case of Venezuela, IMF conditionality did not contribute to the strengthening of the rule of law and the urgency of the measures contributed to the use of exceptional powers by the Venezuelan government in addressing the banking crisis. In contrast, Malaysia, a nation that adopted its own domestic solution, provides a more adequate legal management approach to a financial crisis that helped to strengthen the rule of law in the banking system.

ACRONYMS

AD	Acción Democrática
ADB	Asian Development Bank
AMCs	Assets Management Companies
ASEAN	Association of Southeast Asian Nations
BAFIA	Banking and Financial Institutions Act 1989
BANDES	Economic and Social Development Bank of Venezuela
BCV	Central Bank of Venezuela
BMF	Bumiputera Malaysia Finance
BN	Barisan Nasional
BNM	Bank Negara Malaysia
CDRC	Corporate Debts Restructuring Committee
COPEI	Social Christian Party of Venezuela
CNE	Venezuelan National Electoral Board
CTV	Worker Union of Venezuela
CVF	Corporación Venezolana de Fomento
DANAHARTA	Pengurusan DANAHARTA Nasional Berhad
DTCs	Deposit Taking Cooperatives
ESCAR	Essential Security Cases Regulations 1975
FEA	Financial Emergency Act
FEB	Financial Emergency Board
FEDECAMARAS	Federacion de Camaras y Asociaciones de Comercio y Producción de Venezuela
FOGADE	Deposit Guarantee and Banking Protection Fund
FIV	Investment Fund of Venezuela
FMS	Federated Malay States
FSAP	Financial Sector Assessment Program
GDP	Gross Domestic Product
GNP	Gross National Product
HDI	Human Development Index
IADB	Inter-American Development Bank
IBA	Islamic Banking Act 1993
IFIs	International Financial Institutions
IMF	International Monetary Fund
ISA	Internal Security Act
ITs	Indicative Targets
LOFSA	Labuan Offshore Financial Services Authority
MCA	Malay Chinese Association
MCP	Malayan Communist Party
MIC	Malayan Indian Congress
MIFC	Malaysia International Islamic Financial Center
MoF	Ministry of Finance
MPAJA	Malayan Peoples Anti-Japanese Army
MVR	Movimiento Quinta República
NEAC	National Economic Action Council

NEP	New Economic Policy
NERP	National Economic Recovery Plan
NPLs	Non Performing Loans
NUDs	Need and Urgency Decrees
OECD	Organisation for Economic Co-operation and Development
PAs	Prior Actions
PAS	Islamic Party of Malaysia
PETRONAS	Petroleum Nasional Berhad
PCs	Performance Criteria
PROTON	Perusahaan Otomobil Nasional
PRs	Program Reviews
PRGF	Poverty Reduction Growth Facility
PSUV	United Socialist Party of Venezuela
RAP	Right Accumulation Program
SAC	National Syariah Advisory Council for Islamic Banking and Takeful
SBs	Structural Benchmarks
SDRs	Special Drawing Right
SUDEBAN	Superintendency of Banks and other Financial Institutions
UMNO	United Malays National Organization
UMS	Unfederated Malay States
UNDP	United Nation Development Programme
UK	United Kingdom
US	United States of America
VAT	Value Added Tax
WB	World Bank
WWI	World War I
WWII	World War II

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TABLE OF CONTENT

ABSTRACT	iii
ACRONYMS	iv
ACKNOWLEDGEMENTS	vi
TABLE OF CONTENT	vii
TABLES AND FIGURES	x
CHAPTER 1	
INTRODUCTION	
1.1 IMF Conditionality and the Promotion of the Rule of Law in Developing Countries	1
1.2 Significance	5
1.3 Research Questions	6
1.4 Analytical Framework	7
1.5 Thesis Structure	12
CHAPTER 2	
RULE OF LAW, IMF AND THE BANKING SYSTEM	
2.1 Introduction	15
2.2 Development: From the GNP approach to the Comprehensive Development Framework	16
2.3 From the Law and Development Debate to the Rule of Law Promotion	21
2.4 The Meaning of the Rule of Law	30
2.5 IMF and the Rule of Law	39
2.6 Building a Concept of the Rule of Law for Developing Countries	48
2.7 The Rule of Law and Banking Systems	56
CHAPTER 3	
IMF CONDITIONALITY: A WAY TO STRENGTHEN RULE OF LAW IN DEVELOPING COUNTRIES?	
3.1 Introduction	67
3.2 Understanding IMF Conditionality	68
3.3 Nature of IMF Arrangements: Their adequacy to strengthen governance and the rule of law	82

3.4 Democracy, Conditionality and the Rule of Law	103
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CHAPTER 4 EXCEPTIONAL POWERS AND THE RULE OF LAW CHALLENGE

4.1 Introduction	109
4.2 Exceptional Powers: A definition	110
4.3 Exceptional Powers in the Economic Domain	111
4.4 Limits of Exceptional Powers to Cope Economic Crises	121
4.5 Harmonising the Rule of Law and Exceptional Powers	124
4.6 Exceptional Powers and the Implementation of Market Reforms	132
4.7 Banking Systems and Exceptional Powers	137
4.8 Inadequacy of Exceptional Powers to Build a Notion of the Rule of Law	141

CHAPTER 5 AN INTRODUCTION TO MALAYSIA'S LEGAL SYSTEM

5.1 Introduction	143
5.2. A Brief History of Modern Malaysia	144
5.3 People of Malaysia	148
5.4 Economy	153
5.5 Legal System	156
5.6 The Limits of the Rule of Law in Malaysia	168
5.7 Exceptional Powers in Malaysia	173
5.8 The Rule of Law, Exceptional Powers and the Management of Financial Crises	182

CHAPTER 6 THE ASIAN FINANCIAL CRISIS: A BANKING LEGAL PERSPECTIVE

6.1 The Malaysian Banking System	187
6.2 Institutions of the Malaysian Banking System	190
6.3 The Malaysian Legal Banking Framework	193
6.4 The Rule of Law in the Banking System	201
6.5 The Asian Crisis and the Banking System	203
6.6 Government Responses to the Crisis	208
6.7. The Legal Approach to the Banking Rehabilitation	217

6.8 Results of the Home-Grown Malaysian Program	229
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CHAPTER 7 RULE OF LAW, EXCEPTIONAL POWERS AND THE IMF THE VENEZUELAN EXPERIENCE

7.1 Introduction	237
7.2 From Spanish Domination to the Democratic Era: A concise history of Venezuela	238
7.3 People from Venezuela	243
7.4 Economy	247
7.5 Venezuelan Legal System	252
7.6 Venezuela and the Rule of Law	262
7.7 Exceptional Regimes in the Venezuelan Constitutional Law	267

CHAPTER 8 THE VENEZUELAN BANKING CRISIS: EXCEPTIONAL POWERS AND IMF CONDITIONALITY

8.1 The Venezuelan Banking System	277
8.2 The Legal Framework of the Banking System in the 1990s	281
8.3 The Venezuelan Banking Crisis (1994-2001)	292
8.4 Venezuela's Responses to the Crisis	296
8.5 Legal Aspects of the Banking Crisis	301
8.6 Agenda Venezuela Results in the Banking Sector	319
8.7 The Venezuelan Banking System after the Crisis	329

CHAPTER 9 CONCLUSIONS

9.1 Introduction	334
9.2 Malaysia and Venezuela: Two crises, two stories	334
9.3 IMF Conditionality and the Rule of Law in Developing Countries:	338
9.4 From Global to Regional Pacts: New challenges for the IMF	363
BIBLIOGRAPHY	369

TABLES AND FIGURES

Table 1: Selected Latin American and Asian countries Human Development Index Growth	152
Table 2: Commercial Bank's Loans Property & Manufacturing 1997 Indonesia, Malaysia and Thailand	189
Table 3: Malaysia, Banking System	190
Table 4: Malaysia Selected Macroeconomic Indicators 1993-1998	204
Table 5: Selected measures adopted by BNM to stabilise the Banking Sector 1997-1998	219
Table 6: Selected Malaysia Legal Banking Reforms 1998-2005	232
Table 7: Poverty, by Ethnic groups 1999-2004 (%)	234
Table 8: Venezuelan Presidents 1959-2008	243
Table 9: Enabling Laws in the Democratic Era, 1961-2007	275
Table 10: Banks Institution Affected by the Crisis	295
Table 11: Key Events Venezuelan Banking Crisis, May 1993-July 1996	296
Table 12: Rights Suspension Measures, 1994	307
Table 13: IMF Technical Assistance Missions to Venezuela, February 1993-August 1995	309
Table 14: IMF Conditions Banking Sector	315
Table 15: Selected Privatisation Transactions by FOGADE	323
Table 16: Affected Banks and Mechanisms of Crisis Management	325
Table 17: Venezuela Selected Indicator 1989-2001	331
Table 18: Venezuela, Social Indicators 1990-2002	331
Table 19: Bank Credit/GDP Selected Latin American Countries (%)	332
Table 20: Banking Emergency Instruments and IMF Intervention in Venezuela	345
 FIGURE 1: PRIOR ACTIONS	 77
FIGURE 2: MAP OF MALAYSIA	144
FIGURE 3: INDONESIA, MALAYSIA AND THAILAND GDP 1998-2006	235
FIGURE 4: SELECTED INDICATORS, MALAYSIA 1995-2005	235
FIGURE 5: POVERTY, MALAYSIA 1997-2007	236
FIGURE 6: MAP OF VENEZUELA	238
FIGURE 7: HUMAN DEVELOPMENT INDEX, MALAYSIA AND VENEZUELA 1975-2005	246
FIGURE 8: SPOT VENEZUELA REFERENCE OIL BASKET (\$/B), 1993-1998	328
FIGURE 9: RULE OF LAW INDICATOR, MALAYSIA AND VENEZUELA	356
FIGURE 10: MALAYSIA AND VENEZUELA REAL GDP GROWTH 1993-2000	360