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The Institute for a Greater Europe established *The Greater European Journal* in 2019 as a continuation to its work publishing articles for students and young professionals from across the world as well as explore what Europe means on a greater cultural and political scale. Established in 2014, the Institute promotes European integration across the traditional borders of Europe and beyond. Papers were collected from a wide range of backgrounds and submitted through an anonymous peer-review process. This year we present our third edition of *The Greater European Journal*, which is to be published annually. This journal is dedicated to the interdisciplinary study of Europe across its borders and beyond, aiming to promote original research and debate whilst supporting young professionals and academics.

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EDITOR'S NOTE

Two years into the global pandemic, the year 2021 once seemed like the world was about to sink into a strange sort of normality, with the virus stabilising and the vaccines slowly rolling out. It was anything but, and 2021 was another of these years of cracks and fault lines.

The vaccines rollout was granted by a somewhat novel phenomenon in global affairs: vaccine politics. Be it because of patents, recognition or hoarding, our world found itself divided around the injection question. With many wealthy countries ready to administer a third shot while poorer nations still struggle to secure enough doses for their population's first injection, the division between the First and Third worlds made itself apparent again for those who wanted to do away with it. And stuck in the middle were the Cubas and Russias of the world, whose homegrown vaccines enjoyed scant recognition abroad. In any case, the lack of global cooperation gave way to wave after wave of new variants, that prolonged the pandemic, while in the Global North, where wealthier states hoarded vaccines and patents, anti-vaccination movements grew and increasingly fused with anti-lockdown ones. On the eve of 2022, COVID-19 still doesn't look like it is going away.

Europeans find themselves divided, not only by the pandemic, but around questions like the rule of law in Poland or the rise of fascism in France. Tensions are flaring up again at the Russo-Ukrainian border, and in the Białowieża forest, where migrants and refugees are caught freezing between Belarusian forces and Frontex personnel, showing once again that the migration crisis is before all a reception crisis. The continent faces an uncertain future, as the longest serving of its elected heads of government (unless one counts Mr Putin), Mrs Angela Merkel heads for retirement, and French elections are just around the corner.

But crises and fault lines aren't just that, they can also be turning points, for better or for worst. In Central Asia, 2021 was also the year of the US withdrawal from Afghanistan, an event that is sure to change the region's path in the future. In the western hemisphere, it was marked by the victory of Peru's Pedro Castillo and Chile's Gabriel Boric, already held as heralds of a second *Pink Tide*, after the 2010s were marked by a long conservative wave.

Though this year was a turning point for the Institute for a Greater Europe, it was none so dramatic. The IGE led an ambitious project with our new partners at the EU-Russia Civil Society Forum, a cross-media endeavour called *Places in the Sun*. The project, which confronted decolonial movements in the post-Socialist space and in the Third World, took the form of podcasts, articles, workshops, our institute's first published book, an event in Brussels' *Matonge* neighbourhood and a seminar at WIELS contemporary art centre.

This achievement is perhaps one of those we are the most proud and grateful for this year, and, we hope, an augur of even more ambitious things to come.

Valentin M. Luntumbue
Editor-in-chief

A political analysis of EU's uncertain legitimacy to protect the rule of law at the national level

Irina Betancor Almeida¹

Abstract

The rule of law crisis has prompted the need for clarification of the EU's legitimacy to ensure the effective compliance with the rule of law in all Member States. This question is addressed through a multidisciplinary perspective, following the multifaceted character of the rule of law. Special emphasis is made onto the political dimension, dividing it into three layers. To do so, legitimacy is analysed throughout its legal and political aspects, but also taking into consideration elements deriving from the integration process to provide a transversal answer to the legitimacy dilemma. While on the one side, the legal base for the protection of the rule of law at the national level has evolved continuously, including the creation of new instruments, the current legal framework does not yet provide clear, concise and effective mechanisms for creating supranational competences. On the other side, the integration process has increasingly accentuated interdependence in the EU's regulatory and judicial arenas, creating functional needs for further integration of the rule of law protection. Democratic backlash in one Member State can negatively affect the others, diminishing mutual trust, a fundamental principle for EU's integration. The final reflection on political legitimacy concludes that the rule of law crisis represents a political crisis, affecting not only institutions, but also European citizens. Eroding this principle leads to legal uncertainty, individual rights violations and constrains on the enjoyment of already acquired rights. Since the EU is an independent political entity, a supranational community based on common values, it would then be entitled to give itself the instruments to defend these values, given that a systemic breach of the shared values in any Member State represents a threat to the EU as a whole and not only to the Member State in question.

Introduction

The question of legitimacy has been touched upon the European Union (EU) since its very foundation. Whilst the effectiveness of economic integration has long provided for a sense of passive legitimacy based on the permissive consensus (Hooghe and Marks, 2009; Coman, 2018),

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increasing demands for the political legitimization of the European Project soon led to the evolution of the European Parliament from a merely consultative assembly to a real embodiment of European democracy.

Nowadays, the constraining dissensus political behaviour shown by many citizens all around the EU poses the question of whether this previous results-based legitimacy is still up to date (Hooghe and Marks, 2009). This increasing politicization has led to a democratic crisis at the heart of the EU, questioning its institutions, its policies and its very nature (Collignon, 2006). In addition, the constitutional and judicial reforms carried out in Hungary as well as the judicial system modifications and the potential constitutional reform to be implemented in Poland, the so-called “rule of law crises”, have prompted the need of a clarification regarding the EU’s capacities and mechanisms to ensure effective compliance with the rule of law in all Member States (Dawson & Muir, 2013; Coman, 2015; Kochenov & Pech, 2015; Coman, 2018; Mader, 2019). The rule of law crises refers to the complex combination of legal and political phenomenon taking place in Poland and Hungary over the last decades.

From this framework arises the question of the legitimacy of the EU to protect the rule of law at the national level, a question entangled in three different types of legitimization sources: the existence of a clear legal base to do so, the integration process itself and the legitimacy conferred to the EU as a supranational polity. This structure is followed in this article to answer its question by adopting a transversal perspective that relies on both, the political and legal aspects of the rule of law and the supranational mechanisms for its protection. Finally, while a differentiation between thin and thick conceptualizations of the rule of law serves as a way to separate the political and legal dimensions it comprises (Mader, 2019), the definition adopted for this article corresponds to the substantive dimension, as it allows for the inclusion of a wide set of ideals (Chesterman, 2008).

The three dimensions of EU’s legitimacy as protector of the rule of law

1. Legally constructed legitimacy

Coman (2015) purposed the existence of a regulatory gap when it comes to rule of law monitoring, implementing and enforcing at the supranational level. During the enlargement process, Member States agreed to delegate the power of monitoring the achievements of the Copenhagen criteria, including the rule of law, to the European Commission. Notwithstanding, the Commission lacks formal power to implement and enforce the rule of law within the EU (Dawson & Muir, 2013; Coman, 2015: 3).

The Treaties’ revisions carried out during the 1990s brought new mechanisms to protect the rule of law, notably the Article 7 procedure and the inclusion of the fundamental values in the body of the Treaty on EU (TEU) (Coman, 2018; Van Elsuwege & Gremmelprez, 2020). Notwithstanding, Müller (2015:146) showed that these values do not confer material competence, as they rather represent general orientations to policy and law implementation. Correspondingly, Mader (2019) asserts that the lack of precision in Article 2 (TEU) also has negative consequences for its enforcement. Kochenov and Pech (2015: 516-517) insisted on the political nature of Article 7

TEU, arguing that the Council is not legally compelled to impose sanctions when there has been a breach of the fundamental values of the EU. Furthermore, Coman (2018: 144) noted that the Article 7 mechanism is conceived as a nuclear option whose application is impractical in actual legal practice.

The Commission, in order to deal with the previously described situation, recommended the adoption of new instruments. In 2013, the EU Justice Scoreboards, and in 2014, a new framework to strengthen the rule of law at the EU level (Coman, 2018). The need for the creation of this new framework – which functions as an early warning tool, preceding the triggering of the Article 7 procedure – indicates that available tools were not sufficient, neither efficient, to prevent violations of EU values (Kochenov & Pech, 2015: 516). The principle of the rule of law, although used by the Court of Justice of the EU, “is not a rule of law actionable before a Court” (Ibid, p. 519). Therefore, Article 2 does not provide a legal basis, as its content can only be operationalized in the frame of Article 7.

2. Legitimacy deriving from the EU integration process

Firstly, Coman (2015) argues that, while the enlargement process created a frame for the development of new policy areas regarding the rule of law in an institutionalized manner, they have not yet emerged as such. During the enlargement, the EU saw its input legitimacy increased as a result of the diverse consultations. Nevertheless, the spill-over effect in the area of the rule of law implementation and enforcement has been limited once candidates became Member States. In spite of the fact that the rule of law has been included as part of different internal policies at the EU level, Coman (2015) points that “the political and administrative autonomy of the Commission has remained precarious” (p. 7).

Secondly, the integration process has increasingly accentuated interdependence. As functional theories reveal, progressive integration has led to spill-over effects (Haas, 2004: 199). This continuous inclusion of policy areas under the EU umbrella has not only resulted in the high interdependence of economic and monetary policies, but also created political interdependence (Müller, 2015). Furthermore, Kochenov and Pech (2015: 521) show that interdependence in the EU’s regulatory and judicial arenas is based on the principle of mutual trust, which can no longer function if one Member State does not respect the rule of law at the national level (Rizcallah, 2019; Van Elsuwege & Gremmelpré, 2020). Furthermore, Müller (2015) has exposed how democratic backlash in one Member State can negatively affect the others, further synthesizing the cross-border output into the following idea: “if national institutions of democracy and the rule of law fail, mutual recognition will end” (Ibid, p. 145). For instance, mutual trust is the fundamental base of the Single Market since all actors trust the system based on common regulations. The same applies to intergovernmental policy areas, notably foreign and defence policies are two fields whose development at the EU level has been possible due to interdependence between the Union members, resulting from the implementation of a common broad international relations strategy. If the doubt of implementation in one Member State starts to crumble the cost-benefit analysis of intergovernmental cooperation, incentives to work together will be eroded.

Since its inception, the EU has been committed to shared values, but the integration of these values into the legal scheme has taken place in a progressive manner, strongly encouraged by the need for legitimization of the European project (Coman, 2018). According to Smith (2019), the EU integration process relies on the rule of law as a requirement to ensure the effective implementation of EU policies, given that the EU is essentially a system of law whose functioning depends on the law application at the national level (Rizcallah, 2019). Likewise, as expressed by Van Elsuwege and Gremmelprez (2020: 13), the respect of the rule of law is linked to the principle of sincere cooperation, which implies that Member States shall not implement measures that could endanger the shared goals and values of the EU.

EU integration has progressively become more politically oriented, augmenting the importance of values and rights. Examples of this trend can be found in the positioning of most EU's leaders regarding Hungary's new educational law which touches upon the respect for fundamental rights enshrined in Article 2 (TEU). Besides, the list of competences in which the institutional system of the EU is involved continues to increase with each crisis period: the economic and monetary union was deeply reinforced after the 2008 financial crisis and the EU is developing currently. Since the 2000s, shared values have been inserted as fundamental parts of EU action, both domestically and in the area of external relations (Coman, 2018). The conceptual change from principles to values is consistent with this evolution, considering that the term "values" is more related to political ideals, pointing to the recent development of the EU's political dimension (Smith, 2019).

3. Political legitimacy

The rule of law crisis is also a political crisis. For the first time in the history of the EU, democratically elected governments have systematically pursued illiberal, anti-democratic policies, threatening the values of the European project. Mader (2019) argued that the solution to this situation can only be thought of as one of political nature. In accordance with these ideas, Müller (2015) exposed that, while the democratic principle of all-affected interests is not commonly used in the EU sphere, it is not in the objective interest of any of the Member States, nor of the European citizens, to have a non-liberal government participating at the EU institutions. Since decisions taken at the Council and the European Council have a direct impact on citizens' lives, the fact that the offending Member State enjoys the same voting rights as the rest of them represents a threat to all Europeans (Kochenov & Pech, 2015: 521).

The EU is not a democracy in itself, but it rather takes part in democratic processes. The sui generis character of the EU, which is not a State, nor a Federation, together with the complex institutional structure depending simultaneously on supranational, intergovernmental and national processes, creates an unique system of governance. As a result, it is subjected to a double legitimacy when described as a democratically fully legitimate polity: national parliaments' legitimacy and the European Parliament legitimacy (Müller, 2015). Hence, the EU as a political community based on common values would be entitled to give itself the instruments to defend these values (Coman, 2018: 147). A systemic breach of the shared values in any Member State represents a threat to the EU as a whole and not only to the Member State in question (Mader, 2019: 139).

Conclusion

The current legal framework does not provide clear, concise and effective mechanisms for the creation of supranational competences that allow the Commission to protect the rule of law at the national level. Despite subsequent treaty reforms, the rule of law is still codified as a fundamental value, preventing its operationalization as a judicially enforceable prescription outside the framework of Article 7.

Even though the Commission has monitored and evaluated the fulfilment of the Copenhagen criteria during the enlargement process, spill-over effects were limited once candidates had acceded to the EU. However, increasing interdependence between Member States has turned into functional needs for more political integration. The EU, as a system based on laws, relies on national actors for the enforcement of supranational legislation. Therefore, the rule of law crises have brought into the debate the need for new mechanisms in order to strengthen and safeguard the rule of law within the EU. One of the main arguments to do so relies on the effects that breaches on the rule of law in one Member State can have in other Member States, as well as its direct consequences for European citizens. A good example of such consequences is the lack of certitude of legal protection, the blurring of the fundamental right to be equal before the law and the possibility of seeing individuals' rights violated.

The concepts of the EU are embedded in multiple democratic processes, both at the national and the European levels, that create a complex, supranational, political legitimacy derived from national and European processes of participation and election. Given that the breaches of rule of law affect these processes that European citizens partake in, it would be politically legitimate for the EU to protect the rule of law on the national level, as well as on the European level.

Overall, the EU's legal legitimacy to enforce the rule of law at the national level is evolving, with the constant development of new tools and mechanisms. There are functional needs for further integration of rule of law enforcement, which are sustained on a clear political legitimacy built around democratically reinforced values.

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International Organizations and Democratic Backsliding: The Case of the Western Balkans¹

Boris Ananiev²

Abstract

Democracy promotion has been a staple of international organizations (IOs) since the fall of the Iron Curtain. Today, the number of IOs is at an all-time high, yet cases of democratic backsliding are growing around the world. This article explores the role of the EU in the (de)democratization process within the non-EU Western Balkan countries (WB6). Using the Liberal Democracy Index from V-Dem's dataset to illustrate the degree of democratic backsliding in this region, followed by a qualitative case study of the most severe case, a link between the EU enlargement conditionality policy and democratic backsliding can be established. Namely, the EU's democracy promotion apparatus – although widely successful – has led to unintended developments in the process of democratization in the WB6 region by placing greater emphasis on the executive branch or disregarding the possibility of complex election manipulation. An important implication of the analysis lies in understanding how different factors, both internal and external, influence the process of democratization and how democracy promoters can improve their approach.

Introduction

The rapid democratization of states at the end of the twentieth century marked the beginning of a new era in governance around the world. Starting with the Carnation Revolution in Portugal in 1974 and spreading across other south European countries such as Greece and Spain, the third wave of democratization continued well into the 1980s and 1990s to include countries on every continent (Huntington, 1991). Around this period, democracy promotion – a distinctive foreign policy phenomenon attributed to democracies, begun to take hold among developed nations. This foreign policy instrument quickly became the staple of numerous international organizations (IOs) as well (Pevehouse, 2005). At the same time, the number of IOs increased dramatically, but more importantly, the percentage of IOs that actively seek to promote democracy abroad rose threefold from 1980 to 2010 (Marshall and Cole, 2011; von Borzyskowski and Vabulas, 2018).

¹ This article draws on the author's master's thesis *International Actors and Democratic Backsliding: The Case of the Western Balkans*, defended in June 2021.

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While scholars do link IOs with democratization, recent years have witnessed a surge in cases of democratic backsliding both in consolidated and new democracies (Poast and Urpelainen, 2015; Hyde, 2020). **So, what explains these counterintuitive episodes of democratic backsliding during an era of widespread democracy promotion?** Existing literature has extensively covered domestic (internal) sources of democratic backsliding in numerous countries and/or regions that show signs of democratic erosion³, however few have examined the role of international actors in regard to this phenomenon. Given this, I argue that IOs and their democracy-promoting policies have inadvertently enhanced backsliding in some new democracies. In essence, IOs can be considered as one of the *external* factors that can potentially provoke democratic backsliding. To illustrate and test this, the article will focus on the Western Balkan countries and how the European Union (EU) and its enlargement conditionality policies have contributed towards democratic backsliding in the region. The intended purpose of this article is twofold: to broaden the debate on democratic erosion and its underlying causes and to contribute towards improving the EU democracy promotion apparatus.

Research Design

This article follows a bipartite research design directed at **(1)** illustrating the extent of democratic backsliding in the non-EU Western Balkan countries and **(2)** exploring how the EU (and its enlargement conditionality policies) influence the process of democratic backsliding in the region. This empirical approach allows the article to study the phenomenon of democratic backsliding as well as the key external explanations that are often overlooked in existing literature through establishing a link between democracy-promoting international organizations and backsliding.

1. The extent of democratic backsliding in the non-EU Western Balkan countries

The research will include six out of the seven countries of the Western Balkan region, later referred to as WB6: Serbia, Montenegro, North Macedonia, Albania, Bosnia and Herzegovina and Kosovo⁴. All of these countries are currently not EU members (they are either EU Candidates or Potential EU Candidates) (European Commission, 2020). Croatia, commonly considered a Western Balkan country, will be excluded from the scope of the research because of its EU membership. In order to evaluate the extent of democratic backsliding in the WB6 region, the article will isolate the WB country with the most severe form of backsliding and draw parallels with the two hypotheses below. To achieve this, the Liberal Democracy Index (LDI) from the Varieties of Democracy (V-Dem) dataset will be used.⁵

³ See Hanley, Seán, and Sikk, Allan. (2014) Economy, Corruption or Floating Voters? Explaining the Breakthroughs of Anti-Establishment Reform Parties in Eastern Europe. *Party Politics*, Volume 22(4); Krastev, Ivan. (2016) The Unraveling of the Post-1989 Order. *Journal of Democracy* Volume 27(4). or Rupnik, Jacques. (2016) Surging Illiberalism in the East.” *Journal of Democracy*, Volume 27(4).

⁴ This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

⁵ Clarification on the V-Dem dataset and the LDI is included in the *Democratic Backsliding in the WB6 region* section of this article.

2. How does the EU and its democracy promoting policies influence democratic backsliding within the WB6

The results of the first part of the empirical study are going to dictate the case selection for the second part — a qualitative case study. Namely, the case selection will be done by singling out the country that exhibited the most severe case of democratic backsliding captured by V-Dem's LDI. Once this country is identified, the following two hypotheses will be tested through qualitative analysis:

H1: EU enlargement conditionality increases the likelihood of democratic backsliding by placing greater emphasis on the executive relative to other democratic institutions, leading to executive aggrandizement.

H2: EU enlargement conditionality increases the likelihood of democratic backsliding by focusing on the minimal requirements for free and fair elections, disregarding the possibility of a more complex election manipulation.

Democratic Backsliding in the WB6 region

Democratic backsliding is a phenomenon, often seen as a type of a de-democratization episode that occurs when democratically elected officials deliberately take actions to (1) deteriorate institutional checks on executive power, (2) diminish the strength of opposition parties or the opposition in the legislature and often (3) target other characteristics associated with liberal democracy such as the independent judiciary, civil society and human and minority rights (Bermeo, 2016; Maeda 2010). As a legal, state-led process, backsliding retains minimalist characteristics of democracy such as free and fair elections, resulting in a diminished form of democracy rather than autocracy (Meyerrose, 2020). So, in order to measure the degree of democratic backsliding in a country, one needs to look at the variations of the quality of democracy, rather than at a dichotomous classification of democracy-autocracy.

The Liberal Democracy Index (LDI) is one of the 350 indices offered by the Varieties of Democracy (V-Dem) dataset – the largest social science database focused on democracy. The LDI captures slight changes in democratic characteristics such as the quality of elections, individual rights, media freedom, checks and balances of the executive, respect for civil liberties and the rule of law and independent legislature and judiciary (Coppedge et al., 2020). As such, this index has the ability to show subtle shifts in the quality of democracy in a given country and thus, it is a suitable tool to illustrate democratic backsliding when compared to other more conventional indices such as Freedom House or Polity for example. The LDI is based on expert surveys and a mix of additive and multiplicative aggregation rules (Kapidžić, 2020) and uses a 0-1 scale, with higher scores indicating a greater degree of (liberal) democracy.

Figure 1 shows the applied LDI on the WB6 region from 2002 until 2020. As already mentioned, the scope is limited to non-EU WB countries, so it excludes Croatia (commonly considered a part of the Western Balkans). This choice is driven by the independent variable – the EU enlargement conditionality policies, which does not apply to states that are already in the EU. The timeframe is strategically set to cover the years from 2002 until 2020 (the most recent available data). This chosen interval allows sufficient time for domestic development of minimalist democratic institutions such as free and fair elections following the dissolution of Yugoslavia, while also considering key events in EU-WB6 relations – all of which occurred after the turn of the century.

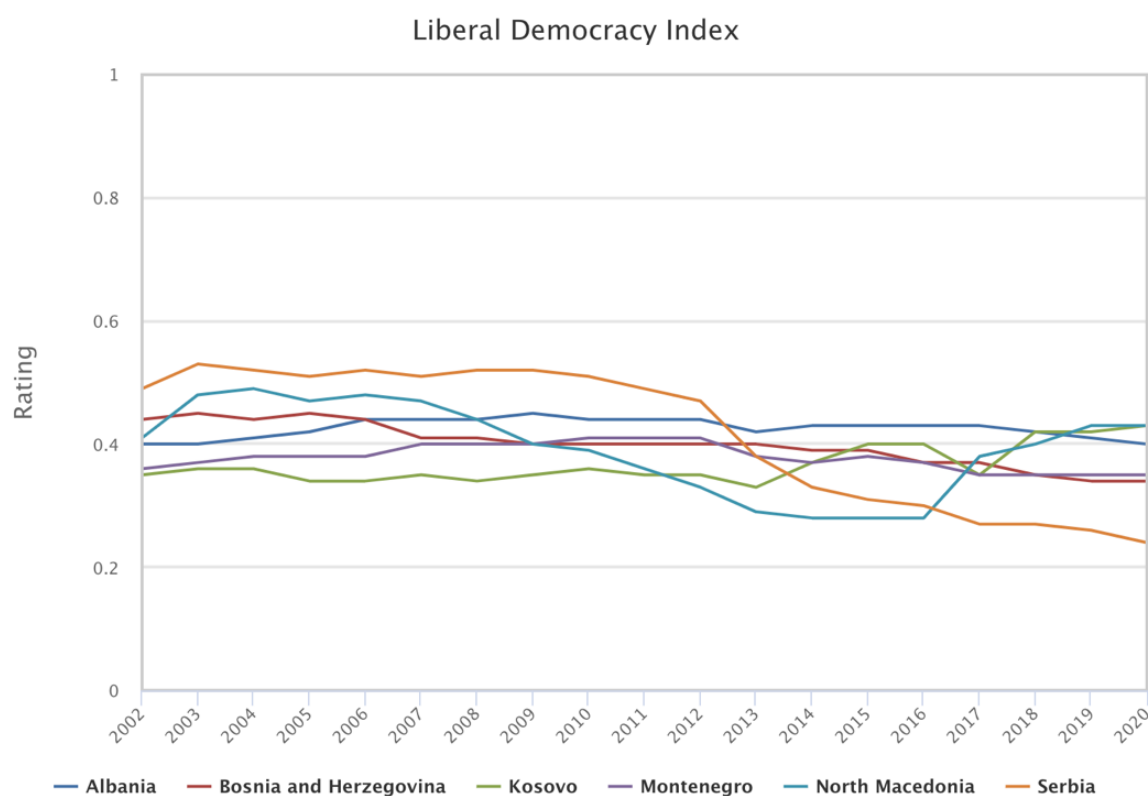


Figure 1. V-Dem LDI applied on the WB6 countries (2002-2020)

Based on the LDI, the WB6 countries did not show an improvement in the quality of their democracy in the chosen time interval of 18 years, from 2002 until 2020. After a stagnant period with minor fluctuations over the course of several years, all WB6 countries displayed a drop in the quality of democracy after 2012. The emergence of democratic backsliding did not occur simultaneously in each country – North Macedonia had been experiencing a steady decrease in the quality of democracy since 2004, and Serbia had a sharp downturn in 2012. Despite the recent improvements in specific cases, the LDI shows clear empirical signs of democratic backsliding in the WB6 region. While this increase of illiberal tendencies can be attributed to internal matters such as the rise of populism, the economic consequences following the European crisis of 2010-2013 or the growing interethnic tensions in some states (Kapidžić, 2020), the international community also played a role. The next section tests the aforementioned hypotheses regarding the role of the EU as the external factor that inadvertently contributes towards backsliding.

Backsliding: The Inadvertent Consequence of Democracy Promotion?

Although there are several external international actors influence the process of democratization around the globe, this article focuses on the European Union and their democracy promotion apparatus – the EU’s enlargement conditionality (Barnes and Randerson, 2006). As a non-official foreign policy instrument, EU accession conditionality has evolved to be an effective tool to drive certain countries or even regions towards democratic consolidation (as seen with the Eastern enlargement in 2004, 2007 and 2013). The Western Balkan region has been on the EU’s enlargement agenda for more than two decades now and the benefits thus far are clear: Croatia joined the EU in 2013 and the rest of the WB countries signed the Stabilization and Association Process (SAA), effectively making EU integration their foreign policy aim. However, as illustrated in the previous section, WB countries are experiencing democratic backsliding despite the EU’s democracy-promoting efforts. While scholars have studied the domestic reasons behind these illiberal tendencies (see Bieber, 2020; Marciacq, 2017), existing literature is scarce when it comes to external factors such as international organizations for instance.

From the LDI, we can isolate Serbia as having the most dramatic case of democratic backsliding in the last two decades. As seen in **Figure 2**, the quality of democracy had minor fluctuations between 2002 and 2012, and then continued to drastically decrease. So, to test **H1** which states that EU enlargement conditionality increases the likelihood of democratic backsliding by placing greater emphasis on the executive relative to other democratic institutions, we need to focus on the *other* democratic institutions. Firstly, as soon as the EU accession process starts, the space for parliamentary participation begins to shrink. This can be confirmed by the fact that SAA negotiations between Serbia and the EU were carried out with negligent parliamentary participation (Ministry of European Integration of the Republic of Serbia, 2019; Flessenkemper and Kmezić, 2017). On a more local level, EU institutions that engage with Serbia, “neither require nor actively encourage” parliamentary oversight (Flessenkemper and Kmezić, 2017). Instead, policies negotiated by the executive branch are absolute and final. This leads to a disbalance of the checks on the executive branch when it comes to the process of negotiating EU accession. Encouraged by this, the executive branch might continue to eliminate other checks and balances via legal and institutional changes that impede oppositional forces to challenge executive actions, a process that Bermeo (2016) calls *executive aggrandizement*. In the case of Serbia, there is overwhelming evidence that executive aggrandizement is in fact occurring under the rule of the Serbian Progressive Party (SNS) (Sofer, 2017)

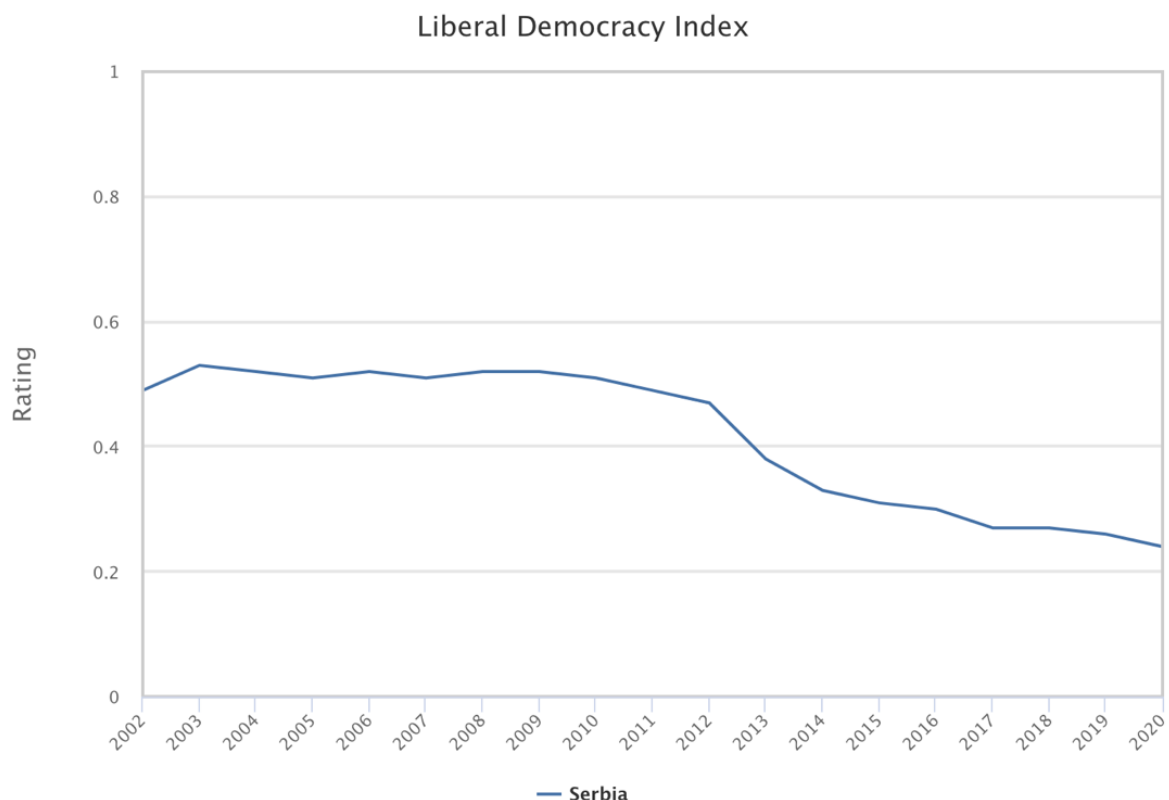


Figure 2. The course of democratic backsliding in Serbia (2002-2020) as shown through the LDI

As part of the democratic component of EU enlargement conditionality, free and fair elections are considered to be the minimal requirement that guarantee democracy (Meyerrose, 2020). Thus, the EU supports potential member states in their path towards fraud-free elections and improved electoral legislation. While the EU has been successful in improving basic election guidelines in Serbia through its conditionality framework thus far, it disregards more complex forms of election fraud (**H2**). Bermeo (2016) argues that democratic backsliding can manifest itself as strategic election manipulation which can be explained as a range of actions taken to undermine opposition movements through various mechanisms such as abusing government funds for incumbent campaigns, voter buyouts or intimidation of opponents. According to an OSCE/ODIHR report of the 2016 parliamentary elections in Serbia, such calculated election manipulation is already occurring in the country. In fact, the report states that vote-buying and general intimidation by the government during previous elections in Serbia (2012, 2014) are being replaced by covert pressure on employees in the public sector or those dependent on welfare programs (OSCE, 2016). This goes to show that Serbia is indeed experiencing strategic elections manipulation alongside executive aggrandizement, despite the EU's efforts aimed at democratic consolidation.

Conclusion

The rise of international organizations and their democracy promoting policies did manage to aid in the democratization process of numerous countries. However, the recent increase of illiberal tendencies across Europe is starting to raise questions. While a fairly obvious link would be to look

at domestic developments such as economic difficulties or populist movements, and democratic backsliding in these countries, international organizations do have a role to play. So, I argued that international organizations and their democracy promoting efforts unintentionally caused backsliding in some states. I used the example of the EU and its enlargement conditionality policy as the democracy promoter, and the Western Balkan 6 countries. The Liberal Democracy Index from V-Dem's dataset was used as a quantitative method and illustrated a drop in (liberal) democracy in the region. Then, the EU was linked to democratic backsliding through two interconnected mechanisms: the executive and elections. Motivated by the EU disregard of the legislature in the negotiation process, the executive continues to erode democratic characteristics, leading to executive aggrandizement. Relatedly, the EU's focus on elementary election policies such as elections monitoring for example omits the possibility of more complex election-fraud instances such as strategic election manipulation.

EU enlargement conditionality policy might be a success story when it comes to the preliminary and basic democratic elements. However, there are additional elements between the basic ones and complete democratic consolidation that need to be addressed. Diversifying the attention away from the executive and reallocating democracy promotion efforts towards root causes rather than palpable symptoms could not only enhance the EU's conditionality policy, but it could also help circumvent future democratic backsliding episodes.

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Social and political implications of football fandom in Post-Socialist Poland, Serbia and Croatia

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Abstract

This article draws attention to the issue of social politicisation of the football fandom following empirical comparative study between Poland and counties of the former Yugoslavia, focusing primarily on Serbia and Croatia. The analysis introduces the aspect of historical legacy in the light of interconnectedness of football fans with anti-communist social movements including Polish Solidarity and (anti)-Yugoslav nationalism. In the subsequent segments, it elaborates the contemporary landscape of football fandoms by analysing some of the key conundrums. What are the reasons for hate and violence on football stadiums? Are all football communities necessarily (far)-right? What is their relationship with currently ruling elites?

Introduction

Football fans constitute an indispensable part of social landscapes in Poland and the countries of what was once Yugoslavia. Any visitor to the region will be aware of their presence in the urban space. Either in the use of widespread graffiti glorifying particular clubs or calls for eradication of the perennial opponents embedded with nationalistic, historical and politicised undertones. Football fans' activities are as variegated as politically and socially diversified, truly reflecting this particular environment. For some, they are just a rabble of violent hooligans embodying xenophobic and far-right radicalism. For others, football fans are just local patriots, directing the same level of affection towards their clubs, cities, geographical regions or even nations wholly. The present paper intends to confront some of the most hackneyed stereotypes and generalisations regarding the environments of football fans. The main reason for focusing on Poland and former Yugoslavia in particular stems from the academic knowledge available of the socio-political context of these areas as well as the interesting comparative potential regarding the post-communist past, nationalism and identity.

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Historical anti-communism and nationalism

The emergence of a massive football fandom in Poland between 1970 and 1980 coincided not only with the greatest successes of the Polish national team in the World Cup and Summer Olympics, but also with the establishment of renowned trade union *Solidarność* (Solidarity). On the one hand, football stadiums served as a great platform for chanting numerous anti-governmental slogans such as “once a sickle, once a hammer into a red rabble” or “on the trees, instead of leaves, communists will be hanging” (Benkowska, 2017). On the other hand, repetitive brawls between the fans of opposite, antagonistic clubs very often turned into struggles with governmental security services. In the memoirs published by a journalist Karol Gac or a priest Jarosław Wąsowicz one can read that the most politically engaged football club in the oppositionist activity was Lechia from Gdańsk, a city in northern Poland that experienced bloody massacres of workers in 1970 and where later in 1980 Solidarity was formed. During every football match fans organised the so-called “five minutes for politics” when all anti-communist expressions were preached, either verbally or written on banners (Gac, 2020). One of the most remembered matches took place when Lechia hosted the Italian *Juventus* during an international competition in 1983. The leader of Solidarity, Lech Wałęsa, who appeared on the stadium, was quickly noticed by foreign media and other fans who started chanting his surname and other pro-Solidarity slogans, the events that led to disturbed broadcasting of the match by the state national television (Wąsowicz, 2006). Additionally, many activists of the Solidarity movement who at the time were devoted supporters of Lechia later became significant politicians, including former President of the European Council Donald Tusk or current head of Polish State Television Jacek Kurski. In the subsequent years, Lechia’s experiences and Solidarity’s messages started to circulate around other Polish football fandoms.

The situation regarding the activity of football fans was slightly different in socialist Yugoslavia. Football stadiums became the area of demonstration of local national identities and political support for the new generation of politicians including Slobodan Milošević or Franjo Tuđman who established the pillars of the post-Titoist nationalism that contributed to the disintegration process of Yugoslavia. Nonetheless, it is important to bear in mind that football had always been the expression of nationalist and separatist movements even before the Tito’s death can be exemplified with such events as the Croatian Spring from 1971 (Tsai, 2021) or Kosovar unrests from 1968. When discussing the influence of football on socio-political life of Yugoslavia many would pinpoint the match from Spring 1990 between Dinamo Zagreb and Crvena Zvezda Belgrade, defined by some scholars as the official beginning of the civil war. The act of one Dinamo player, Zvonimir Boban, who kicked a Yugoslav policeman that intended to beat a Dinamo fan, turned into a huge symbol within Croatian national separatism, besides converting Yugoslav security services into Milošević’s political tool to transform Yugoslavia into Greater Serbia (Freiermuth, 2010). In the following years, many of the fans of Dinamo Zagreb or Hajduk Split formed in two groups namely, Bad Blue Boys and Torcida respectively joined the forces of the voluntary Croatian army. Similarly, the leader of Crvena Zvezda’s fans grouped in Delije and led by Željko Ražnatović Arkan, established well-known Serbian militias known as “Arkan’s Tigers”, accused of committing crimes against humanity in Croatia and Bosnia (Mueller, 2000).

Reasons for being radical in the 21st century

After the fall of communism and the end of Yugoslav wars, both being the key drivers for establishment of extreme football environments, many would wonder the reasons for football fans' radicalisation as in the 1970-80 periods. Some sociologists would mention the following phenomena. Firstly, many governments from the 2007-2016 period including the Polish Civic Platform, Social Democratic Party of Croatia or Serbian Democratic Party are responsible for the so-called crisis of community and fall of the social trust to authorities evoked by neoliberal and clientelist economic reforms (Zagórski & Santana, 2021). Absence of a valid post-communist lustration allowed political opponents to accuse liberal politicians of having deep connections with the communists, thus, as understood in plain language, they represented the anti-national communism. Secondly, liberals were also held responsible for neglecting the national sphere of education, especially with a definition of national identity that led to the emergence of an identity crisis. This oversight was similarly intercepted by the conservative opposition and then instrumentalised for building electoral support. Other factors would also include a general disappointment stemming from an awaited sense of belonging to the EU or the imagined "West", seen in massive migrations from Poland, economic stagnation in Croatia or the continuous dream of Serbian integration with the EU. Hence, football environments welcomed a fertile ground for recruiting new members feeling discriminated against by the liberal economic system that seeks collective recognition in a community representing an explicit identity and a strong internal cohesion.

Nationalism, far-right, xenophobia and their limitations

Some political analysts would classify extreme nationalists, neo-fascists and football fans under the same ideological category. A common social portrayal of people attending football stadiums nowadays is quite consistent. The perception of an ordinary football fan in the former Yugoslavia or Poland is a person harbouring nationalistic, xenophobic, anti-Semitic, anti-communist, anti-LGBT beliefs well integrated in a strict hierarchy underpinned by violent masculinity and religious values (Bobrowicz & Nowak, 2021). Speaking empirically, there are plenty of examples easily available thanks to their exposure within the media. Groups of organised fans between football clubs in Poland insult each other with direct references to the Jews and the Holocaust (Image 1). Graffitis adorning presumably every Polish city portray a radical interpretation of history emphasised by the fact that football fans are the most faithful and devoted patriots to the "truth". Celebrations of Croatian football successes during the 2018 World Cup in Russia were constantly intertwined with slogans referring to Second World War Croatian fascist movement Ustaša, articulated by nationalist singer Marko Perković "Thompson" (Vladislavljevic, 2018). In Serbia, football fans representing Crvena Zvezda's Delije, Partizan's Grobari or Vojvodina's Firma conduct many demonstrations during national and international matches claiming 1999 NATO's air strikes barbarism and calling Kosovo as part of the "heart of Serbia". In countries like Bosnia and Herzegovina or Northern Macedonia, football fandoms are essential in expressing ethnic

divisions and separatism as in the case of Croatian Zrinjski from Mostar or Albanian Shkëndija from Tetovo.²



Image 1. Graffiti Stating, "Best away match of Cracovia: a tour to Auschwitz"³

Are all the fans from the region purely nationalistic then? Despite examples, there are some exceptions to this rule. Firstly, there are some minor clubs whose fans would openly admit to represent socialist, egalitarian, anti-homophobic or anti-fascist ideology including Croatian NK Zagreb and RNK Split, Bosnian Velež Mostar or a former part of Polonia Warsaw fans affiliated with local Antifa (Jurković, 2018). Secondly, anti-Semitic or racist slogans directed at players and fans of other teams are quickly jettisoned when such players with a potentially “daring” origin join their own clubs. Examples of the aforementioned trend are, for example, the fans of Hajduk Split, who in 2005 displayed a racist banner aimed at Dinamo Zagreb’s Black players including Chago, Etto and Da Silva as belonging to the “Dinamo Zoo”, later celebrated the successes of their own Black stars (Lisec, 2015). Fans of Wisła Kraków who are the authors of the anti-Semitic graffiti from Image 1 mocking their greatest rivals later celebrated goals scored by one of their most notable stars, Maor Melikson, coming originally from Israel (Bratkowski, 2011). It is still unclear who the author of recent graffiti in Łódź is but in reaction to waves of anti-Semitic inscriptions between fans of local Widzew and ŁKS the new ones banteringly resemble a quarrel between toddlers⁴ (Burska, 2019). Finally, as demonstrated in the research conducted by Dražen Lalić, many

² Shkëndija fans from a match against Milan with a banner "This land has been always a component of Great Albania" Intv Albania, 18.08.2017, Milan-Shkëndija, "Ballistët" arrijnë në "San Siro", <https://www.intv.al/milan-shkendija-ballistet-arrijne-ne-san-siro-34768>

³ TPI, Dziennik, 04.03.2009, Raport FARE: Polska symbolem piłkarskiego antysemityzmu, Taken by Photographer LK for unofficial fan page of Cracovia Fans http://terazpasy.pl/Publicystyka/artykuly_prasowe/raport_fare_polska_symbolem_piłkarskiego_antysemityzmu

⁴ Graffiti Stating, "ŁKS thinks that "in vitro" is a name of pizzeria", Mariusz Bielski, 16.09.2020, ŁKS myśli, że in vitro to pizzeria, a Widzew, że Żabka to zoologiczny. Derby na łódzkich murach,

football fans actually support economic egalitarian reforms and oppose the richest class of local oligarchs and international banks, therefore not putting them straightforward on the alleged right-wing ideology (Lalić, 2015).

Violence and football fandom

Presumably, one of the most negative effects impairing the image of football fandom concerns the common use of violence. That assertion refers to two various points. The first one is organised by the hooligan groups in a form of earlier settled setups for a given equal number of participants from two rival clubs in a specific place and time. Sometimes these events occur in public spaces such as highways or parks which can turn out as a life threat to other people. The second type regards the uncontrolled use of violence which often transcends any affiliation with the original football club and is demonstrated, for instance, with such events as direct assaults on equality parades as the one in 2010 in Belgrade or in 2019 in Białystok. The other facet of public violence refers to mock lynchings effectuated with symbolic demonstrations during matches. They might range from mild examples such as the banner of Lechia Gdańsk fans denouncing the affiliation of Donald Tusk with their club up to more radical ones, including the Legia Warsaw fans' hanging on gallows of the two liberal journalists Monika Olejnik and Tomasz Lis or the public stabbing of a sex doll by the fans of Partizan Belgrade in 2009 representing Brankica Stanković⁵, a B92 journalist who published a series of reports showing evidences of connections between football fans and organised crime groups (Rusovac, 2010).

Politicisation of football fans and their relations with current governments

It is interesting to see a dramatic shift of relations between football fans and their governments after conservative parties assumed power in post-2015 Poland, Croatia and Serbia. Even though academic sources connected to this topic are insufficient or non-existent, there are plenty of investigative reports claiming an allegedly deep cooperation between Aleksandar Vučić and football hooligan groups. According to KRIK's journalist, Vesna Radojević, one of the events where such cooperation was utilised for political means was the dispelling of 2020 protests where Partizan Belgrade fans' group Janjičari attacked police forces that led to the arrest of many peaceful protesters where media reported oppositionist demonstrations as aggressive and dangerous (Radojević, 2020). Moreover, the ongoing scandal around the criminal organisation responsible for numerous assassinations and drug smuggling led by Veljko Belivuk demonstrates a series of connections between Partizan fans and governmental environment (Higgins, 2021).

In recent years, the current governing party in Poland, Law and Justice, notoriously attempted to get support from football fans on the basis of their numerous antagonisms with previous liberal governments. A very interesting phenomenon emerged on the wave of anti-abortionist protests in

<http://www.2x45.info/aktualnosci/64162/lks-mysli-ze-in-vitro-to-pizzeria-a-widzew-ze-zabka-to-zoologiczny-derby-na-lodzkich-murach/>

⁵ Partizan fans with a sex doll imitating Stanković and a canvas of Car Dušan, medieval ruler of Serbia, Javni Servis.net, 24.07.2020, <https://javniservis.net/dnevnik/vujosevic-i-huligani-upotreba-tolerancija-i-osuda/>

autumn 2020 in Poland that divided football environments. After Kaczyński's appeal towards football fans to defend churches from radical left, some of the fans established paramilitary divisions patrolling key cathedrals throughout the whole country whereas the others joined women strikes calling for anti-governmental actions evinced with such radical events as an assault by Arka Gdynia fans on regional Law and Justice offices. Interestingly enough, such a cooperation on the security scale between football fans and church institutions is also present in Kosovo where vulnerable Orthodox monasteries are protected from organised football militias.

Conclusion

The present paper outlined empirical implications of anti-statism and nationalism represented by football fandom in Poland and former Yugoslavia on social and political life. To sum up, there are three key conclusions to take from this analysis. Firstly, historical and nationalistic undertones of these environments, scopes of violence or use of public lynchings are highly complementary when it comes to Polish and ex-Yugoslav contexts. Secondly, despite the vocal minority of football fans arouse many connotations between football environments and far-right radicalisms, there are some limitations and exceptions to this rule. Thirdly, the governments of the analysed countries attempted to utilise the anti-liberal sentiments of football fans by seeking to get their political support which turned out only as partially successful as the Polish case demonstrated.

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Western Democracy in the Information Age: Online Discourse and the Infeasibility of Regulation

Oliver Lawrie¹

Abstract

With reference to social media platforms, this paper examines both the codependent nature of online communication and political processes in Western democracies and the consequences this relationship has for the health of democracy. It will go on to assess the necessity for the regulation of cyberspace, should governments want to preserve the benefits and minimise the disadvantages these mass-communication tools offer. It will then argue why, although necessary, any regulation of discourse is infeasible, as it fundamentally contradicts one of the cornerstones of any Western democracy: the freedom of expression. It will conclude with my own proposal on the form a solution could take that would overcome this regulatory paradox.

Introduction

Technological developments throughout the Information Age have made communication possible on a previously unparalleled scale. From electronic mailing capabilities through to the swathe of modern social networks currently available, understanding which effects these new found opportunities for mass-communication have on society is vital if we are to exploit the benefits, whilst simultaneously guarding against the negatives, they present. Focused on (but not limited to) social media platforms, this article will examine why communication facilitated by the internet and democratic processes in the West have become irreconcilably intertwined, given the perceived advantages it offers to the health of a representative democracy, coupled with the consequent value placed on these communication tools by the political establishment. It will then explore the necessity for the regulation of cyber-space, should the acknowledged West want to exploit the benefits these communication tools could offer their democracies. This paper will go on to argue why, on both a practical and a constitutional level, regulation of online discourse is at present infeasible, and will assess alternative approaches suggested to create a symbiosis between online communication and healthy democracy, concluding by proposing my own solution to the issue.

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The Mutual Inclusivity of Politics and Online Communication

The wide availability of these mass-communication platforms, in conjunction with the role they play in influencing the electorate in a democracy (Bos et al., 2011), clarify why such platforms are now influential factors in the outcomes of democratic processes in the West. With these advances, traditional barriers to democratic participation have been eliminated. Whereas previously the ability to organise (inter)national political movements was inaccessible for those not part of the media establishment, provided one now has an internet connection and the appropriate hardware, anyone can create, consume and shape international and domestic political discourse on demand.

These platforms also afford political actors unprecedented access to the electorate, an indicator as to why they cannot be separated from the modern political landscape. With reach and influence on a scale which traditional media could never match (Lewis, 2017), social media networks serve political parties of all orientations as an economical and efficient method for disseminating their political ideology to their electorate, thereby enhancing their chances of political success. As of December 2021, Facebook recorded 2,800,000,000 monthly active users worldwide (Facebook, 2021). This number, amongst the billions of users on numerous other social networks, illustrates that, given the documented influence social media content has on the political opinion of its users (Bos et al., 2011; Schwanzholz et al., 2018; Rambukkana, 2015), political parties can, and more importantly, have not overlooked social media as a tool that can be exploited for political gain.

Barack Obama's electoral success in the 2008 Presidential Election has been credited to his exploitation of the Internet as a tool to convince and mobilise voters, in so doing establishing Twitter, Facebook, Youtube, MySpace and other social media services as indispensable weapons in any political campaign's armoury (Williams and Gulati, 2008). This reality is reflected in the disparity between spending on digital and traditional advertising in Western elections in recent years. Political parties participating in the 2017 General election in the United Kingdom spent a total of £3,016,000 million on Facebook advertising alone, compared to just £239,000 on traditional advertising in national and regional media outlets (Dommett and Power, 2019).

The Necessity of Regulation

When one considers the quality of the aforementioned democratic participation, brought about by the presence of social media, the necessity for the regulation of politically influential discourse becomes clear, especially if governments are intent on harnessing social media to better their democratic systems of government, rather than using the benefits to achieve political success.

To that end, a study (Tumasjan et al., 2010) analysing 104,003 tweets in the run-up to the 2009 federal elections in Germany found that 4 percent of all accounts contributed more than 40 percent of the election-related discussions. In this instance, while more people having access to the political debate as a consequence of social media platforms is empirically true, a minority of actors still control the content of political discussion, similar to the position enjoyed by editors of traditional print media. A further study (Rambukkana, 2015) analysed 2,608 relevant tweets over a 3-day period that corresponded with the 2013 budget announcement in Alberta, Canada. 46 percent of

those tweets were shared further by other users. However, 27.1 percent of the data set originated from accounts controlled by established figures from traditional media, government, politicians, labour unions, and political parties, rather than empowered voters who would not have otherwise engaged with the issues in question. As Rambukkana (2015) notes in his analysis, Twitter grants the public access to an environment in which they may access discourse that is still controlled by dominant traditional media outlets. In addition, he (2015, p. 261) observes the contrast between the democratic ideal of mass-communication tools stimulating the meaningful participation of the masses, and the opposing reality experienced in modern Western democracies:

‘[Traditional media, government, politicians, labour unions, and political parties] already control powerful platforms from which to communicate and influence the general public and public opinion. When Twitter is used in this way, it serves primarily as an echo chamber for those ideas already in the popular press, further problematizing the critiques leveled by [scholars at social media].’

A further problem for those who participate in the democratic process through social media is the requirement to contribute through the pre-determined framework created by the service provider. This raises the question: Is the service provided conducive to meaningful debate between members of the electorate who hold divergent views? Democratic emancipation can be considered as a byproduct, rather than a primary aim, of current social network services. At time of writing, Facebook is the fifth most valuable company based on market capitalisation in the world (YCharts, 2021). With such extreme economic success, alongside a clear absence of pro-democratic political motivation in its mission statement (Facebook, 2019), one can logically assume that Facebook and other social media platforms, will prioritise optimising their service for generating the most profit for its shareholders, even if that is at the expense of the perceived benefits it provides western democracy.

In the case of Twitter, the prerequisite framework for the contribution and the consumption of content is not conducive to productive democratic debate. The ability to articulate an opinion coherently and comprehensively, a fundamental component of political discourse in a successful consensus democracy, as outlined in article 10 of the European Convention on Human Rights (European Court of Human Rights, 2010), has been noted as a marked challenge when character limits are imposed on user contributions (Rambukkana, 2015). Further, any increased accessibility to democratic discourse empowers anyone with access to the hardware and an internet connection, regardless of their desire to contribute constructive or destructively to meaningful debate, rendering democracies vulnerable to manipulation by the online activity presence of everyday citizens (Schwanzholz et al., 2018).

The Practical and Theoretical Infeasibility of Regulation

It is clear that social media acts as a proverbial double-edged sword when it comes to the future of democracy. There is a plethora of practical challenges that must be overcome to ensure democracy is a net beneficiary of social media's existence. If governments want to ensure these services benefit democracy, rather than utilising them as an efficient tool to get re-elected, regulation of communication in the digital space will be needed.

As Spinello (2002, p. 21) notes, it is impossible to ‘separate regulatory regimes for the Internet from its technology and underlying architecture’. With its ‘techno-utopian’ (Hoffman, 2012) origins and the ‘decentralised’ nature of its evolution (Spinello, 2002), the internet has developed in such a way as to ensure its resilience to regulation from governing bodies. Recognised ‘Cyber-Libertarian’ (Goldsmith, J., and Wu, T., 2006) John Perry Barlow and founder of the Electronic Frontier Foundation (EFF), a non-profit organisation created to ‘champion user privacy, free expression, and innovation through impact litigation, policy analysis, grassroots activism, and technology development’ (EFF, 2021), explained the desire for the internet to be remain an ungoverned cyberspace nearly a decade before social media moved into the societal mainstream:

‘[Governments] have no sovereignty where we gather. We have no elected government, nor are we likely to have one, so I address you with no greater authority than that with which liberty itself always speaks. I declare the global social space we are building to be naturally independent of the tyrannies you seek to impose on us. [...] We are creating a world that all may enter without privilege or prejudice accorded by race, economic power, military force, or station of birth. We are creating a world where anyone, anywhere may express his or her beliefs, no matter how singular, without fear of being coerced into silence or conformity.’

This disregard the internet, and its functionality, has for traditional land borders renders it difficult to both implement and police regulation. As Johnson and Post (1996, p. 1367) note, ‘global computer-based communications cut across territorial borders, [...] undermining the feasibility and legitimacy laws based on geographic boundaries’. Legal precedent states that societies use geographical lines in the physical space to determine where (and which) legal rights and responsibilities are applicable (see: Justia, 1991), a method that is not transferable when regulating digital space. The location of the material on which information is written can be tracked in the physical space. The contrary is true for actions in the digital sphere, however, as Johnson and Post (1996, p. 1372) note:

‘Individual electrons can easily, and without any realistic prospect of detection, "enter" any sovereign's territory’.

Authorities in the West have already encountered this issue in their attempts to regulate the digital space. The Russian communications watchdog (Roskomnadzor) was forced to ban, rather than regulate, access to LinkedIn, ‘the world's largest [online] professional network’ (LinkedIn, 2020) in 2016, citing that ‘Russian law requires websites that store the personal data of Russian citizens to do so on [...] servers [on Russian soil]’ (Tsvetkova and Osborne, 2016). Furthermore, Roskomnadzor prohibited the use of the messaging service Telegram in 2018. Despite the company themselves not having access to the encryption keys used to keep messages private from third parties, the companies’ inability to ‘give Russian state security services access to its users’ messages’ (Stubbs, J, and Ostroukh, A, 2018) resulted in the service being banned. Given the ability for users to mask their locations to their internet providers, Russian authorities reversed this ban which ‘failed to stop the widely-used programme operating despite being in force for more than two years.’ (Reuters, 2020).

Above the practical issues, however, the most pertinent when explaining why this regulation of the digital space in Western democracies is the threat regulation poses to a fundamental aspect of democracy: Freedom of expression. A regulatory paradox exists if attempts are made to control both access to and users' ability to shape any content. In western democracies, freedom of expression acts as a cornerstone of their democracy; be that the fifth article of German Basic Law (German Bundesrat, 2020) or the first amendment of the United States Constitution (National Constitution Centre, 2021). To regulate who is permitted to contribute to democratic discourse, or to censor what a population may create and consume in the hope of preserving the advantages of these mass-communication tools, would be to directly contradict their commitment to freedom of expression.

One must also consider who is responsible for creating the form of, implementing and policing any regulation. Multi-billion-dollar technological companies have unilateral, untempered control over their platforms, thereby having unilateral, untempered control over the democratic discourse that takes place on their given platforms. In the aftermath of the storming of Capitol Hill in Washington D.C. in January, Twitter responded by blocking Donald Trump's access to their services on the basis that, in their judgement, his twitter activity incited violence (Twitter, 2021). Encouraging issues to be resolved through dialogue and compromise rather than violence is an aim of democracy, yet world leaders were critical of this action. Angela Merkel commented that, if freedom of expression is to be limited for the benefit of democracy, this must be done within a framework defined by a democratically elected legislature, rather than due to the desire of an unelected boardroom. (Dillmann, 2021). It is inherently undemocratic for private organisations to decide what forms unacceptable discourse, taking this power away from those with a mandate from the masses to make such decisions on their behalf.

As previously mentioned, attempts to regulate have been met with significant resistance. In Germany, the Network Enforcement Act (NetzDG) (Bundesministerium der Justiz und für Verbraucherschutz, 2017), implemented in 2017, was designed to, amongst other aims, oblige the platforms to be responsible for unlawful content on their sites. This move drew wide condemnation in Germany and beyond (Human Rights Watch, 2018; Reporter Ohne Grenzen, 2018; Kaye, D, 2017; Deutscher Journalisten-Verband, 2018) due to its unconstitutional nature and its implications for the freedom of expression in Germany. Wolfgang Schulz, Professor at the Leibniz Institute for Media Research and member of the Committee of Experts on Internet Intermediaries of the European Council, went as far as to say that the NetzDG serves as a model which authoritarian regimes can, and in the case of Russia, have copied (Markert, R. 2020) in their attempts to limit freedom of expression.

Overcoming the Regulatory Paradox

At present, the paradox of effectively regulating communication in the digital space without encroaching on the values that make democracies what they are, seems insurmountable. Some have suggested the necessity to treat Cyberspace as an entirely distinct "space" from the physical, with rules and regulations applying only to those who 'pass over the electronic boundary' (Johnson and Post, 1996). Laidlaw (2015, p. 280) suggests that cooperation between business and

government within an ‘administrative structure of speech protection’ is required. Others see the maintenance of the positives and the elimination of the negatives lying with the users directly; a result of members of the cyber-community deciding to engage with the Internet in an ethical manner, aware of its vulnerability to abuse (Spinallo, 2002).

Given the ‘absence of mediation’ (Lewis, 2017) on the Internet, it is clear that to introduce a nuanced mediatory force, whichever form that may take, would be to fundamentally undermine freedom of expression. I, therefore, suggest the following approach as an initial solution that national governments can implement as a credible, if theoretical, solution to this issue.

Building on the sentiment presented by Spinallo (2002), governments must ensure that their citizens, through increased investment in digital education, are in a position to proactively decide to contribute to online political discourse in a constructive manner, rather than reactively penalising those who do not conform to a complex regulatory framework. Examples of this emphasis on digital literacy already exist. In recent years, the Council of Europe has commissioned a series of reports (Derkashan, H., and Wardle, C., 2017; Committee of Experts On Quality Journalism in the Digital Age, 2020; Tomljenović, R., 2018) that lay the theoretical foundation on which governments can act to help guard democracy from the aforementioned negative effects as the Information Age progresses. This includes, but is not limited to, suggestions based on how to preserve high quality journalism through increased Media Information Literacy (MIL), a fundamental avenue of accountability in western democracies, through to integrating critical media literacy into curricula across different nations. This would empower future generations to exploit the benefits online communication presents for democratic participation due to their ability to critically assess rhetoric they propagate and/or consume online. Most importantly, however, this improvement would *not* be at the expense of the democratic ideal of freedom of expression. It would become a free and active choice to combat and eradicate dis- and misinformation, rather than being left to the responsibility from politically motivated government agencies and departments.

While this acts as a theoretically feasible solution, it must be considered in conjunction with the practical implications that come with its potential implementation by governments. Many western democratic governments (Department for Digital, Culture, Media and Sport, 2021; Ministry of Education and Culture, 2019; Ministry of Digital and Economic Affairs, 2021) of different political orientations have published action plans regarding media literacy. While this is the foundation from which positive change can be enacted, with the multitude of issues western democracies are facing at present, from enacting their Covid-19 recovery strategy, through to responding to the ongoing climate emergency, parliaments across Western Europe may lack the political oxygen necessary to make comprehensive progress in this regard.

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Universal Jurisdiction as Iustitia ex Machina: Speaking Justice for the Victims of ISIS and the Syrian Civil War in Germany

Robin F.C. Schmahl¹

Abstract

This article offers a brief survey of four cases that were at the centre of public attention over the course of 2020 and 2021 in Germany. These cases dealt with ISIS foreign terrorist fighters [FTIs] and former Syrian officials who worked for the Syrian intelligence service and are relative to charges of genocide, torture, or crimes against humanity. The paper will sketch out the inherent importance of these cases for German public discourse as well as some underlying societal issues they touch upon. It will discuss how universal jurisdiction, which plays a crucial role for all four trials, transcended its technical function in international law and transformed into a concept with broader societal ramifications for the German public. I show how these trials can be understood as a form of *Gegenwartsbewältigung* that purports a reaffirmation of German identity in the present. Lastly, the article will provide a brief problematisation of the trials' legal basis and their public reception from a postcolonial perspective.

Nec deus intersit, nisi dignus vindice nodus inciderit

- Horace, *Ars Poetica*, verses 191-92.

Introduction

With the alleged defeat of ISIS in the Middle East, European countries are currently facing the question of how to deal with former foreign terrorist fighters [FTFs] who participated in the fighting in Syria and Iraq (OSCE, 2018; UNODOC, 2019; Eurojust, 2020). This question produced a variety of responses that differ substantially from country to country. Although Germany produced only a modest number of FTFs compared to France or the UK, the topic of the so-called *Rückkehrer*² was and still is a hot topic in the German public discussion. German courts have already trialled several former combatants by now, but German society is currently

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² I.e., FTFs who returned to Germany.

facing the challenge of dealing with former female ISIS members.³ Since women were usually not conceptualised as combatants, their trial required a differing set of legal responses (UNSC, 2019). In a similar fashion, whereas German mainstream society has commonly understood refugees from Syria and Iraq as victims and not perpetrators, now the question arises of how to deal with those who have committed crimes in the name of oppressive regimes.

This article offers a brief survey of four cases relevant to these issues that were at the centre of public attention over the course of the last two years in Germany. It will first describe the cases of Jennifer W., a former female ISIS member and *Rückkehrer*, her husband Taha al-J., an Iraqi national who is charged among other things on accounts of genocide, as well as Eyad A. and Anwar R., who worked for the Syrian intelligence service and were involved in torturing protestors as well as opposition members in 2011 and 2012. The paper will sketch out the inherent importance of these cases for German public discourse as well as some underlying societal or legal issues they touch upon. The main research question of this paper, however, inquires how universal jurisdiction, which plays a crucial role for all four trials, transcends its technical function in international law and transforms into a concept with broader societal ramifications for the German public. I show how these trials can be understood as a form of *Gegenwartsbewältigung* that purports a reaffirmation of German identity in the present. Lastly, the article will provide a brief problematisation of the trials' legal basis and their public reception from a postcolonial perspective.

Universal Jurisdiction and the 'Responsibility to Prosecute'

The concept of universal jurisdiction poses a challenge to positivist theories on a legal system's claim to authority. Since universal jurisdiction cases deal with crimes that were perpetrated by non-nationals on foreign ground, national legislation does not suffice to legitimate authoritative jurisdiction in these cases. Instead of positivism's emphasis on source and/or geography-based approaches, universal jurisdiction should rather be characterized by exploring its intended purpose. While the legal development of universal jurisdiction moved from the exercise of domestic sovereignty to interstate and later international comity, it now not merely serves as a tool to settle matters of states, but focuses on individuals and more specifically victims (Hovell, 2018). Indeed, the role of victims for initiating universal jurisdiction cases worldwide indicates that the concept ensures a now more and more recognized universal right to legal process regarding crimes that are generally abhorred by the international community. The principle of 'responsibility to protect' [R2P] is related to our post-WWII conception of universal jurisdiction (Feierstein, 2019), while the consolidation of international law and the establishment of institutions such as the international criminal court formed R2P into a 'responsibility to prosecute' (Turan, 2016). This development is apparent in Germany's incorporation of universal jurisdiction. As Germany has been a fervent proponent of the International Criminal Court and the Rome Statute it not only incorporated extensive mechanisms for ensuring universal jurisdiction through international institutions but went as far as to legally oblige federal authorities to investigate, prosecute and exercise jurisdiction

³ From a legal perspective, gathering evidence against FTFs, albeit male or female, is a general challenge for European jurisdictions (UNODOC, 2019). What I denote here is that on top of this legal problem, a societal issue arises, namely the social conception of female ISIS members not merely as passive followers or even victims but as active combatants or participants in the oppression of civil society.

over international crimes (Rankin, 2019). The ‘responsibility to prosecute’ within the German context and Germany’s adherence to universal jurisdiction through national and international institutions has been interpreted as a way to assume more global responsibility while respecting the legacy of the Nuremberg Trials (Eikel, 2018). This paper builds on these considerations and offers a case study that reflects more on societal than legal ramifications emerging from recent universal jurisdiction cases in Germany. Lastly, I also intend to offer a first postcolonial perspective on Germany’s growing reliance on universal jurisdiction.

The Cases⁴

In September 2014 the mother of Jennifer W., a young woman in her early twenties from Löhne, Niedersachsen, informed the German authorities that her missing daughter had probably joined ISIS in Syria and Iraq. Later that same year W. informed her mother that she was living in a women’s shelter of the terrorist organisation in Raqqa, where she eventually met her prospective husband, Taha al-J.. In 2015, she moved with him to Fallujah where she became firmly integrated into the militant structures of ISIS. She participated in patrols of a women’s vice squad in Fallujah and Mosul carrying various firearms, as well as an explosive belt, to enforce ISIS’s radical understanding of sharia law in public life. In 2016, she was arrested in Ankara after filing an application for a new German passport and was deported to Germany. Back at home, she would bear a child and start advocating for ISIS on social media, while her activities were monitored by the national authorities. Eventually, she tried to return to Iraq and contacted an alleged trafficker for that purpose. The trafficker, however, was an undercover FBI agent who worked with the German authorities. In a recorded conversation with the agent, W. stated her continued affiliation with ISIS and her intent to rejoin its ranks. Furthermore, she talked about the crimes committed by her husband, mentioned further below, and her complicity if not even pride in them. Eventually, this conversation would become a legal cornerstone for the prosecution against her and her husband. In 2018 she was arrested in Bavaria on her way back to the Middle East and a bill of indictment was filed at the 8th senate of the Higher Regional Court in Munich. She now faces charges for participation in a terrorist organisation, violation of the German War Weapons Control Act, participation in war crimes and homicide by omission. The first hearing took place in February 2019 and the trial was expected to end in 2020. Due to several juridical matters and the impact of the Covid-19 pandemic, however, the case is still ongoing.

On February 5, 2020, a bill of indictment was filed at 5th senate of the Higher Regional Court at Frankfurt/Main against Taha al-J., Jennifer W.’s former husband and an Iraqi national who was arrested in Greece⁵ in May 2019 upon an international warrant issued by the German Federal Court of Justice. According to the bill, al-J. served as ISIS’s chief of the bureau for “sharia exorcism” in Raqqa and has repeatedly visited women shelters of ISIS, where he eventually met Jennifer W..

⁴ Detailed information on the cases can be found in the relevant documentation provided by the Higher Regional Courts of Frankfurt/Main, Koblenz and Munich. (Oberlandesgericht München, 2019; Oberlandesgericht Frankfurt am Main, 2020; Oberlandesgericht Koblenz, 2020, 2021).

⁵ So far there is no official statement on the reasons why al-J. went to Greece, however some unofficial sources claim that he fled to Europe because he deemed it too dangerous to stay in Syria or Iraq. This information would correspond to what Jennifer W. described in her recorded conversation with the FBI agent. See (Felden and von Hein, 2019).

His commitment to the terrorist organisation, however, had already started in 2013 when he offered to construct and store explosives at his house in Iraq. Presumably prior to his engagement with W., al-J. participated in ISIS's human trafficking activities and bought two Yezidi women, a mother⁶ and her daughter, as slaves for his personal household. The women had to suffer from constant malnutrition and were repeatedly brutalised by al-J.. Sometime between July and September 2015, he punished them due to the daughter allegedly having wet her bed. The mother was forced to walk outside barefooted during the day with temperatures over 50 degrees Celsius, resulting in serious bodily harm. After that, al-J. chained the already weakened daughter in the air under the open sun for at least 30 minutes where she apparently died of thirst under the eyes of her helpless mother and Jennifer W.. Afterwards, upon realising that the girl fell unconscious al-J. drove her to a hospital and disappeared for a few days. After his return, the matter was not mentioned again according to both W. and the mother. Today, al-J. faces charges for membership in a terrorist organisation, (participation in the) genocide against the Yezidi people, crimes against humanity, war crimes, human trafficking, and forceful exploitation as well as the murder of the 5-year-old girl. The first hearing took place in April 2020 and the trial is expected to end in the first half of 2021.

On October 18, 2019 a bill of indictment was filed against two Syrian nationals, Anwar R. and Eyad A., at the first senate of the Higher Regional Court of Koblenz. Both defendants have previously been members of the Syrian intelligence services. Anwar R. allegedly led the investigation and interrogation division of the infamous "al-khatib" Department 251 and its adjacent detention section in the governorate of Damascus. According to the charges, the division under his leadership was responsible for murder and torture in at least 4000 cases starting from April 29, 2011 to September 7, 2012. The division used physical, sexual, and psychological violence as well as malnutrition, lack of space and hygiene to intimidate, extract confessions and gain information on Syria's growing opposition movements at the time. At least 58 people have died because of the ongoing torture in Department 251 in 2011 and 2012. Anwar R. was responsible for managing the Department, i.e. coordinating personnel and shifts as well as ordering and overseeing the interrogations and ongoing torture of the prisoners.

Eyad A. worked as a subordinate officer for the Department. Among other things, his team was responsible for brutal crackdowns on protesters in the area. In autumn 2011 for instance, he participated in the arrest of at least 30 protestors, their deportation to Department 251, and torture in the prison facility. Presumably by the end of 2012 both defendants left Syria and fled for Germany. There, Anwar al-Bunni, a Syrian human rights lawyer and refugee himself, who has been detained at Department 251, recognised Anwar R. in a refugee accommodation. At that point, Anwar R. has contacted the German authorities and testified about his former activities in the Syrian intelligence services in fear of being watched by the Syrian regime and apparently unaware

⁶ The mother has been located by the NGO Yazda in a refugee camp in northern Iraq and plays a central role as key witness and joint plaintiff in both al-J.'s and W.'s cases (Yazda, 2020). She is now legally represented by the law office of the distinguished human rights lawyer Amal Clooney. Her testimony, however, only raised more questions, as she repeatedly contradicted herself on the issue and mentioned that she herself did not think that her daughter would die. In that case, it could be argued that Jennifer W. and Taha al-J. might have thought the same, although in her latest statement W. mentioned that she noticed the girl's bad state and tried to intervene (DPA, 2021). Furthermore, trial observers have reported difficulties in translating the mother's Kurmanji Kurdish dialect during the trial hearings. (Lang, 2020)

of facing potential legal consequences in Germany. As several NGOs and individuals have spread public awareness and showed clear documentation of the torture regime in Syria, German investigators turned their attention to Department 251 which then led to the arrest of Anwar R. and later of Eyad A., who testified his previous activities for the Syrian intelligence services to the German authorities in 2019. The former is trialled for complicity in crimes against humanity, murder in 58 cases, rape and severe sexual harassment, whereas the latter was trialled for aiding and abetting crimes against humanity. The first hearing took place on April 23, 2020 and the case has gained considerable attention in German and international media since then, dubbing it the “al-khatib” case. The hearings took place in over 50 days with victims, former Syrian intelligence agents and outside experts as witnesses, including a forensic expert who worked on the documentation provided by the Caesar-Files Group. On April 24, 2021 the Higher Regional Court of Koblenz convicted Eyad A. of all charges for 4 years and 6 months in prison, lowering the expected punishment of 5 years due to mitigating circumstances in which Eyad A. had allegedly acted in a strictly hierarchised and oppressive state structure and repeatedly showed his willingness to contribute to a full uncovering of all activities of Department 251 in 2011 and 2012. The case of Anwar R. is still ongoing and expected end by October 2021.

The Trials and Public Discourse

Jennifer W.’s case provides an interesting study for the specific issue of FTFs. German jurisdiction has now already convicted several male ISIS combatants who returned to Germany. Although, nominally speaking, legal prosecution should be impartial to the indicted’s gender, social connotations of gender roles are now changing in the aftermath of these cases. The issue of female *Rückkehrer* is moving to the forefront of German public discourse (Schirrmacher, 2018). Most women who joined ISIS have been indicted with charges for participation in a terrorist organisation, whereas they were often depicted as mislead or unwillingly seduced by the organisation’s projected utopia for pious Muslim women (PRIO, 2017; Patel and Westermann, 2018). With Jennifer W.’s case, however, the role of women in the organisation is re-negotiated in public discussions and, to a limited degree, legal discourses as well (Felden, 2019). Whereas female FTFs were oftentimes seen as passive adherents to ISIS’s regime, stemming from a specific and perhaps misinformed conception of gender roles in conservative Islamic societies (Handle *et al.*, 2019), Jennifer W. shows how women actively participate in the organisation’s terror if not even acts of genocide (von Hein, 2020). This new perspective on gender roles could carry consequences for German jurisdiction and the broader public discussion, especially at a time when the German Ministry of Foreign Affairs had invested efforts in extracting German female FTFs from Kurdish prison camps in Northern Iraq (Auswärtiges Amt, 2020).

Jennifer W.’s case is of course inherently linked to her former husband’s trial. With the tragic murder of the 5-year-old Yezidi girl and her enslavement in the household of W. and al-J., the genocide against the Yezidi people moved to the forefront of German discourse. Several legal observers of al-J.’s case have emphasised the difficulties in providing proof for the charges of genocide (HAWAR. help e.V., 2020). Although NGOs and international organisations have used ISIS propaganda and its activities in social media to showcase the organisation’s genocidal intention, there are no official orders, or something similar as such, which would provide a clear

basis for proving genocidal intent (AFP Deutschland, 2020). As our present understanding of the charges of genocide within international law stems from post-WWII experiences as well as the civil war in Rwanda and former Yugoslavia in the 1990s, a re-evaluation of legal proof for genocide needs to adapt to present circumstances. In addition, even though there is consensus on the occurrence of genocidal intent, the prosecution would have to show that al-J.'s participation in ISIS's system of human trafficking is indicative of his explicit personal motivation to contribute to the extermination of the Yezidi people (Duran, 2020). Of course, from a legal standpoint, this task is a delicate matter and, so far, it seems to be in no way guaranteed to be accepted by the court. Nonetheless, the trial has sparked considerable hopes for Yezidi activists and civil organisations (HAWAR. help e.V., 2020; Yazda, 2020) to provide a first step not only for the international recognition of the genocide but also of the legal status of the Yezidis – after all the German term for genocide, *Völkermord*, requires some recognition of a genus or *Volk*.

The al-khatib cases are probably the most widely discussed trials of all four. The judgement of Eyad A. has enjoyed considerable international attention especially in terms of the development of universal jurisdiction discussed further below. What it brought to the forefront in German public discourse is the uncovering of the systematic torture committed by the Assad regime through extensive official documentation, testimonies by victims and perpetrators, as well as the horrifying evidence through leaks such as the one of the Caesar-Files Group. It also led to a new awareness of sexualised violence related to war crimes, crimes against humanity and its systematic function within oppressive regimes. Here, the case of rape and sexual harassment had so far been dealt with as individual crimes – an issue that has been widely criticised by German legal experts (Kaufmann, 2020; LTO, 2021) – however, the prosecution has forwarded a motion to include those within the charges of crimes against humanity (ECCHR, 2020). An interesting reaction in German public discourse surrounding the trials was the discussion about the mitigating circumstances that both defendants acted within the oftentimes paradoxical structures of an oppressive regime. Some reporters have emphasised how Anwar R. and Eyad A. had ultimately deserted from the ranks of Assad's henchmen, sometimes served as counsellors to Syrian opposition groups after 2012 and with that, shared the conception that their cases would lead to a prosecution of all who turn their backs to the Syrian regime (SJAC, 2019; Baumstieger, Kampf and Steinke, 2020). Lastly, the al-khatib trials sparked a discussion of the internationalisation, or rather lack thereof, in German jurisdiction. Several observers have criticised the exclusivity of the trials and their treatment as common murder cases. As such, it took an intervention from the German constitutional court to offer an Arabic translation for Syrian journalists, whereas official press releases or the application process for press accreditation are still mostly in German (SJAC, 2021). Even despite the trials' importance for universal jurisdiction, the Higher Regional Court itself did not allow for any audio recordings (Kaufmann, 2020).

Universal Jurisdiction and German *Gegenwartsbewältigung*

This last issue brings us back to the concept of universal jurisdiction and its now overwhelming presence in the public discussion of all four trials. Universal jurisdiction serves as the main legal basis for all cases as the crimes were not only committed in Syria and Iraq, but also partly by Iraqi and Syrian nationals. Germany introduced universal jurisdiction in its *Völkerstrafgesetzbuch* or

International Criminal Code with the incorporation of the Roman Statute in 2002. Its first paragraph allows for the prosecution of crimes committed by non-nationals on non-German ground, even if the crime has no connection to Germany itself. There are only a handful of cases in Germany so far that were based on the mechanisms appertaining to universal jurisdiction in the *Völkerstrafgesetzbuch*. Usually, courts relied on the National Criminal Code as these crimes would be easier to prove than the ones stated in the International Criminal Code. The high hurdle of proof however is now more and more mitigated through the activity of several NGOs and national as well as international organisations that work tirelessly on providing evidence for the crimes committed in the Syrian Civil War (Baier, 2020). Furthermore, the concept of joint plaintiffs in the German legal system, together with strategic litigation by civil institutions and the increasing organisation of victims, has led to a facilitation of the application of universal jurisdiction (Mégret, 2015; Hovell, 2018). Over the course of the last years, Germany has shown an extensive increase in the use of legal, as well as institutional resources, for the purposes of universal jurisdiction (Palet, 2019).

Since the more prominent institutions within international law such as the UN Security Council, ICC or ICJ are perceived to be unable to deal with the crimes committed during the Syrian Civil War due to their inherent institutional flaws, now German or sometimes European jurisdiction is portrayed as *Iustitia ex Machina*⁷ — the missing link which ensures that international law can finally deliver justice to the people of Syria and Iraq (Salahi, 2020; Hamdoun, 2021; Khattab, 2021). Many observers even saw these trials as the legal basis for a future international criminal tribunal that could hold judgment over the atrocities committed in Syria and Iraq since 2011 (Ergin, 2020; IGFM, 2020; Stewens, 2020; Tekkal and Schwarz, 2020).

The discussion surrounding all cases prominently features a public re-negotiation of notions of agency or non-agency, personal responsibility for atrocities committed under the rule of oppressive regimes, as well as genocide and their reprocessing within international law, i.e. through the application of universal jurisdiction or an international criminal tribunal. Of course, these issues are highly reminiscent of the German post-WWII experience in the era of de-Nazification, the Nuremberg Trials and the coming to terms with the atrocities committed in the name of the German nation. As such, a subliminal though ever-present feature of the discourse is an instinctive allusion to German history or rather a demarcation of today's Germany from the national-socialist regime of the '30s and '40s. In a way, it is this *coming to terms with the past*, or *Vergangenheitsbewältigung* — perhaps even *Geschichtsbewältigung* in German (König and Kohlstruck, 1998), that now resurfaces in public discourse as the legal and societal coming to terms with atrocities committed in the present. As it were, *Vergangenheitsbewältigung* becomes *Gegenwartsbewältigung*⁸ and the demarcation from past evil

⁷ I coined this phenomenon as *Iustitia ex Machina* alluding to the classical dramaturgical concept of *Deus ex Machina* ("god out of the machine"). In classical Greek drama some irresolvable plot constellations would be resolved through the sudden and unexpected appearance of a divine figure in the piece – usually brought on stage by a crane or similar contraption, hence the *machina*. Through this intervention, the previously hopeless situation usually unravels into a favorable conclusion. (Appleton, 1920; Moore, 1974). The Latin quote at the beginning of this article is a cautionary remark in Horace's *Ars Poetica* about the excessive reliance on the *Deus ex Machina*.

⁸I.e. the *coming to terms with the present*. Here, I am relying partially on the analysis of the relationship between these two concepts provided by the artist and political commentator Max Czollek. Czollek has shown how the German experience of *Vergangenheitsbewältigung* serves the function of producing a specific collective identity that, through its determined demarcation from the past, forms a new, however still problematic, concept of German society. (Czollek, 2018, 2020)

turns into the responsibility to act in the face of crimes committed in the present. Political reactions to the trials expressed the re-occurring theme that Germany is now finally stepping up after the West's perceived inaction upon what happened in Syria and Iraq until 2011. Claudia Roth, a prominent figure of the German Greens, summarised the intention of the trials in a clear message to all victims of the Syrian Civil War: *Wir haben euch nicht vergessen* - "We did not forget you" (Kaufmann, 2020).

The overwhelming enthusiasm for the principle of universal jurisdiction and for Germany delivering justice in cases committed by and against non-German nationals on foreign ground can be interpreted as a new affirmation of German identity in the world. Under the rallying cry of "no safe haven for perpetrators!" German society expresses its newfound will to take up international responsibility in the framework of international law. From a constructivist perspective in international relations theory, the trials have as much to do with legal proceedings as with state and societal identity. Especially the public discussion surrounding the cases exhibit a strong normative tendency to appreciate the application of universal jurisdiction in Germany with no trace of any discussion about the perhaps problematic nature of this aspect of international law.

A Postcolonial Perspective on Germany's Enthusiasm for Universal Jurisdiction

As such, strong enthusiasm usually carries its caveats. The concept of universal jurisdiction has experienced a sharp increase in usage over the last few years (Jeßberger, 2018). Legal observers have stressed how nations with capable jurisdiction, an influx in refugee communities, and strong civil society organisations — such as it is the case in Western Europe — are predestined to become venues for universal jurisdiction cases in the future (Derohannesian, 2020). However, as most European nations have proposed universal jurisdiction as an ideal way to ensure global accountability in cases where perpetrators are not expected to be trialled under national jurisdiction, the Global South and predominantly Sub-Saharan Africa have repeatedly voiced contention over this aspect in international law (Canefe, 2018; Varney and Zduńczyk, 2020). Considering that most cases of universal jurisdiction resulted in the indictment of people hailing from the Global South before European courts, albeit national or international courts, one might conceptualise international law as a neo-imperial structure of Western hegemony (Ba Oumar, 2017). Research emphasised how the oftentimes indeterminate legal basis for universal jurisdiction and postcolonial experiences spread mistrust in the system of international law (Ifeonu, 2015). Indeed, from a postcolonial perspective, it seems that former colonial or neo-imperial powers set up a legal system, i.e. post-WWII international law, that purports to perpetuate Western hegemony on a theoretical, legal as well as institutional basis. Even advocates of international law might perceive the recent increase in universal jurisdiction cases in Europe as a neo-imperial means to enforce national jurisdiction under the umbrella and with the legitimacy of international law.

Even though I am not advocating against the intention and proceedings of the four cases that I have described here, it is nonetheless troublesome that while universal jurisdiction was at the centre of the public discourse, a critical discussion of the concept itself was missing in every instance of media coverage as well as legal or scholarly postprocessing of the trials. By not addressing the

postcolonial perspective on universal jurisdiction, states, civil societies, as well as scholars give the floor to actors such as the Syrian regime to dismiss these judicial proceedings as illegitimate, neo-imperialist modes of domination.

To end on a normative note: was it good that justice has been or will be brought to the victims of the Syrian Civil War in Germany? In my opinion and relative to these specific cases, yes. However, in an attempt to broaden our perspectives and distance ourselves from the specificities of these cases, all is not well. The lack of discussion about the manifold issues that might appertain to the application of universal jurisdiction should be worrisome for any advocate of international law. The overwhelming disregard for the postcolonial perspective on international law, especially at a time when universal jurisdiction cases are at a sharp rise in Europe, is an aspect that has to be problematised in order to ensure not only the adherence to international law within the Global South, but also to show sensibility for processes of decolonisation with a simultaneous consolidation of world-wide accountability in international law.

Conclusion

The trials of Jennifer W., Taha al-J., Eyad A. and Anwar R. carry profound importance for Syria and Iraq, the Yezidi people, Germany, Europe, and international law. They could serve as a potential legal basis for delivering justice to the victims of the Syrian Civil War and its aftermath since 2011. They are a strong signal for spreading world-wide accountability through universal jurisdiction, the legal status of the Yezidi people and our legal conception of genocide as well as the potential establishment of international tribunals to deal with war crimes and crimes against humanity.

Besides these aspects, the four cases serve a specific function for re-affirming the new identity of today's Germany. Emanating from the concept of *Vergangenheitsbewältigung* or the *coming to terms with the past*, the process of what I called *Iustitia ex Machina* purports a certain form of *Gegenwartsbewältigung* and a way to come to terms with the present. As such, Germany affirms its demarcation from the past and consolidates its new role as a responsible actor within the global order under the guidance of international law.

Unfortunately, however, this occasion is not taken as an opportunity to engage in a meaningful discussion about universal jurisdiction and postcolonial perspectives on international law. To ensure the global consolidation of international law and the spread of accountability, these perspectives should be addressed in a meaningful way by the international community and on a national level such as in today's Germany.

Future research could pick up this responsibility and explore postcolonial notions of international law, national legal proceedings and the application of universal jurisdiction in Europe. Other studies might broaden their perspective and pursue a comparative analysis of how different European societies come to terms not only with their past, but also with the present. Finally, this article has shown that research in international relations could utilise the methods of constructivist theory to explore cases of national jurisdiction.

All in all, even though justice has or will be delivered *ex Machina*, it is exactly this notion that we should further engage with, scrutinise and perhaps even criticise. In the end, such an endeavour would indeed conduce to the ambition to be able to deliver justice anywhere and everywhere.

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Lifelong Learning or learning for a global future: A comparison between Asia and Europe

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Abstract

Facing the challenges of an ever more flexible environment, adaptive skills through a process of lifelong learning are essential nowadays. Nowadays, the future seems to be open and dynamic, requiring people to keep on learning for their lifetime. The term lifelong learning has been used by UNESCO since the Faure Report in 1972. Starting the new millennium, many political actors have become aware of the importance of education to prepare their societies for the global age, as well as empowering them to partake in shaping the process of globalization. Education always serves as a preparation for the future. Nevertheless, depending on the history of each country, the goals of this process might diverge. Under the frame of a scientific project at the University of Bamberg, Cyprus, Korea, and Japan have been selected for further investigation of their system for lifelong learning. This contribution will shed light on the bright and dark sides of the evolution of lifelong learning in Europe and Asia. Eventually, an outlook will be given on how those countries and regions could learn from each other.

Introduction

Our world is determined by volatility, uncertainty, complexity, and ambiguity, summarized by the acronym of a VUCA-world (Volatility, Uncertainty, Complexity, Ambiguity). Since the emergence of this global and digital VUCA world, issues of lifelong learning have become central. Societies all over the globe are undergoing dynamic transformations. Facing the challenges of an ever more flexible environment, adaptive skills through a process of lifelong learning are essential nowadays. Nevertheless, the term lifelong learning has been used by UNESCO since the Faure Report in 1972. Starting the new millennium, many political actors have become aware of the importance of education for preparing their societies for the global age, as well as empowering them to partake in shaping the process of globalization. In 2004, the European Union issued the “Memorandum for Lifelong Learning”, underscoring the willingness to support a continuous learning effort. Meanwhile in Asia, outstanding achievements in the educational system have become the norm and the demand for the state as many students alike. Under the frame of a scientific project at the

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University of Bamberg, a research team has analysed the evolution of visions for lifelong learning between Asia and the European Union. For that purpose, three countries, namely Cyprus, Korea and Japan have been selected for further investigation. During that project, it could be shown that all countries emphasize the importance of lifelong learning as an investment into the future. On one hand, it seems that the European Union addresses the catching up process for less qualified layers of the society. On the other hand, the Asian countries present themselves as the harbingers of a new period of lifelong learning in a society that is based on knowledge. However, all countries observed are facing certain obstacles to attain their educational goals. This contribution will shed light on the bright and dark sides of the evolution of lifelong learning in Europe and Asia. Eventually, an outlook will be given regarding how countries and regions could learn from each other.

Education as evolution of humanity- An introduction into lifelong learning

According to the famous philosopher of Enlightenment Immanuel Kant he once described the purpose of learning as follows: (Kant 1803: 11) *“Man can only become a human being through education. He is nothing but what education makes of him.”* Nevertheless, Kant also admits that education provides the most difficult task given to human beings, serving as the hardest challenges of mankind to cope with (ibid.15). Expressed in other words, learning, whether this might happen consciously through certain training, or also unconsciously through experience is innate to us. Put even more succinctly, people are forced to learn for life in order to cope with a world that is constantly changing (Nuissl 2006: 220). Based on that, according to the educationist Sigrid Nolda, three purposes shall be fulfilled. Those are, firstly, the adaptation towards changes, taking here for instance the digitalisation. Secondly, deficits such as a lack of digital literacy shall be addressed. Eventually, this also deals with the anticipation of the future, determining and assessing skills that might be needed in the future (Nolda 2015: 27ff.).

In general, this process is highly linked to socialising in a certain community and creating a unique identity. A paper by the European Parliament Research Service describes it as: *“More than most other policy areas, education, alongside culture, touches upon the fundamental questions ‘Where do we come from?’, ‘Who are we?’ and ‘Where do we want to go?’. National peculiarities and ‘special paths’ tend to be more pronounced in the field of education than elsewhere, as do national sensibilities and pride in own traditions.”* (Heriart et.al. 2021: 19). Consequently, in a VUCA-World, composed of **V**olatility, **U**ncertainty, **C**omplexity and **A**mbiguity, finding answers to those questions becomes ever-more challenging (Bennet; Lemoine 2014). Nowadays future is contingent, where everything might be possible, but also the opposite of it as well (Luhmann 1984:149). Coping with the challenges of this contingent world, experts are needed who have learned how to process the many options available. Therefore, trained people are needed, who might be able to assess the implications of choosing a certain option. *“Progress in the modern vision cannot possibly continue much longer into the future. Modern progress is ultimately linked to our ability to know and manipulate our environment”* (Norgaard 1994:55). More and more experts have to be trained for acquiring the necessary skills to deal with an VUCA world, having the skills to assess the implications of choosing certain options over alternatives. During the industrialisation compulsory schooling was introduced, as people had to be trained how to handle the machines. Considering the increasing complexities of a world dominated strongly by digital technology this

concept is still applicable. Currently, things are changing very fast without anybody having a clear idea, where these changes might be leading to. Progress consequently includes the ideas of philosopher John Dewey considering education not as a preparation but the purpose of life (Dewey 2001:58). Gaining knowledge is an essential factor in international relations, ensuring legitimacy within the own country but also abroad. *“Knowledge diplomacy (and how it leads up to consensual knowledge) is an important driver of creating visions and narratives on sustainable futures.”* (Hernandez 2021). Education is directed to the future including a path to future world orders.

National governments face tremendous challenges, preparing their societies for a global future, that is still unforeseen. However, those issues are not new. Already in the 1960s, facing tremendous societal and technological shifts, during a *“catastrophe of education”* (Coombs 1968), the concept of lifelong learning was introduced into the world of educational policies. For that purpose, UNESCO, the UN agency for education and culture issued two striking reports. Both were conceived by two influential French politicians. Those were on the one side Edgar Faure, serving as a Prime Minister of the French Republic and later on as a MEP. On the other side there was Jacques Delors, who served as president of the European Commission. The Faure Report in 1972 proclaimed the emergence of *“learning societies”* beyond schooling and educational institutions with every member of it becoming a global citizen as part of a global society. Lifelong education should contribute for creating a new global social contract (Faure 1972:158). Later on, the Delors Report in 1996 on *“Education: The necessary utopia”* elaborated on these thoughts, calling for the ideal vision of learning for a more just society and *“a better world to live in”* (Delors 1996). The concept of lifelong learning presented here, was based on four pillars, learning to know, learning to do, learning to be and what was considered most essential learning to live together (ibid. 22). Building upon the evolutionary frame of international educational research by DiMaggio & Powell (1983) the conception, as realization of lifelong learning between Asia and Europe will be compared.

Same reasons and different roots - When Humanism meets Confucianism

Turning societies into learning societies of lifelong learning members seems to be a phenomenon of recent years, yet the concept is older than many presume. Already the Chinese scholar Confucius stated: *“I surrendered myself to learning at the age of 15. I could bring my will under control at the age of 30. I got rid of doubts at the age of 40. I learned the order of heaven at 50. I perceived everything with insight at 60. I could realise my aspirations without harming anything at 70”* (Analects 2:4 cited after Lau 1979). Apart from that, the Greek philosopher Plato considered a prototype of a curriculum for lifelong learning, where all citizens should undergo certain training and only the most prudent shall reign as philosophers at the age of over-50 (Plato 1991). Despite those precursors, those ideas were received by politics rather lately due to external constraints. Those were the Asian crisis in 1997 and the Euro crisis from 2010, both proving that the history of adult education always takes place at moments of crisis while trying to overcome their impacts (Tietgens 2009: 26).

Although based on the same external factors, education is never neutral, but normative, describing the process of learning certain rules and norms to become part of a certain society (Scheunpflug 2015: 78). At this point, the European tradition and the Asian tradition start to diverge into different philosophical traditions. The European school of thought is determined by the principle

of humanism and the age of enlightenment. Suddenly, human beings started to discover themselves and their potentials to influence their destiny, perceiving themselves as individuals with certain rights and the chance to become the masters of their own fate (Fend 2006:141). Conversely, the Asian perspective was shaped by the ideas of the Chinese scholar and philosopher Confucius. In this concept, family as a miniature depiction of the universe is the core to becoming truly human. Here, moral duties and obligations among family members are learned. This translates into honouring the parents and the elders in exchange for reciprocal altruism. According to that, everyone is obliged to accept and behave according to a certain social position assigned to (Berthrong & Berthrong 2000:17). Consequently, each family member must carry their responsibilities to support the family, where the needs of the family are greater than the individual needs. Notwithstanding that, education provides a fruitful tool for fulfilling those duties as set forth by annual governmental examinations. For instance, in Korea, every male subject of the kingdom could take part in the exams for, in case of being successful, starting a prosperous career as an official of the government (Park 2010: 124). This is called, “kyoyoungnyol”, the education fever, where through studying hard, success will be given in life (Sorensen 1994:23).

Catching up or lagging behind- Learning in Cyprus, Japan, and Korea

Having presented the various social and political implications of education, this chapter will show that the interpretation of lifelong learning is a tool for dealing with an ever-increasing challenge of globalisation. Based on a research project at the Chair of Adult Learning at the Otto-Friedrich-University of Bamberg, Cyprus, Japan, and Korea were chosen for comparison. Those countries were chosen due to a personal affiliation of the team member, comparing how the concept of lifelong learning was put into educational practice by the decision-makers. Therefore, the research team spend several months searching for dominant educational motivations in the countries, the local history of educational systems as their current infrastructure. What seems to be striking here already, meanwhile several materials on Japan and Korea was available, the research for Cyprus is still underdeveloped. For that reason, only some first tendencies will be given putting it into the wider frame of European Education Policy.

Especially the case of Korea reveals the multiple dimensions of lifelong learning for and in a global world. Chairman Kim Jong Un stated at the 13th National Conference of Teachers in 2014: “*The goal of “educational revolution in the new century” is to “make our country a socialist educational powerhouse in the 21st century by nurturing young students as reliable workers who will lead the construction of a powerful country and realizing North Korea’s Vision of Making All People Well-versed in Science and Technology,’ and to present detailed tasks”* (cited after Cho 2019:2). This claim comes along with setting up various infrastructure for learning at factories or online through a North Korean Intranet called Kwang Myong (ibid. 3). On the other side of the border, in South Korea, since 2002, a wide range of learning facilities has been established, where people of all ages can learn either at learning centres in their neighbourhood or online. Learners are even invited to compose their own degrees through gathering credit points in the Academic Credit Banking System. Several programmes are offered for instance by private facilities, Korea National Open University, or the open platform KMooc,

providing free classes². Everything is coordinated by the National Institute for Lifelong Learning (NILE)³, updating the lifelong learning strategy on a regular basis. Eventually the goals of this educational endeavour are shown in the graphic below. Once, the Korean Peninsula was considered a poorhouse in Asia. Still in the 1960s the per capita income was lower than Haiti, Yemen, or Ethiopia. About 40% of the population suffered from absolute poverty (Kim 1991: 3). Thanks to intense investment infrastructure and foremost education, South Korea managed to thrive from a war-torn country into a fully-fledged industrialized country and member of the G20. After the Korean War, the focus was put on basic education, now it is about learning ahead, becoming not just a knowledge society, but rather a smart learning society setting the pace for lifelong learning in a global world that requires skills for adapting smoothly to changes (Gwan Jo 2002: 29ff.).

Period	Economy	Education
1960s – mid-1970s	1) Take-off in early 1960s: from import substitution to export-driven, light labor intensive 2) Selective strategic industries in 1970s: export-acceleration, heavy and chemical industries	1) Expansion/upgrading of primary & lower secondary education 2) Emphasis on TVET (late 1960s) * manpower planning
Mid-1970s – 1980s	1) Structural adjustments from late 1970s: steel, shipbuilding, etc. 2) From imitation to innovation in 1980s: electronic industry	1) Expansion/upgrading of upper secondary 2) Expansion of tertiary education 3) Strengthening of TVET
1990s through the present	1) Enhancing national competitiveness in early 1990s 2) Knowledge-based economy from mid-1990s	1) Quality enhancement for K-12 2) Public investment in higher education (e.g., Brain Korea 21*) 3) Lifelong Learning

Notes: Manpower planning was employed until late 1970s as a tool to link education and training, and the labor market. Brain Korea (BK21) introduced in 1999 is a government competitive/performance funding scheme (1.2 billion USD for seven years) to stimulate R&D training in IT, BT, and other cutting-edge technology areas.

Figure 1: Evolution of Lifelong Learning in South Korea (Gwan Jo, Kim 2002:31)

Astonishingly, either the North or the South, both Korean states are striving to promote lifelong learning, either to keep the impacts of globalisation out of the country (North Korea), or to be fully integrated into the demands of learning for and in a global world (South Korea).

Foremost, the last point becomes more striking, when turning to educational policies in Japan. The Ministry of Education, Culture, Sport, Science and Technology, abbreviated as MEXT, defines their purpose as such: *“A society must be brought into being in which the people can continue to learn throughout their lives, on all occasions and in all places, and in which they can suitably apply the outcomes of their lifelong learning to refine themselves and lead fulfilling lives”* (MEXT 2006). Consequently, a *“super smart society”* shall be developed, overcoming polarisation and discrimination of age or gender in order to give everyone the chance for living a harmonious life (MEXT 2016: 13).

At the European Union, the concept of lifelong learning was discovered in 2000 by the *“Memorandum for Lifelong Learning”* (European Commission 2000). Furthermore, the European Pillar of Social Rights, established in 2016, enshrines the right for lifelong learning, where: *“Everyone has the right to quality and inclusive education, training and lifelong learning in order to maintain and acquire skills*

² An example of classes offered can be found here: <http://www.kmooc.kr/>

³ for further information National Institute for Lifelong Learning: <http://www.nile.or.kr/eng/>

that enable them to participate fully in society and manage successfully transitions in the labour market” (European Commission 2017). Conversely, to the high emphasis on lifelong learning in political discourses, the European Union had to admit that they are still lagging behind. (Council of the European Union 2018). The island of Cyprus serves as a special case. During the times of enlightenment in Europe, the island was under Ottoman rule, excluding it from the developments on the continent. Latter under the rule of the British an investment in primary education was considered sufficient. Only in 1952 were the first centres for adult education opened serving the local rural population. When Cyprus joined the European Union new impulses for the education system should be given. Currently, formal education is provided at five evening schools. Non-formal education is given by various registered private institutions. Furthermore, the Ministry of Education offers several programmes, however those are funded by fees that have to be paid by the participants (Gravanni; Ioannidou 2014:14f.). In general, public expenditure on education is higher in Cyprus, than the EU average, however the learning results are still be waited upon (ebd. 12). According to the PIAC Studies one in four Cypriots does not possess even basic computer skills. Many teenagers and even adults do not even manage basic skills in literacy or mathematics. Taking the case study of Cyprus, the national strategy of lifelong learning addresses the increasing youth unemployment. Simultaneously only about 6,9% of adults in comparison to 10,4% of EU average took part in lifelong learning training. Reacting to those deficits, the quality of training shall be improved, for then improving the economic situation. This shall be achieved by promoting a better access to high quality training, including a national qualitative framework to make those trainings more valuable for the job market. This shall include measures to avoid early school dropout rates as synergies with employers (DGEPCD 2014). However, until today, the status of adult education in Cyprus is still not scientifically systemized. Apart from that, the low status of adult education can be explained by the strong reliance of family as environment for socializing and learning. Only recently the concepts of adult students and learners are gaining more acceptance (Gravanni; Ioannidou 2014:15.).

However, during this research project, only little scientific material about Cyprus was accessible, showing that the progress in fulfilling those ambitious goals is still hard to be measured. Consciously about the lack of lifelong learning policy, the European Commission came up with the “*New Skills Agenda*”, encouraging an educational impetus, preparing the EU for the future (European Commission 2019). Nevertheless, the focus of the lifelong strategy is mostly directed to cope with new demands on the job market, searching to bring people back into employment by training them with new skills that might be helpful for the future of work.

Learning for and in a global life- Challenges in Europe and Asia

A European Education Area (EAE) has been a dream for centuries, already reaching back to the Middle Ages with scholars such as Erasmus from Rotterdam or later on the famous Austrian author Stefan Zweig. Nevertheless, the visionary goal set by the European Commission to make this dream reality by 2025 is facing tremendous challenges. According to the EPRS, this project misses a clear strategy of implementation, clarifying the level of involvement by various actors. Furthermore, the European Dimension in national education seems to be still rather weak

(Heriard, Pierre et. al. 2021: 9f.). Moreover, despite the humanistic tradition, the focus is put on increasing employability given the increasing qualifications needed for the European job market. On the other hand, it could be argued that Asia should be taken as a role model for lifelong learning. However, here the challenges are to be found at a different level. Despite the extensive opportunities for learning and graduating from online universities, employers still do not recognize those degrees as equal to traditional universities with high reputation (Hyewon, Pak et. al. 2019: 980). Furthermore, the tremendous social status of education puts a special burden on students and their families. Korea can be considered as a “testocracy” culminating into “sihom chok”, the examination hell, where entrance exams at the universities decide upon the future of the students and their families (Sorensen 1994: 17). Based on that, the mission is not to learn in school but to excel. Consequently, Korean households spend about 30% of their income on private tutoring for high school students (Dawson 2010:18). However, the success of all those efforts can at least be questioned, as argued by So Kyoung Lee: “*Although Korean students perform highly in international assessments, students do not “learn!”*” (Lee 2011:2). Competences of self- learning or learning how to learn are estimated rather weakly. The focus of learning is put on a strict hierarchy of the teacher, instead of promoting the skills of critical reflection. All those aspects lead to a phenomenon described by OECD as “*overeducation by underemployment*”, arguing that there are not enough appropriate jobs for those with a formal high qualification of the educated workforce (Grubb et. al. 2009:45).

A comparative conclusion - What we can learn from each other

Concluding this paper of comparative educational policy, it has been shown that human beings are forced to learn for life, as governments are forced to promote lifelong learning to cope with the educational demands of an ever more complex interconnected global society.

On one side, Asia could be considered a precursor and role model for the future of lifelong learning. On the other side, facing many hurdles and a deficit of skills, the European Union seems to be lagging behind. However, both regions have to deal with certain challenges. Looking towards Asia, the price paid for by students and society for this “educational success” seems to be very high. Looking at the European Union, a lack of strategy and competences, the reality of lifelong learning does not correspond to the high importance attributed to it.

According to educational theory, challenges are the trigger for learning processes (Faulstich 2004:20). Therefore, at the end of this paper, a short outlook will be provided on how various concepts of lifelong learning can be turned into concepts for mutual learning. Referring back to the Faure Report or the Delors Report, a special focus was put on education as the process for becoming human. On the opposite, the discourse of lifelong learning during the last years has mainly focused on utilitarian skills, putting the human factor aside in favor of what can be used for employment. Responding to that, the Korean poet and political activist Kim Koo lamented in 1947: “*What is lacking in humanity of today is neither military force nor economic power. [...] The root reason for humanity's unhappiness today is that people lack humanity, justice, compassion and love*” (Koo; Kim 1947). Based on that, whilst Asia has provided the educational infrastructure with the digital revolution, meanwhile Europe provides critical methods for learning. Both regions are encouraged to learn from the other side, inspiring each other over and over again to develop new concepts of how to

learn in and for a global society. Where humanism put the individual into consideration, Confucianism puts a focus on the community, avoiding too much egoism. Simultaneously, humanism opens a way to overcome old, discriminatory expectations of a certain community. Lifelong Learning is the reaction towards an ever more complex and interconnected world, requiring critical thinking skills and strategies trying to find answers to who we are and who we want to be in the future, or to conclude as noted by the famous science fiction author Isaac Asimov: *"Education isn't something you can finish!"*

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The Challenges of the EU-China CAI: Analysis from a Two-Level Game Approach

Xiaowen Hu¹

Abstract

In 2020, the European Union (EU) and China reached an agreement that set the principles for the EU-China Comprehensive Agreement on Investment (CAI). 7 years of negotiation indicate both a willingness to reach a consensus on investment and the divergence between the two parties. This paper utilizes Putnam's two-level game to analyse the "win-sets" of both parties and their overlap in order to answer what motivates and hinders the two parties to reach agreement during the long-lasting negotiation.

For the EU, legally speaking, the Union is entitled to establish investment relations with China with exclusive competence, so that the existing bilateral framework between member States and China can be updated in pursuit of greater reciprocity and a level-playing field. From a strategic perspective, CAI conforms to the strategic outlook of "Effective Multilateralism" and China-EU 2020 Strategic Agenda for Cooperation. Internally, Brexit, separating the EU from China's largest investment destination within the Union, strengthens the EU's willingness to conclude CAI, while there is doubt whether the CAI can be ratified in the end.

For China, the EU occupies strategic importance on China's development agenda, from its "Going Global" strategy to the Belt and Road Initiative (BRI). The challenge posed by the US-China trade war pushed China closer to the EU. Domestically, China's legislation has included the Foreign Investment Law (FIL) in 2019, and Chinese businesses have expressed similar expectations of the investment deal. However, the complexity of China's governing pattern makes it difficult for the EU to find the right interlocutor.

Despite the strong motivation of both parties to conclude the CAI for pursuing investment fairness, different business cultures have led to a divergence of understanding regarding fairness, with the EU focusing more on market access and issue linkage with environment and human rights and China more concerned with the foreign direct investment (FDI) screening mechanism

Introduction

Despite maintaining strong economic relations, the European Union (EU) and China did not reach agreement on the EU-China Comprehensive Agreement on Investment (CAI) until after 35 rounds of negotiation over 7 years, demonstrating the difficulties of reaching consensus. This paper seeks to understand the motivations and difficulties for both parties to conclude the agreement during the long-

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lasting negotiations, by adopting Putnam's two-level game approach. According to Putnam, in negotiations involving interaction between domestic and international actors, agents at both "levels" have "win-sets" consisting of all the possible agreements to be ratified, with agreement being reached only when these win-sets overlap (Putnam, 1988).

Based on this "two-level game", this paper first analyses the EU's win-set by examining the investment potential with China, the EU's strategic pursuit, member States' attitudes, and the role of institutions in the negotiation and ratification processes. The second part will be dedicated to the analysis of China's win-set, from the perspective of the economic and strategic importance of the EU, China's governance style, domestic preferences and the impact of the trade war between the United States (US) and China. The third part will then compare the common grounds and divergence of each party's win-set to identify an overlap. This paper argues that the divergent understanding of fairness exacerbated the difficulty of negotiation in spite of the strong overlap of both parties' win-sets.

The shaping of the EU's win-set

For the EU, China has economic and strategic implications, making up the cost of no agreement. In economic terms, China was a crucial player in international trade and investment while the potential of investment between the EU and China was not fully discovered. With 13 billion EUR of investment in China and 18 billion EUR flowing from China to the Union in 2014 (Rhodium Group, 2016), imbalanced FDI flows demonstrated the importance of a fair investment environment under the framework of CAI. Moreover, faced with the stagnation in the EU after the financial crisis and European debt crisis, Chinese investment could be a boost for the revitalization of the EU economy. For example, by 2013, Asian investors including those from China had already bought 22% of European Financial Stability Facility (EFSF)/European Stability Mechanism (ESM) bonds (Tzogopoulos, 2016). Besides investment potential in the context of economic recovery, the EU-China CAI would conform to the EU's strategic pursuit. Multilaterally, in the context of Trump's unilateralism (Thompson, 2018), an effective engagement in China became vital for the EU's strategy of "Effective Multilateralism" considering the influencing role of China in many multilateral settings such as the World Trade Organization (WTO). Bilaterally, the China-EU 2020 Strategic Agenda for Cooperation classified a comprehensive EU-China Investment Agreement as a key initiative to boost prosperity (European External Action Service, 2013), demonstrating the EU's strong willingness to conclude the CAI. At the member States-level, the shortcomings of existing bilateral frameworks made up their preference for a comprehensive one at EU level. All of the EU member States except Ireland had already signed Bilateral Investment Treaties (BIT) with China (European Parliament, 2020), but European enterprises might receive different treatment when investing in China. Besides the divergence of investment regulations in member States, existing investment treaties were not sufficient to regulate China's investment. Mostly signed at the starting point of China's reform and opening-up policy when Chinese foreign investment had hardly been developed, the existing frameworks primarily regulated the outward investment from EU member States to China, instead of the inward investment in the other direction. According to the Commission's assessment, an agreement at the EU-level can provide more certain legal protection than the status quo (European Commission, 2013). As a result, concerns about using investment as a political tool arose (Dominguez-Jimenez et al., 2020), and member States developed an interest in the EU-China CAI to fix the lack of reciprocity and develop a fair investment environment. The role of EU institutions was strengthened in the negotiation of the investment agreement from 2009. With the coming into force of the Lisbon Treaty, foreign direct investment became an exclusive competence of the EU (Treaty on the Functioning of the European Union, 2012), so the EU, rather than its member States, was capable of concluding one single comprehensive agreement to replace the existing

bilateral BITs and joint agreements. The CAI also includes provisions on environment, which falls within shared competence (Treaty on the Functioning of the European Union, 2012). In this regard, the CAI may be considered a mixed agreement requiring ratification by the European Parliament and the national parliaments of member States, which may involve more potential veto players. Moreover, the European Parliament, despite its consultative role, plays an important role in the negotiation. The European Parliament, often holding a negative attitude towards the human rights situation in China (Goodman, 2020), insisted on introducing a human rights clause in the CAI negotiation and considered it as the redline for ratification, increasing the Commission's bargaining power. Indeed, the freezing of CAI ratification following the human rights sanctions between two parties (European Parliament, 2021) provides further evidence of the prioritisation of human rights engagement over investment opportunities in China, requiring a tougher bargaining position of the Commission.

Brexit may have cast possible reverberation effects on the negotiation due to the importance of the United Kingdom (UK) for Chinese investment in the EU. The British strategy of presenting itself as the gateway to the EU (Ryan, 2017) attracted Chinese investors so as to become the largest investment destination in the EU. Judging from the cumulative inward FDI from China between 2000 and 2009, the UK received 50.3 billion EUR, 3 times more than the total transaction to France (Kratz, et al., 2020). The withdrawal of the UK from the EU might create an investment vacuum, constitute an opportunity to absorb Chinese investment that used to be occupied by the UK. Brexit reverberates with the possibility of the EU receiving more investment from China, which made the CAI negotiations more important for the EU.

Altogether, the EU's win-set during the negotiations was mainly based on investment potentials, strategic interests, legal preferences and opportunities after Brexit, but has been constrained by the potential veto players. In short, the issue linkage with human rights required by the European Parliament and its role in the ratification limit the agent autonomy of the European Commission.

The shaping of China's win-set

The cost of no agreement for China can be understood from both economic and strategic angles. The EU, with its tremendous market dynamics and economic power, was the biggest economy and the largest trade partner of China for years (Mission of the People's Republic of China to the European Union, 2019). With its "Going Global" strategy, China has been committed to international trade, where the EU is an important player. The EU was also vital for the Belt and Road Initiative (BRI) because it is not only the Western end of the ancient Silk Road but also the intersection of the Silk Road Economic Belt and the 21st Century Maritime Silk Road.

In terms of political institutions, China followed a "fragmented authoritarian" governing style where final implementation would depend on the internal consensus within the segmented executive. The Ministry of Commerce (MOFCOM, 2019) had to present the negotiating position to the State of Council. However, the measures "behind the border" (Mertha, 2009) such as the approval of investments would fall in the responsibility of regional and local authorities. That is to say, there is a risk of "involuntary defection" that might result from insufficient coordination with actors in civil society – for example, local businesses – who might influence implementation on the ground.

With regard to national preferences, China hoped to establish a protection mechanism both in China and in the EU. Chinese businesses were willing to welcome inward investment to China, as shown by the adoption of the FIL in 2019. The FIL provided EU investors with equal treatment, such as participation in

public procurement. Although the FIL narrowed the EU's cost of no agreement, it illustrated China's sincerity in creating a harmonious investment environment. In the EU market, Chinese businesses upheld the same expectation, because the strict investment screening in the EU increased the investment cost and discouraged their investment passion. Among the Chinese enterprises which had gone through EU investment scrutiny, 48.8% of them reported receiving discriminative treatment and 78.8% thought that the scrutiny had negative effects on their performance in the EU market (Zhao et al., 2020).

The US-China trade war also had repercussions on the EU-China CAI negotiations. American protectionism and unilateralism reverberated in the investment negotiations with the EU, and sharing the value of multilateralism became more important to China for its future international engagement. Moreover, the cost of no agreement increased as it would be difficult for China to find an alternative to the US.

Overall, China's win-set has been shaped by economic and strategic interests, heterogeneous domestic preferences and the EU's increasing importance in the context of US-China trade war, but can be limited by difficulties in implementation. Through the analysis of negotiation difficulties from China's side, it can be understood that the gap between negotiation and implementation in China may not effectively address the EU's concerns over market access, so the possible involuntary defection of agents can undermine the negotiation process.

Overlap of win-set

At the beginning, the EU had a larger win-set because a harmonious investment relation with China would be important in the context of economic recovery. It was also necessary for the EU, with its exclusive competence, to establish a uniform investment protection mechanism to replace the outdated existing bilateral frameworks. Otherwise, the EU might not be able to attract enough Chinese investment to boost its economy. However, with the promotion of the BRI and the outbreak of the US-China trade war, China could be said to have had a larger win-set than the EU, because the strategic importance of EU-China relations increased the cost of no agreement. For China, the EU was an inevitable interlocutor in the implementation of the BRI due to its economic power and specific geographical position. Moreover, its economic ties with the EU, an actor that shares the value of multilateralism, would be helpful for international engagement in times of the US-China trade war.

In spite of the common expectation for a fair investment environment through the CAI, the overlap was narrowed because of the divergent understanding of fairness which responds to difficulties in the negotiation. For the EU investors, they hope for market access in China, with the belief that fairness means equal opportunities for EU companies to compete with Chinese ones on the Chinese market. That helps explain why the lack of a level playing field for EU investors in China is considered as a major problem at stake during the public consultation of the EU (European Commission, 2013). For the EU institutions, especially the European Parliament, the lack of issue linkage between investment and human rights does not contribute to a fair investment environment. For China, the strict investment screening in the EU is unfair for private-sector enterprises which are not as strong as State-owned enterprises, so Chinese interest lies in less strict scrutiny for Chinese investment. To tackle the dilemma, the two parties should make efforts for a common rule-based negotiation instead of insisting on their own rules.

Conclusion

The EU's win-set is determined by the potential of balanced investment, strategic interests, the shortcoming of existing frameworks, and the investment vacuum after Brexit but may be narrowed by ratification procedures and issue linkage with human rights. The Chinese win-set depends on its economic and strategic concerns, and the US-China trade war but can be constrained by involuntary defection caused by "fragmented authoritarianism". The EU, with the need to revitalize the economy, had a larger win-set at the beginning of negotiations, but the situation changed due to the increasing strategic importance of the EU for China, especially in the context of the BRI and the trade war. When looking into the obstacles during the CAI negotiation, this paper finds that the divergent approaches towards fair investment leads to different interests of the two parties, making the negotiation difficult despite the overlap of win-set.

Putnam's two-level game has its limitations when used to analyse the stalemate of international negotiations. Putnam argues that agreement is possible only if those win-sets overlap, and the larger each win-set, the more likely they are to overlap (Putnam, 1988). In this case study, despite the overlap such as the pursuit of multilateralism and the expectation towards investment fairness, the negotiation was still time-consuming because of different culture and investment practices. Moreover, in order to analyse the stalemate, it is difficult to compare whether the overlap or the non-overlap plays a more important role, indicating that this approach can be only used to explain the stalemate, not to predict its possibility.

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Book Review – Musical Democracy by Nancy S. Love

Valentina Koumoulou

“Music is political already in virtue of the fact that music is a practice of human expression or performance working itself out in the world, in particular communities, through the medium of melody.”

Lydia Goehr¹

Have you ever wondered what democracy might sound like? Have you ever listened to the rhythms of politics? People have a very narrow sense of music in their minds, only to be found in melody, rhythm, or lyrics. Therefore, in her book “Musical Democracy” political scientist Nancy Love searches to widen the reader’s perception of democracy by seeing and singing it through music theory.

A New Meaning of Music

People have a very narrow sense of what music means in their minds. They might consider that it is only found in melody, rhythm, or lyrics but what this particular book is trying to explore is that music can be found in everyday language, social movements, national anthems, protest songs, or even political slogans. This is the part where democracy steps in the discussion. In democratic states, music plays a significant role. The melody of democracy expresses itself less through harmony, but more through an orchestra in dissonance. Citizens express their discontent towards a government’s decision, promoting a social movement that stems from the marginalisation of social groups, protesting against an unfair new law that harms the state’s citizens, and the list goes on.

Throughout the book it is argued that a piece does not need notes in order to be characterised as musical. In the first few pages, a different perspective is presented suggesting that even in rhetoric there is musicality. It goes without saying that metaphors add an artistic touch in political speech and make the speaker more relatable. Moreover, the author advocates that in fact, “*voice is music.*” (Love, 2006) Therefore, all linguistic communication carries musical nuances.

Metaphors are everywhere around. The author argues that even in science metaphors can be found within a discussion, something that shows how embedded they are in our everyday language. A

¹ Goehr, Lydia. 1998. *The Quest For Voice, On Music, Politics, And The Limits Of Philosophy*, The 1997 Ernest Bloch Lectures. Berkeley: University of California Press.

great example of metaphors in politics would be the narrative of “*Government as Parent*” in American politics, which varies from “*Nurturant Parent*” to “*Strict Father*”, whether it is employed by liberals and conservatives respectively. Metaphors serve as notes for conveying certain tunes to a particular audience.

Types of Democracy

According to political scientists, there are two types of democracy: aggregative and deliberative (ibid). In the former, the people believe that it is important to have formal institutions that will ensure the proper functioning of democracy, while in the latter people have trust in a more autonomous and liberal way of handling matters in a democratic state. However, they also recognise one more: agonistic. This type is characterised as more conflictual, where social movements have a central role in the promotion of how democracy should work. All three are analysed in depth in the book but what is important to keep in mind, is that all of them use specific vocal metaphors that link each type to its target audience. This is better described by Dunn and Jones in that “*human vocality encompasses all the voice’s manifestations (for example, speaking, singing, crying, and laughing), each of which is invested with social meanings not wholly determined by linguistic content*” (Dunn, Love, 1994). Music affects people on three dimensions, which are aesthetics as composing, language as performing and orality or literality as special form of listening to the resonances of democracy.

The Role of Aesthetics and Languages

On a different note, aesthetics also plays an important role in a people’s reason for following or doing something. It is not only true for different forms of art, but also in social, political, and everyday life, people do tend to be drawn to aesthetically pleasing objects. Throughout the book it is argued that songs always have a touch of politics in their lyrics, given that what artists create has always something to say. Drawing mental pictures in the minds of people listening to their music, talking about social phenomena, marginalized groups, or the self. The author notes that “*music blurs and crosses, defines and expands relationships between self and other, challenging established identities and institutions*” (Love, 2006).

Language has the power to coordinate everyday life, to organize minds, or even to inspire people. Combined with art, and more specifically music, its power reaches other levels. However, there are a few theorists that disagree with the significance of art in political speech. They believe that political speech should be more realistic and dedicated to the point of discussion. Given that art is used in speeches made by more liberal politicians, these theorists tend to be on the more conservative side of politics.

Orality vs. Literacy

Walter Ong wrote that *“in oral cultures, verbal expression involves magical powers, embodied experience, and archaic unities. Sound cannot be sounding without the use of power and, as a moving force, it unifies worlds — interior and exterior, self and other, and animals and spirits”* (Walter, 1977). There is a difference between oral cultures and cultures that value literacy more than anything. These two types of culture have very different perspectives not only when it comes to everyday life but also to political involvement. *Oral societies are correspondingly “conservative,” “repetitive,” and “traditionalist”, while literate cultures tend to overvalue the “book-learned” and “book-learning,” and to undervalue practical experience, spiritual inspiration, and traditional knowledge”* (Love, 2006). This plays a highly important role when it comes to voting, participating in political events, or even protesting by neglected groups making their voice to be heard.

Women’s Music

Women’s music could be described as manifold, feminist, respectful, celebratory, trauma inspired, but under all of those characterizations lies *democratic*. Women with all kinds of stories have the opportunity to communicate them through social movements in democratic states. Female musicians who introduce elements of feminism in their music, or who make comments on society, politics, and justice from a woman’s perspective are needed in order to show the world different narratives. In a democracy every voice has to be heard no matter the background, the colour, or the sexual orientation. Each voice serves as an instrument in the great and particular melody of democracy. Different pieces all pursue the goal of more freedom.

Freedom Songs

“The music doesn’t change governments. Some bureaucrat or some politician isn’t going to be changed by some music he hears. But we can change people—individual people. The people can change governments.”

Cordell Reagon²

There is no better way to explain how music is linked to democracy than mentioning songs about freedom. Ever since people started going to wars, music has been on their side in order to inspire them, suppress fear, or even help them relax before the battle. More importantly, songs are an undeniable element of revolutions which are always about changing the status quo to a more democratic and inclusive society. Lyrics say stories, melody lights the spirit, and in the fights towards freedom both play their role in people’s lives. Music runs through our veins, we have songs about happiness, sadness, thus democracy could not get away. Artists will always be moved by social injustice, history, discrimination, and inclusion. It is their duty to sing their truth and inspire change. This is the most immediate link from music to democracy.

² Reagon, Bernice Johnson. 1980. Songs of the Civil Rights Movement, 1955–1965: A Study in Culture History. Ann Arbor, MI: University Microfilms.

A Lullaby for Goodnight

In conclusion “Musical Democracy” opens a new perspective on democracy, touching not just the rational but also the emotional sides of democratic societies and systems. It truly has different perspectives on how language works when it comes to politics, while at the same time showing how music is linked to democracy through vivid examples. Moreover, it widens the mind regarding the concept of music by characterizing metaphors as musical elements. The types of democracy, with regards to language, are also analysed and enriched in meaning. An exciting concept that draws the attention of the reader is the use of aesthetics in political language and the use of specific words and metaphors that bring certain connotations to mind. The debate between orality vs. literacy brings a linguistic depth when talking about how different cultures deal with social issues, marginalisation, etc. Last but not least, women’s music and music about freedom constitute two kinds of music that have always played their part in evolution and revolution, creating paths towards a better status quo. As a person who has studied both translation and international relations, this book to me was an academically revealing masterpiece, combining two very different fields in the most inspiring way. *Just open your ears and listen because music is indeed everywhere!*

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Book Review - “Beter wordt het niet – Een reis door the Habsburgse Rijk en de Europese Unie” by Caroline de Gruyter

(Translated as “It doesn’t get better – A journey through the Habsburg Empire and the European Union”)

Stephan Raab

Right after the Brexit vote the most searched question on the Internet was asking: What is the European Union? What are the goals of the process of the European Integration? Is it a transition to something or the evolution of something else? In her book “Beter wordt het niet” (It doesn’t get better”) the Dutch journalist and EU correspondent Caroline de Gruyter takes the reader on a magnificent journey through the European Union, following the old traces of the Habsburg Empire, visiting people and places of thought of the European identity today.

From Habsburgs Empire to European- From Brussels to Vienna and beyond

Between the European Union of today and the last days of the Habsburg Empire, lies a history of more than a century. However, the traces of the Habsburg’s old glories are even visible today, just passing by Brussels’ *Place Royale/Koningsplein*”. Having discovered Brussels once during a guided city tour, some Austrians in the group just cheered at this spot, stating, that they already felt like home, as here it very much resembled the royal buildings of Vienna.



Picture 1. Place Royale/Koningsplein in Brussels (picture by the reviewer)

“Each crisis is existential for the European Union, and we have enough of those crisis. Will it be, that one of those crisis will be fatal for the European Union? Will happen the same to it as has happened to the Habsburg Empire? How shall this happen?” (Gruyter, 2021, 11f.). In her book, Caroline de Gruyter takes the reader on a fantastic journey through the last century, bringing people, places, their story as the history of Europe together, comparing the influence of the Habsburg Empire in the past and the evolution of the European integration nowadays.

The author of *“Beter wordt het niet”* is an experienced EU-journalist, having reported from the pulses of European decision making during the turbulent times of 2008 to 2013. After that, Caroline de Gruyter moved to Vienna. In her book she shares her experiences and insights from her time living in the old capital of the Habsburg Empire once ranging from the border of Switzerland up to Russia, covering a multitude of cultures and peoples under one common roof.

United in Diversity! - Equal or different? - A personal comparison

“Europe needs to be explained better. [...] Because Europe can only be built if it is properly understood and thus better explained. It can only be built with the Member States, never against them” once the president of the European Commission Jean Claude Juncker emphasized in his State to the Union (Juncker, 2016, p. 64). Building upon that concept, the book argues, that: *“Understanding Europe is still mostly understanding the member states* (Gruyter, 2021, p. 24)”

During this journey de Gruyter visits many renowned personalities influenced by the times of the Habsburg, either personally or at least in a mental sense. Probably, the best history of the last century might be told best along the story of Otto von Habsburg, who served as head of the family, a family which gave an entire epoch its name – ruling over about 13 million people on a territory providing about 1/10 of the gross domestic product of Europe during that time (ibid.p.62). Being the grandson of the famous emperor Franz Josef I, in his younger years, Otto had to flee his country, losing his Austrian passport. Living in various European countries. Later, he supported the resistance against the Nazi suppression, helping people to flee the regime. After the war, he joined the Bavarian CSU, serving as member of the European Parliament. During that term, he was also responsible for the “Pan European Picnic” in 1989, when many citizens of the GDR managed to escape to the West through a hole in the Iron Curtain cut by the Hungarians (ibid p.34f.) This story is just one of many, as for instance, the author presents one of his neighbours in Vienna, who was supposed to inherit the throne of Ukraine, yet, instead of a kingdom, now owns a dancehall to be rented for balls (ibid. p.49). Many people from Norway to Italy and the numerous new states, that emerged from the demise of the Habsburg empire, have a say during the lecture, presenting the impact of the Habsburg past on the Europe of today.

In *“Die Welt von Gestern - Erinnerungen eines Europäers“* (The world of yesterday- Memories of a European) Austrian novelist Stefan Zweig, who grew up during the heydays of the Habsburg Monarchy, reminds us that things that were taken for granted can get lost quite fast. He once wrote down: *“The day I lost my passport, at the age of 58 I discovered that losing your home does mean more than losing a certain spot on earth”* (Zweig, 1978, p. 208). Travelling through Europe, this travelling diary uncovers many parallels. Once the Habsburg emperors were responsible for keeping stability within the

multitude of nationalities. Both, the European Union today, as the Habsburg emperor during his time, were built upon the principle of keeping peace (Gruyter, 2021, 106f.). Like today, many ethnic issues were transformed into legal issues to be debated in front of a court. Sometimes this procedure worked, other times not, yet the strategy was to gain time to find a peaceful solution (ibid. p.72). As in earlier times, the Hungarians especially were striving for a stronger position, and now the European Union finds itself negotiating their position, with the United Kingdom having left (ibid. p.137). Eventually, the presumed slow working speed of the European bureaucracy could also be found within Habsburg bureaucracy, which appeared to be rather relaxed, following the same somehow lethargic procedures (ibid.p.76). According to a famous legend, the last words of emperor Franz Joseph I to his servant were: *“Let’s do it as always. Wake me up at 4 a.m. I have not finished my work so far”* (Rosen, 2016). Despite many their many differences the emperor and the house of Habsburg served as common point of reference for different nations.

The present is the past of tomorrow or lessons to be learned from history

Whoever comes to the European Parliament building in Brussels will find a huge sculpture, made of different bars striving in various direction. However, the sculpture *“Confluence”* is based upon a common fundament, symbolizing the common root of all member states of the EU, meanwhile the perspectives and ideas for the future might be contradictory to each other. Most of the buildings from the imperial times are still in use today as centres of power such as the Hofburg – now the office of the Austrian head of state. The stability and evolution of a political system used to be built on exchange, best shown by the concept of masquerade balls. While noble people dressed down as ordinary people, those ordinary people were allowed to dress up as noble people on that occasion (Gruyter, 2021, p. 147). This way governors and governed could get a glimpse of the opposite perspective, maybe understanding each other a little bit better, likewise the expert bubbles of the European quarter and the European citizens on the ground. Together all parts of the European project enter a new phase to search for their identity today.

History is not about the past, but about change. The German sociologist Niklas Luhmann considered the purpose of history to bequeath a testament of your time, meanwhile giving an incentive to learn from history for the next generation (Luhmann, 2010, p. 187). Concluding this review *“Beter wordt het niet”* provides two essential lessons from the past. On the one hand, even so many are fearing a loss of identity, the European Union is still more diverse, than many might think, with each part telling its own story. On the other hand, drawing parallels to the demise of the Habsburg Empire emphasize, that something, that might have been taken for granted for a very long time, suddenly might disappear within a moment. Consequently, this book encourages the reader to start its own discovery of the European identity today, promoting exchange and dialogue about the past and the future, or to summarize with the author’s words:

“Europe is a continent full of contradiction. It has always been like that. A continent with many people, languages, and beliefs. Everybody sees things bright, or very bleak, differently. Often things went wrong during the walk of history. But often it also went well. Then people started to listen to each other. They started to debate, started to eat together, they began to chat and to practice philosophy, began to negotiate as they managed to settle down conflicts. That is why the coffeehouse is so characteristic for the European Idea” (Gruyter, 2021, p. 89)

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