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GOVERNING YOUTH: CONFIGURATIONS OF EU YOUTH POLICY

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Abstract

The European Union has developed a range of measures to coordinate the actions of governments and other institutionalized actors in the field of youth as well as practical programs and actions directly addressing young individuals. Applying the Foucauldian analytics of government approach, this paper shows that EU Youth Policy is a particular field of government simultaneously regulating the actions of actors dealing with youth issues while also directing the 'proper' behavior and conduct of young individuals primarily as jobseekers. The Open Method of Coordination and the Structured Dialogue as modes of governance are used at the EU level to disperse political power across a range of institutions. Governing is accomplished through the notions of the involvement and equivalence of partners dealing with youth issues. Complementing this, by implementing the Youth in Action Program the EU is directly encouraging young Europeans to be self-responsible and to act as active economically valuable (prospective) workers.

Keywords: EU Youth policy, Structured Dialogue, government, governance

1. Introduction

The European Union is often promoted in an idealized way, as a space where much is done to create favorable conditions in which young people can seek opportunities, develop their skills and actively participate in European society. Indeed, the European Union (EU) represents itself as a unique community in which young people are, through diverse programs and actions, stimulated and encouraged to enter the labor market and learn how to become more employable.¹ On the other hand, the EU authorities, especially in the context of the economic crisis that hit the EU in 2008, are not entirely blind to the internal problems facing young people. In particular, unemployment is increasingly considered one of the most pressing issues. As the former Commissioner for Education, Culture, Multilingualism and Youth, Androulla Vassiliou, noted, "one in five young people in Europe cannot find a job".² Therefore, what we are encountering is a somewhat ambiguous notion of European space; it is at once presented and considered as an auspicious economic zone and as a space affected by unpleasant (if not critical) economic circumstances.

¹ See European Commission, *Focus On: Youth Employment. European Good Practice Projects* (Luxembourg: Publications Office of the European Union, 2012).

² European Commission, *Focus On: Youth Employment. European Good Practice Projects* (Luxembourg: Publications Office of the European Union, 2012), 3.

While there are practically no objections or counter-arguments to the notion that the issues confronting European youth need to be resolved, the solutions are far from straightforward. The EU has been at the forefront of the search for remedies to the challenges young people face. In this context, the Renewed Framework for European Cooperation in the Youth Field (2010–2018), more commonly known as the EU Youth Strategy, was adopted by the European Commission in 2009. The Strategy is an overarching document for EU Youth Policy with two overall objectives: first, to provide more and equal opportunities for young people in education and in the labor market and, second, to encourage young people to be active citizens and participate in society.³ Because EU Youth Policy can only complement and support national youth policies, the Strategy is implemented on the European level through relatively new modes of governance, namely the Open Method of Coordination which is a non-binding, intergovernmental framework for cooperation and policy exchange, and through the Structured Dialogue which serves as a forum for continuous joint reflection between young people and policymakers across the EU in the youth field. In addition, yet equally importantly, the EU considers youth as part of the solution; every young person is spoken of as an agent of change and a critical resource in society upon which the EU's future depends. Within EU Youth Policy, young individual's concrete activities and actions were stimulated through the Youth in Action program which ran from 2007 to 2013 and in 2014 was included in the new Erasmus+ program scheduled to last from 2014–2020.⁴

EU Youth Policy is obviously a field with diverse mechanisms and means available through which specific objectives are to be achieved. Within the policy field actions on two different, yet complementary levels are proposed and implemented: the intergovernmental level (which, besides the governments of member states, includes other more or less institutionalized actors/organizations), and that of young individuals.

Not much research attention has been paid to the EU's role in the field of youth policy, which is also curious because the EU considers young people as a driving force and one of the priorities of its political agenda. This article aims to fill this gap by critically analyzing the complex entanglement of processes and practices, the

³ European Commission, *An EU Strategy for Youth – Investing and Empowering. A Renewed Open Method of Coordination to Address Youth Challenges and Opportunities. Com(2009) 200 Final* (Brussels: Commission of the European Communities, 2009).

⁴ The Youth in Action program has certainly not been the only EU program or initiative to address young individuals. Currently, among others, young people are targeted by the Youth on the Move initiative, the Youth Opportunities initiative, the Your First EURES Job action, and the Youth@Work campaign. All these are clearly important but are implemented under the EU's Employment, Social Affairs and Inclusion Policy. Therefore, in this article, we focus on Youth in Action program that has been implemented within the EU Youth Policy field.

involvement of multiple collective actors as well as individuals within the youth policy, and how forms of governing the youth field are articulated through a variety of governmental practices and mediations between power and (collective) subjectivities. Applying the Foucauldian analytics of government approach⁵, we aim to show that EU Youth Policy is a complex field of government in which governing is undertaken not by a central institution/authority but by a multiplicity of authorities and agencies, employing a variety of techniques, practices, mechanisms, programs, and forms of knowledge. Through the relatively new modes of governance, that is, the Open Method of Coordination and the Structured Dialogue, the EU disperses power and involves various actors, formalized, institutionalized as well as more informal stakeholders. Beside these more formalized modes of governance, specific subjects – young individuals as part of the European population – are directly addressed through various initiatives, programs and actions to take specific measures, actions and types of behavior.

Although quite a few studies from the critical Foucauldian perspective have been conducted on the Open Method of Coordination as a particular European governmental mechanism,⁶ we aim to show that within EU Youth Policy such modes of governance are only part of the comprehensive set-up of the governmental rationale and concrete practices through which governing in the youth field is achieved. Thus, in this paper we rethink the Open Method of Coordination and the Structured Dialogue also in relation to the EU's Youth in Action Program through which a specific form of young personhood is constituted. While modes of governance such as the Open Method of Coordination and the Structured Dialogue are primarily a means of governing more institutionalized, formal and informal organizations such as national governments, civil society (youth) organizations, local governments, etc., the EU also carries out programs in the field of youth that aim to find solutions to problems (e.g. unemployment) residing in the capacity of young individuals as rational, autonomous, responsible, active, and entrepreneurial subjects. EU Youth Policy is therefore critically analyzed as a field in which government occurs through governmental mechanisms, strategies, programs, and

⁵ Mitchell Dean, *Governmentality: Power and Rule in Modern Society* (Los Angeles: Sage, 2010), Nikolas Rose, *Powers of Freedom: Reframing Political Thought* (Cambridge: Cambridge University Press, 1999), Michel Foucault, "Governmentality," in *The Foucault Effect: Studies in Governmentality: With Two Lectures by and an Interview with Michel Foucault*, ed. Graham Burchell, Colin Gordon, and Peter Miller (Chicago: University of Chicago Press, 1991).

⁶ Roger Dale, "Forms of Governance, Governmentality and the EU's Open Method of Coordination," in *Governmentality: Governing International Spaces*, ed. Wendy Larner and William Walters (London: Routledge, 2004), Jens Henrik Haahr, "Open Co-ordination as Advanced Liberal Government," *Journal of European Public Policy* 11, no. 2 (2004), also see Caroline de la Porte, "Is the Open Method of Coordination Appropriate for Organising Activities at European Level in Sensitive Policy Areas?," *European Law Journal* 8, no. 1 (2002).

actions and by which European youth are governed in a manner so that the desires, aspirations, and interests of young individuals are shaped.

In the first part of the paper we briefly present the theoretical approach of 'analytics of government' and explain why it is useful for examining current modes of governing in Europe and specifically within the youth policy field. Second, we present the formation of EU Youth Policy and explain the role of the Open Method of Coordination and the Structured Dialogue within it. We show how these two modes of governance are employed by the EU to disperse power among a variety of stakeholders and to 'govern at a distance'. We then move on to show how EU Youth Policy addresses young individuals through different programs and actions to develop particular compartments, behaviors and activities of individuals: a form of personhood we can describe as the entrepreneurial Self – an active, responsible and self-caring individual seeking to make an entrepreneur of herself or himself.

2. 'Analytics of government' and the governmentalization of Europe

As two of its most prominent proponents, Peter Miller and Nikolas Rose⁷, argue, the analytics of government approach is concerned with the analysis of the specificities of diverse contexts in which particular socio-political practices, apparatuses, institutions and structures emerge. What studies starting from this perspective are concerned with are programs, acts, practices, mechanisms, techniques, and knowledge that are aimed at conducting, managing, administering, and directing large-scale polities or organizations/institutions as well as the micro-scale, that is, at individuals as part of a specific population. The analytics of government focuses on the knowledge that is enmeshed in various governmental practices. The focus is on the "heterogeneity of authorities which seek to govern conduct, the heterogeneity of the strategies, devices and technologies used for governing [...]".⁸ Mitchell Dean⁹ similarly explains that the analytics of government is concerned with modes of governing, acting, intervening, and directing that rely upon definite mechanisms and programs which, in the name of the public good and well-being of society, aspire to regulate, inform, arrange, and adapt social and economic policies, activities or practices. In this light, government is clearly not something which can be pinpointed but is the deliberate shaping of the way collectivities and individuals act; it aims at "not only the legitimately constituted forms of political or economic subjection but also modes of action, more or less considered and calculated, which

⁷ Peter Miller and Nikolas Rose, "Political Thought and the Limits of Orthodoxy: A Response to Curtis," *The British Journal of Sociology* 46, no. 4 (1995): 591.

⁸ Herbert Gottweis, "Theoretical Strategies of Poststructuralist Policy Analysis: Towards an Analytics of Government," in *Deliberative Policy Analysis: Understanding Governance in the Network Society*, ed. Maarten A. Hajer and Hendrik Wagenaar (Cambridge, UK; New York, USA: Cambridge University Press, 2003), 255.

⁹ *Governmentality: Power and Rule in Modern Society*.

were destined to act upon the possibilities of action of other people. To govern, in this sense, is to structure the possible field of actions of other".¹⁰

Such a perspective is particularly relevant and useful for examining new modes of government emerging at the European level. The EU is frequently characterized as a multi-level polity; a space which manifests itself through the recognition and acknowledgement of new actors and political processes.¹¹ The latter are commonly identified as novel patterns of governance in which traditional centers of authority (states) are practically compelled to interact, network, and cooperate in policymaking processes with a myriad of other actors from local, national, regional, and global levels and coming from different sectors of society.¹² Governance presupposes regular, iterative communication and exchanges among a more or less fixed set of interdependent actors that presumably have guaranteed access in the policy-making and decision-making cycle. In the EU, such political processes have been increasingly identified as "multi-level governance"¹³ whose key objective is, as the European Commission stressed in *The White Paper on European Governance*, to "open up the policy-making process to get more people and organisations involved in shaping and delivering EU policy. It promotes greater openness, accountability and responsibility for all those involved".¹⁴

One can argue from the analytics of government perspective that such a mode of governance¹⁵ is a re-arrangement of governing in which power is dispersed among associational networks of different actors from the private sector, civil society

¹⁰ Michel Foucault, "The Subject and Power," *Critical Inquiry* 8, no. 4 (1982): 790.

¹¹ European Commission, *European Governance: A White Paper. Com(2001) 428 Final*, vol. Commission of the European Communities (Brussels: Brussels, 2001), Patrick Le Galès, *European Cities: Social Conflicts and Governance* (New York: Oxford University Press, 2002).

¹² Philippe C. Schmitter, "Participation in Governance Arrangements: Is There Any Reason to Expect It Will Achieve" Sustainable and Innovative Policies in a Multi-Level Context," in *Participatory Governance. Political and Societal Implications*, ed. Jürgen R. Grote and Bernard Gbikpi (Opladen: Leske and Budrich, 2002).

¹³ See William Walters and Jens Henrik Haahr, *Governing Europe: Discourse, Governmentality and European Integration* (New York: Routledge, 2005), 2; also see Neill Nugent, *The government and politics of the European Union*: (Durham: Duke University Press, 2003); John McCormick and Jonathan Olsen, *The European Union: politics and policies* (Boulder, CO: Perseus Books Group, 2013).

¹⁴ European Commission, *European Governance: A White Paper. Com(2001) 428 Final*, 3.

¹⁵ For more on the conceptual distinction between government, governmentality, and governance, see Mark Bevir, "Governance and Governmentality after Neoliberalism," *Policy & Politics* 39, no. 4 (2011).

organizations, and parts of the state apparatus.¹⁶ Political power is exercised on the basis of temporary as well as more long-term alliances between diverse authorities "in projects to govern a multitude of facets of economic activity, social life and individual conduct".¹⁷ The restructuring of governing through polycentric ensembles in which the public-private distinction is blurred is deeply ingrained in a consolidating neoliberal rationale which, among others, combines "a desire to construct politically the market as the preferred social institution of resource mobilisation and allocation".¹⁸ Moreover, as Thomas Lemke importantly upgrades Rose and Miller's argument regarding the new modes for governing different collective agencies (e.g. state apparatuses, civil society organizations, private companies, etc.) as well as individuals:

Neo-liberalism encourages individuals to give their lives a specific entrepreneurial form. It responds to stronger 'demand' for individual scope for self-determination and desired autonomy by 'supplying' individuals and collectives with the possibility of actively participating in the solution of specific matters and problems [...]. This participation has a 'price-tag': the individuals themselves have to assume responsibility for these activities and the possible failure thereof.¹⁹

Within the EU modes of governance are certainly not limited to the inclusion of specific actors, agencies and organizations and their commitments, actions, and processes but are composed of specific practices, mechanisms, and technologies. Governing is accomplished through a varied mix of practical features of government that include a range of different policies and programs. This intricate and entangled amalgam of modes of governance and policies, programs and (practical) actions is what constitutes European government and can be described, using William Walters and Jens Henrik Haahr's²⁰ phrase, as the governmentalization of Europe. Walters and Haahr have effectively shown in their book entitled *Governing Europe* that a specific form of governmentalization can be observed at the European level. The governmentalization of Europe involves a series of diverse and complex policies and programs that serve to constitute Europe and, more particularly, the EU as a

¹⁶ Klaus Dingwerth, "Democratic Governance Beyond the State: Operationalising an Idea," in *Global Governance Working Paper No 14* (Amsterdam, Berlin, Oldenburg, Potsdam: The Global Governance Project, 2004), Mark Bevir, "Governance and Governmentality after Neoliberalism," *Policy & Politics* 39, no. 4 (2011).

¹⁷ Nikolas Rose and Peter Miller, "Political Power Beyond the State: Problematics of Government," *The British Journal of Sociology* 43, no. 2 (1992): 272.

¹⁸ Erik Swyngedouw, "Governance Innovation and the Citizen: The Janus Face of Governance-Beyond-the-State," *Urban Studies* 42, no. 11 (2005): 1998.

¹⁹ "The Birth of Bio-Politics': Michel Foucault's Lecture at the Collège De France on Neo-Liberal Governmentality," *Economy and Society* 30, no. 2 (2001): 202.

²⁰ Walters and Haahr, *Governing Europe: Discourse, Governmentality and European Integration*.

space in which governmental apparatus is deeply involved in the processes of enhancing different aspects of socio-political life.

Having reflected on and explained the main aspects and elements of the analytics of government approach and also clarified its analytical value and potency in examining modes of governing within the EU, it seems reasonable to point out the analytical capacity of this approach for investigating EU youth policy. From the analytics of government perspective, the policy field can be observed as an amalgamated framework where specific political rationalities, strategies, and programs are constructed and ingrained into the political technologies and specific practices through and in which numerous collective actors of various types as well as individuals are involved and molded in the exercise of power. Analytics of government is valuable for explaining policies at the EU level as specific socio-political artefacts or fields emanating from particular historical conditions and as an answer to specific needs and demands while at the same time always being flexible, changeable, and versatile. Moreover, youth policy should not be seen from an analytics of government perspective as a framework in which one political power or authority regulates the behavior and conduct of other actors. On the contrary, a specific policy field can be observed as a terrain of government where the capacities of different actors are used as a political strategy to secure particular ends.

3. Modes of governance within EU Youth Policy: Historical contexts and current developments

Although the development of a more or less coherent EU Youth Policy is quite a recent phenomenon, ideas and official references to youth on the European level have been present since the 1950s. Entering into force in 1958, the Treaty establishing the European Economic Community already explicitly refers to the young European population. Article 50 thereof states that member states shall, as part of a common program, encourage the exchange of young workers. The focus is thus not on the entire young population but exclusively on working youth. Although references to youth obviously did exist, it must be stressed that these were relatively scattered and more or less incoherent. This situation gradually changed and in the second half of the 1980s the first tangible initiatives were set up.

Claire Wallace and Rene Bendit argue that one of the formative events for initiating the European Youth Policy was consultations with youth ministers in 1988 and the European Commission's subsequent publication of a Memorandum which examined

the feasibility of a common European Youth Policy.²¹ But with the Maastricht Treaty (1992) it became clear that moves towards a common EU Youth Policy were limited since the competence to deal with the subject was restrained to encouraging cooperation between member states and, if necessary, by supporting and supplementing their actions.²² This principle of subsidiarity remained unchanged during the revisions of Amsterdam (1997), Nice (2000), and Lisbon (2009).

Another important political development in the youth field was implementation of the Youth for Europe action program adopted by the Council in 1988. The program was designed to promote youth exchanges in the Community by implementing exchange and youth initiatives outside of formal education. Moreover, the program enabled member states to develop and share information in the field of youth.²³ In the 1990s, especially in the second half, the question of employment became a common issue for more or less all member states and, as such, a kind of trigger for deeper European integration within the social dimension.²⁴ One result was the adoption of a new strategy in 1997, known as the European Employment Strategy, which represents an important political milieu in which youth policy was further developed. In 1999, the Council and the Ministers of Youth meeting with the Council adopted a resolution on youth participation.

This was one of the first explicit documents to clearly call for the cooperation of young people within the European space to participate in (political) processes that affect their lives.²⁵ Further, in the same year the European Commission, Parliament and Council declared the need for a global, transparent and coherent EU Youth Policy reinforced by *Social Agenda 2000*, emphasizing the central role of the promotion of knowledge, education and vocational training. The result was the Youth program, superseding the Youth for Europe program.²⁶ Nevertheless, a still present and recurring problem was how to address the issues and needs of youth at

²¹ "Youth Policies in Europe: Towards a Classification of Different Tendencies in Youth Policies in the European Union," *Perspectives on European Politics and Society* 10, no. 3 (2009).

²² Pekka Kettunen and Corinna Wolff, "Europeanisation through the Back Door: EU Social Policy and the Member States," *Politička misao* 47, no. 5 (2011).

²³ Council of the European Communities, "Council Decision of 16 June 1988 Adopting an Action Programme for the Promotion of Youth Exchanges in the Community - "Youth for Europe" Programme," *Official Journal of the European Communities* L 158, no. 25 June (1988).

²⁴ See Janine Goetschy, "The European Employment Strategy: Genesis and Development," *European Journal of Industrial Relations* 5, no. 2 (1999).

²⁵ Council of Ministers of Youth "Resolution of the Council and the Ministers of Youth Meeting within the Council of 8 February 1999 on Youth Participation," *Official Journal of the European Union* C 042, no. 17 February (1999).

²⁶ Wallace and Bendit, "Youth Policies in Europe: Towards a Classification of Different Tendencies in Youth Policies in the European Union," 453.

the European level but without interfering with the competencies of the member states.

The response came in 2001 in the form of a new document known as *The White Paper on European Youth: A New Impetus for European Youth*. Here the European Commission committed itself to a clear policy and actions compatible with it. The introduction and launching of this document, which aimed to lay down a detailed and well-argued framework for cooperation between member states and the Commission, has been part of a larger, relatively profound and more tangible move towards so-called European governance. This does not mean, of course, that certain models of governance were not already in work at that stage,²⁷ but the Lisbon Strategy and *The White Paper on the European Governance* are just two of the markers signifying the new impetus for implementing new concrete and allegedly more democratic modes of policymaking on the European level. The White Paper on European Youth introduced the Open Method of Coordination as a specific form of governance through which issues within EU Youth Policy should be dealt with.

The Open Method of Coordination as a potent governance practice was introduced at the Lisbon European Council in 2000:

The Union has today set itself a new strategic goal for the next decade: to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion [...] Implementing this strategy will be achieved by improving the existing processes, introducing a new Open Method of Coordination at all levels....²⁸

Dermot Hodson and Imelda Maher²⁹ state that the Open Method of Coordination was in fact not introduced in 2000 *ex nihilo*; on the contrary, it had already existed in different, yet similar versions. Nevertheless, it was introduced by the Council as a novel vehicle for a more open and democratic process towards common EU goals and objectives. According to the Council, it has four key elements: setting up different guidelines and objectives for the EU; establishing performance indicators and benchmarking movements towards a previously established objective; translating objectives into implementation goals not only at the European but also,

²⁷ Liesbet Hooghe and Gary Marks, *Multi-Level Governance and European Integration* (Lanham, MD: Rowman & Littlefield Publishers, 2001).

²⁸ European Council, *Presidency Conclusions* (2000 [cited 2 June 2012]); available from http://www.europarl.europa.eu/summits/lis1_en.htm.

²⁹ "The Open Method as a New Mode of Governance: The Case of Soft Economic Policy Co-ordination," *JCMS: Journal of Common Market Studies* 39, no. 4 (2001).

or primarily, on the national, regional and local levels; systematic monitoring of the implementation with an emphasis on the process of mutual learning.³⁰

Within EU Youth Policy, the Open Method of Coordination has been adopted and applied basically according to the principles defined in the White Paper on European Governance. More concretely, the Commission has proposed that several subjects are suited to the Open Method of Coordination, including "participation, voluntary service, information, improving the public authorities' awareness of young people's concerns, and, more generally, any other subject which might contribute to the development and recognition of activities on the youth front (e.g. youth work, youth clubs, street work, projects to foster a sense of citizenship, integration, solidarity among young people, etc.) for the part which is not covered by other political processes such as employment, social integration and education".³¹ These subjects correspond very strongly to the kind of activities and resources normally associated with youth policies at the national level. Among the themes proposed for applying the Open Method of Coordination to, it is particularly participation which is set as a priority. In order to facilitate the participation of European Youth, the Commission proposed "strengthening a consultation structure for young people at European level" in which civil society organizations (and particularly the Youth Forum) representing youth are supposed to participate.

This can be viewed as a particular form of neoliberal governance which Jacques Donzelot has termed "the mobilization of society",³² since within it we can observe "a pluralisation of the centre, enabling the problems [...] to rebound back on society, so that society is implicated in the task of resolving them, where previously the state was expected to hand down an answer for society's needs".³³ It is a specific form of government where political power is understood to be dispersed across a range of formal and informal institutions or organizations without manipulating specific processes and without dominating. Bearing in mind that the Open Method of Cooperation is primarily a new mode of governance through which, as described by the Lisbon Strategy, the EU seeks to become "the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion", it becomes clear that it serves a specific governmental purpose: that of mobilizing all available sources,

³⁰ European Commission, *European Governance: A White Paper. Com (2001) 428 Final*, European Council *Presidency Conclusions* ([cited]).

³¹ European Commission, *White Paper - a New Impetus for Youth. Com(2001) 681 Final* (Brussels: Commission of the European Communities, 2001), 16.

³² "The Mobilization of Society," in *The Foucault Effect: Studies in Governmentality: With Two Lectures by and an Interview with Michel Foucault*, ed. Graham Burchell, Colin Gordon, and Peter Miller (Chicago: University of Chicago Press, 1991).

³³ Jacques Donzelot, "The Mobilization of Society," in *The Foucault Effect: Studies in Governmentality: With Two Lectures by and an Interview with Michel Foucault*, ed. Graham Burchell, Colin Gordon, and Peter Miller (Chicago: University of Chicago Press, 1991), 178.

including, or in particular, youth for pursuing a neoliberal agenda of competitiveness, dynamism of business and for securing a climate conducive to investment, innovation, and entrepreneurship.

Although the Commission and the Council have both expressly assessed the Open Method of Coordination and the framework for European cooperation as part of EU Youth Policy in general as a successful platform for the member states in addressing youth-related issues, the European Youth Pact was set up by the European Council in 2005 to further promote the participation of all young people in education, employment, and society in general. In the same year, the Council of Ministers adopted a resolution which invited both the Commission and the member states to develop and implement the Structured Dialogue with young people and their organizations, researchers in the youth field and policymakers. The need for such a governance mechanism was confirmed by a Council resolution in November 2006 and by the Commission in 2007. The Structured Dialogue has also been integrated into the renewed framework for cooperation proposed in the new EU Youth Strategy that sets current objectives within EU Youth Policy for the period between 2010 and 2018.

Implementation of the Structured Dialogue as a mode of governance within EU Youth Policy starts from the presumption that “young people and their organizations should be consulted on and closely involved in the development, implementation and follow-up of policy actions affecting them”.³⁴ As such, the Dialogue aims to address a wide range of youth organizations as well as those young individuals who have fewer opportunities or are not formally organized: “through the Structured Dialogue, the EU institutions want to make full participation of young people in society a reality and strengthen the partnership between the EU institutions and young people”.³⁵ Particularly the European Youth Forum, a youth organization active on the European level, has been targeted by the Commission as the main partner of EU institutions because it speaks on behalf of a great number of young people.

Quite a few different events of the Structured Dialogue take place in the member states and at the European level from which different opinions, views, and

³⁴ Council of the European Union, “Resolution of the Council and of the Representatives of the Governments of the Member States, Meeting within the Council, on Addressing the Concerns of Young People in Europe — Implementing the European Pact for Youth and Promoting Active Citizenship,” *Official Journal of the European Union* C 292, no. 24 November (2005): 5.

³⁵ European Commission, *The New Concept of the European Structured Dialogue with Young People. Eac/D1/Jk/D (2008)* (Brussels: European Commission, Directorate-General for Education and Culture, 2008), 1.

judgments are gained. The Commission is a key steering and coordinating partner in the dialogue but it relies heavily on the support of the member states and the National Youth Councils to organize local, regional, and national debates and to feed the results back from the national to the European level.

From this short sketch of the Structured Dialogue it is possible to observe techniques, mainly in the form of organized participatory events, employed for the purpose of governing through the notions of involvement, equivalence of each partner involved in the dialogue, reciprocal expectations and inputs of the parties involved, negotiations and, in the last instance, mutual consent for possible future policies. As such, the Structured Dialogue is a governmental strategy that employs techniques of voice and representation by which the targeted actors are endowed with the possibility to participate in the policymaking process, but which are at the same time shaped and guided through and throughout this process.

The Structured Dialogue has primarily been put into practice to “help achieve the Lisbon employment goals” and in the process it is young people who need to be fully integrated into society. In this context, the EU strives to support young people in their efforts to access the labor market and encourages them to develop creativity and entrepreneurial skills. Further, the EU emphasizes that the young should be equipped with knowledge, skills, and competencies through high-quality, relevant education, training, and mobility experiences. The first step towards such concrete actions and support mechanisms for youth is, it is argued, precisely the dialogue that must be as inclusive as possible and developed at the local, regional, national and EU levels and which serves “as a forum for continuous joint reflection on the priorities, implementation and follow-up of European cooperation in the youth field”.³⁶ The Structured Dialogue as a specific mode of governance is a way to promote the economy by seeking to guide and mold the conduct of specific formal as well as informal institutional arrangements as targets of governmental apparatus of local, national and European institutions. As such, the Structured Dialogue as a means of governing a range of diverse actors in the field of youth works through the “flexible forms of strategic alliance [...] that cut across traditional institutional, professional and sector boundaries”³⁷ and therefore transforms the organizations and institutions involved in the dialogue into areas of calculable space molded as a collective body limiting their forms and possible actions.

³⁶ Council of the European Union, "Council Resolution of 27 November 2009 on a Renewed Framework for European Cooperation in the Youth Field (2010-2018)," *Official Journal of the European Union* C 311, no. 19 December (2009): 4.

³⁷ Mark Duffield, "Governing the Borderlands: Decoding the Power of Aid," *Disasters* 25, no. 4 (2001): 318.

4. Governing youth through the Youth in Action program: towards self-responsible young individuals

As we have seen, the modes of governance that are invoked and actualized within EU Youth Policy, and the agencies which are endowed with possibilities to participate in the policymaking more frequently and thoroughly, are predominantly collectivities/organizations, whether formal or informal, rather than young individuals. But this does not mean that EU Youth Policy does not target individuals as part of the young European population. To this end, there is a specific program known as Youth in Action (now under the Erasmus+ program) through which young individuals are addressed. The Youth in Action program was established by the European Parliament and the Council of the European Union in 2006 to be implemented between 1 January 2007 and 31 December 2013³⁸. It was a successor of the Youth Program (2000–2006) and recognized by the EU as a key instrument in providing young people with opportunities.³⁹ Its stated aims are to create a sense of active European citizenship among young Europeans and to involve them in shaping the EU's future. To this end, the program's main objectives, summarized in five points were: (1) to promote young people's active citizenship in general and their European citizenship in particular; (2) to develop solidarity and promote tolerance among young people, in particular in order to reinforce social cohesion in the EU; (3) to foster mutual understanding between young people in different countries; (4) to contribute to developing the quality of support systems for youth activities and the capabilities of civil society organizations in the youth field; and (5) to promote European cooperation in the youth field. More specific objectives of the program included: giving young people and youth organizations the opportunity to take part in the development of society in general and the EU in particular; encouraging young people's participation in the democratic life of Europe; encouraging initiative, enterprise, and creativity. To achieve both these general and specific objectives, the program has been divided into five action clusters known as Youth for Europe; European Voluntary Service, Youth in the World; Youth Support Systems, and Support for European Co-operation in the Youth Field.

As already stressed, the key subjects addressed by Youth in Action are evidently young individuals as members of the young European population. Here, the objective of government is to bring up, cultivate, mold, and nourish forces and "capacities of living individuals as members of specific population, as resources to be fostered, to be used and to be optimized".⁴⁰ Youth is being valued, regarded, and

³⁸ The Decision was amended by a Decision of the European Parliament and of the Council in 2008.

³⁹ European Commission, *Youth in Action Programme Guide* (Brussels: European Commission, 2012).

⁴⁰ Dean, *Governmentality: Power and Rule in Modern Society*, 29.

conducted as a specific component of society at large that need to act in such a way to successfully enter the 'adult' world of being useful to European society.

The Youth in Action program as part of EU Youth Policy has from the outset been formulated as a flexible governmental mechanism which can adapt to emerging issues and include specific actions responding to those issues not identified when the program started to be implemented. To this end, annual priorities were selected with the aim of better defining the context of implementation of the Program and by anchoring the Program to the most pressing issues at the European level.

From 2010 to 2012 one of the now already permanent annual priorities was the issue of youth (un)employment. This persisting problem has worsened especially since 2008 and was also highlighted as one of the most acute concerns facing European youth by the European Commission in its 2009 Youth Strategy.⁴¹ The document acknowledges that today's globalized world is an opportunity for young people to find jobs, but at the same time a place where unemployment can easily become a reality for vulnerable workers such as young people.

This detected problem of young Europeans has received a response within the Youth in Action Program. As already noted, the question of (un)employment has been an annual priority of the program since 2010. In 2012, priority was given to projects financed by the Program that aim to promote young people's commitment to more inclusive growth, projects tackling the issue of youth unemployment, as well as projects seeking to stimulate unemployed young people's mobility and active participation in society. Further, the Program especially called for specific actions to stimulate entrepreneurship and employability among young individuals. Such priorities are clearly in line with the European Youth Strategy's recommendations to youth workers whose responsibility should be to "encourage partnerships between the worlds of education and enterprise in fostering the transition of young people into employment and in supporting the development of the competences and skills *young people need to participate fully in employment and society*".⁴²

We can see how obligations and responsibilities are divided between different subjects. On one hand, youth workers and organizations are expected to support, encourage, and foster youth employability, while it is the responsibility of young individuals themselves to seize such opportunities for developing their knowledge,

⁴¹ European Commission, *An EU Strategy for Youth – Investing and Empowering. A Renewed Open Method of Coordination to Address Youth Challenges and Opportunities. Com(2009) 200 Final*.

⁴² European Commission, *European Research on Youth. Supporting Young People to Participate Fully in Society* (Luxembourg: Office for Official Publications of the European Communities, 2009), 69, emphasis added.

competencies and skills, with the latter predominantly being entrepreneurial. What was once a public area of responsibility is now a responsibility of individuals, groups, and communities that are encouraged freely and rationally to conduct themselves. However, these recommendations, incentives, and stimulations from the side of the EU do entail something that could be called contractual implication. Namely, individuals and youth workers must assume active responsibility for their actions and activities, "both for carrying them out and [...] their outcomes".⁴³ In addition, government through the EU Youth Policy involves processes of responsabilization, inciting and encouraging individuals to act, behave and conduct themselves as enterprise, to conduct themselves in accordance with a normalized, appropriate and/or approved model of action.

Instances of such 'proper' comportment, actions, and behavior of youth organizations, workers and young individuals are aggregated and presented through the identification of good practice projects within the Youth in Action Program, available to the wider public in the publication *Focus on: Youth Employment* published by the European Commission.⁴⁴ As the former Commissioner for Education, Culture, Multilingualism and Youth, Androulla Vassiliou, explains: "The projects [...] demonstrate how Youth in Action empowers young people, giving them chance to transform themselves to take on a role in the job market, with its evolving demands for adaptability and resourcefulness".⁴⁵ Such a published compendium of good practices is precisely what the former commissioner was hinting at: good practice cases are part of the governmental technologies of performance that aim to demonstrate, make visible, benchmark and measure performance and conduct, and are allegedly a way to restore trust, stimulate, and make subjects accountable.⁴⁶

An example of what the European Commission assesses as a good practice was a project conducted within the Youth in Action Program in Estonia in 2010. The motto of the project was "Getting prepared for the world of work". The project organizers prepared a training course that helped 16 Estonian jobseekers get ready for their position in the labor market and to improve their knowledge and possibilities of finding a job. The project sought to raise the participants' awareness of youth

⁴³ Graham Burchell, "Liberal Government and the Techniques of the Self," in *Foucault and Political Reason: Liberalism, Neo-Liberalism and Rationalities of Government*, ed. Andrew Barry, Thomas Osborne, and Nikolas Rose (Chicago and London: University of Chicago Press and UCL Press, 1996), 29.

⁴⁴ European Commission, *Focus On: Youth Employment. European Good Practice Projects*.

⁴⁵ *Ibid.*, 4.

⁴⁶ Hans Krause Hansen and Dorte Salskov-Iversen, "Remodeling the Transnational Political Realm: Partnerships, Best-Practice Schemes, and the Digitalization of Governance," *Alternatives: Global, Local, Political* 30, no. 2 (2005): 146.

employment, the labor market and to gain knowledge on how to look for a job and start a business. What was offered during the project was an opportunity for young individuals to acquire knowledge on the employment topic. It is therefore implicitly assumed that knowledge and competencies are a necessary condition to be employable and, in order for young people to gain knowledge and competencies, they must possess the 'will to learn'. An unemployed person is not only someone who is in need of an income, but also a person who must first and foremost actively seek (additional) knowledge and competencies. Learning, whether formal or informal, is as such part of the regime of government in which one's learning process through human capital is produced. Young individuals are compelled to acquire knowledge and must be able to use this knowledge in order to be both included and valuable to society.⁴⁷

Projects within the Youth in Action program do not only concentrate on knowledge transmission but also on offering young individuals an opportunity to make connections and direct links with employers. The idea is to create networks between jobseekers, employers and entrepreneurs not simply to obtain knowledge about employers' activities, roles, and responsibilities, but to give them an immediate chance of finding a job by themselves. The creation of networks and ties is what living an entrepreneurial life is all about. This means that young individuals are being stimulated to be mobile; moving in different contexts and environments or networks and, through this, to become employed in the "continuous business of living".⁴⁸ In the process of creating networks and making oneself mobile, the incentive is to activate values of self-reliance, self-respect, self-esteem, self-advancement, and self-responsibility. As one participant in the Estonian project mentioned above remarked, "[...] it is up to me to create the opportunities for myself to get a job".⁴⁹ The quest for young entrepreneurs is to make themselves economically valuable and to enhance their own economic capital as a capacity of their selves.

5. Conclusion

Although the EU does not hold legally-binding competencies in the youth field, this does not mean that no policies and governmental arrangements have been developed and implemented at the EU level. On the contrary, as we have shown, the

⁴⁷ Rose, *Powers of Freedom: Reframing Political Thought*, 162, Richard Edwards, "Mobilizing Lifelong Learning: Governmentality in Educational Practices," *Journal of Education Policy* 17, no. 3 (2002).

⁴⁸ Colin Gordon, "Governmental Rationality: An Introduction," in *The Foucault Effect: Studies in Governmentality: With Two Lectures by and an Interview with Michel Foucault*, ed. Graham Burchell, Colin Gordon, and Peter Miller (Chicago: University of Chicago Press, 1991), 44.

⁴⁹ European Commission *Focus On: Youth Employment. European Good Practice Projects*, 25.

EU has developed an intricate and complex policy framework within which issues relevant to youth are addressed and dealt with. In addressing and responding to these issues, among which the issue of unemployment has been a central one since 2009, a range of formal and informal, institutionalized and less institutionalized actors has been mobilized. This is not by coincidence, of course, since the mobilization of diverse and heterogeneous stakeholders in policymaking at the European level is part of the relatively new European governance agenda that presupposes more open, inclusive and democratic political processes. We have shown that such governmental involvement of a range of actors from different levels and societal domains is particular to the governmentalization of Europe which entails the construction of political and administrative structures at the EU level, dissemination of norms and procedures, and production of specific practical arrangements, mechanisms, and programs.

EU Youth Policy is one of the more or less coherent fields in which such governmentalization can be discerned. It is structured around two modes of governance through which cooperation between not just national authorities but also other agencies is stimulated, encouraged, and framed. The Open Method of Coordination and the Structured Dialogue are two practical modes of governance that are currently the formula for planning and solving issues related to the field of youth and seem to be fabricating space where substantial and comprehensive improvements in the field of youth can be achieved with the contribution of all partners involved. However, as the Open Method of Coordination and the Structured Dialogue stimulate and enable agency, participation, and deliberation, they also structure the possibility of action of these collective actors, their values, norms, and attitudes that are harmonious yet never fully analogous or identical with the institutional arrangements and objectives outlined at the EU level.

While the Open Method of Coordination and the Structured Dialogue are relatively coherent and systematized governmental arrangements directed at the inclusion of governments and institutionalized organizations, the Youth in Action Program as an important part of EU Youth Policy more directly addresses young individuals as part of the European youth population. While the program is well-organized and clearly structured, with unambiguous aims and objectives, it is also flexible and allows the most persistent or relevant issues to be included in its framework. In this light, the issue of youth employment has also received growing attention within the Youth in Action program. In addressing this issue, young Europeans are represented not as a problem but as a solution. The Youth in Action program is declared to be one of the European mechanisms that opens up possibilities for young individuals, yet it is young EU citizens themselves who must seize the opportunities given. The Youth in Action program is a vehicle through which responsibility for tackling the employment issue is transposed to 'responsible' and 'rational' individuals upon whom subjectivities such as active jobseeker and effective entrepreneur are

bestowed. Young individuals included in the projects within the Youth in Action program are encouraged to give their lives a specific entrepreneurial form. They must empower themselves by gaining knowledge and skills so that they can become economically valuable to European society. The governing of youth (employability) is therefore increasingly being accomplished by allocating accountability to the younger European generations. The logic behind this, it seems, is quite harsh: if European youth is Europe's (economic) future, why not make them fulfil our expectation themselves.

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ESTONIAN TRANSITIONAL JUSTICE: PREDICATED ON A COLLECTIVE MEMORY

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Abstract

In 1991, post-Soviet Estonia was confronted with the need to deal with the burdened legacies of its past. The independent regime began to implement transitional justice. This process was predicated on a particular collective memory of the recent past that has since been produced and reproduced through the works of a memory institute, the Estonian International Commission for the Investigation of Crimes Against Humanity, operating as a mechanism of transitional justice. It is found that this institute regards the Soviet period of occupation as criminal, illegitimate, and immoral, and has selectively remembered Estonian history, dismissing counter-narratives of the past, reflecting the goals of the present regime. As a result, some of the universal and normative goals of transitional justice have been compromised.

Keywords: transitional justice, memory, crimes against humanity, Estonia

1. Introduction

A society emerging from an authoritarian, totalitarian, and criminal past is confronted with the need to redress and acknowledge the burdened legacies of the past. In its transitional context, transitional justice is a process often implemented by the new regime seeking to deal with this burdened past and the crimes committed. Referencing Christine Bell, the “common project” of transitional justice is “dealing with the past” to establish reconciliation and stability for the new regime.¹ Moreover, Juan E. Mendez argues that redressing the wrongs is “an urgent task of democratization because it highlights the fundamental character of the new order to be established, an order based on the rule of law and on respect for the dignity and worth of each human person.”² Therefore, pursuing justice both during the period of transition and post-transition is critical for the new regime attempting to establish itself as stable, accountable, and legitimate, thus distinct from its predecessor. It must be initially noted that transition, for the purposes of this discussion, is conceptualized as “the shift from a non-democratic regime type to a

¹ Nico Wouters, *Transitional Justice and Memory in Europe 1945-2013* (Antwerp: Intersentia, 2014), 10; Christine Bell, “Transitional Justice, Interdisciplinarity and the State of the ‘Field’ or ‘Non-Field,’” *The International Journal of Transitional Justice* (3) 2009: 5-27.

² Juan E. Mendez, “In Defense of Transitional Justice,” in *Transitional Justice and the Rule of Law in New Democracies*, ed. A.J. McAdams (Notre Dame: University of Notre Dame Press, 1997) 1.

democratic one.”³ In Estonia, the transition began to take place in the late 1980’s and culminated September 17th, 1991 with the international recognition of its independence and membership to the United Nations.

As part of the third wave of democratization,⁴ Estonia’s approach to transitional justice has been largely defined by the added normative dimension that is concerned with values of democracy on an international scale.⁵ This article takes the normative assumption that democracy and the associated values of accountability and stability are strived for, representing the widely accepted broad and universal goals of transitional justice.⁶ Moreover, the post-Cold War wave of democratic transitions introduced a form of transitional justice closely tied to nation building,⁷ where a collective memory and a dominant narrative of the past became essential to regime consolidation. Therefore, a balance must be achieved between international norms and the local conditions and constraints.⁸ There are three predominant factors that limit and structure a given regime’s approach to transitional justice: the type of transition,⁹ the dominant beliefs and attitudes of the transitional society and elites,¹⁰ and the nature of predecessor’s regime.¹¹

³ Alexandra Barahona de Brito, “Introduction by Editors,” in *The Politics of Memory Transitional Justice in Democratizing Societies*, ed. C.G. Enriquez, A.B. de Brito, and P. Aguilar, (Oxford: Oxford University Press, 2001): 5.

⁴ The third wave of democratization refers to the surge of democracy that began in the 1970’s and includes the democratic transitions of South-West Europe, Central and South America, countries of Pacific Asia, and the Eastern European countries after the collapse of the Soviet Union. See Samuel Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman: University of Oklahoma Press, 1993).

⁵ Tuomas Forsberg, “The Philosophy and Practice of Dealing with the Past: Some Conceptual and Normative Issues,” in *Burying the Past: Making Peace and Doing Justice After Civil Conflict*, ed. N. Biggar (Washington: Georgetown University, 2003): 65; Ruti G. Teitel, “Transitional Justice Genealogy,” *Harvard Human Rights Journal* 16 (2003): 70-71.

⁶ Mendez, “In Defense of Transitional Justice,” 5; Forsberg, “The Philosophy and Practice of Dealing with the Past,” 65; Teitel, “Transitional Justice Genealogy,” 87.

⁷ Teitel, “Transitional Justice Genealogy,” 71.

⁸ Diane Orentlicher, “‘Settling Accounts’ Revisited: Reconciling Global Norms with Local Agency,” *The International Journal of Transitional Justice* 1 (2007): 18; Juan E. Mendez, “National Reconciliation, Transitional Justice, and the International Criminal Court,” *Ethics and International Affairs* 15 (2001): 29; Jose Zalaquett, “Confronting Human Rights Violations Committed by Former Governments: Principles Applicable and Political Constraints,” in *Transitional Justice Volume I: General Considerations*, ed. N.J. Kritz (Washington: US Institute of Peace, 1995): 17-19; Teitel, “Transitional Justice Genealogy,” 76; Mendez, “In Defense of Transitional Justice,” 3-5.

⁹ de Brito, “Introduction by Editors,” 12-13, 35.

¹⁰ Jon Elster, “Closing the Books: Transitional Justice in a Historical Perspective,” (Cambridge: Cambridge University Press, 2004): 213, 216-217.

¹¹ De Brito, “Introduction by Editors,” 19.

In Estonia, the crimes under the Soviet Union were often clandestine. Repression, secret police activities, and arbitrary arrests,¹² left the Estonian population with a black hole of knowledge about its' past. With the advent of transition, Estonians actively sought to uncover these crimes and reclaim ownership of their past subjugation.¹³ Therefore, and theoretically, to establish a record of the past, mechanisms involving investigation and truth revelation would be more effective than criminal trials or reparatory efforts.¹⁴ Shaped by such constraints, Estonia's experience with transitional justice has largely been predicated upon the construction of a collective memory, based on a decided account of the past.

Through the establishment of collective memory,¹⁵ there is also possibility for the new regime to influence what is remembered and how the process of memory construction is to unfold through the various approaches and mechanisms of transitional justice.¹⁶ Therefore, in the process of achieving transitional justice, the Estonian past has been remembered in a particular way, reinforced through the mechanisms of transitional justice the new regime adopted. The ways in which the various mechanisms of transitional justice function, their positive and negative outcomes, has been well studied.¹⁷ Although employed by Estonia, Slovakia, and Latvia, there has thus far been little to no research analyzing memory institutes as a

¹² Lavinia Stan, "Introduction: Post-Communist Transition, Justice, and Transitional Justice," in *Transitional Justice in Eastern Europe and the Former Soviet Union: Reckoning with the Communist Past* (London: Routledge, 2009): 6.

¹³ Lavinia Stan and Nadya Nedelsky, "Estonia," in *Encyclopedia of Transitional Justice Volume 2*, ed. Lavinia Stan and Nadya Nedelsky. (New York: Cambridge University Press, 2013) 16; Marek Tamm, "In Search of Lost Time: Memory Politics in Estonia 1991-2011," *Nationalities Papers* 41 (2013): 654; Mart Laar, "The Restoration of Independence in Estonia," in *Estonia: Identity and Independence*, ed. J.J. Subrenat (Amsterdam: Rodopi, 2004): 226-227.

¹⁴ De Brito, "Introduction by Editors," 21.

¹⁵ Maurice Halbwachs notion of collective memory is used, whereby individual memory is to be understood in terms of the collective memory as collective memory is a cohesive notion based on the overall and dominant representation of the past that is to inform the present. See Maurice Halbwachs *La Mémoire Collective* (Paris: Les Presses universitaires de France, 1950; Richard Ned Lebow, "The Memory of Politics in Postwar Europe," in *The Politics of Memory in Postwar Europe*, eds. N. Lebow, W. Kansteiner, C. Fogu (Durham and London: Duke University Press, 2006) 8-9; Jan Assmann and John Czaplicka, "Collective Memory and Cultural Identity," *New German Critique* 65 (1995): 125-133.

¹⁶ Forsberg, "The Philosophy and Practice of Dealing with the Past: Some Conceptual and Normative Issues," 69; De Brito, "Introduction by Editors," 24.

¹⁷ De Brito, "Introduction by Editors," 1-14; Elster, *Closing the Books*; Forsberg, "The Philosophy and Practice of Dealing with the Past: Some Conceptual and Normative Issues"; Mendez, "In Defense of Transitional Justice"; Juan E. Mendez, "Accountability for Past Abuses," *Human Rights Quarterly* 19 (1997): 255-282; Teitel, *Transitional Justice Genealogy*; Wouters, *Transitional Justice and Memory in Europe*.

mechanism of transitional justice seeking to establish a collective memory of the past.

A memory institute is distinct yet similar to truth commissions. Similar in terms of the need to establish a record of the past, yet different because they do not necessarily assume the close collaboration with all those involved in the given historical events to be investigated. In particular, memory institutes do not require direct juxtaposition of perpetrators' and victims' narratives on discrete events. They are not necessarily required to produce an end result of their works nor are they restricted temporally in any sense. Memory institutes will be understood as a mechanism seeking to reclaim the past and in order to "reclaim the past" memory institutes aim to establish a narrative of the given historical event or time period, that is widely accepted and perceived as legitimate through some form of investigation and research. A collective memory is constructed which often has the effect of distinguishing the new regime from the previous, defined by its oppression and criminality.¹⁸ However, in oppositional reference to truth commissions¹⁹ memory institutes are less restricted in terms of what historical events are to be examined, as well as how, when, and what the final outcome of the findings is to be.

This article seeks to evaluate institutes of memory as a mechanism of transitional justice in terms of their success meeting the broadly stated normative goals of transitional justice. One institute, the Estonian International Commission for the Investigation of Crimes against Humanity (hereafter: the Commission) will be analyzed to understand the Estonian collective memory that has been produced, and how successful the mechanism has been in meeting both the broader universal and context specific goals.

2. Method

Given the Commission as the subject of analysis, an empirically driven approach will be utilized in order to effectively understand the ways in which collective memory has been established in post-communist Estonia. An evaluation of whether the established collective memory and the process of historical selectivity has been justified and remained neutral will be conducted. Additionally, an analysis of the

¹⁸ James Mark, *The Unfinished Revolution: Making Sense of the Communist Past in Central-Eastern Europe* (London and New Haven: Yale University Press, 2010) 27-28.

¹⁹ Using Priscilla Hayner's definition, truth commissions directly engage with those involved, the perpetrators, victims and witnesses, are focused on a series of events that took place in a specific timeframe, are officially authorized by the state, have a temporal limit and are meant to produce a formalized report of the findings. See Priscilla Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (New York: Routledge, 2011).

works and achievements of the memory institute will be evaluated by relating them to the universal normative goals of transitional justice. Further analysis will be based on a close reading of the reports published by the Commission supported by statements made by Toomas Hiio and Meelis Maripuu, directors of the Estonian Institute of Historical Memory,²⁰ in an interview conducted at the institute in Tallinn May 2014. This approach allows for a thorough evaluation as the conclusions drawn are supported and derived from a variety of primary and secondary sources.

Juan Mendez has proposed four responsibilities for the state to move forward to a less adversarial future and achieve the normative universal goals of transitional justice while considering the context specific needs.²¹ Each of these obligations are not goals in and of themselves, they are processes to be incorporated in the selected mechanisms of transitional justice in the hopes of meeting the normative goals. Mendez' four proposals will be directly applied as the theoretical basis for the evaluation of Estonia's success in meeting the broadly stated, universally accepted, and legitimate normative goals of transitional justice, specifically with regards to the institute of memory under study.

The obligations proposed by Mendez are as follows, (1) there is an obligation for justice in that abuses and crimes committed in the past need to be punished, (2) the victims have a right to know the truth which allows the state to investigate and establish a record of the past, (3) the victims should also be granted some form of reparation for the harms done, and (4) those who committed the crimes should be removed from public office positions.²²

In order to properly contextualize the critical analysis of the Estonian memory institute a brief overview of Estonia's recent history, starting with the inter-war years of independence of the 1920's and ending with proclaimed independence in 1991²³, and experience with transitional justice thus far is necessary. Li Bennich-Björkman argues that Estonia's historical legacy, particularly the period of independence between World War I and World War II, was formative in the country's transitional process.²⁴

²⁰ The Estonian Institute of Historical Memory replaced the Estonian International Commission for the Investigation of Crimes Against Humanity in 2008 once the Commission had completed its investigation based on the Rome Statute. More details regarding the Estonian Institute of Historical Memory can be found at: <http://www.mnemosyne.ee/lang/en-us>.

²¹ Mendez, "In Defense of Transitional Justice," 12.

²² Ibid.

²³ For a comprehensive overview of Estonian history see: Toivu Raun's *Estonia and the Estonians* (Stanford: Hoover Institutions Press, 2001).

²⁴ Li Bennich-Björkman, "The Cultural Roots of Estonia's Successful Transition: How Historical Legacies Shaped the 1990s," *East European Politics and Societies* 21 (2007): 317-

On August 23rd, 1939 the Republic of Estonia was signed into the “secret protocols” of the Molotov-Ribbentrop Pact, becoming part of the Soviet “sphere of influence,” and by late August 1940, the Soviet Union occupied Estonia and Sovietization began.²⁵ Nazi Germany attacked the Soviet Union in June of 1941 and the Soviet forces retreated. There was a general sense of welcoming and help from Estonian partisans towards the Nazi’s who took control of Tallinn August 28th of 1941.²⁶ However, the German occupiers turned to outright mobilization, undermined the Estonian state structure and inflicted suffering upon Estonia and Estonians.²⁷ In September of 1944, the Soviet forces ‘liberated’ Tallinn, crushing an attempt to restore an independent Estonian government.²⁸ The German forces retreated in 1944 and nearly 100,000 Estonian citizens fled fearing the second Soviet occupation based on memories of the deportations and repression that took place from 1940 to 1941. The immediate post-war years were characterized by Stalin’s rule and Sovietization, dramatically altering Estonian demographics, politics and economics.²⁹ After Stalin’s death in 1953, the Soviet policies and system altered, becoming more moderate.³⁰ Although for the next near 40 years of Soviet occupation, many of the soft cultural and national annihilation Stalinist projects continued,³¹ threatening the Estonian language, culture, and identity. Yet a collective memory of the inter-war years of independence was able to withstand the occupations and the crimes, namely the mass deportations and the assault on culture and history.³² By the mid-1980’s it was becoming increasingly clear that the

319; Rein Ruutsoo “The Perception of Historical Identity and the Restoration of Estonian National Independence,” *Nationalities Papers* 32 (1995): 172-173.

²⁵ Toivo Raun, *Estonia and the Estonians* (Stanford: Hoover Institutions Press, 2001): 139-144; Karsten Brüggemann and Andres Kasekamp, “Identity Politics and Contested Histories in Divided Societies: The Case of Estonian War Monuments,” in *Identity and Foreign Policy: Baltic-Russian Relations and European Integration*, Eds. E. Berg and P. Ehin (Surrey: Ashgate Publishing Limited, 2009): 54.

²⁶ Brüggemann and Kasekamp, “The Politics of History and the ‘War of Monuments’ in Estonia,” *Nationalities Papers* 36 (2008): 427; Raun, *Estonia and the Estonians*, 142; Tonu Parming, *From the Republic of Estonia to the Estonian Soviet Socialist Republic: The Transfer of Rule and Sovereignty* (Helsinki: Otava, 1997): 47-48, 89.

²⁷ Raun, *Estonia and the Estonians*, 158.

²⁸ Ibid.

²⁹ Ibid., 171-172, 182; Brüggemann and Kasekamp, “The Politics of History and the ‘War of Monuments’ in Estonia,” 428-429.; Romauld J. Misiunas and Rein Taagepera. *The Baltic States, Years of Dependence: 1940-1980* (Oakland: University of California Press, 1983) 74.

³⁰ Raun, *Estonia and the Estonians*, 185-189.

³¹ Ibid, 212-218; Toivo Miljan, *Historical Dictionary of Estonia* (Oxford: Scarecrow Press Inc., 2004) 424; Rein Ruutsoo “The Perception of Historical Identity and the Restoration of Estonian National Independence,” 168.

³² Toivo Raun, “Estonia After 1991: Identity and Integration.” *East European Politics and Societies* 23 (2009): 529; Laar, “The Restoration of Independence in Estonia,” 226-227;

Soviet communist system was coming to an end on a global scale. The permissiveness of Gorbachev's *glasnost and perestroika* provided the opportunity for Estonians to exploit the changes in the regime but also to challenge the Soviet version of history.³³ The following years saw extensive national activism and efforts to reclaim independence based on the collective idea of legal continuity, the illegality of the Soviet Union and its illegal political actions in the country.³⁴ The Estonian collective memory of the past provided a basis for Estonian independence which was internationally recognized on September 17th 1991, and contributed to the moral grounding of the new regime through its inversion to the oppressive Soviet occupiers.

3. Estonia and Transitional Justice

As briefly mentioned, the crimes committed in the Soviet Union were of a particular nature that influenced the measures of transitional justice adopted. Due to the high degree of secrecy and repression in Estonia, there was a collective demand for an understanding of the crimes that were committed, and an established record of the past was arguably one of the first transitional steps.³⁵ Accordingly, Estonia's experience with transitional justice has largely been predicated upon the construction of a collective memory that has had the effect of distinguishing the new regime from its three periods of occupation. Since independence in 1991 Estonia has adopted six identifiable mechanisms of transitional justice based on the view that the Soviet period was illegal, criminal, and thus, the independent country has been dealing with repressive acts committed by a foreign power rather than by Estonia itself.³⁶ Therefore in Estonia's transitional context, establishing a collective memory of the previous regime has been crucial for the new regime's attempt with transitional justice.³⁷

Lavinia Stan and Nadya Nedelsky identify Estonia's six mechanisms as: victim rehabilitation, property restitution, the written oath of conscience, revealing the names of former security agents, prosecuting crimes against humanity, and symbolic

Bennich-Björkman, "The Cultural Roots of Estonia's Successful Transition: How Historical Legacies Shaped the 1990's," 316-347.

³³ Raun, *Estonia and the Estonians*, 222; Brüggemann and Kasekamp, "The Politics of History and the 'War of Monuments' in Estonia," 428.

³⁴ Tamm, "In Search of Lost Time: Memory Politics in Estonia 1991-2011," 654; Vello Pettai, "The Construction of State Identity and its Legacies: Legal Restorationism in Estonia," *Ab Imperio* 3 (2007): 5-7.

³⁵ Laar, "The Restoration of Independence in Estonia," 226-227; Stan and Nedelsky, "Estonia," 161.

³⁶ Stan and Nedelsky, "Estonia," 161.

³⁷ Teitel, "Transitional Justice Genealogy," 87; De Brito "Introduction by Editors," 10; Wouters, *Transitional Justice and Memory in Europe (1945-2013)*, 14.

justice.³⁸ As mentioned, the majority of the crimes and repression, including the forced evacuations, deportations, and murders, were committed under Stalin and ceased after his death in 1953.³⁹ Since transition began roughly 40 years after the end of Stalin's regime, the pursuit of criminal justice was limited;⁴⁰ many of those involved had already died or were too ill for criminal proceedings.⁴¹ However, some individuals have been tried by the Estonian state, as well as by the European Court of Human Rights.⁴² Lustration was also very limited, consisting solely of the written oath of conscience.⁴³ Estonia's experience with property restitution has been controversial. The legal owners of Estonian property in 1940 were able to reclaim ownership in June of 1991, evicting tenants, and possibly leaving many homeless.⁴⁴

Furthermore, the process of confronting the past was arguably delayed.⁴⁵ Eva Onken points to the fact that "many Balts shied away from engaging too actively in a policy of confronting the recent past," fearing that it would "endanger social stability in the young democracies."⁴⁶ However, as Estonia was increasingly cooperating and seeking membership with the European Union and NATO, the pressure to deal with the criminal past was mounting.⁴⁷ Specifically, Estonia needed to come to terms with the possibility of Estonian involvement and collaboration particularly with reference to the Holocaust. Passive leverage of membership into the European Union and NATO likely motivated Estonia to deal with its burdened historical

³⁸ Stan and Nedelsky, "Estonia," 162-167.

³⁹ Raun, *Estonia and the Estonians*, 189.

⁴⁰ "Kaitesepolitsaiemet: Judicial Decisions," Kaitesepolitsaiemet, accessed May 19 2014, www.kapo.ee/eng/judicial-decisions.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Stan and Nedelsky, "Estonia," 161; Marek M. Kaminski and Monika Nalepa, "Judging Transitional Justice: A New Criterion for Evaluating Truth and Revelation Procedures," *Journal of Conflict Resolution* 50 (2006): 399; "Act on Procedure for Taking an Oath," (Riigikogu, 1992): 1.

⁴⁴ Merje Feldman, "Justice in Space? The Restitution of Property Rights in Tallinn, Estonia," *Cultural Geographies* 6 (1999): 167-169; Stan and Nedelsky, "Estonia," 163.

⁴⁵ Eva-Clarita Onken, "The Politics of Finding Historical Truth: Reviewing Baltic History Commissions and their Work," *Journal of Baltic Studies* 38 (2007): 110; Pettai A. Vello, "Estonia: Old Maps and New Roads," *Journal for Democracy* 4 (1993): 117-125.

⁴⁶ Onken, "The Politics of Finding Historical Truth: Reviewing Baltic History Commissions and their Work," 110.

⁴⁷ Ibid; Matthew Kott, "Estonia 1940-1945: Reports of the Estonian International Commission for the Investigation of Crimes Against Humanity (review)" *Holocaust and Genocide Studies* 21 (2007): 321.

legacies.⁴⁸ Perhaps the international environment and political context led to the culmination of former President Lennart Meri convening the Commission in 1998.⁴⁹

As mentioned, there are various constraints to the process of transitional justice. One problem is the tension between history, memory, and justice.⁵⁰ This dilemma is particularly salient amongst post-communist transitional societies,⁵¹ including Estonia, that have attempted to uncover much of the hidden activities and crimes that took place under the communist regime.⁵²

Based on its findings, the particular notion of the Estonian past propagated by the Commission will be assessed in the proceeding chapter. As a mechanism of transitional justice meant to establish an understanding of the past, thereby contributing to the construction and dissemination of a collective memory, the Commission's work is important for an evaluation of Estonia's success with transitional justice. A critical analysis will show, despite the claim of objectivity, this memory institute is largely focused on the task of criminalizing the previous regime bringing into question concerns of selectivity, objectivity, and the possibility of manipulation in the process of establishing an understanding of the past.

4. The Estonian International Commission for the Investigation of Crimes Against Humanity

4.1. Establishment, Goals, and Mandate

The Estonian International Commission for the Investigation of Crimes Against Humanity was established by a presidential decision on October 2nd 1998 by the President of the Republic of Estonia, Lennart Meri.⁵³ Through Presidential designations, seven non-Estonian academics, policy analysts, and politicians from the United States, Finland, Denmark, Russia, and Germany formed the Commission. According to Anton Weiss-Wendt, the members were nominated on the basis of

⁴⁸ Brüggenmann and Kasekamp, "The Politics of History and the 'War of Monuments' in Estonia," 437.

⁴⁹ Onken, "The Politics of Finding Historical Truth: Reviewing Baltic History Commission and their Work," 110; Kott, "Estonia 1940-1945: Reports of the Estonian International Commission for the Investigation of Crimes Against Humanity (review)," 321.

⁵⁰ Teitel, "Transitional Justice Genealogy," 78; De Brito, "Introduction by Editors," 25; Forsberg, "The Philosophy and Practice of Dealing with the Past: Some Conceptual and Normative Issues," 72.

⁵¹ Teitel, "Transitional Justice Genealogy," 81.

⁵² De Brito, "Introduction by Editors," 5; Mark, "The Unfinished Revolution: Making Sense of the Communist Past in Central-Eastern Europe," 27-28.

⁵³ "Introduction of the Estonian International Commission for the Investigation of Crimes Against Humanity" (2008): 1.

their “friendliness” towards Estonia.⁵⁴ The “Introduction” produced by the Commission and published in 2008 serves as the mission statement of this body. It formally defines the goals and mandate of the Commission, derived from President Lennart Meri’s announcement convening the Commission.

As laid out in the Introduction, the principal goal of the Commission was “the investigation of “crimes against humanity committed against Estonian citizens or on the territory of the Republic of Estonia during the occupation of the Soviet Union and Nazi Germany,” as well as to establish “the attendant circumstances of the crimes against humanity, and also the relevant historical background.”⁵⁵ According to the Introduction, the Commission is to proceed from Articles 6, 7, and 8 of the Statute of the International Criminal Court of Rome, and to compile “a record sufficiently well-documented and complete that no one will be able to deny what happened or to avoid facing up to the facts,” because “double standards in the assessment of particular events,” are to be eliminated.⁵⁶ However it is emphasized that the Commission is a non-judicial body, thus its powers are limited, and the established record of the facts is not to launch any sort of judicial action. In order to compile an account of the crimes against humanity committed in Estonia and towards Estonians, the Commission was instructed to work on the basis of consensus where research papers by Estonian history scholars were to be analyzed and discussed by the Commission’s members to eventually produce a report, even though producing a report is not mandated by the Introduction or the Presidential speech.⁵⁷

In order to perform such research, the hired historians were given access to all of the available Estonian and international archives.⁵⁸ The internal working rules are otherwise not detailed in the Introduction, nor were they outlined in President Lennart Meri’s speech regarding the decision to convene this Commission. Therefore, despite being funded by the Estonian state, the Commission has had a significant degree of freedom in terms of the method of its work and its relationship to other state bodies.⁵⁹ In contrast to truth commissions, there was no formal call for

⁵⁴ Anton Weiss-Wendt, “Why the Holocaust Does Not Matter to Estonians,” *Journal of Baltic Studies* 39 (2008): 479.

⁵⁵ “Introduction of the Estonian International Commission for the Investigation of Crimes Against Humanity,” 1.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*; Estonian International Commission for the Investigation of Crimes Against Humanity, “Statement by the International Commission for the Investigation of Crimes Against Humanity” (1999).

⁵⁸ “Introduction of the Estonian International Commission for the Investigation of Crimes Against Humanity,” 2.

⁵⁹ Interview with ToomasHiio and MeelisMaripuu. Estonian Institute of Historical Memory, Tallinn, 19 May 2014.

victims as witnesses, nor was there cooperation from all those involved in the historical period under study, and there was not a clearly defined timeframe or requirement to produce a report at the outset. Therefore, despite its many similarities, this body cannot be accepted as a truth commission. As a mechanism of transitional justice, the Estonian International Commission for the Investigation of Crimes Against Humanity is a memory institute meant to “reflect our hope in Estonia that shining the bright light of truth on some of the tragedies of the past will not only contribute to reconciliation within our society and its further reintegration into the international community of nations but also help to prevent the repetition of such tragedies elsewhere.”⁶⁰

Following its establishment, the Commission decided to investigate the crimes against humanity committed in Estonia in three distinct historical periods, “(1) the occupation of Estonia by Soviet forces in 1940-1941, (2) the occupation of Estonia by German forces in 1941-1944, (3) the second Soviet occupation beginning in 1944.”⁶¹ However, there is no clearly defined set of events or limit as to what is to be investigated regarding the Soviet occupation beginning in 1944. It is clear that it ends with the proclamation of Estonian independence, yet the actual set of historical events is not explicitly stated, whereas a truth commission would temporally and spatially define the historical events under study.

Although the Commission was established as a non-judicial body, the basis of its evaluation of the past includes Crimes of Genocide, War Crimes, Crimes of Aggression, and Crimes Against Humanity as laid out in the Statute of the International Criminal Court of Rome.⁶² From 2001 to 2008, the Commission published three reports, one per period of occupation, detailing the historical background of each occupation and the criminal events that took place under the occupying regimes. The following section will provide a descriptive overview of these three reports. This overview will be followed by an analysis of the Commission’s work, relating the findings to the specifically stated goals as well as the universal and normative goals of transitional justice.

4.2 The Soviet Occupation of Estonia: 1940-1941

At the outset, the Report of the Estonian International Commission for Investigation of Crimes Against Humanity regarding the Soviet Occupation of 1940 to 1941 states that the annexation of Estonia in 1940 was illegal. Furthermore, the Commission

⁶⁰ “Introduction of the Estonian International Commission for the Investigation of Crimes Against Humanity,” 1.

⁶¹ *Ibid.*, 2.

⁶² *Ibid.*, 1-2; Statement by the International Commission for the Investigation of Crimes Against Humanity”.

attributes responsibility to “those citizens of the Republic of Estonia who together with the Soviet officials prepared for and carried out the take-over of power,” identifying six particular criminal events that fall under Articles 7 and 8 of the Rome Statute, “Crimes Against Humanity,” and “War Crimes.”⁶³ Each of these noted criminal events are detailed in terms of what exactly had happened, who and how many were harmed, and if any, what sort of justification was used in the commitment of the given crime. Based on Article 7 of the Rome Statute of the International Criminal Court, these six crimes are considered crimes against humanity because they were part of “a widespread or systemic attack directed against [a] civilian population,” and some are “considered war crimes according to Article 8 of the Rome Statute of the International Criminal Court.”⁶⁴ The report concludes that responsibility for these crimes lies with the Soviet leadership, “whose objective was the rapid incorporation of Estonia into the USSR and the elimination of social groups and individuals that did not conform to the ideology of the USSR.”⁶⁵ In conclusion,

the position of the Commission is that no ideology can justify the imprisonment, maiming and execution of thousands of people. The activity of citizens of the Republic of Estonia in the service of their country and people, in accordance with existing laws of Estonia before the Soviet occupation, could not under any circumstance be grounds for their subsequent conviction according to the laws of the Soviet Union,” of whose occupation of Estonia was illegitimate.⁶⁶

Accordingly, a multitude of crimes were committed in Estonia and the events that took place were not in the interest of Estonia and its people, but were in the interest of the Soviet Union and its expansionist goals.⁶⁷ The Commission emphasizes the criminality of the Soviets, furthermore it is able to explicitly name those responsible while also identifying the involvement of broader Soviet-led institutions, demonstrating the oppression Estonia suffered from 1940 to 1941 under its illegal annexation by the Soviet Union.

4.3 The German Occupation of Estonia: 1941-1944

According to the Commission’s publication regarding the German invasion of the Soviet Union and the occupation of Estonia, five crimes took place that are deemed genocide, crimes against humanity, and war crimes.

⁶³ “The Estonian International Commission for Investigation of Crimes Against Humanity Report,” (2004): 1-10.

⁶⁴ “Report,” (2004): 8.

⁶⁵ *Ibid*, 10.

⁶⁶ *Ibid*, 1-10.

⁶⁷ *Ibid*, 4.

In relation to the Holocaust, the report identifies a sub-set of three criminal events, "the Killing of Estonian Jews," "the Killing of Foreign Jews on the Territory of Estonia," and "the Participation of Estonian Military Units and Police Battalions in Towns and Transit Camps Outside Estonia, and at Labour and Concentration Camps in Estonia, while Acts of Genocide or Crimes Against Humanity Took Place Involving the Killing or Deportation of Jews and Other Civilians, in which the Units Played a Variety of Roles." According to the Report, about 75% of Estonia's Jewish community fled the country in fear of the Germans, although roughly 950-1,000 were killed. An unknown number of foreign Jews were killed in various camps established throughout Estonian territory and records from the Soviet trials found a number of Estonian battalions involved in the murdering of Jewish citizens in Estonia, Belarus, and Poland.⁶⁸ The report's details regarding the remaining four established crimes are sparse. The attitude and findings of the Commission regarding this particular period of German occupation raises many questions, which will be returned to in the analytical section.

The Commission's report identifies the Estonian people's "confusion of the first two months [of the German occupation]," as follows: "the German invasion initially appeared to many as a form of liberation," particularly after "the year-long Soviet occupation...[which] caused immense damage to Estonia's institutions and to her citizens, in particular, the mass deportations of June 1941."⁶⁹ The report considers the crimes committed under German occupation within the context of the former Soviet occupation, and emphasizes the continued anti-communism and dominant anti-Soviet feelings of Estonian society.⁷⁰

Although the report acknowledges evidence regarding the involvement of Estonians in the arrests and killings of Estonian Jews, as well as in the interrogations of suspects deemed to be opponents of Nazi Germany, in particular Estonians that were members of the Omakaitse who had killed communists, and the 36th Police Battalion that participated in the shooting of Jews in Nowogródel, Belarus,⁷¹ it concludes that "it is not reasonable to assign responsibility by virtue of their positions," and "neither the dates mentioned nor the testimony given, directly implicates Estonian units in these actions."⁷² There were no trials or prosecutions of individuals who had been named in this report. The concluding portion of the report refers back to the difficulty of Estonians to "take a side" as there "was very little middle ground," because "resistance to the Germans would inevitably be construed

⁶⁸ "The Estonian International Commission for the Investigation of Crimes Against Humanity Report," (2001): 2.

⁶⁹ *Ibid*, 6.

⁷⁰ *Ibid*, 7.

⁷¹ *Ibid*, 4-5.

⁷² *Ibid*.

as support for Communism and the Soviet Union."⁷³ In the end, "it is unjust that an entire nation should be criminalized because of the actions of some of its citizens; but it is equally unjust that its criminals should be able to shelter behind a cloak of victimhood."⁷⁴ Therefore, the report regarding the German occupation of Estonia from 1941-1944 accepts the criminality of the regime, the involvement of Estonians, and in the end returns to the present importance of the rule of law in acknowledging and condemning these crimes.

4.4 The Soviet Occupation of Estonia: From 1944

This part of the report notes the continuation of the Soviet regime's repression after 1944⁷⁵ justified by the Soviet regime's claim that the Estonian governments after the War of Independence were illegitimate, despite its signing of the Tartu Peace Treaty.⁷⁶ Based on this rationale, former Estonian leaders were convicted for anti-communist activities and many were sent to Gulag labor camps. The Commission identifies the first crime as "the Continuation of the Prosecution and Conviction of Previous Estonian Leaders." In 1944 the Soviets had continued with the punishment and arrests of Estonians who had not been convicted under the first occupation. Toivo Raun, Estonian historian, refers to these activities as the purge of the "bourgeois nationalists,"⁷⁷ which had the greatest impact on the Estonian government and leadership structure. As part of this criminal event, the Commission refers back to the falsified elections of July 1940 as well as the illegitimate nature of the occupation itself, re-emphasizing the illegality of the Soviet occupation and its criminal activities in 1940-1941 and that the occupation of 1944 was simply a continuation of this criminal period. Eight more crimes are listed in direct relation to the Stalinist years. The Report describes these crimes in detail, where they occurred, who took part, and who the victims were. The tenth and final crime listed is "the Post-1953 Repression – the Commuting of Sentences, but the Continuation for some Estonians of Enforced Residence in Exile" – entailing the release of prisoners and deportees from the Gulag camps after Stalin's death in 1953. The report notes the slow and complex process of return, which often took years, and once returned, the limited freedoms of former prisoners.⁷⁸ In the assessment of responsibility, the report attributes responsibility to the Soviet institutions that subordinated local bodies and carried out crimes against humanity, but it also names individuals at the

⁷³ Ibid, 7.

⁷⁴ Ibid.

⁷⁵ "The Estonian International Commission for the Investigation of Crimes Against Humanity Report," (2008): 4.

⁷⁶ Ibid.

⁷⁷ Raun, *Estonia and the Estonians*, 171.

⁷⁸ "Report," (2008): 11.

head of these organizations. Again, as a non-judicial body, it is out of scope for the Commission to carry out judicial activities against these individuals.

As part of the conclusion the report notes that after Stalin's death in 1953, the crimes committed under the Soviet regime in Estonia were deemed to be less atrocious and physically violent. Thus, the Rome Statute's definition of "crimes against humanity," no longer applied even though repression continued after 1953 until independence was restored.⁷⁹ Therefore, Stalin's death informally marks the end of the work of the Estonian International Commission for the Investigation of Crimes Against Humanity because it was based on the Rome Statute, specifically Crimes Against Humanity, War Crimes, and Crimes of Genocide, and these standards of international law were no longer applicable.

5. Analysis and Evaluation of the Commission's Report

5.1 Approach

All together, the works of the Commission regarding the Soviet occupation of 1940-1941, the German occupation of 1941-1944, and the Soviet occupation from 1944, consist of describing the selected crimes and naming wrongdoers. These reports serve to establish a record of what happened, providing Estonians with knowledge of the criminal past. Regarding Mendez' proposed responsibilities of the state to meet the normative and universal goals of transitional justice, the works of the Commission will be considered in terms of its role in fulfilling these four obligations in conjunction with its stated goals. This allows for the most effective analysis of the Commission's success as a mechanism of transitional justice. Consequently, both the international normative discourse and the context-specific historical and transitional constraints are considered in the analysis and evaluation. The purpose of considering the universal normative features of transitional justice is that they allow for a criteria judging right from wrong use of collective memory.

5.2 Granting Victims the Right to Know

The Commission has arguably met the second responsibility proposed by Mendez, which is to "grant victims the right to know the truth."⁸⁰ According to this criterion, the independent Estonian state is duty-bound to investigate and establish a record of the past regarding the injustices committed towards Estonian individuals and society, as well as those on Estonian territory.⁸¹ Ultimately, the Commission's focus on uncovering the crimes against humanity has had the effect of criminalizing the

⁷⁹ Ibid, 14.

⁸⁰ Mendez, "In Defense of Transitional Justice," 12.

⁸¹ Ibid.

previous regimes, distinguishing the new regime as one based on the rule of law, equal worth and respect of all people. The Commission has worked on the basis of consensus to construct a dominant narrative of the past based on both the collected historical knowledge and gathered memories of the difficult past. This process has made the knowledge of what happened accessible to victims, their descendants, and the whole society, thus delegitimizing the discourse of the institutionalized lie that had ruled in the previous period. In doing so, it has also contributed towards the collective memory of the harm, suffering, and injustice in Estonia at the hands of the oppressive occupying powers, which arguably serves to emphasize both the moral and democratic-political change brought about by independence.

5.3 Redressing Injustice

Regarding Mendez' first obligation, the need for justice, and the fourth obligation, to remove perpetrators from positions in public office,⁸² the Commission has been less successful. As mentioned, the Introduction explicitly states that the Commission is a non-judicial body that is "not trying to compile a set of facts to launch judicial actions against anyone or any institution."⁸³ Yet, in each report the Commission attributes responsibility to individuals involved in the criminal events deemed to be crimes against humanity, war crimes, or genocide. After compiling the report, it then became up to the Estonian Internal Security Service, a government agency, to investigate offences and bring suspected individuals to trial if that should be the case.⁸⁴ Certainly, the findings of the Commission may be used for investigation and prosecution, however, it is not part of the stated responsibilities of the Commission to initiate criminal proceedings, nor is it up to the Commission to compile a set of facts for such judicial action.⁸⁵ Clearly, without judicial power, the Commission does not meet Mendez' proposed obligations for the state to remove perpetrators from positions of public office or to persecute and punish those responsible for the crimes.

However it must be noted that some, among the individuals named in the three reports, have been prosecuted for crimes against humanity. For instance, Vassili Riis was prosecuted for the arrest and deportation of 1,062 citizens in Estonia in 1941, although he died before the proceedings were finalized and IdelJakobson also died but was accused for the repression of at least 1,800 people from 1940-1941.⁸⁶

⁸² Ibid.

⁸³ "Introduction to the Estonian International Commission for the Investigation of Crimes Against Humanity," 1.

⁸⁴ Hiio and Maripuu; Kaitsepolitseiamet, 2014.

⁸⁵ "Introduction to the Estonian International Commission for the Investigation of Crimes Against Humanity," 1; Hiio and Maripuu.

⁸⁶ Kaitsepolitseiamet, 2014.

Similarly, individuals singled out for crimes against humanity under the Soviet occupation of Estonia from 1944 have also been tried.⁸⁷

The Commission and the report regarding the Soviet occupation from 1944 have been cited and referenced in criminal proceedings carried out against some of the named perpetrators, including the European Court of Human Rights vs. Kolk and Kislyiy,⁸⁸ and the European Court of Human Rights vs. Penart.⁸⁹ Additionally, a few of the named individuals were investigated by the Estonian Internal Security Service.⁹⁰ Estonian and international bodies have utilized the knowledge presented by the Commission because it explicitly attributes responsibility for the crimes against humanity committed towards Estonians, and in Estonia, based on the Rome Statute, despite President Lennart Meri's claim that the Commission's role is not judicial or prosecutorial.

Due to the nature of the content of the reports and the explicit attribution of responsibility, the Commission does well to criminalize both periods of Soviet occupation, which has the effect of distinguishing the new regime through moral inversion.⁹¹ This perception is largely in agreement with the argument that the collective memory of post-communist Estonia has been based on the dominant and agreed upon understanding that Estonia suffered under the criminal Soviet rule.⁹²

As discussed, no trials or proceedings resulted from the report published regarding the German Occupation of Estonia in 1941-1944. Establishing a thorough account is a primary goal of memory institutes seeking to achieve the broad goals of

⁸⁷ Ibid.

⁸⁸ "Fourth Section Decision as to the Admissibility of Application no. 23052/04 by August Kolk Application no. 24018/04 by Petr Kislyiy," European Court of Human Rights 2006. Accessed May 22 2014, <http://hudoc.echr.coe.int/sites/eng/pages/searc.aspx?i=001-72404>.

⁸⁹ "Fourth Section Decision as to the Admissibility of Application no. 14685/04 by Vladimir Penart against Estonia," European Court of Human Rights 2006. Accessed May 22 2014, http://www.proyectos.cchs.csic.es/transitionaljustice/sites/default/files/maps/info/case-law/estonia_penart_2004.pdf.

⁹⁰ Kaitsepolitseiamet, 2014.

⁹¹ Mark, "The Unfinished Revolution: Making Sense of the Communist Past in Central-Eastern Europe," 31.

⁹² Brüggemann and Kasekamp, "The Politics of History and the 'War of Monuments' in Estonia," 426; Fofanova and Morozov, "Imperial Legacy and the Russian-Baltic Relations: From Conflicting Historical Narratives to a Foreign Policy Confrontation?" 27; Onken, "Commemorating 9 May: The Baltic States and European Memory Politics," 40; Astrov, "The 'Return of History' or Technocratic Administration? The Effects of Depoliticization in Estonian-Russian Relations," 86.

transitional justice. However, controversy surrounding the 36th Police Battalion, the involvement of Estonians in the deportation and killing of Jews and opponents to the Nazi regime, as well as the fact that this report was published in 2001, hints at the possibility for future action. Toomas Hiio and Meelis Maripuu are also of this belief, and as time passes, more and more evidence is collected, allowing for more extensive research and the potential for new understanding of the criminal past.⁹³ The controversial elements of this period of German occupation will be discussed further.

Certainly processes of retroactive justice are complex and difficult due to the temporal distance between the present and time of occupation. It is therefore out of scope and near impossible to effectively indict and remove those responsible from public office for crimes that occurred in 1940 and 1941, particularly as many have died or were too ill for proceedings.⁹⁴

Additionally, retroactive justice is contestable in and of itself due to the debated legitimacy of the new democratic regime to implement justice regarding the previous regimes inability to follow the rule of law.⁹⁵ Toomas Hiio and Meelis Maripuu emphasize that the end of the Commission's operations were due to the inapplicability of the original framework, based on Crimes Against Humanity. Despite the works of the Commission being based on international legal grounds – Article 7 of the Rome Statute, Crimes Against Humanity – which arguably facilitates and legitimizes retroactive justice,⁹⁶ Hiio and Maripuu emphasize the complexity of this sort of evaluative historical research and the importance of leaving present political motives out of the research itself. This is particularly relevant considering the roles the report and the Commission has recently played in international and domestic court proceedings regarding the findings.

Arguably, the non-judicial nature of the Commission has been somewhat confused, making its efforts and aims to objectively establish an account of the past more ambiguous and multifarious. By identifying individuals responsible on the basis of historical research, the Commission has taken a stance regarding the possible narratives put forth, thus providing a blueprint for establishing a dominant account of the past. A published record and attribution of responsibility for the crimes

⁹³ Hiio and Maripuu, 2014.

⁹⁴ Ibid, Kaitsepolitseiamet, 2014.

⁹⁵ Kaminski and Nalepa, "Judging Transitional Justice: A New Criterion for Evaluating Truth Revelation Procedures," 388.

⁹⁶ Ibid.

against humanity has had the effect of dismissing counter-narratives, which meets a stated goal of the Commission⁹⁷ and simultaneously constructs a collective memory.

5.4 Reparations

The third stated responsibility listed by Mendez is to grant the victims some form of reparation for the harms done, be it monetary, recognition, or an apology.⁹⁸ Certainly, research and publications cannot explicitly serve as a form of material reparation or compensation. With this in mind, the reports produced by the Commission can only allow for recognition and acknowledgement by detailing the criminal events, the historical background, the context, and the attribution of responsibility in the context of reparation. Through its works, the Commission has certainly done so. Additionally, Mendez' identifies reparation as a means of recognizing the worth and dignity of the victims as human beings.⁹⁹ The language used throughout the Report consistently conveys this message. For example, Soviet arrests of Estonians for the "activity of citizens of the Republic of Estonia in the service of their country and people," implies the resilience of Estonians to fight for their country and dignity.¹⁰⁰ In reference to the possibility of collaboration with Nazi Germany, "we believe that many of these men taking the only action they believed possible,"¹⁰¹ emphasizes the non-rationality of human nature. The language of the Report does well to acknowledge and recognize the suffering of Estonians, all the while emphasizing their efforts to restore Estonian independence arguably satisfying the need of victims to have their dignity and worth restored after the years of human rights violations. Therefore, the reports serve as a means of recognition and reconciliation for the victims, meeting at a normative and symbolic level Mendez' third obligation for a state.

5.5 Possibility of Denial

Thus far, it is clear that the Commission has decisively contributed to producing a particular memory of the country's recent past, mostly focused on the criminality of the Soviet periods of occupation, as evidenced through the listed crimes committed. Entrenching this narrative, the Commission was able to emphasize the legal, political, and moral contrast between the old regimes and the new one, which is to be based on the rule of law, democracy, respect for equal rights, and the international democratic ethos. However, with regards to the period of German

⁹⁷ "Introduction to the Estonian International Commission for the Investigation of Crimes Against Humanity," 1.

⁹⁸ Mendez, "In Defense of Transitional Justice," 12.

⁹⁹ Ibid.

¹⁰⁰ "Report," (2004): 13.

¹⁰¹ "Report," (2001): 7.

occupation, there are points of contention in the works of the Commission and within the report itself.

As mentioned, the involvement of Estonians in criminal events is acknowledged throughout the Report, although the actions of the 36th Police Battalion have been increasingly controversial.¹⁰² Additionally, there were no trials or prosecutions of individuals named in this report. However, the Estonian Security Police initiated an investigation into an Estonian, Harry Männil, after Efraim Zuroff, a prominent historian and the director of the Simon Wiesenthal Center, claimed Männil killed hundreds of Jewish individuals in 1941 and 1942.¹⁰³ After a five-year investigation process the Estonian Security Police as well as the Commission concluded that there was no concrete evidence regarding Männil's participation in war crimes.¹⁰⁴ Ultimately, the findings detailed in the report, and the attribution of responsibility for the crimes committed under the German occupation, have remained controversial.

Additionally, the crimes committed during the German occupation are considered in the context of the former Soviet occupation and there is a repeated emphasis on the anti-Soviet and anti-communist attitudes throughout. The extensive references about repression of Estonians by the Soviets that occurred prior to the Nazi occupation contextualizes the period of German occupation in Estonia, and further stresses the criminality of the Soviets while minimizing the period of German occupation and criminal activity that took place. Moreover, the lack of detail regarding the crimes committed relative to those of the Soviet occupation of 1940-1941 is curious, although the Commission refers to the limited accessible material.¹⁰⁵ Attributing sparse details of one period of occupation to a lack of evidence hints towards Stanley Cohen's concept of historical denial, "a matter of memory, forgetting and repression," it is about "remembering only what we want to remember."¹⁰⁶ Historical denial is not necessarily planned, but may result from gradual ignorance or the avoidance of past atrocities, leading to a black hole of

¹⁰² Hiio and Maripuu, 2014; Michal Kopecek, "Past in the Making. Historical Revisionism in Central Europe After 1989. (Budapest and New York: CEU Press, 2008): 229; ValtersNollendorfs and Erwin Oberlanders. *The Hidden and Forbidden History of Latvia Under Soviet and Nazi Occupations* (Riga: Institute of the History of Latvia, 2005): 109.

¹⁰³ "Wiesenthal Center: Estonian Investigation of Suspected Nazi War Criminal – A Pathetic Political Whitewash," Simon Wiesenthal Center, accessed 23 May 2014, <http://www.wiesenthal.com/site/apps/s/content.aspx=IsKWLbPJLnF&b=4442915&ct=5849327#.U4sh815DubE>.

¹⁰⁴ "Report," (2001): 3-7; Kaitsepolitseiamat, 2014.

¹⁰⁵ "Report," (2001):5.

¹⁰⁶ Stanley Cohen, *States of Denial: Knowing About Atrocities and Suffering* (Cambridge: Polity Press, 2001): 12.

historical knowledge.¹⁰⁷ Arguably, the criminal events took place roughly 65 years ago, the majority of the Estonian Jewish population left prior to the German occupation,¹⁰⁸ allowing for a natural black hole of knowledge.¹⁰⁹ Thus, it may be difficult to properly research with such a temporal gap.¹¹⁰ Therefore, historical denial is plausible. Still, when considering the collective memory that has so far been produced through the memory institute and its report – to criminalize the Soviet regime and emphasize the moral high ground of post-communist Estonia – the limited details regarding the German occupation, and the near dismissal of Estonian involvement contributes to cultural denial.

Cultural denial has been perpetuated in the sense that Estonian society has chosen to maintain some degree of silence regarding this period in order maintain the dominant narrative of the past, characterized by Soviet evil.¹¹¹ Although cultural and historical denial do not necessarily imply deliberative manipulation of facts and memory, they tend to misinterpret or ignore past and present realities.¹¹² The potential political and social ramifications of denial in terms of meeting the goals of transitional justice are quite possibly far-reaching. Denial may have the effect of denying victims their right to know the truth of what happened, for victims to receive reparations, and to bring the perpetrators to justice, thus jeopardizing the realization of the broad and universally agreed upon goals of transitional justice that are based in the rule of law, equal worth and respect for all individuals.

The portion of the report regarding the German occupation of Estonia from 1941 to 1944 has been somewhat controversial and must be reconsidered to ensure that cultural or historical denial is not taking place in order to further Estonia's transitional justice process.

6. Discussion

After a close reading and evaluation of the Commissions three reports, regarding the Soviet period of occupation of 1940-1941, the German occupation of 1941-1944, and the Soviet occupation from 1944, it is evident that there is an effort to criminalize the previous regimes. References to the illegality of the Soviet

¹⁰⁷

Ibid.

¹⁰⁸

"Report," (2001): 2.

¹⁰⁹

Cohen, "States of Denial: Knowing About Atrocities and Suffering," 12.

¹¹⁰

Hiio and Maripuu, 2014.

¹¹¹

Cohen, "State of Denial: Knowing About Atrocities and Suffering," 11; Brüggemann and Kasekamp, "Identity Politics and Contested Histories in Divided Societies: The Case of Estonian War Monuments," 2009, 61; Astrov, "The 'Return of History' or Technocratic Administration? The Effects of Depoliticization in Estonian-Russian Relations," 86.

¹¹²

Cohen, "State of Denial: Knowing About Atrocities and Suffering," 7-13.

occupation are frequent, the criminal events are well documented and detailed, and attribution of responsibility to the Soviet Union, its institutions, and leaders is clear regarding both periods of occupation. This narrative has the effect of emphasizing and portraying the independent, democratic, and moral Estonia based on the rule of law.

Regarding the occupation of Estonia by Nazi-Germany, the details regarding the criminal events are relatively sparse, the German occupation is framed within the context of the Soviet occupations, and there is repeated emphasis on the confusion Estonians experienced in the first few months of German occupation. Moreover, evidence of Estonian collaboration is largely dismissed and the Commission points to the lack of information and evidence regarding this period, as discussed, perhaps implying some form of denial.

Broadly speaking, the Estonian International Commission for the Investigation of Crimes Against Humanity has established a particular understanding of Estonia's past that operates within the framework of the independent nation understood through its moral inversion to the Soviet predecessor. However, the Estonian International Commission for the Investigation of Crimes Against Humanity completed its work in 2008 and has been succeeded by the Estonian Institute of Historical Memory, which is still in operation. The Institute is focused on establishing to what extent human rights had been violated under the second Soviet occupation in Estonia. It is therefore likely that the Estonian collective memory that has so far been based on the criminality of the Soviet Union will continue to be produced. Particularly since this collective memory has had the effect of further establishing Estonia as part of the international democratic ethos based on the rule of law with equal respect and worth for all individuals, a broad and normative goal of transitional justice that serves the contemporary Estonian political circumstance and context.

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POLITICAL DETERMINANTS OF MINIMUM WAGE ADJUSTMENT POLICIES: A COMPARATIVE ANALYSIS OF 23 OECD STATES

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Abstract

The purpose of this article is to address the impact of political indicators on the minimum wage adjustment policies in 23 OECD countries. Adopting a multi-theory approach, we aim to answer the question if “minimum wage setting mechanism, institutionalized schedule of minimum wage adjustment, unionization rate, party ideology of the governments, and social welfare expenditures have impact on the minimum wages adjustment policies”? The findings show that indicators such as institutionalized schedule of minimum wage adjustment, unionization rate and social welfare expenditures have significant impact on the ‘real minimum wage adjustment’ in the selected cases.

Keywords: minimum wage, unionization, social welfare, party ideology, scheduled minimum wage adjustment

1. Introduction

The minimum wage law is a labor market institution used in the majority of countries around the world.¹ According to the International Labour Organization (ILO) *Global Wage Report 2008/09*, minimum wage is a nearly universal policy applied in some form or another in more than 90 percent of countries.² Along with being a really critical labor market institution for the most of the world, minimum wage is a political issue on several levels. On one level it is political by highlighting the limitations of the market place and recognizing the necessity of the involvement of the governments, labor unions, and other social partners. On another level minimum wage adjustment is a major instrument of political competition that can be manipulated in order to achieve diverse objectives.³

Then, what exactly is a minimum wage? It is easy to define the minimum wage as ‘the wage floor applying to all wage earners and ensuring that they receive a minimum level of pay protection’. However the reality is much more complicated and there are variety of legislative texts set for the minimum wage laws. The reasons

¹ François Eyraud and Catherine Saget, *The Fundamentals of Minimum Wage Fixing*. Geneva: International Labor Office, 2005.

² (ILO) *Global Wage Report 2008/09*, 34

³ Eyraud and Saget, *The Fundamentals of Minimum Wage Fixing*, 2005.

for such a complex array of systems can be traced to the very foundation of the minimum wage system, minimum wage adjustment procedures and criteria and the political, social and economic actors involved in the process.

While there is a large body of theoretical and empirical research on the effects of minimum wages on employment, wage distribution, and inflation, much less attention has been devoted to the factors affecting the determination of the minimum wage increases. The academic literature has surprisingly little to say about the determinants of the minimum wage adjustment.

National or statutory minimum wages exist in many OECD countries, but there are substantial differences in the way they are set and operated. The main objective of this study is to fill the gap in the minimum wage literature by conducting an longitudinal empirical analysis for 23 Organization for Economic Co-operation and Development (OECD)⁴ states that have national (statutory) minimum wage laws. In order to explain the determinants of the minimum wage we should know: What are the institutional dimensions of the national minimum wages? What are the mechanisms of minimum wage adjustment? Who sets the minimum wage? How is it determined? Do left parties and coalition parties favor minimum wage increases more than right-wing parties? Given the questions above, the research question of the study has been formulated as the following: What are the impacts of minimum wage setting mechanisms (i), scheduled minimum wage adjustment (ii), unionization rate (iii), party ideology of the government (iv), social welfare expenditures (v), on the 'real minimum wages'?

In order to answer these questions, this study adopts a multi-theory approach by taking institutional theory⁵, interest groups⁶, and political parties and party ideology as the reference points for its theoretical framework⁷.

2. Literature Review

Definition of the Minimum Wage

The International Labor Organization (ILO) defines the minimum wage as the salary which constitutes the floor of the wage structure; its objective is to protect workers

⁴ Australia, Belgium, Canada, Czech Republic, Estonia, France, Greece, Hungary, Ireland, Japan, Korea, Luxembourg, Mexico, Netherlands, New Zealand, Poland, Portugal, Slovak Republic, Slovenia, Spain, Turkey, United Kingdom, United States.

⁵ Sven Steinmo, "Historical Institutionalism" in *Approaches and Methodologies in the Social Sciences*. in eds. Della Porta and M. Keating, Cambridge: Cambridge University Press, 2008; March, James and Olsen, Johan. "Elaborating the New Institutionalism" in *The Oxford Handbook of Political Institutions*, eds. Rhodes et al. Oxford: Oxford University Press, 2006.

⁶ Frank R. Baumgartner and Jones, Bryan D., *Agendas and Instability in American Politics*. Chicago: University of Chicago Press, 1993.

⁷ Walter Korpi, *The Democratic Class Struggle*. London: Routledge, 1983.

who occupy the lowest position in wage distribution.⁸ The minimum wage is generally related to a survival standard which is considered basic in a given society, and has the purpose of safeguarding the income and living conditions of workers who are considered to be the most vulnerable in the labor market and that of their families.⁹ Minimum wage policy supported by a strong social policy is an efficient mechanism against poverty and income erosion of the poorest households.¹⁰ By some groups the minimum wage is only seen as a wage floor. What is not appreciated is the extent to which a simple floor represents. According to Steinberg, minimum wage standards alter the employee-employer relationship in three important ways: It introduces limits on employer autonomy by establishing a standard that must be adhered to (1); it institutes some procedure for government to determine the extent to which employers comply with regulation (2); and it creates a situation in which employees see themselves as having a government-backed right to demand certain minimum terms from their employers (3).¹¹

Minimum wage along with other labor market policies – particularly those that empower labor- would represent a powerful step in the direction of a higher wage economy.¹² Therefore, the primary goal of any minimum wage policy is to increase the incomes of those at the very bottom of the wage scale¹³. Besides, the economic and social impacts of the minimum wage are considerably large because national minimum wage has a spillover effect and it has the potential to affect wages around it.¹⁴ Therefore, setting a higher minimum wage will have a compressing effect on wages. When viewed in these terms, a decline in the real minimum wage may be seen as a contributing factor to the wage squeeze and the growing income inequality, or vice versa. The minimum wage, in other words, as Levin-Waldman highlights, affects the nation's overall wage structure, and is not just restricted to a few unfortunate members of a rather narrow segment of the labor market.¹⁵

⁸ ILO 2008, 34

⁹ Barbosa de Melo, Frederico L., Figueiredo, Ademir, Mineiro, Adhemar S., Arbulu Mendonça, Sérgio E. "Rescuing the Minimum Wage as a Tool for Development in Brazil", *International Journal of Labour Research*, 4: 1 (2012)27-46.

¹⁰ Herr, Hansjörg and Kazandziska, Milka, "Principles of Minimum Wage Policy : Economics, Institutions and Recommendations", *Global Labour University Working Papers* 11 (2011): 1-22.

¹¹ Steinberg (1982: as cited in Levin-Waldman 2001)

¹² Oren M. Levin-Waldman, *The Case of Minimum Wage: Competing Policy Models*, New York: State University of New York Press, 2001.

¹³ Jerold Waltman, *Minimum Wage Policy in Great Britain and the United States*. New York: Algora Publishing, 2008.

¹⁴ Ibid.

¹⁵ Levin-Waldman, 2001.

Minimum Wage as a Mixed Policy

In which policy domain does minimum wage lie? The answer to this fundamental question is hugely important for the minimum wage and its importance in politics. It is really crucial to understand the realms of the minimum wage before presenting the adjustment determinants of it.

Theodore Lowi has distinguished among three types of politics: regulation, distribution, and redistribution. Regulation essentially involves restricting the activities of some for the benefit of others.¹⁶ In terms of costs it is clear that one group will bear some costs so that others can derive benefits. Redistribution essentially involves taking from one group in society – usually in the form of taxation- and giving to others, such as social welfare policies. For these kinds of policies who benefits and who bears the costs is usually clear. Distribution policies, on the other hand, allow the political system to offer benefits to whatever group makes a request. Some groups bear the costs, but they are not identifiable. Therefore, the critical question about the minimum wage for the Lowi's policy typology is the following: Were the minimum wage to be increased, who would be the prime beneficiaries and who would bear the costs?

The minimum wage would appear to be a redistributive policy in Lowi's terms because minimum wage laws force employers to pay employees higher wages. Freeman also conceptualizes minimum wage as a redistributive policy; because it takes money from some – businessmen and consumers- and transfers it to the low-wage workers. According to him the goal of the minimum wage is to redistribute earnings to low-paid workers.¹⁷ If the market factors that determine who pays for a given minimum are considered, there are two main potential groups of payers.¹⁸ First are consumers who will pay a higher price for those goods or services, proportional to the minimum wage workers' share of the cost of production. Another group who may pay for a minimum wage is stakeholders in businesses that raise hourly rates to meet the minimum (or to keep rates above the minimum).

However, Lowi's and Freeman's classification of minimum wage as a redistributive policy is not conclusive, because the minimum wage as a policy area does not exhibit single pattern of politics; and national minimum wage laws also regulate the actions of employers.¹⁹ According to Waltman minimum wage, as a purpose, is a

¹⁶ Theodore J. Lowi, "American Business, Public Policy, Case Studies, and Political Theory." *World Politics* 16 (1964): 677–715.

¹⁷ Richard B. Freeman, "The Minimum Wage as a Redistributive Tool." *The Economic Journal* 106 (1996): 639–49.

¹⁸ Ibid

¹⁹ Michael T. Hayes, "Policy Characteristics, Patterns of Politics, and the Minimum Wage: Toward a Typology of Redistributive Policies", *The Policy Studies Journal*, 35: 3 (2007): 465-480.

social welfare policy and its primary goal is to attack poverty. However, in design and operation it is a labor market regulation. Even when it is put high on the social welfare agenda, the minimum wage's status as labor market regulation policy will shape the political struggle.²⁰

Spitzer tried to solve this dilemma by introducing the idea of mixed categories. Spitzer revised Lowi's typologies and recognized that many policies do not fit neatly within one of Lowi's policy categories. Thus, he makes a distinction between 'pure' and 'mixed' cases. According to Spitzer's typology, the minimum wage as a mixed case would combine aspects of both regulative and redistributive policies.²¹ Following Spitzer's and Waltman's typologies, this study conceptualizes 'minimum wage' as a mixed policy case generally following both the redistributive patterns (as a social welfare policy) and regulatory patterns (as a labor market policy).

Conventional Discussions on Minimum Wage

In this study, minimum wage is viewed mainly as a political issue and thus seeks to understand it through the lens of political theories because the minimum wage by its very nature and design is political more than being economic. However, to say that minimum wage is political is not to diminish either its economic bases or implications.

For the most part, the minimum wage has been studied through the lens of economics.²² For economists, it is specifically an economic issue with consequences that are clearly predictable such as unemployment and inflation.²³ They claim that minimum wage affects workers' and their employers' ability to freely negotiate labor contracts and leads to market inefficiencies. As the price of labor rises, employers seek to find other alternatives, such as layoffs, which inevitably lead to unemployment.²⁴

Opponents of the minimum wage often contend that the real way to lift people out of poverty can only be achieved through economic growth and increased productivity. According to this argument that favor business interests, market by itself can create more jobs and higher wages, and those at the bottom of the economic ladder will then benefit along with everyone else.²⁵

²⁰ Waltman, *Minimum Wage Policy in Great Britain and the United States*. 2008.

²¹ Michael T. Hayes, "Policy Characteristics, Patterns of Politics, and the Minimum Wage: Toward a Typology of Redistributive Policies", *The Policy Studies Journal*, 35: 3 (2007): 465-480.

²² Levin-Waldman, *The Case of Minimum Wage: Competing Policy Models*, 2001.

²³ Ibid

²⁴ Ibid

²⁵ Waltman, *Minimum Wage Policy in Great Britain and the United States*. 2008.

However, not all of the economic arguments oppose minimum wage. The most provocative challenge to the conventional view has been the “new economics of the minimum wage”.²⁶ The new economics approach mostly discussed the positive effects of the minimum wages such as how minimum wage increases purchasing power and productivity²⁷; and a growing body of empirical work has begun to show that the employment consequences of minimum wage really were not that serious.²⁸

3. Methodological Framework

Units of Analysis

All countries in OECD have at least some form of the minimum wage (Table 1). The national systems, however, differ widely regarding levels, scope and political and institutional setting of minimum wages. Basically, there are two main characteristics which can help to differentiate the minimum wage systems among all OECD countries. First one is having a single national minimum wage that is set either by law or by a national inter-sectorial agreement; and the other one is to set the minimum wages only at sectorial or occupational level through collective bargaining agreements.²⁹ The units of analysis of this research consist of 23 OECD countries that have national (statutory) minimum wage laws³⁰.

Dependent Variable

There are two main methods on how to compare the levels of minimum wages among OECD countries. The *first* is to match the current value of the minimum wage calculated in a common currency, for example the euro or US dollar. The problem with this way of comparison is that it always includes statistically distorting effects as a result of exchange rate developments. In addition, the current value of a minimum wage contains only little information on its real meaning for the workers in a certain national socio-economic framework. A *second* way on how to compare minimum wages is, therefore, to calculate them in Purchasing Power Standards (or Purchasing Power Parity, PPP), which reflects the different price levels and costs of living in the various countries. This study uses ‘*real minimum wages*’ that is calculated in Purchasing Power Parity. The ‘real minimum wages’ are conceptualized according to

²⁶ Eric A. Whitaker, Herian, Mitchel N., Larimer, Christopher W. and Lang, Michael. “The Determinants of Policy Introduction and Bill Adoption: Examining Minimum Wage Increases in the American States, 1997–2006”, *The Policy Studies Journal* 40: 4 (2012): 626-649

²⁷ Ibid

²⁸ Salas Neumark, Wascher 2013, Neumark and Wascher 2008; Card and Krueger

1995

²⁹ Schulten 2012; Barbosa de Melo et al. 2012; Herr and Kazandziska 2011; Waltman 2008; Funk and Lesch 2006; Eyraud and Saget 2005.

³⁰ Chile and Israel have been eliminated from this research due to lack of data in OECD Statistics database for the analyzed years.

the OECD statistics, in which the real hourly and annual minimum wages are calculated first by deflating the series using the consumer price index taking 2011 as the base year. These series are then converted into the common currency unit of USD by using Purchasing Power Parities (PPPs) for private consumption expenditures in 2011.

Table 1: Minimum Wage Structure of OECD Countries³¹

OECD Countries	
National Minimum Wage	Sectoral/Occupational Minimum Wage
United States, United Kingdom, Japan, Ireland, Estonia, Czech Republic, Chile, Canada, Australia, Belgium, France, Greece, Hungary, Israel, Korea, Mexico, New Zealand, Portugal, Slovak Republic, Slovenia, Luxembourg, Netherlands, Poland, Spain, Turkey	Denmark, Finland, Norway, Sweden, Germany, Italy, Austria, Switzerland, Cyprus

Source: International Labor Organization

Independent Variables

Mechanisms of Minimum Wage Setting

In most countries the government is the only actor in the decision making process and in some countries final decision about the minimum wage rates is given either by a tripartite committee or by the collective bargaining negotiations. Based on this, five categories have been identified for the OECD countries by Eyraud and Saget: (1) the government decides alone; (2) the government consults directly and separately each of the social partners; (3) the government ‘must’ seek the opinion of

³¹ In all other countries belonging to second group minimum wages are exclusively determined by collective agreements at sectoral and company level. Cyprus is rather an exception, as it is the only country where there is a national minimum wage but it applies only to a group of nine different occupations including security guards, caretakers, cleaners, etc. (Soumeli, 2011: as cited in Schulten 2012).

specialized committee; (4) the tripartite committee sets minimum wage rates; (5) minimum wages are set through collective bargaining, with no state intervention.³²

Table 2: Mechanisms of Minimum Wage Setting

AUTONOMOUS		SEMI-AUTONOMOUS	COOPERATIVE	
Single Decision-Making w/o Required Consultation		Single Decision-Making with Required Consultation	Multiple Decision-Makers with Required Consultation	
Gov'ts Decide Alone	Voluntary Consultation	Required Consultation	Tripartite System	Collective Bargaining Systems
United States	Spain	United Kingdom	Australia	Belgium
Canada	New Zealand	France	Korea	Greece
Chile	Czech Republic	Japan	Mexico	
Luxembourg	Estonia	Hungary	Poland	
	Israel	Ireland	Slovakia	
		Portugal	Slovenia	
		Netherlands	Turkey	

Source: International Labor Organization, Authors' own composition

Based on these arguments, three different minimum wage adjustment mechanisms have been identified for the OECD countries that are examined in this study: autonomous, semi-autonomous, and cooperative (Table 2). Once a minimum wage law is enacted, subsequent minimum wage policy development can take one of three forms.³³ The autonomous mechanism is to keep all aspects of minimum wage policy in the hands of the legislature, government being the single decision-maker. The semi-autonomous mechanism is to create an outside body, but only give it the power to make recommendations that can soon come to the legislature such as the

³² François Eyraud and Catherine Saget, *The Fundamentals of Minimum Wage Fixing*. Geneva: International Labor Office, 2005.

³³ Waltman, *Minimum Wage Policy in Great Britain and the United States*. 2008.

Low Pay Commission in UK. The cooperative mechanism is to establish a public body outside the legislature and endow it with the power to make changes in the law, especially the setting of the level of the wage³⁴.

In some countries national minimum wages are set by the government without formalized consultations with unions or employer's associations and no formal consultation body exists.³⁵ The United States uses the autonomous mode as Congress has repeatedly resisted creating a recommendatory body. Thus each alteration in the minimum wage must run the entire legislative gamut, as any other statute.³⁶ Another popular minimum wage adjustment system is minimum wage determination by the government which in some states follows a period of 'voluntary' consultation with minimum wage commissions and social partners. The role of the social partners or minimum wage commissions can vary among countries but when it comes to the final decision, it is the government that makes it autonomously although the importance of consultation is still recognized.³⁷

Some governments are required to assess the recommendations of specialized wage committees when they are adjusting the minimum wages. The UK also fits in the category of governments that has to consult with the Low Pay Commission (LPC) which was established in July 1997 and granted permanent status in October 2001. The LPC is made up of a chair, three members from the business community, three from the labor unions and two independent academics.³⁸ The recommendations made by these specialized bodies are generally backed by a technical report. The Low Wage Commission in UK also writes an annual wage report; and through that report a lot of important information and research about wage dispersion and minimum wages is delivered to the public.³⁹ It would be difficult for the government not to accept the proposal or to reject a unanimous decision. On the other hand, it has no such constraints when there is disagreement within the committee.

In tripartite or collective bargaining systems, for a decision to be reached the authorities generally have to come to an agreement with the employers' and workers' representatives. The commissions within these systems do more than

³⁴ Herr and Kazandziska (2011), Waltman (2008), and Eyraud and Saget (2005) discussed minimum wage adjustments systems among states with national minimum wage laws. However, these authors did not operationalize these mechanisms. Hence, for the purpose of conceptual clarity, minimum wage adjustment mechanisms have been renamed by Yildirim-Babakiray and Tugdar as autonomous, semi-autonomous, and cooperative according the decision-making actors involved within the process.

³⁵ Herr and Kazandziska, "Principles of Minimum Wage Policy, 2011

³⁶ Waltman, *Minimum Wage Policy in Great Britain and the United States*. 2008.

³⁷ Herr and Kazandziska 2011; Eyraud and Saget 2005

³⁸ Lothar Funk and Hagen Lesch, "Minimum Wage Regulations in Selected European Countries", *Intereconomics: Review of European Economic Policy* 3 (2006): 78-92

³⁹ Herr and Kazandziska, "Principles of Minimum Wage Policy", 2011

merely making recommendations; they set the minimum wage rates. In most cases the government validates the decision but this is merely a formality.⁴⁰ Tripartite system is considered as a favorable minimum wage fixing mechanism because it involves the three main actors - market forces, public authorities, and organized labor- to come into play, thus avoiding both excessive state control and excessive liberalism. Both tripartite and collective bargaining systems ensure that issues related to minimum wage are solved with a degree of coordination, solidarity and social integration that cannot be achieved by decentralized labor relations.

In the collective bargaining systems, from a purely legal point of view, minimum wage setting is left completely to the social partners.⁴¹ A national multi-sectorial agreement sets a single minimum wage rate for the whole country. Very few countries have a single national rate set through collective bargaining. Of all the countries studied only two – Belgium and Greece – belong to this category. In Belgium national minimum wage is determined in inter-sectorial collective agreement negotiated within the National Labour Council; and in Greece it is determined by National General Collective Labour Agreement (NGCLA) which is agreed by the social partners and then voted into law (LPC 2011). However, that fact that public bodies are not legally designated participants in the collective bargaining process does not necessarily mean that they are not involved in wage fixing. Governments may make recommendations concerning wage increases that can have an effect on negotiations.

Hypothesis #1: OECD countries that use semi-autonomous and cooperative decision-making to determine the national minimum wages will be more likely to have higher 'real minimum wages' and OECD countries that use autonomous decision-making will be more likely to have lower 'real minimum wages'.⁴²

Institutionalized Schedule of Adjustment

National minimum wages are adjusted regularly by governments.⁴³ However the duration of the adjustments may be longer than a year period when there is no institutionalized schedule of adjustment (Table 3).

⁴⁰ Eyraud and Saget, *The Fundamentals of Minimum Wage Fixing*, 2005.

⁴¹ Ibid

⁴² Mechanisms of minimum wage setting are operationalized as a time-invariant dummy variable: semi-autonomous and cooperative mechanisms being 1, and autonomous decision making being 0.

⁴³ Lothar Funk and Hagen Lesch. "Minimum Wage Regulations in Selected European Countries", *Intereconomics: Review of European Economic Policy* 3 (2006): 78-92.

Table 3: Institutionalized Schedule of Adjustment

Institutionalized Schedule of Adjustment		
Country	Yes/No	How often?
Australia	Yes	Annual
Belgium	Yes	Two-years
Canada	No	-
Czech Republic	No	-
Estonia	No	-
France	Yes	Annual
Greece	Yes	Annual
Hungary	Yes	Annual
Ireland	No	-
Japan	No	-
Korea	Yes	Annual
Luxembourg	Yes	Bi-Annual
Mexico	Yes	Annual
Netherlands	Yes	Bi-Annual
New Zealand	Yes	Annual
Poland	Yes	Bi-Annual
Portugal	Yes	Annual
Slovak Republic	Yes	Annual
Slovenia	Yes	Annual
Spain	Yes	Bi-Annual
Turkey	Yes	Two-years
United Kingdom	No	-
United States	No	-

Source: International Labor Organization, Authors' own composition

In countries without a fixed rhythm of adjustment, as for example in United States, minimum wages increase in an arbitrary way according to specific economic, social

and political conditions in the country.⁴⁴ In an inflationary situation adjustments in only two or even more years will lead to a situation in which the real minimum wage drops substantially and/or the nominal minimum wage loses its contact with the nominal average or median wage.⁴⁵ Finally, annual adjustments of national minimum wages can add to the mobilization of union members to lobby and fight for sufficient adjustments of minimum wages.⁴⁶

Hypothesis #2: OECD countries with institutionalized schedule of minimum wage adjustments are more likely to have higher 'real minimum wages', and OECD countries without institutionalized schedule of minimum wage adjustments are more likely to have lower 'real minimum wages'.⁴⁷

Social Welfare Expenditure

Waltman and Marsh find that OECD countries with high levels of expenditure on traditional social welfare policies are decidedly less likely to have any type of minimum wage policy than lower spending nations.⁴⁸ If we look across the OECD countries, we can see very complex relationships between social welfare, wealth, and minimum wage policies. Sweden, for example, has relatively high social welfare expenditures, but no minimum wage, while Australia has historically had a relatively high minimum wage, but low social welfare expenditures.⁴⁹ These observations lead us to another question regarding national minimum wages. In order to move beyond these observations this study aims to analyze the relationship between social welfare expenditure and the real minimum wage among the countries with national minimum wage laws. It is hypothesized that there is a correlation between the real minimum wages and the percentage of GDP spent on social welfare expenditure among countries.⁵⁰

Hypothesis # 3: OECD countries that spent more GDP on social welfare are more likely to have higher 'real minimum wages', and OECD countries that spent less GDP on social welfare are more likely to have lower 'real minimum wages'.

⁴⁴ Herr and Kazandziska, "Principles of Minimum Wage Policy, 2011

⁴⁵ Ibid

⁴⁶ Ibid

⁴⁷ Institutionalized schedule of adjustment is operationalized as a time invariant dummy variable for this study. For the OECD countries that have scheduled their minimum wage adjustment are given the value 1; and the ones that have not institutionalized their minimum wage adjustment are given the value of 0 for this variable.

⁴⁸ Jerold Waltman and Christopher Marsh. "Minimum Wages and Social Welfare Expenditures: Substitutes or Complements?" *Policy Studies* 28: 2 (2007):163-174.

⁴⁹ Ibid.

⁵⁰ The main social policy areas determined by OECD for the social expenditure data are as follows: old age, survivors, incapacity-related benefits, health, family, active labor market programs, unemployment, housing, and other social policy areas.

Unionization Rate

The configuration of organized interests on any given issue is critically important.⁵¹ According to Baumgartner and Jones interest groups are one of the major actors in setting the policy agenda.⁵² Interest groups play an important role in formulating questions, affecting public opinion, and defining the terms of the public debate. This study conceptualizes labor unions as a key interest group affecting the national minimum wage adjustment within the OECD countries. A commonplace observation is that labor unions promote minimum wage legislation. However according to Cox and Oaxaca this observation calls for an explanation. After all, most unionized workers are in relatively high wage occupations and thus do not have an immediately obvious economic self-interest to increase the minimum wage.⁵³

Today unions are representing many low-paid workers.⁵⁴ A rise in the minimum wage increases the demand for workers with greater skills because it reduces competition for low-skilled workers.⁵⁵ Thus, some employers will replace their lowest-skilled workers with somewhat higher-skilled workers in response to increases in the minimum wage.⁵⁶ As a result, minimum wage increases may harm the least skilled workers because more-skilled workers would be replacing some less-skilled workers, which in turn would weaken labor union's strength and their collective bargaining power.⁵⁷ Considering their relatively strong organizational power, the unions from the Nordic States especially but also those from Austria and Italy do not want to give the State any influence on wage setting and therefore reject any ideas of a statutory minimum wage. Thus, this study expects the minimum wage increase rate to be negatively related to the rate of unionization.

⁵¹ Mancur Olson Jr., *The Logic of Collective Action: Public Goods and the Theory of Groups*. New York: Schocken Books, 1970; Schattschneider, Elmer E., *The Semi-Sovereign People: A Realist's View of Democracy in America*. New York: Holt, Rinehart, and Winston, 1960.

⁵² Frank R. Baumgartner and Jones, Bryan D., *Agendas and Instability in American Politics*. Chicago: University of Chicago Press, 1993.

⁵³ James C. Cox and Ronald L. Oaxaca, "The Political Economy of Minimum Wage Legislation", *Economic Inquiry* 20: 4 (1982): 533–555.

⁵⁴ Waltman, Jerold. *Minimum Wage Policy in Great Britain and the United States*. New York: Algora Publishing, 2008.

⁵⁵ Richard V. Burkhauser and Joseph J. Sabia, "Minimum Wages and Poverty: Will a \$9.50 Federal Minimum Wage Really Help the Working Poor?," *Southern Economic Journal* 77: 3 (January 2010): 592-623.

⁵⁶ Gary Becker, "On Raising the Federal Minimum Wage," November 26, 2006, Available at www.becker-posner-blog.com

⁵⁷ Daniel Aaronson and Erich French. "Output Prices and the Minimum Wage," *Employment Policies Institute*, June 2006.

Hypothesis #4: OECD countries that have higher unionization rate are less likely to have higher 'real minimum wages'; and OECD countries that have lower unionization rate are more likely to have higher 'real minimum wages'.

Political Party Ideology

In modern democratic theory political parties are seen as the primary means for mediating between society and government. Parties are supposed to play a comprehensive role before, during, and after elections and they structure the voter's choice. Once in the office, parties are the major actors that form, operate, and control the policy making process. Korpi believe that the strength of unions and parties of the left drive expenditure on welfare state policies independent from the level of societal wealth. Rather than wealth being automatically translated into welfare state provision, only the political muscle of the left serves to secure policies designed to help the less fortunate.⁵⁸

Waltman's investigation of public opinion polls pertaining to the federal minimum wage in United States turned up evidence that self-described ideology and political party affiliation were the most important factors in predicting a person's support for federal minimum wage increases, with ideology especially important in as much as the minimum wage is seen by many of its proponents as a social welfare policy.⁵⁹

Hypothesis #5: OECD countries that have left-wing governments, or lefty-wing dominance of coalitions are more likely to have higher 'real minimum wages', and OECD countries that have right-wing governments, or right-wing dominance of coalitions are more likely to have lower 'real minimum wages'.⁶⁰

Control Variables

For a better regression analysis, we control two variables in 23 OECD states; 'inflation rate' and 'annual increase of relative value of minimum wages in comparison to national average wages' for their general economic well-being and job market characteristics.

The relative value of minimum wages in comparison to national average or median wages gives information on the real level of minimum wage protection and the status of minimum wage earners within the overall national wage hierarchy.⁶¹ Thus,

⁵⁸ Walter Korpi. *The Democratic Class Struggle*. London: Routledge, 1983.

⁵⁹ Jerold Waltman, and Pittman, Sarah. "The Determinants of State Minimum Wage Rates: A Public Policy Approach", *Journal of Labor Research* 23:1 (2002): 51-56

⁶⁰ The party ideology of the governments in rule has been operationalized as a dummy variable: left-wing governments and coalitions being 1, and the right-wing governments and coalitions being 0.

⁶¹ Thorsten Schulten. "European Minimum Wage Policy: A Concept for Wage-Led Growth and Fair Wages in Europe", *International Journal of Labour Research* 4: 1 (2012): 85-103

we use 'relative value of minimum wages in comparison to national average or median wages' as a crucial control variable for this analysis. As the inflation refers to a rise in the general level of prices of goods and services over a period of time, and impacts the purchasing power, we control the 'inflation rate' as a variable as well.

Data Analysis Methodology

Data analysis and statistical software program STATA (Version 12) has been used for the regression analysis of the data. The panel data (also known as longitudinal or cross-sectional time-series) for this study has been consolidated by utilizing the statistical databases of OECD and International Labor Organization (ILO). In our panel data selected OECD countries with minimum wage laws are observed for the years in between 2001 to 2011.

The two dominant approaches for the multiple regression analysis of the panel data are the use of 'fixed effects' or 'random effects' models.⁶² The core difference between fixed and random effect models lies in the role of the dummy variables. In our study, independent variables such as 'minimum wage setting mechanism' or 'institutionalization of scheduled minimum wage adjustment' are time invariant dummy variables; and our regression model hypothesizes that these variables have some influence on the dependent variable. As Green explains if there is a reason to believe that differences across entities have some influence on the dependent variable then you should use random effects.⁶³

As an advantage of the random effects model we are able to include time invariant variables in our model which allows for time-invariant variables to play a role as explanatory variables. In the fixed effects model these variables are absorbed by the intercept. Another reason behind using random effects model for this study is that, unlike the fixed effects model, the variation across entities is assumed to be random and uncorrelated with the equation of independent variables included in the model. The random effects regression equation of our model (I) can be written as follows:

$$RMW_{it} = \alpha + \beta_1 MWSM_{it} + \beta_2 ISA_{it} + \beta_3 SWE + \beta_4 UR_{it} + \beta_5 PI_{it} + \beta_6 CPI_{it} + \beta_7 MWME_{it} + u_{it} + \varepsilon_{it}$$

⁶² Tom Clark and Drew Linzer, "Should I Use Fixed or Random Effects?" Available at <http://userwww.service.emory.edu/~tclark7/randomeffects.pdf>, accessed on Aug 15, 2013; Park, Hun M., "Linear Regression Models for Panel Data Using SAS, Stata, LIMDEP, and SPSS", Center for Statistical and Mathematical Computing Working Paper Series, 2009. Available at <http://www.indiana.edu/~statmath/stat/all/panel>

⁶³ William H. Greene, *Econometric Analysis*, New Jersey: Prentice Hall, 2008.

⁶⁴ RMW= real minimum wages calculated in Purchasing Power Parity; MWSM= minimum wage setting mechanisms; ISA=institutionalized schedule of minimum wage adjustment; SWE= social welfare expenditure in percentage of GDP; UR= unionization rate; PI=party ideology of the government; CPI=consumer price index; MWME=the ratio of

4. Findings and Discussion

In this paper, random effects regression analysis is done in two steps (Table 4). Real minimum wages that have been calculated in Purchasing Power Parity (PPP) as the dependent variable; Model I includes 5 independent variables (MWSM, ISA, SWE, UR, PI) and two control variables (CPI, MWME) whereas Model II includes 3 independent variables (ISA, SWE, UR) and two control variables (CPI, MWME). In Model I, minimum wage setting mechanism and party ideology are statistically insignificant. The testing number of p for these variables are both greater than 0.05. Although, the Model I is significant (Prob > chi2 = 0.000), the insignificant variables have been omitted for an additional analysis in order to get a more reliable model, because with insignificant p values we are not able to support our hypotheses about the minimum wage setting mechanisms and party ideology of governments. Unlike it has been hypothesized random effects regression analysis of Model I explicitly shows that semi-autonomous or cooperative decision making for minimum wage adjustment and lefty-party governments cannot be considered as political determinants of minimum wage adjustments for the OECD countries analyzed in this study.

The variables that are regressed for Model II, including the control variables, are all statistically significant having p values less than 0.05. The coefficients of the variables also support the hypotheses. The regression analysis of the data demonstrates that OECD countries with institutionalized schedule of minimum wage adjustments are more likely to have higher 'real minimum wages', and OECD countries with minimum wage laws that spent more of their GDP on social welfare are more likely to have higher 'real minimum wages'. A commonplace observation about labor unions' effect on minimum wages is that unions usually promote minimum wage legislation. However, this study does not take unions' positive effect on minimum wages for granted due to the facts that most unionized workers are in relatively high wage occupations and thus do not have an immediately obvious economic self-interest to increase the minimum wage; and supporting minimum wages would weaken labor union's strength and their collective bargaining power. As it is hypothesized regression analysis results shows that the effect of unionization rate on real minimum wage is negative rather than being positive which means that OECD countries that have higher unionization rate are less likely to have higher 'real minimum wages', and OECD countries that have lower unionization rate are more likely to have higher 'real minimum wages'.

minimum wages to median earnings of full-time employees; i =country; t =time; u_{it} =between-country error; ε_{it} =within-country error.

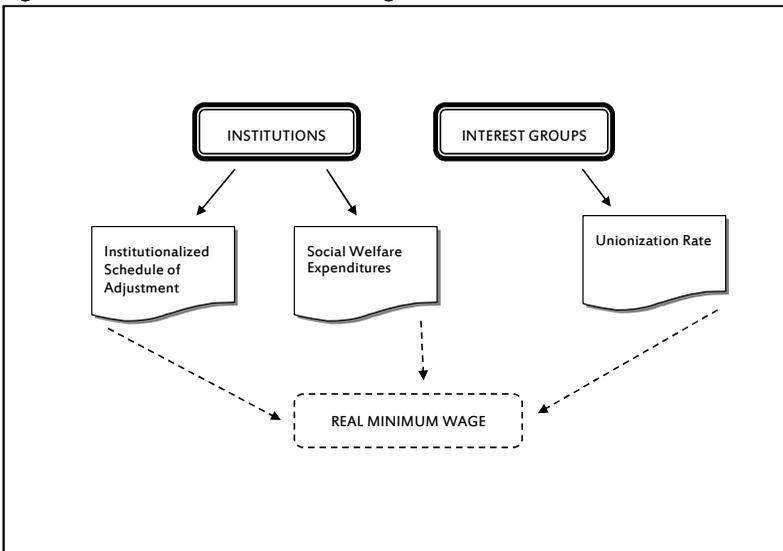
Table 4: Random Effects Regression Models

Random Effects Regression		
Variables	Model I	Model II
	Coefficient	Coefficient
Constant	4.619 (1.054)	4.467 (0.737)
Minimum Wage Setting Mechanism MWSM (Time Invariant Dummy Variable)	-0.203 (1.321)	<i>omitted</i>
Institutionalized Schedule of Adjustment ISA (Time Invariant Dummy Variable)	0.632*** (0.151)	0.667*** (0.137)
Social Welfare Expenditure SWE	0.127*** (0.023)	0.126*** (0.022)
Unionization Rate UR	-0.076*** (0.014)	-0.75*** (0.013)
Political Party Ideology PI (Dummy Variable)	-0.046 (0.103)	<i>omitted</i>
Consumer Price Index\Inflation CPI	-0.015* (0.006)	-0.016** (0.005)
The Ratio of Minimum Wages to Median Earnings MWME	1.730** (0.632)	1.735** 0.612

Number of observations (n)	253	253
	Prob > chi2 =	Prob >
	0.000	chi2 =
		0.000
	R-sq=0.5723	R-sq=0.5714

Standard errors in parentheses. * indicates $p < 0.05$; ** indicates $p < 0.01$, *** indicates $p < 0.001$

Figure 1: 2I Model for Minimum Wages



Comparative analysis of policy processes clearly demonstrate that there is a great variety in the ways agenda setting and policy implementation are accomplished. How can a minimum wage as a public policy process be extensively theorized given the fact it possesses different components such as social welfare institutions, schedule of the minimum wage adjustment, and unions? This analysis presents that institutional arrangements play a significant role in minimum wage adjustment. The institutional framework in which minimum wage policies are designed, implemented, and enforced matters. However, in order to understand the dynamics of minimum wage policies adopting an institutional theory as an explanation is not enough. The determination of national statutory minimum wage is often a topic in public and political debates, which gives labor unions as interest groups the opportunity to influence wage developments beyond the traditional channels of collective bargaining.

5. Conclusion

Cross-country studies of the policy-making process demonstrate that there is no single process through which public policies are made. As Cairney mentions policy processes are likely to vary across countries, political systems, and policy areas.⁶⁵ Different institutional frameworks, procedures, and traditions result in significant variation in the style and mechanisms of policy making.⁶⁶ However, this variance does not mean that these processes stand as 'apples' and 'oranges'; and it does not mean that we cannot compare those.

The OECD states have at least some form of the minimum wage, although their national systems differ, which in turn brings different practices regarding the scope and the institutional setting of minimum wages. OECD states mainly have two characteristics that differ for their minimum wage systems; either (1) by law or by a national inter-sectorial agreement; (2) by collective bargaining agreements.⁶⁷ For a better analysis, we developed two random effect regression models of 23 OECD countries with national (statutory) minimum wage law. In Model 1, real minimum wages based on Purchasing Power Parity (PPP) are taken as the dependent variable, on which the impact of minimum wage setting mechanism, institutionalized schedule of minimum wage adjustment, unionization rate, party ideology of the governments, and social welfare expenditures are tested with the control variables (CPI, MWME). The Model 1 appeared as significant, taking the variables institutionalized schedule of minimum wage adjustment, unionization rate, and social welfare expenditures into consideration. However, the statistically insignificance of minimum wage setting mechanism and party ideology encouraged us to transform it into the Model 21 with three independent variables.

Comparison of our two models show that, in order to study these differences/similarities among 23 OECD states in terms of their minimum wage adjustment policies, we reach to the conclusion that we need casually driven frameworks just like the '21 Model' that has been developed for this study. All variables tested in Model 21 are statistically significant, which supports our hypotheses about the impact of political indicators on minimum wage adjustment policies. Thus, our model 21 supports that OECD countries with institutionalized schedule of minimum wage adjustments are more likely to have higher 'real minimum wages'. This analysis contributes to the literature stating that states

⁶⁵ Paul Cairney, *Understanding Public Policy: Theories and Issues*. New York: Palgrave, 2012.

⁶⁶ Jessica Adolino and Charles Blake, *Comparative Public Policy*, Washington: CQ Press, 2010.

⁶⁷ Schulten 2012; Barbosa de Melo et al. 2012; Herr and Kazandziska 2011; Waltman 2008; Funk and Lesch 2006; Eyraud and Saget 2005.

without institutionalized minimum wage adjustment either depends on specific economic, social and political conditions or inflationary situation adjustments.⁶⁸

Accordingly, annual adjustments of national minimum wages can add to the unionization, which in turn would bring lobbying for sufficient adjustments of minimum wages.⁶⁹ The determination of minimum wage is often a topic in political debates, which gives labor unions the opportunity to influence wage developments through the channels of collective bargaining. Our findings support these assumptions in literature as well. As the unionized workers are in relatively high wage occupations and thus have lower interest to increase the minimum wage, labor union's collective bargaining power would be weakened if minimum wages supported. Thus, Model 2I indicate that the effect of unionization rate on real minimum wage is negative rather than being positive, which means that OECD countries with higher unionization rate are less likely to have higher 'real minimum wages'.

Social welfare spending is another significant indicator of our Model 2I. In literature, the relationship between social welfare spending and minimum wage adjustment appears as a complex mechanism with different experiences in various OECD states.⁷⁰ Our findings contribute to the literature by showing that 23 OECD countries with minimum wage laws that spent more of their GDP on social welfare are more likely to have higher 'real minimum wages'.

Despite the significant contribution of our Model 2I to the literature on minimum wage adjustments, the findings could be strengthened with other independent and control variables (i.e. public opinion, women organizations, living wage campaigns) that would have explanatory power on this issue. Using more variables would definitely increase the robustness of this analysis. However, the main reason for not including other variables in the current model is mostly the lack of sufficient data. Nevertheless, mentioning some of these variables briefly here would be helpful for further research on determinants of minimum wage adjustment.

First of all, as a cross-country study design, our model lacks the international institutions as determinants on countries' minimum wage policies. The domestic institutions considered are relatively stable and solely cross sectional variation is not sufficient to catch the true effect of 'institutions'. An example of such as affect is the severe cuts in minimum wages both in Ireland and Greece in 2011 that have resulted by the pressure of international institutions (i.e. International Monetary

⁶⁸ Herr and Kazandziska, "Principles of Minimum Wage Policy, 2011

⁶⁹ Ibid.

⁷⁰ Waltman and Marsh, "Minimum Wages and Social Welfare Expenditures: Substitutes or Complements?", 2007.

Fund).⁷¹ It would be very helpful to analyze if IMF, WB, EU or other bailout agreements influence the policy outcomes, or what would be the impact of (pre or post) electoral agreements and the magnitude of the coalitions, on the minimum wage options. Additionally other domestic variables could be added to the model as well such as the living wage campaign. Although living wage is fundamentally different from the minimum wage (the latter is any legally mandated wage that must be paid by an employer, whereas the former is a wage sufficient to provide a decent living for the affected worker) in many ways, it can be considered as a pushing factor for national minimum wage policies, as it serves as a constant reminder that the ultimate goal is to make the minimum wage a living wage.⁷²

Other interest groups, such as women organizations, could have explanatory power as indicators on the minimum wage adjustments. In many countries, the minimum wage has undoubtedly been important for raising income levels among female workers and facilitating a reduction in the gender wage gap.⁷³ Minimum wage workforce contains a significantly disproportionate number of women; and especially in U.S. women organizations co-ordinate lobbying activities to increase public awareness about the minimum wage increases.⁷⁴ Thus, inclusion of women organizations in the model can bring a gender-oriented political perspective to the analysis of minimum wage adjustment policies.

Although, minimum wage adjustment is a widely-discussed issue in literature, the analysis is heavily focused on micro-economic perspectives. In this respect, this article is a significant contribution to the literature, as we propose two models testing the relationship between political indicators and minimum wage adjustment policies in OECD countries. Thus, this study makes a significant contribution to the field by bringing a political perspective to the literature on minimum wage adjustment. Focusing on the real minimum wages calculated in Purchasing Power

⁷¹ In February 2012, the Greek government decided on a radical, 22 per cent cut of the national minimum. The decision was taken in the face of opposition from both the labor unions and the employers' associations which had jointly appealed to keep the minimum wage level as determined in the national collective agreement (Paphitis and Corder 2012: as cited in Schulten 2012). However, the Greek government was under strong pressure of the so-called Troika, composed of the European Commission (EC), the European Central Bank (ECB) and the International Monetary Fund (IMF), which had insisted that a radical drop in the national minimum wage would be necessary in order to restore the competitiveness of the Greek economy (Schulten, 2012). At the beginning of 2011, it was Ireland which was the first country to cut its hourly minimum wage by 1 euro, which was equivalent to a reduction of 11.5 per cent. Again, it was the EU-ECB-IMF Troika which had strongly pushed in favor of the wage cut (Schulten, 2012).

⁷² Jerold Waltman, *Minimum Wage Policy in Great Britain and the United States*. New York: Algora Publishing, 2008.

⁷³ Funk and Lesch, "Minimum Wage Regulations in Selected European Countries", 2006.

⁷⁴ Ibid

Parity, our model shows that political indicators such as institutionalized schedule of minimum wage adjustment, social welfare expenditure in percentage of GDP, and unionization rate in 23 OECD states have significant impact on the minimum wage adjustment.

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EU COUNCIL PRESIDENCY AS AGENDA SHAPER: THE CASE OF THE CZECH EU PRESIDENCY

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Abstract

Based on an analysis of several EU Presidencies, Swedish political scientist Jonas Tallberg created a model that identifies ways in which EU Presidency countries shape the EU agenda. In this model, Tallberg conceptualises the process of agenda shaping in a broader way and particularly focuses on structuring issues that are already a part of the EU political agenda. Tallberg argues that there are three relevant dimensions – the socioeconomic, the regional and the constitutional – according to which the Presidency structures its political preferences. However, Tallberg did not work with consistent data (for example, presidency priorities on EU legislation) and his model is less than comprehensive. Additionally, Tallberg’s model was created in the context of the EU – 15. By analysing the Czech EU Presidency of 2009 and its legislative priorities, this article addresses both shortcomings of the model and applies it to the EU – 27 context. As its main findings, the analysis confirms that Tallberg’s model is valid when applied to a single EU Presidency and a consistent dataset (legislative priorities) and offers an optimisation of the model. The analysis also confirms Tallberg’s model is valid for the new EU Member States.

Keywords: *EU presidency, agenda setting, Czech Republic, Council of the EU*

1. Introduction¹

Over the past two decades, the presidency of the EU has been a frequent topic of research into the European integration process. After years of relative neglect, it began to attract attention in the 1990s, as scholars began to investigate both qualitative and quantitative changes in the European integration process. Some of this research comprised a series of case studies focused on concrete presidencies;²

¹ This article has been written as part of research project “Europe 2020: A Horizon of Change of Relevant Actors of the Czech Republic’s Political System” (Czech Science Foundation project GA13-24657S).

² See for example Simone Bunse, *Small States and EU Governance Leadership through the Council Presidency* (Houndmills, Basingstone and New York: Palgrave/Macmillan, 2009), Ben Crum, *Can the EU Presidency make its mark on interstate bargains? The Italian and Irish Presidencies of the 2003–04 IGC*, *Journal of European Public Policy* 14 (8, 2007): 1208-1226, Ramūnas Vilpišauskas, “Lithuania’s EU Council Presidency: Negotiating Finances, Dealing with Geopolitics”, *Journal of Common Market Studies* 52 (s1, 2014): 99-108.

some was more theoretically-oriented. The latter includes Jonas Tallberg's abstract model of how the presidency works with the political agenda.

Under Tallberg's conceptualisation, the presidency may potentially shape the EU agenda in one of three ways: by agenda setting, by agenda exclusion, and, particularly, by structuring the issues already present within the political discourse — agenda structuring. He argues that, especially in terms of how they work with existing agenda matters, Presidencies follow particular socio-economic, constitutional, and regional determinants characteristic for the country. But Tallberg's work suffers two shortcomings. First, he utilises ad hoc elements to model the presidency as a shaper of the agenda, illustrating the different parts of his model using various situations in which the presidency may find itself and the actions it may take. This set of situations is patchy in nature, though, and can hardly be said to be of uniform quality. Second, as illustrated in the literature review section, Tallberg's model is not comprehensive — he does not, for example, explicitly anticipate the role inevitably played by determinants in working with the agenda. This paper addresses these problems by systematically analysing a single presidency and the way it deals with legislative action. Such an analysis can a) coherently and comprehensively evaluate Tallberg's assumptions and b) optimise Tallberg's model.

The article has one additional goal. Tallberg's pioneering research into the way presidencies work with the agenda was conducted when the European Union (EU) consisted of 15 Western European member countries. Despite several waves of enlargement and the differing lengths of individual country memberships this implied, these were still countries in which the majority shared common norms, common values, and a common economic model, and which function on the basis of a long-term shared model of representative parliamentary democracy.³ The so-called eastern enlargement that took place in 2004 and again in 2007 brought 10 new countries — in the main former communist regimes — into the EU. These new member countries have had access to the EU presidency since 2008, and by the end of 2013, five had governed the EU: Slovenia, the Czech Republic, Hungary, Poland, and Lithuania. Analysing one of these new Member State presidencies may answer the question as to whether these presidencies navigate the EU agenda using the same determinants as the original 15 EU countries.

Specifically, the analysis offered here works with the Czech EU Council Presidency.

³ It is correct to take into account two waves of Mediterranean enlargement in 80s which brought into the Community the post-authoritarian Southern European countries of Greece (1981), Portugal and Spain (both in 1986). However, the legacy of nondemocratic regimes of these states can be hardly compared to the legacy of totalitarian communist regimes.

This presidency was chosen deliberately. It was, on the one hand, a new Member State presidency; on the other, it unfolded within the pre-Lisbon institutional setup, thus within the same framework in which Tallberg created his model. By contrast, the Polish and Hungarian EU presidencies took place after the Lisbon Treaty had brought some reforms to the EU Council Presidency, and might thereby introduce bias.

The text is structured as follows: In the first section, the current state of the literature is reviewed. The issues that render the presidency's power in agenda setting problematic are laid out and Tallberg's model is given a detailed critical explanation. The second section analyses the position taken by the Czech government before assuming the EU Council Presidency and explains this position in the context of Tallberg's model. The third section then focuses on an analysis of the Czech Presidency and its programme. It shows the Czech Presidency followed the expected patterns in working with the agenda (most actively in agenda structuring) and confirms the validity of Tallberg's model as applied to the presidency's priorities in EU legislation. The fourth section discusses the findings in the context of Tallberg's model and offers a competing model.

The article is designed as a case study⁴ that evaluates the validity of Tallberg's model. The analytical procedure itself is as follows: the characteristics of the presidency are analysed first with respect to socio-economic, regional, and constitutional preferences. The analysis is based on the statement of the government of the Czech Republic, on foreign policy documents, and on the ideological profiles of parties in the government. Analysing these documents and actors enables us to determine how the Czech government scores in terms of these preferences. In other words, the outcome of the analysis is a set of observable consequences⁵ of these political preferences. The preferences are then juxtaposed with those included in the programme of the Czech EU Presidency and its calendar. The materials analysed consist of the Presidency programme, the programs of formal ministerial meetings and press releases summarising the topics of informal ministerial meetings.

This article contributes to the growing literature that focuses on both the

⁴ One case study was chosen deliberately. One might argue that a comparative study taking into account more or all recent CEE Presidencies would be more convincing, but such an approach would inevitably lead to substantially reduced explanatory power and would have to omit a lot of important details. As the article tries not only to evaluate Tallberg's model, but also to optimize it, such a reduction in explanatory power would be inappropriate.

⁵ Garry King, Robert O. Keohane and Sidney Verba, *Designing Social Inquiry. Scientific Inference in Qualitative Research*. (Princeton: Princeton University Press, 1994), 28-29.

presidency's influence on agenda setting and on the presidencies of new Member States. With regard to agenda setting, studies currently available offer rival, competing explanations of the presidency's influence. Some scholars, mostly rooted in a quantitative approach,⁶ claim the presidency can pursue its influence on legislative work. Others arrive at different conclusions. Alexandrova and Timmermans⁷, for instance, in their analysis of the European Council agenda, show presidencies have no significant ability to push their domestic preferences. Crum⁸, in his analysis of the presidency and its role in the IGC 2003-2004, concurs that the presidency has only a limited impact on the agenda.

The second stream of research is quite restricted in scope. Most work on the presidencies of new Member States focuses on particular countries and their performance as chair.⁹ A rare example of a theory-based work is the book by Drulak and Šabič¹⁰ comparing the Czech and Slovenian EU presidencies in terms of efficiency and socialisation. A second is Leconte's¹¹ article on the relation between Euroscepticism and performance in the EU presidency. The intent with the present study is to make a further contribution to this research direction and to place the Czech Presidency in a more theoretical setting.

2. Presidency as initiator: weakness or strength?

Although it is one of its traditional tasks,¹² the initiation function performed by the presidency is controversial. Arguments rooted in a sceptical approach particularly

⁶ Andreas Warntjen, "Steering the Union. The Impact of the EU Presidency on Legislative Activity in the Council," *Journal of Common Market Studies* 45 (5, 2007): 1135-1157; Jelmer Schalk, René Torenlvied, Jeroen Weesie and Frans Stokman, "The Power of the Presidency in EU Council Decision-making," *European Union Politics* 8 (2, 2007): 229-250; Robert Thomson, "The Council Presidency in the European Union: Responsibility with Power," *Journal of Common Market Studies* 46 (3, 2008): 593-617.

⁷ Petya Alexandrova and Arco Timmermans. "National interest versus the common good: The Presidency in European Council agenda setting." *European Journal of Political Research* 52 (3, 2013): 316-338.

⁸ Crum, Can the EU Presidency make its mark on interstate bargains, 1208-1226.

⁹ Vít Beneš and Jan Karlas, "The Czech Presidency," *Journal of Common Market Studies* 48 (s1, 2010): 69-80; Petr Kaniok and Hubert Smekal, "The Czech Presidency of the EU Council: No Triumph, no Tragedy," *Romanian Journal of European Affairs* 9 (2, 2009): 59-79.

¹⁰ Petr Drulák and Zlatko Šabič (Ed.), *The Czech and Slovenian EU Presidencies in a Comparative Perspectives* (Dordrecht: Republic of Letters Publishing, 2010).

¹¹ Cecile Leconte, "Eurosceptics in the Rotating Presidency's Chair: Too Much Ado About Nothing?" *Journal of European Integration* 34 (2, 2012): 133-149.

¹² Ole Elgström, "Introduction." in *European Union Council Presidencies: A comparative perspective*, edited Ole Elgström (London: Routledge, 2003), 6; Fiona Hayes-

evident in the 1970s and 1980s¹³ cast doubt on the presidency and contest its power in the programme dimension. Five arguments dispute the ability of a country acting as EU chair to influence the EU agenda.

The first of these claims EU primary law does not explicitly delegate any formal power to the presidency that gives it the right to initiate legislation or to structure the agenda in keeping with its wishes.¹⁴ The presidency holds the chairmanship only on a *primus inter pares* basis and in this sense its role is not unique.¹⁵ The second argument has to do with the presidency's own time constraints and internal configurations. It lacks full freedom to define its priorities because these must take into account the 'presidency trio' that includes itself and the previous and upcoming presidencies.¹⁶ In addition, the presidency must cooperate with other EU institutions in a large number of political projects whose timeframe exceeds the presidency's six-month term of office.¹⁷ The third argument touches on the limitations implied by unexpected events that significantly interfere with the initiation function. These might include internal political developments in the country concerned, unanticipated events within the EU, and events that take place within the broader international political context. It is foreign events that seem to have been key in this dimension, as well as the degree to which the country holding the presidency actually represents only the EU Council; historically, countries have not always done so. The fourth argument notes that any requirement that states that the presidency should author priorities is in conflict with the mandate that it play a neutral role. The ideal definition assumes the presidency will act as an impartial moderator primarily engaged in building compromise. This assumption is actually made explicit in the Presidency Handbook, a guide for presidencies issued by the Council General Secretariat. Forces of socialisation also pressure countries in the

Renshaw and Helen Wallace. *The Council of Ministers* (London: Palgrave Macmillan, 2006), 141; Martin Westlake and David Galloway, *The Council of the European Union* (London: John Harper Publishing, 2004), 334.

¹³ Tallberg, The agenda shaping powers of the Council Presidency, 2-3.

¹⁴ Warntjen, *Steering the Union*, 1139.

¹⁵ Tallberg, "The agenda shaping powers of the Council Presidency, 19.

¹⁶ The trio presidency as a tool to strengthen continuity among presidencies was already anticipated by the Constitutional Treaty. The trio presumed EU Member States would be divided into groups containing three presidencies and producing a common agenda for 18 months. Even though the Treaty was rejected, Member States incorporated this element under Council decision 2005/902 EC in 2005 into political practice. The first presidency trio took office in 2007. Concerning their performance and functionality, see Mads Dagnis Jensen and Peter Nedergaard, "Uno, Duo, Trio? Varieties of Trio Presidencies in the Council of Ministers." *Journal of Common Market Studies* 52 (5, 2014): 1035-1052; Agnes Batory and Uwe Puetter, "Consistency and diversity? The EU's rotating trio Council Presidency after the Lisbon Treaty." *Journal of European Public Policy* 20 (1, 2013): 95-112.

¹⁷ Bunse, *Small States and EU Governance*, 44.

presidency role to execute their functions neutrally and suppress efforts to promote issues based upon their national interests. Fear of ostracism is a motivator.¹⁸ Finally, many scholars point to the paradox that the presidency, rather than being as influential as one might think, actually represents the least appropriate moment for a country to champion its own interests. The above noted emphasis on neutrality means it is being closely watched by other Member States.¹⁹

The view of the presidency as primarily an 'honest broker' is opposed by another conceptualisation based upon a broad interpretation of agenda shaping. According to Tallberg, the agenda of the presidency may be influenced by a wide range of tools. These may give preference to or deflect attention away from particular topics. Tallberg's model of agenda creation calls for identifying and determining the agenda, structuring the agenda and, finally, refining it.

The initial manner by which an agenda may come to be set involves a realisation that the EU political process has neglected to acknowledge the gravity of a particular problem. The presidency may then act in one of several ways. First, it may include the issue in its programme for the presidency or include it in the agenda of informal meetings. Or it may lay out concrete proposals for action. Depending upon the nature and character of the problem, the presidency may at its own initiative offer a proposed resolution, a tactic often taken under the (former) first pillar, entailing dependence upon EC cooperation. Finally, the agenda may be set by creating new institutional mechanisms. This has been a frequent practice particularly in recent decades, when there have been more than 20 senatorial Council configurations.²⁰

The real power of the presidency, however, lies not in raising fresh topics so much as it does in structuring the agenda already on the Council's table. The presidency may choose to deemphasise some topics while it prioritises others. In this way, it indirectly enforces its own interests. Any number of controversial topics may arise during the course of a six-month presidency. Deemphasising issues that are low on the country's list of priorities may be a simple solution.²¹

This emphasising or deemphasising of the existing agenda may be influenced by three basic dimensions. The first is the regional. It has closely overlapped in the past with the presidency's function as a representative of the EC/EU. But regional

¹⁸ Ole Elgström, "The honest broker? The Council Presidency as a mediator." in *European Union Council Presidencies: A comparative perspective*, edited Ole Elgström (London: Routledge, 2003), 40.

¹⁹ Bunse, *Small States and EU Governance*, 43.

²⁰ Tallberg, *The agenda shaping powers of the Council Presidency*, 8.

²¹ *Ibid.*, 8-9.

concerns may also make a mark on common specific policies. The European Neighbourhood Policy (ENP) may serve as an example. The German Presidency of 2007 focused on the post-Soviet states, after which the incoming Portuguese Presidency shifted its attention to southern Europe.

The second key dimension is the socio-economic profiling of the presidency. Presidencies differ both in terms of which individual EU policies they emphasise and which they develop. Countries whose political systems are invested in environmental protection traditionally emphasise making substantial progress in this area. Similarly, countries with robust social systems highlight EU social policy. The current political situation of the country assuming the presidency also plays a large role: conservative and liberal cabinets stress liberalisation and the common market. Socialist governments emphasise sustainable development or greater levels of employee protections.

The third dimension centres on the relationship of the country in the presidency towards EU constitutionalism, particularly as regards institutional reform and future EU enlargement. In terms of the latter, there is a sharp line between traditional supporters of deeper integration and those who are more cautious. As an example, both Sweden and Belgium faced the same task of preparing for the Intergovernmental Conference of 2004. In 2001, sovereignty-conscious Sweden lay low and ignored the matter; federalist Belgium, following on Sweden in the presidency, made the future of the EU its leading theme and launched the debate on it.

An effective tool for structuring the agenda is procedural control. Tallberg²² delineates three possibilities. The first has to do with the frequency with which particular types of ministerial meetings are held on both the formal and informal levels. What is important in this context is the type of policy on which ministerial meetings focus — the presidency may express its preferences by favouring specific areas. The second possibility then relates to the programme structure of specific meetings, and the third, the use of standard legislative procedure (co-decision).

Agenda exclusion is not often accorded the full status that agenda setting and agenda structuring are as ways of working with the agenda. Tallberg nevertheless sees it as a tool of equivalent status for influencing the EU agenda.²³ Agenda exclusion may be effected by remaining silent, excluding a topic from the agenda, or by drafting proposals on which compromise is impossible. Tallberg points to the behaviour of the Swedish Presidency in 2001 on mad cow disease, which the Swedes ignored and failed to include in the programme of the European Council for March

²² Tallberg, The agenda shaping powers of the Council Presidency, 27-28.

²³ Tallberg, The agenda shaping powers of the Council Presidency, 28.

despite pressure from the Netherlands and Great Britain. He also makes reference to Germany’s unwillingness during its 1999 presidency to work with the EC proposal on strengthening employees’ consultation rights as an example of a topic excluded from the agenda.²⁴

Research on the general preferences of the Member States and their theoretical implications are not the subject of this article, but it should be demonstrated that Tallberg’s model may be placed in this context. Tallberg’s model is descriptive in nature and Table 1, summarising the model’s components, demonstrates its lack of balance. Its components are clearly not elaborated in detail. The most developed tool is agenda structuring, for which Tallberg treats both the determinants and the resources of potential power for the presidency. But agenda setting and agenda exclusion are mentioned only in passing and only their operationalisation is touched upon. Especially the absence of determinants in both agenda structuring and agenda exclusion is surprising: it is logical to assume that the presidency’s interest should be motivated by the same determinants for each of these three tools. It is difficult to imagine a country would have varying motivations for the different agenda shaping tools.

Table 1: Summary of Tallberg's model

Agenda shaping tool	Means of tool realisation	Determinants	Resources of presidency power
Agenda setting	Raising the awareness of hitherto neglected problems (inclusion into programme or set as a theme for informal meetings) Developing concrete proposal for action Developing new institutional mechanism		
Agenda structuring	Emphasising topic Deemphasising topic	Regional Socio-economic Constitutional	Procedural control a.Ministerial meetings b.Structuring of actual meeting agenda c.Co-decision procedure
Agenda exclusion	Remaining silent on a subject Excluding an item from the decision agenda Presenting a proposal not amenable to compromise		

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Tallberg, The agenda shaping powers of the Council Presidency, 12-13.

3. The Czech Presidency: Characteristics

The Czech Republic joined the EU on 1 May 2004 as part of the greatest enlargement of the EC/EU in its history. A dozen countries gained member status. The Czech Republic was the second of the new member countries to exercise the office of the presidency, taking over its role from France. What follows focuses on the ideological profiles of the political parties that formed the Cabinet during the Czech Presidency, as well as on government statements and an analysis of the foreign policy of the Czech Republic. The goal is to characterise the socio-economic, constitutional and regional position of the Czech Republic as it took over the presidency.

The government that was in power during the presidency had been created only with difficulty in early January 2007, a full six months after the elections of June 2006. Those elections had produced a stalemate between the left-wing and right-wing parties. The coalition was formed on the second attempt and, during the presidency, consisted of the Civic Democratic Party (ODS), the Christian Democratic union – Czechoslovak People's Party (KDU–CSL), and the Green Party (SZ).

The strongest party in government was ODS. It held nine cabinet positions in all, including that of Prime Minister Mirek Topolánek. Ideologically, the party, which had won the last election before the presidency, may be described as conservative – liberal.²⁵ On issues of European integration, it is considered Eurosceptic.²⁶

In numerical terms, the second strongest player in the government was KDU–CSL with five ministerial positions. KDU–CSL is a centrist party politically, described as part of the Christian-Democratic party family. It has a generally favourable view of European integration, which it supports in both its economic and political dimensions.

A particular anomaly in Mirek Topolánek's cabinet was the presence of the Green Party. The party had four ministerial posts and its own self-perception deviated from the norm for Greens in most EU countries. Most such parties locate themselves to the left in the party landscape, but the Czech Greens saw themselves as centre/centre-right, at least on economic issues. Like the Christian Democrats, the

²⁵ Vlastimil Havlík, "A breaking-up of a pro-European consensus: Attitudes of Czech political parties towards the European integration (1998–2010)." *Communist and Post-Communist Studies* 44 (2, 2011), 134.

²⁶ Tim Houghton, "For Business, For Pleasure or For Necessity: The Czech Republic's Choices for Europe". *Europe-Asia Studies*, 61(8, 2009): 1371-1392; Sean Hanley, *The New Right in the New Europe: Czech Transformation and Right-Wing Politics, 1989-2006* (Abingdon – New York: Routledge, 2008).

Green Party may also be classified as pro-European, supporting further enlargement of European integration in both its political and economic dimensions.²⁷

The basic programme document of Topolánek's government wants the Government Policy Statement, adopted in January 2007. Socio-economically, Topolánek's cabinet was in favour of liberalisation, something is declared in the preamble to its platform statement. This part of the platform contains fundamental proposed government policies, such as creating an effective, limited state government; reducing debt; battling corruption; and reforming the pension system. This liberalisation either this is apparent throughout the Statement, but particularly in Section II. The reform of public budgets, taxes, and the taxation system is explicitly linked to reduced mandatory state budget expenditures which, in the Czech Republic, consist primarily of social policy spending. Equally important was a commitment to reduce the overall tax burden and a preference for supporting private enterprise at the expense of socially-oriented policies, for which government spending was cut.²⁸

At the foreign policy level, the statement called for strengthening transatlantic ties between the EU and the US. Topolánek's cabinet considered this a key issue. The ties between the Czech Republic and the United States (and NATO membership) were placed on an equal footing with European integration. The Cabinet did not place its primary focus on Czech political events and developments within the EU. Rather, the EU presidency was spoken of directly as an important tool for increasing the prestige of the Czech Republic on the world stage. The government based its preparation for an exercise of the powers of the presidency on a 'realistic estimate of what is possible for the country'. This was reflected in the particular route taken by the Cabinet in favour of restrictive reforms to the common agricultural policy and the EU budget.²⁹

The Czech Republic had no valid concept of foreign policy before assuming the presidency. The last document to express the country's foreign policy and security interests in the medium-term was the Concept of Foreign Policy of the Czech Republic for 2003-2006. Its primary focus, however, was on the Czech Republic's accession to the EU, meaning it was already out of date at the time of the presidency.³⁰ The foreign policy preferences of the Topolánek government must

²⁷ Havlík, A breaking-up of a pro-European consensus, 141.

²⁸ Cabinet Office, Program Statement of Government of the Czech Republic 2007, available at <http://www.vlada.cz/scripts/detail.php?id=20780>, 2-3.

²⁹ Cabinet Office, Program Statement, 15-16.

³⁰ A new foreign policy concept was adopted in July 2011. The cabinet managed to approve it on the second attempt, as the first version of the concept was voted down for being too much in favour of European integration.

thus be derived from the regular reports on foreign-policy issued annually by the Ministry of Foreign Affairs. The report for 2007 highlighted the critical position taken by the Czech Republic towards the EU constitutional process and stressed the positive impact this had had on the formation of the Lisbon Treaty. Czech foreign policy also favoured a continued EU enlargement process that would result in the fastest possible accession of Croatia and reiterated the importance of transatlantic relations.³¹ These same positions were evident in the report for 2008.

Table 2: Declared and expected positions of the presidency Government

Determinant	Position of the presidency Government	Expected influence on the presidency Program
Socio-economic	Liberalisation, deregulation	Implementation and expansion of free market principles
	Emphasis on economic development	Preference for economic issues at the expense of social issues
	Support for the private sphere	Liberal, pro-market approach to economic crisis
Regional	Equal focus on the EU and the U.S.	Strengthening transatlantic ties Maintaining institutional status quo in CFSP
Constitutional	Reserved approach to further deepening of European integration	Absence of constitutional issues in the program
		Maintaining the status quo on the quality of European integration
		Support for EU enlargement

The declared positions of the government in power during the Czech Presidency reveal all factors were considerably influenced by ODS party ideology. Neither minor coalition partner was able to enforce its interest, something particularly true of the Greens. The disproportion between ODS and the smaller parties is particularly evident in the socio-economic determinant and in relation to the future of the EU, where the approaches taken by ODS on the one hand, and the Christian Democrats and Greens, on the other, most differ. A pro-market, liberal approach prevailed at both levels, and a position was taken toward the EU which was lukewarm at best. The social-market economy orientation and pro-European positions of the minor coalition partners went unheard.

³¹ Ministry of Foreign Affairs, Report on the foreign policy of the Czech Republic for 2007, available at www.mzv.cz/public/eb/43/a3/72910_14945_Zprava2007_cesky_verze_k_22_8_2008.pdf, 6-12.

4. Programme analysis of the Czech Presidency

The Czech Presidency will be analysed in two phases. First, the presidency's use of the agenda shaping tools detailed by Tallberg will be explored. Then, in the second phase of the analysis, an in-depth look will be taken at agenda structuring, for which Tallberg's model is an excellent tool. The analysis will employ the model to examine the concrete ways in which the agenda is structured in terms of which topics are deemphasized or emphasized, which determinants are present (the expected content as summarized in the previous chapter on the real behaviour of the Czech Presidency), and which resources of power are utilized. Along the way, the analysis will take into account the programme of the presidency, and the program, agenda and configuration of formal/informal ministerial meetings.³²

When it comes to agenda shaping tools, the Czech Presidency was quite active in *agenda setting*. The first good example is the Eastern Partnership, originally a Czech enterprise, even if the formal initiative for its establishment came from Poland and Sweden.³³ Czech diplomacy, however, had already identified it as an important priority in 2007-2008, working systematically on its development.³⁴ The program of the presidency mentioned the Eastern Partnership as a key priority for Europe (Cabinet Office 2009, vii), reinforcing its importance with a call for a summit between the EU and the countries in the Eastern Partnership. As France had done in establishing the Union for the Mediterranean in 2008,³⁵ and Finland in proposing the Northern Dimension³⁶ during the country's first EU presidency, the Czech Republic readied the Eastern Partnership before assuming the presidency. Unlike those other countries, however, Czech diplomats were careful to emphasize the

³² Concerning the sources of presidency power, the article omits the third– use of the co-decision procedure – as Tallberg does not describe its content and there is a lack of reliable, valid data.

³³ David Král, "The Czech Republic and the Eastern Partnership – from a by-product to a beloved child?" in: *The Eastern Partnership in the Context of the European Neighbourhood Policy and V4 Agenda* edited by Izabela Albrycht (Krakow/Brussels: The Kosciuszko Institute, 2010), 9.

³⁴ David Král, Vladimír Bartovic and Věra Řiháčková, *The 2009 Czech EU Presidency - Contested leadership at a time of crisis*. SIEPS Occasional Paper 2009:2, available at <http://www.sieps.se/en/publikationer/the-2009-czech-eu-presidency-20092op>, 51-52; Alexander Duleba, András Rác, Věra Řiháčková and Rafał Sadowski, "Visegrad 4 the Eastern Partnership: Towards the Vilnius Summit", SFPA Policy Paper 2013, available at <http://www.sfpa.sk/dokumenty/publikacie/377>, 15-16.

³⁵ Renaud Dehousse and Anand Menon, "The French Presidency," *Journal of Common Market Studies* 47 (s1, 2009), 99–111.

³⁶ Teija Tiilikainen, "The Finnish Presidency of 1999", in *European Union Council Presidencies: A comparative perspective*, edited Ole Elgström (London: Routledge, 2003), 109-111.

communitarian dimension of partnership and cooperated with those other Member States involved, and particularly with the EC.

A similar example is shown at the level of secondary legislation in the commitment of the presidency to work on implementing the Services Directive. Another example may be found in the area of competitiveness. The presidency intended to work on the upcoming revision of the late payments directive, designed to ensure that small and medium enterprises (SME) receive payment for commercial transactions on time (Cabinet Office 2009a, 3-6). But unlike the French Presidency which had gone before, which was very active in calling ad hoc summits, the Czech Republic rarely created new institutional practices as a tool for introducing new issues into the EU agenda. Two exceptions were the Eastern Partnership summit and one informal ministerial meeting on regional development held as a Competitiveness Council (COMP) meeting in Mariánské Lázně.

Like most presidencies, that of the Czech government was visibly engaged in *agenda structuring*. In this, the presidency followed the socio-economic, constitutional, and regional preferences expressed in the government statement. The liberal profile of Topolánek's cabinet, linked to the socio-economic determinant, was distinct in the socio-economic dimension. The economy, the presidency's initial top priority, is a good illustration. The leitmotif in this area may be described as one of liberalization, anti-protectionism, and challenging barriers. The program made reference to temporary measures proposed by the European plan for economic and social renewal³⁷ at the same time as it appealed to the principles of the Stability and Growth Pact and argued for the internal and external liberalization of the economic environment. In another priority area — that of energy policy — the Czech Presidency again made itself known as an advocate of liberalization. Its program stressed completing the internal market and emphasized the importance of energy security.³⁸ And finally, the 'Third E'³⁹ — the European Union in the world — was also framed in the liberalization ethos. Aside from strengthening euroatlantic ties, the Czech Republic emphasized policy towards the Western Balkan countries, and called for dismantling external barriers, particularly in the area of trade policy.⁴⁰

³⁷ This plan was introduced and approved during the French Presidency in December 2008. The Czech government saw it as an expression of protectionism.

³⁸ Cabinet Office, Work Program of the Czech Presidency in the EU Council: Europe without barriers, available at http://www.eu2009.cz/assets/news-and-documents/news/cz-pres_program_cs.pdf, vi.

³⁹ Three top priorities of the Presidency (economy, energy and the EU in the world) were often put together as the 'Three Es'.

⁴⁰ Cabinet Office. 2009a. Work Program, vii.

The regional preferences of the Czech government were most clearly visible in its support for enlarging the EU to take in the Western Balkans, a traditional priority area for Czech foreign policy. These preferences were also visible in its focusing of the external relations agenda on Eastern Europe, specifically on relations between the EU and Russia, and the emphasis the presidency laid on strengthening transatlantic ties. When it comes to the constitutional determinant, no mention was made of the Czech position on the Lisbon Treaty, an obvious consequence of the negative attitude held by ODS on the review of primary legislation, and the failure of the presidency government to adopt a clear stance. Significantly, at the time the program was formulated, the Czech Republic remained one of the few countries that had not yet ratified the Lisbon Treaty. On the point of EU constitutionalism, then, the presidency mentioned only resolution of the Irish guarantees.

As regards *agenda exclusion*, there is no convincing evidence the Czech Presidency made use of this tool. The country was not silent vis-à-vis any part of the agenda. It tackled many issues — economic crisis, EU constitutional questions — in a different manner than had previous presidencies or most EU Member States. But this difference does not add up to an exclusion agenda. The program for the presidency proposed no unacceptable compromises and never pointed to any issue it wished to see eliminated from the Council agenda.

Tallberg's assumptions seem to have been confirmed in this first level of analysis focused on the presence of agenda shaping tools. Most convincing in the Czech case seems to be the use of agenda structuring. At the current stage of European integration, taking in, as it does, virtually all policies and regions, proposing fresh topics is difficult, even under the agenda setting procedure defined by Tallberg. As regards agenda exclusion, Tallberg⁴¹ points out that one of the few reasonable criteria for identifying it is that other states who wish to see an agenda item included react to its absence. But no such reaction occurred under the Czech Presidency, at least not as part of the process of agenda setting as defined by Tallberg.

Turning now to the second level of analysis, Tallberg regards agenda structuring as the most effective, most commonly employed tool. The priorities contained in the working program (appearing after the general section of the presidency program) confirm the influence of all three determinants. Liberalization, which may be seen as the Czech 'operationalization' of the socio-economic determinant, was not present merely in economic policy; it also provided the impetus behind the presidency's grasp of social policy. The presidency clearly preferred strengthened competitiveness to active social policy mechanisms as a tool for preserving the European social model. Aside from its rhetorical references to the importance of the

⁴¹ Tallberg, *The agenda shaping powers of the Council Presidency*, 29.

Lisbon strategy, the presidency mostly targeted the internal market and the need to remove barriers to the free movement of labour. Concrete measures included support for implementing the Services Directive. Additional points of focus were competition, better regulation, research and development, and SMEs.⁴²

Economic policies as a whole were framed by the economic and financial crisis. The programme focused on the recovery of the financial markets and their development, on macroeconomic structural policies, international cooperation, and on the battle to stop tax evasion and modernise tax rules. The presidency's intent was to adopt or revise legislation in the above noted areas and to continue discussions aimed at strengthening the stability and development of the single European financial market. Plans also called for discussions on the quality of public finances.⁴³ Liberalization of the common trade policy was also sought, with the presidency explicitly rejecting protectionism and calling for the removal of barriers.⁴⁴ Some issues were emphasized; others were deemphasized. The latter was evident in the presidency's reluctance to address the economic crisis on the same activist, protectionist basis as had France in 2008. But the Czech liking of liberalization and deregulation placed the country in the minority — most EU Member States called for major state intervention and were in favour of greater regulation.⁴⁵

The second of the 'Three Es', energy, also felt the Czech government's advocacy of liberalisation as a key socioeconomic principle. Liberalisation, or deregulation, is a distinct element in the presidency's plan to conclude discussions on the Third Liberalisation Package and focus on completing the requisite transmission levels and transmission capacity in member countries, as well as on starting talks on introducing a uniform tariff for international electricity transmission.⁴⁶ In other words, the presidency's chief interest lay in the internal EU market for electricity and gas. The environmental area, among others, was deemphasised in the programme vis-a-vis the economy and energy. It came up only in the context of negotiating a global agreement to cut emissions.⁴⁷

The programme was quite detailed in the areas of transportation and telecommunications and, to some extent, in matters covered by the former third pillar as well. In transportation, key legislative items included several which

⁴² Cabinet Office. 2009a. Work Program, 3-6.

⁴³ Cabinet Office. 2009a. Work Program, 2-3.

⁴⁴ Cabinet Office. 2009a. Work Program, 23-34.

⁴⁵ The most important advocate of this approach was France, the Czech Republic's partner in the Presidency Trio. See Beneš and Karlas, *The Czech Presidency*, 74-75.

⁴⁶ Cabinet Office. 2009a. Work Program, 7-8.

⁴⁷ Cabinet Office. 2009a. Work Program, 10.

attempted to complete or strengthen the internal market: a proposal to amend the directive on fees levied on heavy goods vehicles, negotiations on the directive covering the introduction of intelligent transport systems, and aviation legislation. In the telecommunications area, stress was laid upon completing the telecommunications package and revising the regulation of roaming prices. Under the third pillar, the Schengen system was chosen as a crucial item. The program assumed a significant move forward in the development of the second generation of the Schengen Information System (SIS II) and work on the Visa Information System.⁴⁸ The emphasis given to these issues also demonstrates the pro-liberalisation approach taken by the Czech government, given that improving these tools would allow the free movement of persons in the EU to be broadened and simplified.

Other EU policies and activities were deemphasised in both scope and depth compared to those noted. As an example, in the area of agriculture and fisheries, the presidency intended to continue discussions on reforming the CAP — and the words ‘debate’ and ‘discussion’ perfectly capture the way it viewed the CAP. This discussion-oriented approach, however, was underlined by the liberalisation ethos that the CAP should spend more efficiently, and that conditions for farmers should be fair, while the regulatory and administrative framework of the CAP should be simplified.⁴⁹

In terms of the *regionally determined* perspective on structuring the agenda, one interesting disparity occurs between the opening part of the programme and the sector priorities that follow. Its first segment starts by labelling the transatlantic relationship as a number one priority. It then moves to the relationship with Russia and finishes by speaking about the Eastern Partnership agenda. The second segment does the reverse; it first brings up the Eastern Partnership agenda, then moves to EU-Russia relations, and finally to the transatlantic relationship. All three of these priorities are in keeping with the foreign policy profile of the Topolánek government in terms of content and in the regional sense. Other areas of EU foreign relations activity are given brief mention. These include Mediterranean cooperation, given less emphasis by the Czechs than it had received during the preceding French Presidency, European Security and defence policy, and development assistance, both of which were also downplayed.

EU constitutional topics took a back seat for the Czech Presidency, something entirely expected given the hesitant, Eurosceptic stance of the government. The program glossed over the constitutional situation in the EU in a fragmentary way and seemed inclined to accept the Irish ‘No’ on the Lisbon Treaty. Without going

⁴⁸ Ibid., 8-10, 16.

⁴⁹ Ibid., 16-17.

into specifics, the presidency pledged to find solutions that took into account the concerns of the Irish people as expressed in the referendum.⁵⁰ The Czechs attempted to deemphasise the agenda, a logical behaviour in view of the fact the country had not yet ratified the Treaty. The Czech government had also been asked by Ireland prior to assuming the presidency to keep a low profile on the issue. When it came to EU enlargement, the program was more enthusiastic. Support was given to the integration of the Western Balkans and interest was shown in making maximum progress on the accession negotiations with Croatia.⁵¹ Broad support for EU enlargement is not strictly regionally determined in the Czech case; it also indicates the presidency's lack of interest in deepening European integration. ODS, particularly, has been the widest supporter of EU enlargement at the expense of further qualitative development. As far as emphasising and deemphasising particular topics, it is noteworthy that the presidency paid substantially more attention to enlarging the EU than it did to EU constitutionalism or institutional affairs, not only qualitatively, but also in terms of quantity.

Another tool the presidency may use to demonstrate and promote its preferences consists in formal and informal ministerial meetings. Table 3 summarises the formal, informal and extraordinary meetings of the Council. A quick glance shows that the 'Three Es' formed the most frequent topic of these meetings. The first 'E', the economy, was a topic in six ECOFIN meetings and four meetings of the COMP Council. Energy, the second 'E', was featured in seven meetings of the TTE Formation Council, and the third 'E', Europe in the World, was the topic of ten Configuration GAERC meetings. These Council meetings also covered topics not directly concerned with the content of the Three Es, such as transport configuration of TTE Council, but it remains apparent that the presidency favoured its prioritised agenda (and an economic agenda in general) in the Council configurations, at the expense of matters like environmental protection, education, and justice and home affairs.

Ministerial meetings involving formal negotiations (both planned and emergency) may be analysed separately from informal ministerial meetings. The first type is organised under the Council Rules of Procedure, based upon a programme known well in advance, while the second, the informal meetings, are much more open in character and the presidency may use them as a discussion platform for issues it wishes to highlight.

⁵⁰ Cabinet Office. 2009a. Work Program, 1.
⁵¹ Cabinet Office. 2009a. Work Program, 1.

Table 3: Summary of formal, informal and extraordinary meetings of the EU Council during the Czech Presidency

Council Formation	Formal	Informal	Extraordinary
General Affairs and External Relations Council (GAERC)	6	4	0
Justice and Home Affairs (JHA)	3	1	0
Employment, Social Policy, Health and Consumer Affairs Council (EPSCO)	1	2	1
Education, Youth and Culture (EYC)	2	1	0
Economic and Financial Affairs Council (ECOFIN)	5	1	0
Transport, Telecommunications and Energy (TTE)	5	1	1
Agriculture and Fisheries (AGFISH)	5	1	0
Environment (ENVIRO)	2	1	0
Competition (COMP)	2	2	0
Total	31	14	2

Source: Author⁵².

Table 4 offers an overview of the discussion topics on the agendas of informal ministerial meetings. It reveals the vast majority of issues the Czech Presidency offered to debate fit in with its socio-economic, regional and constitutional preferences. The link between determinants and discussion points is evident not only in the case of the Three Es and the Council formations in which they arose, but also in connection with most noneconomic informal ministerial meetings. The discussion agenda for January's informal EPSCO meeting, for example, was in keeping with the liberalisation-influenced view of the socio-economic determinant, both in the area of labour mobility and revision of the working time directive. The March EYC directive likewise discussed education as a tool for solving the economic crisis and stressed partnership between industry and education. A spirit of liberalisation and an economics focus were apparent at the informal AGFISH meeting held in late May and early June. The focus was on cuts in CAP expenditures and the elimination of advantages for shown to some farmers in the direct payment system.

⁵² The author, on the basis of Cabinet Office, Summary of the effect of central coordination team during the Czech Presidency, available at <http://www.eu2009.cz/scripts/file.php?id=61219&down=yes>.

Table 4: Discussion topics of informal ministerial meetings

Council configuration	Date	Agenda
GAERC	8 th January	General presidency priorities; energy security; transatlantic relations; institutional issues
JHA	15 th -16 th January	Modern technology and security; technology, migration and asylum; international protection of children; Schengen information system ii, mutual recognition in criminal matters; cooperation in probate and family law; eJustice
EPSCO	22 nd -24 th January	Mobility of workers; revision of the directive on working time
GAERC	29 th -30 th January	Sustainable resources at the local level; democratic governance; impact of the financial crisis on developing countries
EPSCO	4 th -5 th February	Family and child care
GAERC	12 th -13 th March	EU military operations; EU military development; cooperation between EU-NATO, EU-OSN, EU-African Union
EYC	22 nd -23 rd March	Education as a tool for solving the economic and financial crisis, partnership between education and the labour market/industry
GAERC	27 th -28 th March	Middle East; ESDP Civilian Mission; Belarus, Western Balkans
ECOFIN	3 rd -4 th April	Stability and growth pact (excessive budget deficit), situation of financial markets; IMF; economic benefits of EU enlargements; financial markets
ENVIRO	14 th -15 th April	Adaptation to climate change; financing climate change; strategy for climate change negotiations
COMP	22 nd -24 th April	Principles and objectives of the future cohesion policy; territorial cohesion
TTE	28 th -30 th April	Intelligent Transport Systems; Swine flu
COMP	3 rd - 5 th April	Future of the internal market; reducing administrative burdens; Knowledge Society
AGFISH	31 st May – 2 nd June	Direct payments, CAP reform

Source: The author, based on press releases from informal ministerial meetings available on the Presidency Calendar

The regional determinant of the Czech government is apparent in the discussion topics of informal meetings (especially in the GAERC formation) and in the lack of interest shown in constitutional and institutional matters. Its only mention came during the first informal GAERC and can hardly be regarded as evidence of interest by the Czech Presidency.

Table 5: Optimisation of Tallberg's model

Agenda shaping tool	Means of tool realisation	Determinants	Resources of power
Agenda setting	Raising the awareness of hitherto neglected problems (inclusion into the programme or set as a theme for informal meetings) Developing concrete proposals for action Developing new institutional mechanisms	Regional Socio-economic Constitutional	Procedural control a.Ministerial meetings b.Structuring of actual meeting agenda
Agenda structuring	Emphasising topics Deemphasising topics	Regional Socio-economic Constitutional	Procedural control a.Ministerial meetings b.Structuring of actual meeting agenda c.Co-decision procedure
Agenda exclusion	Remaining silent on a subject Excluding an item from the decision agenda Presenting an impossible compromise proposal	Regional Socio-economic Constitutional	Procedural control a.Ministerial meetings b.Structuring of actual meeting agenda Co-decision procedure

More than thirty formal ministerial meetings were held during the Czech Presidency. Such a number means that no comprehensive table can be drawn up to summarise their agendas, as could be done for informal meetings. Analysing the items included in the programs confirms the trend revealed by the analysis of

discussion topics in informal ministerial meetings. In formal negotiations, as well, the presidency favoured those items connected to its socio-economic, regional and constitutional biases. Particularly in the second half of its mandate, the topics of informal meetings were tied to an anticipated legislative process — legislative items discussed at formal meetings had already been broached at informal meetings.

It is not surprising that the most convincing determinant at this level of analysis turns out to be the socio-economic determinant. Formal Council meetings focus on the legislative process, where socio-economic preferences can best be tracked. But the regional determinant may also be taken into account. At all formal GAERC meetings, the presidency reiterated the themes the Government Statement would lead one to expect: transatlantic relations, the Eastern Partnership, the Western Balkans, and so on. As in the case of informal meetings, the constitutional dimension receded well into the background — no formal GAERC meeting program made explicit mention of EU constitutionalism (or any related agenda, such as the Lisbon Treaty).

5. Conclusions and implications

This article set itself three main goals. The first was to test the general model of agenda shaping advocated by Jonas Tallberg by analysing the agenda for a particular presidency with reference to a compact set of data consisting of EU legislation. The second was to potentially optimise Tallberg's model, and the third, to analyse whether the model, initially developed for the EU-15, is also applicable to a new Member State.

As regards the first and third of these objectives, analysis of the programme agenda of the Czech Presidency showed Tallberg's model is indeed valid when brought to bear in a detailed analysis of the presidency's agenda concerning everyday EU policies. This conclusion applies both to the initial level of analysis — the review of tools employed for agenda shaping — and to the second level, involving agenda structuring. Confirming the validity of Tallberg's model is the first bit of added value brought by this article. This was undertaken in a way which contrasts with Tallberg's own approach of illustrating his model using selected ad hoc examples. This article systematically explored whether the assumptions identified and illustrated by Tallberg also matter in everyday and routine secondary EU legislation. The fact that a single presidency was analysed obviously restricts the generalisability of the findings; it may nevertheless be concluded that Tallberg's model is valid for secondary EU legislation and is applicable to the new member countries. The Czech Presidency simply made use of the same tools as the old Member States and followed the same determinants.

As regards the three determinants that influence agenda structuring, it seems, at least in the case of the Czech Presidency, that the strongest is the socio-economic. The liberalisation approach favoured by ODS was the most striking motive in all areas of the presidency and determined its content. It was also clearly present in the agenda of the informal meetings and in the programs of formal ministerial negotiations. The ideological profile of Topolanek's government was most clearly evident when it came to social and economic issues. But it also had palpable influence on EU foreign policy issues and the approach taken to the EU's constitutional future. In the constitutional/institutional area, the presidency remained passive and employed agenda shaping tools for non-action.

The second objective of the article was to discuss Tallberg's model itself, as illustrated in Table 1. Several comments may be made in this regard and the article's findings matched with the model. The first comment is already been suggested when reviewing Tallberg's model. At least in the Czech case, it seems to be valid that most components of agenda structuring are also relevant to agenda setting. The same determinants that motivated the Czech government when it originally set the new agenda were still present when the structured agenda was actually placed on the table, and equally redolent of the liberal ODS ideology. This is only logical: the presidency is, after all, of a single piece, with unified motives and subservient to a unified logic, no matter whether that concern agenda setting or agenda structuring. It has at its disposal the same resources for setting the agenda as for structuring policies and legislation. The only exception is the co-decision procedure: the presidency cannot propose legislation on its own.

It may also be assumed that the identical pattern of behaviour will obtain (i.e., the influence of determinants and resources of power) in agenda exclusion. It is reasonable to anticipate that determinants will exert the same influence as in agenda structuring. It is difficult to imagine that any presidency would be driven to exclude agenda on the basis of a different set of determinants than motivated it to set the agenda or structure it. The resources of power the presidency has at hand should be subject to the same influences as structuring, since agenda exclusion is carried out using the same procedural variants as are employed to structuring the agenda (including the potential use of standard legislative procedure).

The result of the proposed optimisation of Tallberg's model is a confirmation of the permeability of agenda shaping tools, as has already been noted in the overview of Tallberg's initial model. Since finding a brand new topic or policy in the current stage of European integration is hardly conceivable, it is often difficult to set a clear boundary between agenda structuring and agenda setting. Likewise, it is difficult to clearly identify differences between agenda structuring by its deemphasising and agenda exclusion as a whole — the boundary between deemphasising a topic and remaining silent on it appears fluid and fragile.

Despite some doubts, Tallberg's model may be taken as inspiration for further research into the Council Presidency and its role as agenda shaper. Knowing a government's general leanings on the socio-economic, regional, and constitutional dimensions could forecast with good precision the approach it will take to the presidency agenda. Interesting in this connection is the impact of the Lisbon Treaty, which removed the second pillar and the external relations agenda from the traditional competencies of the presidency. The question that arises here is whether this will lead to a weakening of the regional determinant. Another potential interesting avenue would be to place the programme behaviour of the presidency into the context of research into the general preferences of EU Member States, since the presidency, as agenda shaper, is restrained by a number of formal and informal rules that other Member States are not. A promising, inspiring direction for future research would seem to lie in adopting a comparative perspective that includes a greater number of case studies and tests whether Tallberg's assumptions hold across different presidencies. The present article has deliberately adopted a different prospective. For thoroughly evaluating Tallberg's model, a single case study seemed to be a sufficient first step, but it is clear that a comparative approach should now follow.

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JUDICIARY DEVELOPMENT AFTER THE BREAKDOWN OF COMMUNISM IN THE CZECH REPUBLIC AND SLOVAKIA

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Abstract

After the breakdown of communism in Central and Eastern Europe one of the transition tasks was the adjustment of judiciaries to new democratic conditions. The aim of this comparative case-study is to explain different paths taken by the Czech Republic and Slovakia in establishing the institutions of judiciary independence and to discuss the relationship between these developments and the actual performance of judiciaries. To this end it investigates the existence of socialist legacies in judges' behavior and seeks to provide an overview of legislative changes regarding appointment, removal, career progress and disciplining of judges. The results indicate that Slovakia created the Judicial Council in order to prove itself as a trustworthy candidate for the integration in the European Union after its semi democratic experience in the 1990s, while in the Czech Republic the development has been more gradual with the central role played by the Ministry of Justice.

Key words: rule of law, judiciary development, communist legacies, European Union

1. Introduction¹

One of the challenges faced in the early 1990s by transitional elites in Central and Eastern Europe was the necessity to adjust judiciaries to new democratic conditions. Partly discredited judiciaries that complied with undemocratic regimes had to be altered in order to function properly in new political systems. Yet, even after more than 20 years of experience with democracy in the region, the judiciaries are still perceived as problematic with regard to ongoing consolidation. Several scholars addressed the issue of judiciary reforms and judiciary performance in emerging democracies.² The focus has been usually placed on the most visible, somewhat

¹ This article is based on the MA thesis submitted at Central European University in 2013. Publication of this work was supported by the Slovak Research and Development Agency under the contract No. APVV-0413-11

² See: David Kosar, "Judicial Accountability in the Post(Transitional) Context: A story of Czech Republic and Slovakia," in *Transitional Justice, Rule of Law and Institutional Design*, ed. Adam Czarnota and Stephen S. Parmentier (Antwerp: Intersentia Publishers, 2010). Maria Popova, *Politicized Justice in Emerging Democracies: A study of Courts in Russia and Ukraine* (New York: Cambridge University Press, 2012). Brent T. White, "Putting Aside the Rule of Law Myth: Corruption and the Case for Juries in Emerging Democracies." *Cornell International Law Journal* (2010): 307-363. Alan Uzelac. "Survival of the Third Tradition?" *Supreme Court Law Review* 49(2010): 377-396.

deviant cases such as Ukraine, Russia or Bulgaria, while countries that are considered to perform well in terms of consolidation are neglected, although they face noteworthy problems with their judiciaries as well.

This research looks into development of judiciary institutions in two 'third wave' democracies – Czech Republic and Slovakia – in order to examine how these countries dealt with the issue of communist legacies present in their judicial systems; how they coped with the requirement of independent judiciary, often emphasized by international institutions; and what role these international actors, mainly the EU and countries' ambitions to be integrated into its structures, played in these processes. The research describes and explains different paths taken by the compared countries in establishing of independent judiciaries and discusses the relationship between these paths and observed outcomes.

Cases of the Czech Republic and Slovakia are almost a perfect example for a comparative case-study utilizing most-similar systems design. They share communist past and institutional design at the dawn of democracy, hence the effect of legacies can be controlled and it can be reasonably assumed their starting points were to a large extent similar. In addition, there is a documented difference in the performances of judiciary systems that will be elaborated further in the research. While Czech Republic is by the World Justice Project considered to be one of the strongest performers in the region,³ the Slovak judiciary seems to be "in disarray and turmoil" and "there is hardly any country in the EU where public confidence in the judiciary is as low as in Slovakia".⁴

The study examines the relationship between EU conditionality focusing on judiciary matters and the state of judiciaries after the breakdown of communist regimes. The main argument is that communist judiciaries were not prepared to properly function in new democratic regimes and therefore if countries have not dealt with their communist past sufficiently the legacies could have been transferred into new conditions. Then if the judiciary was given considerable powers to administer its own matters, there was a risk it can negatively influence not only performance of courts with regard to the decision making but also lead to problems with independence of judges and how is their independence perceived.

The argument proposed in this research proceeds as follows. In sections 2 and 3 the role of judicial independence as an essential condition for democratic consolidation is established and is further developed with regard to the European Union and the ways in which the EU promoted this value. Section 4 discusses the inherent conflict

³ The World Justice Project."Rule of Law Index." 2011.

⁴ Lukasz Bojarski and Werner Stemker Koster, *The Slovak Judiciary: its current state and challenges*. (Bratislava: The Open Society Foundation: Slovakia, 2012), 117.

between requirement of judicial independence and the post-communist context. This is subsequently supported by the analysis of semi-structured interviews with four Czech and Slovak judges and/or legal scholars in Section 5 with the focus on communist legacies in two dimensions - judicial decision-making and judicial self-administration. All of the selected respondents either were or still are judges, three of them approached the issue of post-communist judiciary as scholars, and all of them could have been considered prominent representatives of judiciary or academia in their respective countries. Legal textual analysis in Section 6 focuses on the development of legislation adapting administration of judiciaries since communist regime and examines parliamentary documents and discussions regarding the proposals for the creation of specific bodies - Councils - responsible for judiciary self-administration while explaining different paths taken by both countries with emphasis on the role of the EU.

2. Judicial Independence: a sine qua non for democratic consolidation

For a democracy to be considered it is often assumed that the rule of law has to exist there, indeed among other conditions.⁵ There is a variety of approaches to its definition,⁶ however it is generally perceived as an ideal that guarantees certainty between the people and ensures that the change happens in a stringent way, thus minimizing danger of one's unrestricted power. The definitions vary from simplest ideas, such as that the rule of law means rule of law, not men, through any state of law as opposed to anarchy, to approaches based on values and institutional approaches defining institutions necessary for the achievement of the ideal, such as courts, bars or parliaments. Institutional definitions highlight the importance of judiciary independence, secured by the existence of tenure ensuring freedom from interference from other branches of power.⁷ In Walker's definition however we can find something that goes beyond institutions as he brings in an attitudinal factor when he claims that law is highly dependent on people's attitudes and for the successful application of the Rule of Law there needs to be a commonly shared "attitude of legality".

⁵ E.g.: Juan J. Linz and Alfred Stepan. *Problems of Democratic Transition and Consolidation: Southern Europe, South America and Post-communist Europe* (Baltimore: The John Hopkins University Press, 1996). Guillermo O'Donnell. "Why the Rule of Law Matters." *Journal of Democracy* 15 (2004): 32-46.

⁶ There is also a difference between Anglo-Saxon „Rule of Law“ on one hand, and the German „Rechtstaat“ on the other. For the purpose of this paper I will not differentiate between them and will use the term „rule of law“. I realize that „Rechtstaat“ is perhaps closer to Czech and Slovak understanding of the concept, as countries use this expression – „pravny stat“ or „pravny stat“ respectively.

⁷ Joseph Raz. "The Rule of Law and Its Virtue." *The Law Quarterly Review* 93, (1977): 195-211. Geoffrey de Q. Walker, *The Rule of Law: Foundation of Constitutional Democracy*. (Melbourne: Melbourne University Press, 1988).

The institutional approach – and the belief institutions ensure the establishment of a well-functioning democracy – has been criticized in the past. On the one hand, Carothers admits the importance of the rule of law as it has been used as an ideal that solves problems of non-democratic or less-democratic countries, however, on the other hand author argues that besides institutional reforms, an enlightened leadership and changes in values and attitudes of those in power will be required⁸. Others argue it is easier to define the values the rule of law shall serve than design particular institutions that will promote it,⁹ as it may be close to impossible are they not rooted in a proper cultural context.¹⁰ Despite the criticism and emphasis put on such conditions where the members of judiciary branch are able to identify a and interpret law and its fundamental assumptions properly, international documents regularly perceive institutions of *judiciary independence as an essential pre-requisite of the rule of law*¹¹ and can be understood as a *crucial element for the consolidation of democracy*.

The fact that requirement of judicial independence is included in a variety of international documents may have motivated newly democratized countries to search for arrangements that would ensure it. But what does judicial independence actually mean? The ultimate goal of the concept is to ensure that cases are decided on its merits and are not dependent on any other factor. As Popova convincingly puts it in her study, judicial independence “exists if no actor can consistently secure judgments that are in line with his or her preferences”.¹² Despite quite straightforward definition we can distinguish between a variety of conceptualizations – behavioral, decisional, institutional and perhaps administrative independence.¹³

⁸ See: Thomas Carothers, "The End of Transition Paradigm." *Journal of Democracy* (2002): 5-21. Thomas Carothers, „The Rule of Law Revival." *Foreign Policy Affairs* 77 (1998): 95-106.

⁹ Martin Krygier, "Rethinking the Rule of Law After Communism." In *Rethinking the Rule of Law after Communism*, ed. Adam Czarnota, Martin Krygier and Wojciech Sadurski (Budapest: CEU Press, 2005), 266-278.

¹⁰ Walker, *The Rule of Law*.

¹¹ Such a claim can be found in the Council of Europe's Recommendation on the independence, efficiency and the role of judges; the Bangalore Principles of Judicial Conduct; European Charter on the statute of judges.

¹² Popova, *Politicized Justice*, 18.

¹³ Erik S. Herron and Kirk A. Randazzo. "The Relationship Between Independence and Judicial review in Post-Communist Courts." *The Journal of Politics* 65 (2003): 422-438; O'Donnell, "Why the Rule of Law Matters," 32-46. Popova, *Politicized Justice*, 18. Hanssen, Andrew F. "Is There Politically Optimal Level of Judicial Independence?" *The American Economic Review* 94 (2004): 712-729.

This study focuses on the creation and development of institutions, as these are states' means to deliver desired outcomes – in this case independent judges making independent decisions. An "institutionally independent judiciary" is one that is formally separated from other branches of power, diminishing possible risks of affecting its performance through political offices. In an ideal case, such a judiciary would decide about all of its personal, financial and administrative matters without political interference. This study focuses on the personal dimension of institutional independence, specifically on the matters of appointment, removal, disciplining and promotion of judges, and evaluates the extent to which judiciary decides about its matters independently and who it is accountable to. If the judges were selected, appointed and promoted to higher offices solely by political elites, it may be assumed that only "reliable" judges willing to decide according to the desires of elites will be selected. Dependence would be even stronger was there a possibility of judge facing ramifications for their actions that could be initiated by elected officials.¹⁴

What needs to be stressed for the purpose of this paper, *there can be dependent judges in the judiciaries independent from other branches of government*. Judges can be dependent not only on external actors, such as governments, but they are susceptible to be dependent on the members of judiciary itself, hence can be dependent both externally and internally.¹⁵ We need to bear in mind this possibility when talking about judiciary independence – judges' impartiality is always in risk, even when the judiciary is structurally insulated from other branches of power. As was shown in the past, institutional independence does not necessarily correlate with independent behavior of judges¹⁶ which can be interpreted as an argument not only against the usefulness of the concept, but even as a call for abandonment as institutional independence proves to be neither necessary nor sufficient for the rule of law or good governance.¹⁷ In institutionally independent judiciary still exists a variety of possible influences over judges; be it corporate interests,¹⁸ including

¹⁴ Herron and Randazzo. "The Relationship between Independence and Judicial review in Post-Communist Courts," 422-438.

¹⁵ The distinction between internal and external source of dependency, as well as of individual and collective source of dependency was introduced by Peter H. Russell. See: Peter H. Russell, "Toward a General Theory of Judicial Independence." In *Judicial Independence in the Age of Democracy: Critical Perspectives from around the World*, ed. Peter H. Russell and David M. O'Brien (Charlottesville: University Press of Virginia, 2001), 1-24.

¹⁶ Shannon Ishiyama Smithey and John Ishiyama, "Judicious Choices: designing courts in post-communist politics." *Communist and Post-Communist Studies* 33 (2000): 163-82.

¹⁷ Lewis A. Kornhauser, "Is Judicial Independence a Useful Concept?" In *Judicial Independence at the Crossroads: An Interdisciplinary Approach*, ed. Stephen B. Burbank and Barry Friedman (Thousand Oaks: Sage Publications, 2002), 45-55.

¹⁸ O'Donnell, "Why the Rule of Law Matters," 44.

judiciary itself; "telephone justice";¹⁹ or simply by politicians who have capacity, and are willing to, intervene.²⁰ As Ledeneva eloquently puts it: "the pressure does not need to be pervasive, to be effective".²¹

This study focuses on the examination of institutional independence of judiciary and the creation of institutions of independent judiciary which seems to be not only insufficient but, may also cause outcomes contrary to those desired. That is due to the fact that even if the judiciary is effectively separated from other branches of power, there is no support for a claim it cannot become dependent on high judiciary personnel or any other group of people, directly or indirectly – be it political elites, financial groups or even organized crime groups. Moreover, such a judiciary would not be exposed to any possible control provided by citizens, becoming completely unaccountable, whereas any governmental attempt to intervene may be declared as anti-constitutional, illegitimate attempt to influence judiciary, or simply anti-democratic. Based on that, it can be argued there is a reason to preserve elected, and accountable, officials to hold certain powers to influence judiciaries; otherwise a judiciary personnel may become a privileged group – a caste protected from the outside world hidden behind the veil of concepts like judiciary independence and the rule of law.

3. The EU as a motion power towards independent judiciaries

Even though there was a need for the creation of independent judiciaries in the Eastern and Central Europe after the breakdown of communist regimes, the decision remained in the hands of politicians. There are several reasons why politicians would actually restrict their powers to exercise control over the judiciary. Firstly, it may be due to their true pro-democratic persuasion and their commitment to the rule of law ideal; secondly, there are rational choice explanations treating behavior of political elites as conscious decisions serving for the maximization of benefits;²² and last but not least, an explanation central for this paper, emphasizing the role of international actors, even though judiciary has rarely been a main focus point of any democratizing efforts, but rather a by-product of greater plans fundamentally changing institutions in countries in transition and consolidation.²³

¹⁹ Ledeneva, Alena. „Telephone Justice in Russia.“ *Post-Soviet Affairs* 24 (2008): 324-350.

²⁰ Popova, *Politicized Justice*.

²¹ Ledeneva, „Telephone Justice in Russia,” 347.

²² See: Hanssen, "Is There Politically Optimal Level of Judicial Independence?". Magalhaes, Pedro C. "The Politics of Judicial Reform in Eastern Europe." *Comparative Politics* 32 (1999): 43-62. Popova, *Politicized Justice*.

²³ See: Ghergina, Sergiu. "The Helping Hand: The Role of the EU in the Democratization of Post-Communist Europe," *Romanian Journal of Political Science* 9 (2009): 65-79. Santos, Boaventura de Sousa. "The GATT of Law and Democracy: (Mis)Trusting the

In the post-communist region the strongest international player has been the European Union and the push-and-pull effect related to the integrative process of the post-communist countries. It can be hypothesized that countries attempting to be accepted in the EU structures were willing to closely follow the requirements for integration, especially countries that got stuck in the "grey zone" between democracy and authoritarianism and therefore needed to try harder to prove themselves as trustworthy candidates in order to be accepted. Ever since Copenhagen Criteria, reforms of the judicial systems became a crucial task for CEE countries interested in the EU accession. The document states that candidate countries need to have achieved "stability of *institutions guaranteeing democracy, the rule of law*, human rights and respect for protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union"²⁴ in order to be accepted.

In general the EU promotes democracy and democratic reforms on two levels and in two forms. The first difference may be labeled as a difference between formal and substantive democracy; hence a difference between creation of institutions and procedures at the polity level, and principles and mechanisms that function in a polity that encourage societal control over policy processes.²⁵ The second is usually referred to as push and pull effect of the EU integration. The former meaning conditionality principle requiring countries interested in the EU accession to meet all the political requirements proposed by the Union; while the latter refers to the positive effect integration has in domestic political arenas.²⁶

According to Merkel, these incentives helped Central and Eastern European countries to consolidate their democracies so quickly after the regime change;²⁷ despite many propositions to the contrary.²⁸ Merkel's optimism regarding the

Global Reform of Courts." In *Globalization and Legal Cultures. Onati Summer Course 1997*, ed. Johannes Feest, (Euskadi: International Institute for the Sociology of Law, 1997), 49-86.

²⁴ "European Council in Copenhagen. Conclusions of the Presidency. (21-22 June, SN 180/1/93)." [emphasis added]

²⁵ E.g.: Tom Casier. "The EU's two-track approach to democracy promotion: the case of Ukraine." *Democratization* 18 (2011): 956-977.

²⁶ E.g.: Geoffrey Pridham. "European Union Accession Dynamics and Democratization in Central and Eastern Europe: Past and Future Perspectives." *Government and Opposition* 41 (2006): 373-400.

²⁷ Wolfgang Merkel, "Plausible theory, unexpected results: the rapid democratic consolidation in Central and Eastern Europe." *International Politics and Society* 2 (2008): 11-29.

²⁸ E.g.: Jon Elster, "The Necessity and Impossibility of Simultaneous Economic and Political Reform." In *Constitutionalism and Democracy*, ed. Douglas Greenberg, Stanley N Katz, Steven C. Wheatley and Melanie Beth Oliviero. (New York: Oxford University Press,

successful consolidation may be a bit premature it certainly does not change the fact that the EU integration played a considerable role in the alteration of post-communist polities. Casier rightly argues that more progress has been achieved in "formal democracy" arena because formal institutions and procedures are established easier, are more visible and perhaps easier to evaluate,²⁹ whereas the progress in substantive democracy did not happen at the same pace. This may be due to the fact that countries often did not pay sufficient attention to the context and enacted anything the EU desired without proper critical reflection and adequate debates.³⁰

Based on that, it can be expected that the most visible democratic reforms, such as introduction of new institutions, will be found especially in countries actively seeking legitimacy and an endorsement from the EU. Required reforms in formal arena should have served to increase legitimacy of a regime in the eyes of the EU, and hence secure their survival. With regard to the cases examined in this research it can be hypothesized that Slovakia followed the integration requirements more closely, because of its semi-democratic past; while the Czech Republic moved towards the EU accession indubitably, hence could have been more cautious with reforms and proceed rather gradually while paying more attention to the specific context in which reforms should have taken place.

With regard to judiciary reforms, the EU has never really defined the content of independent judiciary, however there exist several other documents that have provided guidelines for candidate countries interested in altering their judiciaries. Casier states "the EU strategy of democracy promotion is mainly a reinforcement strategy. The EU does not create its own standards of democratization, but uses its bargaining power to back up the existing European organizations".³¹ Documents that may have served as guidelines or, perhaps, an inspiration for countries' elites may be divided in two groups: the first including documents that just appeal to the essentiality of the judicial independence, but define it vaguely, if at all;³² the other

1993): 267-274. Claus Offe. "Capitalism by Democratic Design? Democratic Theory Facing the Triple transformation in East Central Europe," *Social Research* 58 (1991): 865-892.

²⁹ Casier, "The EU's two-track approach".

³⁰ Wojciech Sadurski, Adam Czarnota, and Martin Krygier. *Spreading Democracy and the Rule of Law? The Impact of EU Enlargement on the Rule of Law, Democracy and Constitutionalism in Post Communist Legal Orders*, (Dordrecht: Springer, 2006).

³¹ Casier, "The EU's two-track approach", 960.

³² Among other documents to this group belong: the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (Art.6), the 1966 International Covenant on Civil and Political Rights (Art.14), the UN Basic Principles on the Independence of the judiciary adopted in 1985, or the 2000 EU's Charter of Fundamental Rights of the European Union that became binding in 2009 when the Treaty of Lisbon came into power

with documents that actually provide certain requirements and recommendations for what is judicial independence and how to achieve it.³³

All of these documents stress the importance of a body which personnel would be independent from other branches of power in order to establish independent judiciaries. Most elaborate guidelines were adopted by the European Association of judges which actually directly refers to “profound changes that have taken place in Eastern Europe”. The Charter aims to contribute to the efforts to improve legal institutions as an essential element of the rule of law by ensuring competence, independence and impartiality of the judiciary. With regard to judiciary independence the most prominent part is the Article 1.3. that posits:

In respect of every decision affecting the selection, recruitment, appointment, career progress or termination of office of a judge, the statute envisages the intervention of an authority independent of the executive and legislative powers within which at least one half of those who sit are judges elected by their peers following methods guaranteeing the widest representation of the judiciary.³⁴

Hence the Charter calls for a creation of a body that would administer personnel matters of the judiciary, and in addition requires that in such a body judges will not be a minority. However, it needs to be emphasized as we will come back to this point later, it does not demand the domination of members from the judiciary either, so gives legislators a considerable freedom.

The other three documents all place focus on the selection of judges which shall happen independently from other branches of power. European Court of Human Rights in its decision stated: “[i]n order to establish whether a body can be considered as “independent”, regard must be had, inter alia, to the manner of appointment of its members and to their term of office, to the existence of guarantees against outside pressures and to the question whether the body presents an appearance of independence”.³⁵ Remaining documents also include decisions made about careers of judges and related disciplinary measures under the authority of judiciary itself; in the Universal Charter of the Judge also a requirement of self-administration is postulated. All in all, despite the fact the EU has never issued any

³³ Rather specific definitions can be found in the Recommendation on the Independence, Efficiency and the Role of Judges adopted by the Committee of Ministers of the Council of Europe in 1994; The European Charter on the Statute of Judges approved by the European Association of Judges in 1998; and the Universal Charter of the Judge adopted in 1999 by the International Association of Judges. In addition, quite a specific definition can be also found in the jurisprudence of the European Court of Human Rights, e.g. case *Langborger v. Sweden*

³⁴ European Association of Judges. "The European Charter on the Statute of Judges." 1988.

³⁵ *Langborger v. Sweden*. (European Court of Human Rights, June 22, 1989), par. 32.

guidelines on how to establish independent judiciary, it often uses its bargaining power to reinforce other organizations in the realm of democratization. And if any such bodies attempted to provide recommendations on judiciary reforms, it usually concentrated on the creation of such body that would decide about judiciary matters, while including substantial judicial representation.

4. Independence in the Post-Communist context: Hazardous transplantations

The context in which democratic reforms took place was rather a treacherous one as the inherited judiciaries were hardly prepared for a paradigmatic shift that necessary for proper functioning. In communist regimes judicial branches were deeply politicized as they de facto served as extensions of their respective governments³⁶ and therefore were poorly suitable for new democratic conditions. In addition, there were no examples in the world available for post-communist political elites on how to deal with such a problem, as legal cultures in the region were specific, different from other "third wave" democracies; be it Latin American democracies or democracies of Southern Europe.

John H. Merryman recognizes three different legal traditions: civil law, common law and socialist law.³⁷ Opponents agreed there is a certain content to the term 'socialist law', however it does not differ significantly from civil law tradition, and hence does not create separate family of law. However, according to Merryman 'legal tradition' is not a set of rules, but rather a "set of deeply rooted historically conditioned attitudes about the nature of law, about the role of law in the society and the polity, about the proper organization and operation of a legal system".³⁸ Some authors argued along the same lines as they perceived law and legal systems under socialism as consisting of several features – routines, practices, values and attitudes that can exist independently from the ideological labels given by the ruling elites³⁹ and cannot be expected to simply evaporate with the regime change. In this article these routines and practices will be referred to as legacies of communist regimes with accordance to Grzymala-Busse's definition of legacies as "patterns of behavior, cognition, and organization that have clearly identifiable

³⁶ Rene David and John E.C. Brierley. "Socialist Law."In *Major Legal Systems in the World Today*, (London: Stevens & Sons, 1985).

³⁷ Merryman, John Henry. *The Civil Law Tradition: An Introduction of the Legal Systems of Western Europe and Latin America*. (Stanford: Stanford University Press, 1990). Socialist tradition is also recognized by other authors, e.g.: Hazard, John. *Communists and their Law: A Search for the Common Core of the Legal Systems of the Marxian Socialist States*. (Chicago: University of Chicago Press, 1969).

³⁸ Merryman, *The Civil Law Tradition*, 2.

³⁹ Alan Uzelac. "Survival of the Third Tradition?"*Supreme Court Law Review* 49 (2010): 377-396.

roots in the communist regime, and that persist despite a change in the conditions that initially gave rise to them".⁴⁰

Keeping possible communist legacies in mind there were reasons to be cautious about the establishment of institutions of judiciary independence in post-communist countries. Among the most prominent explanations why these legacies could have persisted is the nature of judicial careers in the countries with hybrid tradition of socialist and civil law culture. Judicial positions in these countries are open to students right after graduation, unlike in the common law countries where judgeship is "kind of crowning achievement relatively late in life".⁴¹ Moreover, entering judiciary young causes that judges work under a supervision by senior judges or court presidents which may lead to survival of the opinions and practices typical for older judges.⁴² There was a variety of solutions on how to deal with legacies, however they were not as easily achievable everywhere. While in the East Germany it was possible to make vigorous changes in judiciary as well as at universities;⁴³ other countries did not have sufficient resources of legal professionals available to fill in all vacant positions, for them it was rather a necessity than a conscious choice not to deal with the problem at all. Larkins offers a moderate possibility when he argues that the problem should be treated on a judge-by-judge basis, removing only those members of judicial power who actively demonstrated their agreement with old methods of governance or were responsible for some controversial decisions.⁴⁴

Legacies could have prevailed and appeared in two dimensions: in the decision-making of judges, and in the capability to administrate judiciary matters. With regard to decision-making we can mainly talk about two possible problems caused by legacies. First of all, as Uzelac argues, because judges were subject to possible ramifications in case they issued undesired decisions the "safest way to go was to make no decision at all".⁴⁵ This could lead judges to refrain to sly actions and cause an inability of judges to deal with complex cases where a variety of considerations needs to be taken into account. On the other hand, Annus and Tavits did not find evidence for any significantly different behavior of judges with working experience

⁴⁰ Anna M. Grzymala-Busse, *Redeeming the Communist Past: The Regeneration of Communist Parties in East Central Europe.*, (Cambridge: Cambridge University Press, 2002).

⁴¹ Merryman, *The Civil Law Tradition*, 34.

⁴² Michal Bobek. "The Fortress of Judicial Independence and the Mental Transitions of the Central European Judiciaries." *European Public Law* 14 (2008).

⁴³ See: Owen Fiss. "The Limits of Judicial Independence." *U. Miami Inter-Am. L. Rev.*, 58 (1993). Inga Markovits, "Children of a Lesser God: GDR Lawyers in Post-Socialist Germany." *Michigan Law Review* 94 (1996): 2270-2308.

⁴⁴ Christopher M. Larkins. "Judicial Independence and Democratization: A Theoretical and Conceptual Analysis." *The American Journal of Comparative Law* 44 (1996): 605-626.

⁴⁵ Uzelac, "Survival of the Third Tradition?", 383.

in the previous regime.⁴⁶The other problem is related to the bureaucratic nature of judicial positions in communist era. Judges often had to use their skills not to search for justice, but rather to find a proper regulation to justify the desired, and perhaps already known, outcome. Sajó and Losonci claim: "Judges and courts acted as bureaucrats, and fulfilled the expectations that they would promote centrally determined public interests"⁴⁷ and the judges' persistent self-perception of civil servants is why a necessary shift to "mental independence" would not necessarily happen when the structural independence is secured.⁴⁸

At the same time, bureaucratic nature of judges is problematic even with regard to self-administration dimension of possible communist legacies persistent in judiciaries. Their remuneration and evaluation were based on political loyalty, compliance with some higher authority, rather than on skills and moral preconditions.⁴⁹ To establish judicial self-government in such conditions "will be aiding the position of people who seem to be unresponsive to ideas of fairness, are unfamiliar with judicial independence, and resist responsibilities for creative procedures".⁵⁰Uzelac postulates that such reforms create a closed circle of individuals with shared interests, often family interconnected, and causes perpetuation of old attitudes and practices, as only those compatible with old attitudes and practices will be appointed.⁵¹ For that reason we may refer to institutional changes in post-communist judiciaries as to hazardous "legal transplantations". Such metaphor is very useful for its simplicity in describing the relationship between the new legal setting and the host body – domestic legal framework and legal culture. If these two are not in sync they may appear incompatible, leading to transplantation's failure.⁵² Such effects have been well documented in the past, especially with focus on Judicial Councils, hence a bodies

⁴⁶ Taavi Annus and Margit Tavits. "Judicial Behavior After a Change of Regime: The Effects of a Judge and Defendant Characteristics." *Law and Society Review* 38 (2004): 711-736.

⁴⁷ Andras Sajó and Vera Losonci. "Rule by Law in East Central Europe: Is the Emperor's New Suit a Straightjacket?" In *Constitutionalism and Democracy.Transitions in the Contemporary World*, ed. D. Greenberg, (Oxford: Oxford University Press, 1993), 324.

⁴⁸ Bobek, "The Fortress of Judicial Independence".

⁴⁹ Sajó and Losonci, "Rule by Law in East Central Europe," 324.

⁵⁰ Ibid. 322

⁵¹ Uzelac, "Survival of the Third Tradition?", 383.

⁵² See: David Nelken, "Towards a Sociology of Legal Adaptation." In *Adapting Legal Cultures*, ed. David Nelken and Johannes Feest (Oxford: Hart Publishing, 2001), 7-54. Roger Cotterrell, "Is There a Logic of Legal Transplants?" In *Adapting Legal Cultures*, ed. David Nelken and Johannes Feest (Oxford: Hart Publishing, 2001), 70-92.

of judicial independence and self-administration that were created all over the post-communist Europe in the last 20 years.⁵³

5. Judicial performance in the Czech Republic and Slovakia: the effect of legacies

Both the Czech and the Slovak judiciaries enjoy very little trust among the citizens.⁵⁴ However, while the Czech Republic is considered to be one of the strongest performers in the region by the World Justice Project;⁵⁵ the Slovak judiciary seems to be "in disarray and turmoil".⁵⁶ In addition, in the Global Competitiveness Report both countries ranked badly in Efficiency of the Legal Framework in settling disputes, and challenging regulations, as both can be found among 30 worst performers out of 144 countries.⁵⁷ In this section the article provides an analysis of interviews with four Czech and Slovak judges and/or legal scholars⁵⁸ and discusses the effect of socialist legacies on the observed performance of both judiciaries both in the dimension of decision-making as well as self-administration.

With regard to the dimension of decision-making, what appears to be the problem in both countries is the length of the proceedings, although as Kuhn pointed out, it is getting better in the Czech Republic.⁵⁹ The respondents provided a variety of

⁵³ See: Kosar, "Judicial Accountability in the (Post)Transitional Context." Bruno Schonfelder. "Judicial Independence in Bulgaria: A Tale of Splendour and Misery." *Europe-Asia Studies* 57 (Jan. 2005): 61-92. Francois Frison-Roche and Sodev Spas-Dimitrov, „The issues involved in the reform of the Bulgarian judicial system.” *International review of Administrative Sciences*, 71 (2005): 593-606. Zdenek Kuhn. "Judicial Independence In Central-Eastern Europe: The Experience of the 1990s and 2000s." *The Lawyer Quarterly* 1 (2011): 31-42.

⁵⁴ The survey conducted by the Institute for Public Affairs in June and July 2012 showed that only 28% of public trusts the judiciary; whereas only about 25% of Czechs trust their judiciary as documented by the SANEP agency in the survey conducted in February 2013.

⁵⁵ *Rule of Law Index*. The World Justice Project, 2011, 31.

⁵⁶ Bojarski and Stemker Koster, *The Slovak Judiciary: its current state and challenges*, 117.

⁵⁷ Klaus Schwab, Xavier Sala-i-Martin and Borge Brende. *The Global Competitiveness Report 2012-2013: Full Data Edition*, published by the World Economic Forum. (Geneva: World Economic Forum, 2013)

⁵⁸ The respondents were: Eliska Wagnerova, current Senator, former President of the Supreme Court and the judge of the Czech Constitutional Court; Zdenek Kuhn, legal scholar, and a judge of the Czech Supreme Administrative Court; Ludovit Bradac, the judge and former President of the Regional court in BanskaBystrica, and honorable president of the Slovak Association of Judges; and Jan Svak, former judge, legal scholar and the rector of Paneuropean University in Bratislava.

⁵⁹ This trend is also documented in the Council of Europe Commission for the Evaluation of the Efficiency of Justice's report where the Czech Republic appears to be the

reasons why this is the case: including bad legislation, causing some courts are overloaded; the problem of public prosecutors who are contributing to the delays by their own ineffectiveness; or unnecessarily long decisions and reasonings by the judges, as well as advocates, which were mentioned by both Slovak interviewees, and which lengthen the proceedings. Of the socialist legacies that prolong the proceedings, all of the respondents agreed that avoiding the responsibility for final decisions is very common among the judges, manifested through excessive formalism or positivism. As Kuhn put it: “[legal formalism] has its origin in communism, (...), judges attempted not to be entangled with the values of the communist regime; and because they could not decide on the merits, they had to shift to the form”; and the very same applies to the positivism. As Wagnerova argued it has been present in the Czech Republic, especially in the higher echelons of the hierarchy where judges at courts of appeal have been deciding badly when using a „formalist pettifoggery“. Another factors contributing to the delays are the overuse of appeals, and the fact that higher judges regularly avoid making decisions in order to avoid responsibility. However, one respondent perceived it as a simple “laziness” on the part of judges due to the fact that judicial positions were non-lucrative, with minimal autonomy and have not attracted the best legal professionals.

Problems in the dimension of self-administration were more vocal in Slovakia. The Czech trouble is rather opposite to the self-administration, as was pointed out by Kuhn.⁶⁰ Slovak judiciary has been perceived as politicized and polarized; has been abused for arbitrary disciplinary proceedings against the opponents of the former president of the Supreme Court Stefan Harabin; struck a sensitive chord with the public when approximately 700 judges filed a lawsuit against the state on the basis of wage discrimination;⁶¹ and is considered as absolutely closed to any outside influence creating a state eloquently labeled as an “autism of the Slovak judiciary”.⁶² Many of these problems have their roots in socialism. According to Alexander Bröstl, the former judge of the Slovak Constitutional Court and ex-member of the Judicial Council: “nowadays, at the courts, the generation of about 50-years old dominates.

second best performer in the EU in the time needed to resolve litigious civil and commercial cases, whereas Slovakia is found among the worst countries. See Fig. 9.12., at 184.

⁶⁰ According to him, the ministry has too broad powers over the judiciary and in the case when the minister is “assertive or aggressive” can influence quite a lot, which is currently not the case.

⁶¹ For more information see: Bojarski and Stemker Koster, *The Slovak judiciary: its current state and challenges*, 2011.

⁶² Radoslav Prochazka, “Autizmus slovenskej justície” (Autism of the Slovak judiciary) In *Vyzvy slovenskeho sudnictva a možnosti zlepšenia existujúceho stavu (Challenges of the Slovak judiciary and possibilities of improvement of the current state)*. Transparency International Slovensko. (Bratislava: Transparency International Slovensko, 2010): 14-19.

Their mentality, stereotypes, as well as education did not change”.⁶³ He also emphasizes that the required paradigmatic shift, to the idea that state should protect its citizens and does not serve itself, has not happened yet. According to Bradac this is traceable to the role that law had in socialism, and the fact it was interpreted by the political elites that subsequently enforced their interpretation upon the judges. In a democracy such a pattern of behavior implies that judges may be manipulated by powerful actors, eventually from within the judiciary.

Three out of four interviewees shared the opinion that since the regime change corporatist tendencies has prevailed in judiciaries as judges quickly realized that democracy means money and started to jointly ask for the improvement of their financial situation. In Slovakia the Association of Judges of Slovakia played a crucial role in this question in 1990s. According to Bradac, former president of the Association, a corporatist branch within the organization started to dominate approximately in the mid-2000s which caused Association to lose its democratic ethos and contributed to the “revitalization of the old culture”. Czech corporatism differs, as Wagnerova perceives it rather as “fake collegiality” demonstrated for instance at the time of lustrations when judges wanted to avoid a possible purge. Notwithstanding, judicial corporatism is not directly a socialist legacy, but is rather a consequence of the little prestige the judiciary positions enjoyed in socialism and at the beginning of democratic regimes.

Such corporatist attitudes ‘helped’ in the departure of the judiciary from the society and contributed to its encapsulation. Another factor that played a role here developed as a consequence of the career-model of the judiciary, where the fresh graduates come right to the courts, and once they become judges they are judges for life; especially with regard to formerly strong powers of courts’ presidents concerned with the selection of judges and rights to grant bonuses and other material benefits. Such procedures allowed the judges to provide for their children, possible law graduates, as they were able to help them ensure comparably comfortable life. As Kuhn pointed out, these are the conditions favorable for the rise of informal structures, but claims this was not the case during the communism as a judicial career lacked prestige and financial benefits.

To clarify the connection between these patterns of behavior and the observed problems of the judiciary it is necessary to realize that the judges were used to exercise somebody else’s will, what Bradac labeled as “crooked personalities” of the judges after the breakdown of the old regime. This mass was therefore in its substance manipulable, and if someone was able to promise them personal benefits – be it higher salaries or jobs for their children – the system was able to produce an

⁶³ Martin Hanus. ".tyzden." *Dominuju ludia so zlou mentalitou (People with bad mentality dominate): Interview with Alexander Brostl.* October 21, 2012. <http://www.tyzden.sk>

informal network of personal loyalties that punishes outliers, such as critics or those who try to change the existing practices. According to the interviews, the judiciary in both countries had tendencies for the creation of informal networks, which, if given power, may become dangerous for the rest of the polity, as would any power that would lack effective accountability mechanisms.

In order to control for the effect of these legacies in judicial behavior it is necessary to briefly discuss the change caused by the lustration laws on the judiciary personnel. The issue has been researched in the region insufficiently, hence lacks comparable and reliable data. According to Wagnerova's research in the first three years after the breakdown of regime approximately one third of Czech judges left the judiciary. In the interview she elaborated on the research and estimated it could have been around 40% in 2000 and about 50% in 2013.⁶⁴ According to Svak and Bradac, the lustrations had only minimal impact on the judiciary in Slovakia. Bradac claimed that at the time of the approval of the law he had expected a radical change on the courts, but nothing remarkable happened. For that reason he assumes that there were rather informal tools of the influence over the judges. There is a disagreement between the two Slovak respondents, whereas Jan Svak claims that the change could have been as large as in the Czech counterpart, about 40% in the year 2000; Ludovit Bradac thinks that it was rather smaller but did not specify his estimate.

Interestingly, Kuhn warns that these numbers are not that important; partly because the practices could have been transferred to younger judges, and also for a reason that "the picture that someone who graduated from the Faculty of Law in 1988 is significantly the different from someone who graduated in 1992 is naïve. After all, they were taught by the very same people." Based on this it can be argued that to whatever extent the change of the regime changed the composition of the judiciary, the patterns of behavior persisted in the democracy, preserved also by the fact that most of the senior judges, and judges from the higher echelons were the judges from the communist era. Therefore, it can be argued that if political elites had aimed their efforts on the change in the highest echelons of judiciaries they may have fastened the necessary mental change. If this was true, then the Czech judiciary would have been more successful in achieving this mental shift as, for example, Eliska Wagnerova was appointed to the position of the president of the Supreme Court quite quickly after her return from emigration.

⁶⁴ The effect of lustration laws is difficult to assess as many judges left the judiciary for more lucrative legal professions. According to Kuhn only marginal part of the judiciary personnel collaborated with the secret police, hence the effect of lustration was minimal.

6. Why different paths? The success and the failure of the Council model

In two parts of former Czechoslovakia there can be observed two different paths in establishing institutions of the judiciary independence. The countries shared institutional design at the dawn of democracy in 1989 when basically all the powers with regard to the judiciary rested in the hands of political elites. Since then the countries’ paths took different directions; on one hand, the Czech Republic moves steadily and gradually towards higher independence with fewer significant changes and with the central role of Ministry of Justice; on the other, we can see Slovak turbulent development with decrease in the independence in the early years, through radical change of establishing the Judicial Council responsible for all personnel decisions, to empowering ministry again, as can be seen in Table

Table 1: An overview of central actors in selected matters – Czechoslovakia

	Appointment	Removal	Disciplining	Promotion
Czechoslovakia				
1989	Political elites – ministers of justice	Restricted tenure + political elites	Court presidents	Political elites – parliaments on all levels
1993	Ministers of justice + court presidents	Restricted scope - political elites	Court presidents	Political elites – ministers
Czech Republic				
1998	Minister + court presidents	Minister	Courts	Political elites – minister
2004	Minister + court presidents / councils of judges	Minister	Courts	Political elites – minister
2013	Minister + court presidents / councils of judges	Minister	Supreme Administrative Court – president of the court	Political elites – minister
Slovak Republic				
1998	Political elites	Restricted tenure (!!!) – parliament	Courts	Political elites – minister
2004	Judicial Council	Judicial Council	Judicial Council	Judicial Council / minister
2013	Judicial Council + political elites	Judicial Council	Judicial Council + political elites	Judicial Council

Source: Based on the data obtained from the qualitative analysis of Czechoslovak legislature and its future successors. For more extensive discussion please see: Spac, Samuel. "Judiciary development after the breakdown of communism in the Czech Republic and Slovakia" (MA Thesis). Budapest: CEU, Budapest College, 2013.

1. Slovakia established a greater institutional independence than the Czech counterpart and did so in the period that preceded its EU accession. In addition, it is also important to evaluate these changes with regard to guidelines for establishing judiciary independence discussed earlier in the paper that were reinforced by the EU in the integration period. All of the four examined powers were in the hands of the Council consisting of a majority of judges, hence in accordance with the guidelines provided by the European Association of Judges, the most specific of documents providing any recommendations. Contrariwise, in the Czech Republic only one of the four powers – disciplinary hearings – was handled solely within judiciary itself, whereas political elites remained their powers in appointment, removal and promotion of judges.

Unlike Slovakia, the Czech Republic have not transferred most of the powers from Ministry to any specific body consisting mostly of the members of the judiciary. However, there was an attempt to do so, but the initiative in 2000 was not successful. The differences between the two countries are significant even when we look only at the proposals, as it seems both treated the context differently. If we accept that the socialist legacies in judicial behavior may have persisted even after more than 20 years since the breakdown of communism, it is important to guarantee that judges will not have a clear majority in the council, and will be counterbalanced by the members from other legal professions. In this aspect the two proposed model differ considerably. The Czech model – the Supreme Council of the Judiciary – ensured the council consists of as many judges as of members from other legal occupations – sixteen altogether, and in addition created favorable conditions for a variance among these as advocates, prosecutors and law faculties are eligible to nominate members of the council. Contrarily, the Slovak model does not secure a balance between judicial and non-judicial members, in that 9 out of 18 seats in the council are reserved for judges, but there are no restrictions on other branches of power that would force them to nominate people outside the judiciary. As was argued by Jan Svak, a former member of the Judicial Council in Slovakia, during his term (2002-2007) a vast majority of politically nominated members of the council came from other legal professions which ensured a wider discussions and the possibility of acknowledgement of the existence of communist legacies and their subsequent counterbalancing. This changed in 2007 when, in conjunction with the political will of Fico's government and president Gasparovic, a judges-dominated Council was created, which led to prevalence of corporatist behavior, and consequently judiciary became encapsulated, attempting to protect its own benefits while fighting openness and eventual criticism leading it to a minimal public trust accompanied by very poor results in objective measures.

The very last question remains to be answered: why did Slovak reform successfully pass the parliament and the Czech not and what were the differences between the two debates? The following hypothesis will be evaluated here: Slovak legislators

used the power of Europeanization to a much larger extent than their Czech counterparts, due to Slovak exclusion from democratic community in 1990s. The chapter provides in-depth qualitative analysis of parliamentary negotiations regarding the creation of the Council.⁶⁵ Also, reasons for proposing such legislation will be discussed with focus on the debate about the composition of the council and the perception of different political groups.⁶⁶

At first the focus will be placed on the Czech unsuccessful attempt for the reform as it happened earlier than the Slovak one, which will be analyzed subsequently. The emphasis will be on the arguments used in order to persuade the rest of MPs in favor of the reform – in explanatory reports, as well as in discussions; and how did argue those opposed to the reforms. Evaluation of findings will take into consideration the role of the EU and the concepts of rule of law and judicial independence found in argumentation in the debate.

A failure of the Czech reform

The Czech reform consisted of three different proposals – one constitutional and to regular amendments – submitted by the Minister of Justice Otakar Motejl.⁶⁷ Due to procedural reasons the constitutional amendment was discussed earlier than the rest of the legislation on the issue, and because of its failure the rest failed too. Although all of the proposals were discussed at the House of Deputies, the most attention is dedicated to the constitutional amendment – the following discussion became, to a large extent, repetitive. There were two main topics vocal in the parliament – the question of necessity of establishing such a body in order to

⁶⁵ The unsuccessful reform introducing The Supreme Council of the Judiciary in the Czech Republic; and the Slovak Constitutional Act 90/2001 that besides other crucial changes introduced the Judicial Council of the Slovak Republic.

⁶⁶ At the time the governing party in the Czech Republic was Czech Social Democratic Party (CSSD) that ruled with the support of the Civic Democratic Party (ODS) as a minority government in the period of the “opposition agreement”. The rest of the opposition consisted of the Communist Party of Bohemia and Moravia (KSCM), Christian and Democratic Union – Czechoslovak People’s Party (KDU-CSL), and Freedom Union – Democratic Union (US-DU). In Slovakia a government with constitutional majority held the power, led by Slovak Democratic Coalition (SDK), and including Party of the Democratic Left (SDL), Party of the Hungarian Coalition (SMK), and Party of Civic Understanding (SOP).⁶⁶ The opposition consisted of Vladimir Meciar’s Movement for Democratic Slovakia (HZDS) and the Slovak National Party (SNS).

⁶⁷ The Czech parliamentary material no. 539/2000: The governmental proposal of the act on the courts of Feb 2, 2000; The Czech parliamentary material no. 540/2000: The governmental proposal of the act on the judges and associates of Feb 2, 2000; and The Czech parliamentary material no. 541/2000: The governmental proposal of the act that amends the Constitution of the Czech Republic of Feb 2, 2000.

comply with the requirements of the EU; and the debate about the conflict between independence and responsibility of judges.

As early as in explanatory report⁶⁸ it is stated that the reform is necessary to create such a system of courts administration that would be conform with the documents issued by the Council of Europe, that were discussed earlier in the paper. The proposed arrangement gave the council mainly powers regarding personal matters of the judiciary which should have guaranteed independent functioning of the judicial branch in the same way it was proposed in the aforementioned documents and many of the democratic European countries. In the second reading on the parliamentary floor Motejl emphasized the importance of the reform when said: "(...) if we want to succeed (...) in the realm of the rule of law establishment (...) and at the same time in relatively critical and demanding evaluation in the European space (...)", hence highlighting the perspective of the rule of law and European integration.⁶⁹ A crucial counterstroke in the debate was delivered by the deputy Vlasta Parkanova (KDU-CSL), probably the main critic of the proposal in the parliament. She stressed that establishment of such a body was not a requirement of the European Community and "[the Czech] accession into the European Union is certainly not conditioned by accepting this conception of the judiciary administration, as some advocates of this model like to pretend".⁷⁰ According to her it was not necessary to focus only on the model with central role of the council, as she interpreted international documents as allowing for rather a variety of approaches to the issue.

Parkanova was heard also with regard to the second issue – the conflict between independence and responsibility, when she said: "It is important to note that the judiciary is always threatened by two extreme situations that need to be avoided. On the one hand it is politicization of the judiciary, and on the other it is elitism and corporatism".⁷¹ According to her the proposal was very close the latter state of affairs and she opposed a shift of all the responsibility from politicians to judges themselves, as political elites are directly accountable to citizens and cannot hide from the responsibility. This conflict was also highlighted by the deputy Marek Benda (ODS) when he argued: "Independence, which is without any doubt good, becomes an absolute possibility of its representatives' caprice if it does not go hand-in-hand with responsibility".⁷² The same point was also, rather surprisingly, raised by Vojtech Filip, the KSCM deputy who proposed that the council "would create a

⁶⁸ The Czech parliamentary material no. 541/2000: The governmental proposal of the act that amends the Constitution of the Czech Republic of Feb 2, 2000, 6.

⁶⁹ The transcript of 25th Parliamentary Session of the Czech Parliament, May 17 2000.

⁷⁰ The transcript of 22nd Parliamentary Session of the Czech Parliament, Mar 1 2000 .

⁷¹ The transcript of 26th Parliamentary Session of the Czech Parliament, Jun 28 2000.

⁷² The transcript of 22nd Parliamentary Session of the Czech Parliament, Mar 1 2000.

danger of elitist separation of the judiciary from a real public life".⁷³ Moreover, Parkanova argued that according to the experiences from the Europe, the reform as proposed did not guarantee any improvement and may cause different problems, such as those discussed or simply create a tension between the judiciary and the executive.

Despite a lively debate the general atmosphere of it was rather non-conflicting with the consent, or at least willingness to discuss the establishment of a body of judicial independence. CSSD and its minister Motejl never actually addressed any of the concerns raised in the debate and never justified the proposed composition of the council due to the fact the reform was killed before it stand a fair chance in the parliament. All in all, the introduction of the Supreme Council of the Judiciary was not successful for a variety of reasons. The call for reform based on the reference to the EU accession was not convincing and the critics were able to refute it. Also, the proposed model have not dealt with the conflict between independence and responsibility properly and never got a chance to be discussed in more depth. Indeed, CSSD was in a difficult position as well – it had only a minority of seats in the House and because of procedural reasons it did not have a proper chance to persuade other political parties to support the reform.

The Slovak success: introduction of the Judicial Council

The introduction of the Council in Slovakia was a part of larger constitutional amendment proposed by four coalition deputies, one from each party: Peter Kresak (SOP), Ladislav Orosz (SDL), Ivan Simko (SDK) and Pavol Hrusovsky (KDH). The debate was much more heated and polarized as the Czech one, however the analysis focuses only on the issue of EU integration and its relationship to the reform; and the debate about the composition of the Council and its pros and cons. In general the debate was lengthy and, indeed, very repetitive, but mentioning issues utterly unimportant for the reform; be it nationalistic or personal.⁷⁴

Besides other reasons the explanatory reports expresses "an honest interest to become a member of the family of European states", while refers to a variety of international documents, such as European Charter on the statute of judges, UN

⁷³ The transcript of 25th Parliamentary Session of the Czech Parliament, May 16 2000.

⁷⁴ In the debate one can find arguments dividing between those „who wanted independent Slovakia“ and those who did not, raised mainly by HZDS deputies. They were accusing the coalition of acting like saviors of Slovakia. For all the arguments that illustrate the tone of the discussion Roman Hofbauer's (HZDS) statement suffices: „your proposal is missing one point – to change the name of the state to Presidential Constitutional-Court democradura of the Felvidek country.“ 45th Session, Feb 20 2011, Parliamentary material no. 643.

Basic principles, or recommendations published by the Council of Europe.⁷⁵ In the debate the importance of the reform was expressed mainly by the most important personnel of the coalition. Jozef Migas (SDL), at that time the Speaker of the National Council, argued in favor of the amendment claiming it is necessary in order to meet the requirements for the early accession to the EU.⁷⁶ The Prime Minister Mikulas Dzurinda takes the argument even further:

There were opinions that the constitutional amendment is not necessary if we want to become members of the European Union. I want to declare that such statements are not true, they are false. If we want to successfully aspire on the membership in the EU (...) we need this amendment. We need to strengthen the domestic background to approximate it to the highly-developed European democratic countries.⁷⁷

Somewhat contradicting speech was given by Peter Weiss (SDL) who argued in favor of the proposal, even without a wide consensus across the political spectrum. Nevertheless, he said: "I want to emphasize, the European Union and NATO are not forcing us to anything. It is our national interest, expressed in all the programs of all the government to the date, to be integrated. It is our concern, whether we meet the criteria for the accession into NATO and the EU".⁷⁸ As can be seen, he specifically claims it is not the EU pushing Slovakia into doing anything; it is Slovakia attempting to prove itself as a trustworthy partner who calls for the reform. Similar sentiment is also reflected in a speech given by Ladislav Orosz (SDL) when he said that "[i]f after tens of years some legal historians would come back to these documents, they will be able to objectively review what was at stake in the debate regarding the amendment of the Constitution in February 2001".⁷⁹ Apparently Slovakia desperately wanted to be accepted in the EU alongside with other Visegrad Group countries, and was willing to go an extra mile in order to make it happen.

Unlike the Czech debate about the composition of the Council, the Slovak one did not mention any of the possible concerns discussed in the paper earlier, related to the legacies of previous regime. In fact, the Slovak proposal was criticized for giving too many powers to the ministry, which was by the opposition interpreted as minister's Carnogursky attempt to control the judiciary. The major criticism to the proposal was presented by Stefan Harabin, at that time the president of the Supreme Court appointed by HZDS. He proposed a composition where 10 out of 16

⁷⁵ The Slovak parliamentary material no. 643/2000: The proposal of a group of deputies of the National Council of the Slovak republic of the constitutional act that amends the Constitution of the Slovak Republic. The explanatory report.

⁷⁶ The transcript of 45th Parliamentary Session of the Slovak Parliament, Feb 6 2001.

⁷⁷ The transcript of 45th Parliamentary Session of the Slovak Parliament, Feb 7 2001.

⁷⁸ The transcript of 45th Parliamentary Session of the Slovak Parliament, Feb 19 2001.

⁷⁹ Ibid.

members of the council would be judges and the rest by the parliament, as according to him the composition in the amendment is an “undying effort [of the government] to paralyze judiciary”.⁸⁰ He also proposed his own solution to the problem of complete capture of the council by the judges – at least some part of the members nominated by the parliament would have to support any decision. Interestingly, he proposes that judiciary should be represented only by the judges who had been in the office for at least 10 years; which shows that his proposal did not reflect critically on the problem of socialist legacies.

In the course of debate this proposal was brought back several times by a variety of HZDS deputies and Robert Fico, at that time an independent PM, elected on the list of SDL and the current (as of 2014) Prime Minister of Slovakia. Interestingly, HZDS deputies Gustav Krajci and Jan Gabriel accused the coalition of not-knowing the judiciary personnel as, according to them, judges wanted the Council to be designed as proposed by Harabin. Taking into consideration the fact that the Council was in fact designed together with the Association of Judges of Slovakia, shows not only a division within the judiciary that has been present ever since, but also shows that HZDS, Robert Fico and Harabin shared similar opinions about the self-administration of judiciary, were not concerned about the persistence of socialist legacies, and in fact, when were given a chance⁸¹ adjusted the composition of Council to their preferences. As a response, Orosz claimed that the Council establishes such a composition where a consensus between judicial nominees and members nominated by other branches will be necessary.⁸²

To sum up, the Slovak proposal for the introduction of the Judicial Council passed mainly because of the consensus among the coalition with a sufficient number of MPs to do such a reform. There seems to be an agreement between governing parties about the necessity of the reform in order to prove Slovakia as a trustworthy candidate for the EU accession, in order to overcome Meciar’s period that left Slovakia on the periphery of democratic world. Despite their seeming understanding of the problem of legacies, the Slovak elites never enacted a clause that would secure the politically nominated members of the Council will be from other legal professions, even though they intended it in the explanatory report and allowed subsequent governments to adjust the composition of the council in a manner not intended by the legislators.

⁸⁰ The transcript of 32nd Parliamentary Session of the Slovak Parliament, Jun 14 2000.

⁸¹ Between 2006 and 2009 Stefan Harabin became a Minister of Justice in Fico’s government as a nominee of HZDS. In that period 17 out of 18 members of the Council were judges themselves which, as was said earlier in this paper led to decrease in critical discussions in the Council.

⁸² The transcript of 32nd Parliamentary Session of the Slovak Parliament, Jun 14 2000; and The transcript of 45th Parliamentary Session of the Slovak Parliament, Feb 20 2001.

7. Discussion

This article showed that the necessity of establishing the rule of law, reinforced by Central and Eastern European countries' desires to be accepted in the EU, created a tension between the goal of achieving judiciary independence and the post-communist context they had to deal with. These judiciaries were severely affected by the legacies of previous regime and created unfavorable conditions for the creation of institutions of judiciary independence. Creation of judicial councils in such a culture may have resulted in encapsulation of the judiciary and its separation from the society, because of elitist and corporatist tendencies that were here inherently present. Despite of this, Slovakia came through a quite turbulent development to the crucial change in 2001 where it established such a council. On the other hand, the Czech Republic proceeded since the breakdown of communism rather gradually towards higher independence, yet the central role has been played by the ministry of justice.

The Czechs attempted to introduce a council as well, but the proposal was not successful. In Slovak parliamentary debate the argument of EU accession was used much more than in the Czech counterpart and it was done more assiduously as well as more persuasive. In addition, the model proposed in Slovakia did not secure a balance between judiciary and non-judiciary members, which was included in the Czech proposal, which in time led to capture of the Judicial Council by judiciary members leading to decrease in accountability, encapsulation of the judicial branch and further separation from the public.

In order to explain different paths taken by the two countries it is necessary to address at least two questions collected data could not provide an answer to. First of all; would the Czech reform be successful, had it been in the similar situation as Slovakia after Meciar's government? It can be argued that yes, because there in fact existed quite a consensus about the introduction of the council. The reform failed because of the lack of flexibility on the part of government and because of the lack of discussion regarding the composition of the council. If the reform was really crucial for the Czech elites, as it was in Slovakia, it can be assumed they would have submitted another proposal afterwards. The second question is: would such a reform be possible in Slovakia if the country was in a different position and did not need to prove itself as a trustworthy candidate? It is necessary to realize that the wide coalition – including Christian-democrats as well as social-democratic party – with constitutional majority, would not exist had there not been a strong demand for change after Meciar's period. Such a coalition was rather a unique result of the 'democratizing elections'⁸³ held in 1998.

⁸³ Valerie J. Bunce and Sharon L Wolchik. *Defeating Authoritarian Leaders in Postcommunist Countries*, (New York: Cambridge University Press, 2011).

All in all, the research showed that a desire for the EU integration may create incentives that lead to the reforms which may prove themselves as dangerous in terms of consolidation of democracy. It also pointed to the fact that democratizing countries need to deal with their past properly in order to create a well-functioning judiciary, capable of functioning independent from other branches of power. In Slovakia, one may argue, these legacies were reinforced by the semi-authoritarian regime that followed the breakdown of communism. And last but not least, the research was able to propose several hypotheses that may be examined in the future, such as how the post-communist countries dealt with discredited judiciaries, what was the extent of changes in the judiciary personnel after the regime change and whether the change happened in lower or higher echelons of the judiciary. Subsequently these questions shall be discussed in a relationship with the observed performance of post-communist judiciaries in order to understand this wave of democratization, and its traps, better.

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BOOK REVIEWS

Robert Aldrich and Kirsten McKenzie (eds.), *The Routledge History of Western Empires* (London: Routledge, 2014)

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In thirty two chapters, this book seeks to provide a comparative and thematic perspective of European Empires in the Americas, Asia, and Africa through an analysis of empire making, practices of people, culture, science, and responses by the colonizers and the colonized. The initial chapter by Aldritch and McKenzie acts as the overall unifying theme, positing cultural, economic, political, and ideological reasons for the study of empires via colonization of other continents. The main approach by Aldritch and McKenzie is the interconnected macro and micro practices of empire building, constituting a processual continuation of empire-making throughout the entire imperial period through acts of culture, art, science, medicine, gender, and politics. The strength of the approach is it connects the agency of both the colonizers and the colonized in reconstituting and remaking the structural integrity of empires in both the imperial international system and the imperial domestic system. At times, those practices and acts enabled the agency of those excluded in mainstream narratives in constituting resistance in the political, economic, and cultural conditions. For example, diseases, non-European, women, and the indigenous people were given voice through highlighting their impact in increasing the difficulties for the colonizers to manage the empire. The diversity of the chapters, organized through empire building, cultures, people, science, and spaces, serves as the key strength of the book with countless conversations and debates found in the 32 chapters. For my part, the chapter on Anderson and Maxwell-Stewart on *Convict Labour and the Western Empires* appears to be the most interesting in showing how penitentiaries and inmates were not only issues of crime and punishment, but also cheap labor, empire building, and capital accumulation.

As I would show in two levels, the book's main strength of diversity is also its main weakness. First, on the conceptual definition of colonization, there seems little attempt to define the unifying concept. Colonization, as the key theme in the book, was defined as the territorial (formal) and economic (informal) colonization of Asia, Africa, and the Americas by during the 16th to the 20th century. Empire, in turn, as a term was defined through practices of empire-making. This means that the authors defined the concepts in their narratives through the practices, interaction, and processes of the Iberian, the British, the French, the Belgian, and other forms of European empires. This becomes a problem because, lacking any unifying

conceptual definition, it becomes difficult to categorize and define the actions of European political entities. For instance, what makes the colonization of Asia, the Americas, and Africa different from the conquest of nearby European political entities? Practices like the internal consolidation of the European realms of and on its own minorities were equally constitutive of the brutality and exploitation similar to the kind that ravaged the rest of the world. There were numerous examples: the movement of the English on the Welsh, the Scottish, and the Irish, the Spanish monarchy's treatment of the Basque, the dismemberment of Poland by various European powers, and the consistent expansion on Livonia, Central Germany, and Eastern Europe by Western European powers. Historically, these conquest of smaller political entities in Europe stabilized the intra-European political system that eventually enabled the colonization of other continents. The systematic feudalization of Eastern Europe and Southern Italian *Latifundias* created the conditions of grain and surplus transfer from the East to the West, leading to the systemic exploitation of Eastern European villages, and enabling the growth of more powerful Western European political structures. The growth of the political structures was a precondition of the colonization of the rest of the world. The implications are clear. The lack of conceptual clarity of the book means that the authors do not or cannot account for similar practices across time and space, leading to little theoretical conversations around the concepts of empire, hegemony, and the imperial system. This brings to light the limitations of the edited volume in trying to understand the link between colonization and the systematic nature of empires within a Pan-European system.

Second, although the edited volumes aims to give a comprehensive—different topics on culture, science, economics, and society—account of the Western Empires, one of the book's own aims, little has been done to speak of an integrative account of these empires within long-run and large-scale patterns of recurrence, its links to capital accumulation, and its evolution with the changing global political economy. Any sort of imperial turn from the level of the domestic, intra-state or inter-state European politics was omitted. Before the imperial venture of other continents, European political entities eventually organized into bigger, state-like entities with state-like machineries. The formation of the European empires however depended on subjugation of smaller, Feudal entities which emerged as part of the global warming period at the end of the Roman Empire (800-1300). The end of the global warming period with the harsh European winters withered the self-sufficiency of smaller feudal entities, leading to the formation of the bigger European political entities. An analysis of the relations of the political entities and their formation into bigger, more powerful and expansive empires were largely excluded in the book in favor of a focus on the colonization of the Americas, Asia, and Africa. As such, the authors cannot account for any sort of systematic process of rise, evolution, and fall of the empires in a longer historical time. There is a huge array of literature here since the 1970s. To give several examples, Immanuel Wallerstein's *The Modern World-Systems* (1978), Stephen Bunker and Paul

Cinccantell's *Globalization and the Race for Resources* (2005), and Giovanni Arrighi's *The Long 20th Century* (1994) use longer historical timeframes of 500 years, elucidating a variedly rich, yet complex historical structures, permeating from the beginning of colonization in the 'long' 16th century into the crises of US hegemony and legitimacy. The most central is Jason Moore's work on *Capitalism as World-Ecology* (2013, 2012, 2011, 2010), which takes the question of nature, power, and struggle within a single dialectical unity of world historical relations, redefining colonization as an equally constitutive *environmental* process.

Though it would be too much ask the volume to use the same approaches, but a conversations with these works and a dialogue with the processes would make the volume much more comprehensive than it already is. Given that historical literature has been criticized at times for ignoring these topics or taking them at piecemeal instances, it makes sense to respond to these concerns in light of furthering the conceptualization of empire and dialogue around 'new imperialism' and capitalism today. Altogether, these frustrations fail to dilute the book's ultimate effect. This is a very well argued, valuable book, particularly in its comprehensive account of Western empires, as well as the richness of coverage it provides. It is a must read for anyone working on history and empires.

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Jeffrey L. Dunoff and Mark A. Pollack (eds.), *Interdisciplinary Perspectives on International Law and International Relations. The State of the Art* (Cambridge: Cambridge University Press, 2013)

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This volume examines the constructive engagement between International Law (IL) and International Relations (IR) and the value-added of these two disciplines - separately developed until their recent rapprochement - to the emergence of the so-called 'IL/IR scholarship and the understanding of international affairs in general. By providing empirical and conceptual analysis on different stands of IL and IR theories, the inner goal of this collection of valuable essays is to engender valid reasoning about the tensions generated by IL/IR scholarship in order to identify "the potential obstacles to interdisciplinary dialogue" (p.11).

Starting from the controversial debates between IL and IR scholars, the authors in this volume are making a genuinely interdisciplinary inquiry into the possibility of unifying the approaches cultivated by both political scientists and international legal scholars. IL is "a sort of theoretical *tabula rasa*, waiting to be written on by IR scholars" (p.13).

Looking at the structure and the content of the volume, the book is divided into five parts: the introductory part (part I) is followed by four parts coherently organized, so that one could observe the most important stages of the international legal process: theorizing IL (part II), the making of IL (part III), interpretation and application of IL (part IV) and enforcement, compliance and effectiveness (part V).

In Part I the authors explain the central conceptual dichotomies of the interdisciplinary dialogue (IL and IR, law at a point in time and law over time, values and interests, law and politics) and identify the tensions that might arise out of the IL/IR scholarship, whose causes are arrogated to: (1) the theoretical differences, (2) the epistemological differences and (3) the competing conceptions of IL. One particular attention is given by Kenneth W. Abbott and Duncan Snidal, to the conceptualization of 'international legalization', defined as a distinct form of politics "shaped and constrained by law and legal institutions" (p.35).

Part II focuses on understanding IL in the light of the main theoretical IR approaches: institutionalism, liberal theories, constructivism and realism. In each case, the authors reveal the key assumptions, along with the strengths and weaknesses of their perspective, in order to convince the audience that their theory has the most valuable contribution to the understanding of IL and its role in IR. For example, Andrew Moravcsik stresses on the superiority of the liberal approach in explaining the evolution of IL, by arguing that "international law will increasingly

come to depend on the answers to questions that liberal theories pose” (p.83). On the contrary, Jutta Brunnée and Stephen Toope claim the imperative role of social norms in global politics and consequently, the constructivist engagement with IL, setting up “a sociologically rich and historically grounded understanding of international law” (p.125).

The essays from Part III of the volume concentrate on how to best create the institutional legal design in order to raise the effectiveness of IL and bring into discussion fruitful insights regarding different levels of international law-making (inter-state, trans-governmental and transnational) by NGOs (chapter 9), regulatory networks (chapter 10) and international organizations (chapter 11).

The contributors to Part IV devote attention to the impact of the growing number of international courts and tribunals, regionally and thematically distributed, on the international judicial order. Karen J. Alter examines their main four (multiple) roles: enforcement, administrative review, constitutional review and dispute settlement procedures, which is also analyzed when speaking about international agreements, by Barbara Koremenos and Timm Betz. Another issue that might meet the public’s interest is how international judicial independence could advance the effectiveness of international courts (chapter 17). Erik Voeten argues that “the judicialization of politics is met by an increased politicization of the judiciary” (p.422). Part V examines the concepts of enforcement, effectiveness and compliance and provides a comprehensive qualitative and quantitative measurement of their relation with IL.

Taken as a whole, the essays in this volume provide all together the enriching and innovative theoretical resources for a controversial contemporary discussion of the birth of IL/IR scholarship. The contributors - leading academics and scholars in the field of IL, IR and Political Science - explore the current stage of IL/IR research by proposing an interdisciplinary perspective, which permits them to cross traditional boundaries and analyze tensions between the two disciplines. A step in this direction is successfully made: the authors demonstrate that this new-born IL/IR scholarship transcend the disciplinary divides and traditions and label the points of tangency across disciplines. The result is a new unified sub-discipline, whose actors would be both international lawyers and IR scholars.

A unique aspect of their inquiries is that, in order to investigate the state of art of IL/IR scholarship, the contributors review, firstly, the existing literature in the field from a critical point of view and then, by adopting different IR approaches, they succeed in explaining the making, interpretation and enforcement of IL. The essays outline a fruitful ground for future research questions: what is the impact of IL on global politics and international affairs and how could the later influence IL itself?

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What makes the book even more valuable is that the authors combine different research methods and, besides the legal perspective, they use also the critical analysis of the different IR theories (Part II), the qualitative comparative analysis (Part III), the interpretation of different statistic data and graphics (Part IV - chapters 14 and 15) and the conceptual analysis (Part III). For example, one could notice the increasing attention given by the authors to the conceptual evolution of "flexibility mechanism" in the context of international agreements (chapter 7), "hard and soft law" (chapter 8), "institutional proliferation and the international legal order" (chapter 12) and "legitimacy" (chapter 13).

Another asset of the book is that the essays provide excellent reviews of the IL/IR literature and contemporary writings, but in the same time, the authors develop a very original argumentation supporting their hypothesis. For example, adopting a preference-based approach regarding the domestic voting and the lobbying, Joel P. Trachtman, outline a model of compliance with international legal rule, trying to answer the following question: "how domestic coalitions would be affected by and would affect international law"? (p.561).

Moreover, the contributions create a bridge between theory and practice of IL/IR. The essays are rich in theoretical explanations, but also examples and analysis of specific topics, such as human rights and international trade (chapters 7 and 15). Besides the fact that the volume designs in an original way the avenues of inquiry between global politics and international law, a shortcoming of the book is that the perspectives embraced by the authors are mainly scientific American approaches to the IL/IR scholarship, developed within a very selective group of American scholars, as Slaughter explains himself in chapter 25 (p.612). Taken everything into consideration, this volume is an essential guide for understanding the role of international law in international relations, which makes it a very useful and indispensable reading for students in IL, IR or Political Science, but also for international lawyers and academic and professional audiences.

Mariam Irene Tazi-Preve, *"Motherhood in Patriarchy: Animosity Towards Mothers in Politics and Feminist Theory – Proposals for Change"* (Opladen, Berlin and Toronto: Barbara Budrich Publishers, 2013)

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Over the years the feminist approach to political science has significantly influenced and transformed gender blindness of the discipline by providing methodological and epistemological responses to its various perspectives and practices. The emphasis on the social conditionality of all knowledge has primarily taken place in the field of political theory with the deconstruction of the myth of universality and

abstraction of a political subject, as well as the one of artificiality of public-private divide. However, within the feminist (political) theory there are many internal debates, one of which representing a stand on the ways of achievement of equal civil status of the sexes, reflected in the division on the proponents of its realization within the paradigm of sameness, as opposed to the one of difference. The book *Motherhood in Patriarchy* poses itself within the latter field, taking the affirmative stand towards natural differences of sexes, also manifested in their opposite moralities. According to the proponents of this approach, being inherently pacifist the mothers' ethics provides a solid basis for the establishment of the (new) social order. The main thesis of the book can be understood as a politico-theoretical advocacy for the restitution of the matriarchal society, subverted by the patriarchy, which has turned the ability to give birth into a deficiency. The patriarchy is defined as a transitory phase towards a society that will, with the help of reproduction technology replace mothers with an abstract father, represent a final triumph of a reason over body. Building the argumentation mainly on the binary oppositions, the author also adopts a multi-disciplinary approach defending the case through anthropological, philosophical, psychoanalytical and historical perspectives. The initial premise of the book questions the marginal position of motherhood and childrearing in contemporary societies. Furthermore, by "calling into question the theories and practices which formed the basis of our ideas of body, nature, mother, state and domination", the book aims to provide an argument for the necessity of the return to matriarchy and its pacifist basis, suitable for the building of a just society. Finally, drawing on the concepts of ecofeminism, predominately on the connection between women and nature, the book also adopts the framework of matriarchal religion and poses itself within the field of matriarchal studies.

The case for matriarchy is explicated through nine chapters, introducing the issue of patriarchal motherhood performed in the nuclear family, as opposed to the collective parenting conveyed within the women's clan in matriarchy. The current state of patriarchal motherhood, whose main feature is isolation and overburdening of mothers, causes their depression while the main reason for it is complete detachment from nature, most vividly seen in the artificial approaches of medical science to childbirth. Furthermore, the author addresses the taboo of physicality in women's movement present among the proponents of equality, primarily the liberal feminists, who have "rejected the nature in order to acquire equal rights through law". This tradeoff has proved to be delusional and inefficient, placing motherhood on the margins and opening the possibility of equality only to childless women. The argument is further developed with the criticism of postmodern gender studies and gender theory that reflects gender "as if there are no mothers". These theories have opened a possibility for a further development of reproductive technology towards the "final solution to the question of motherhood", i.e. for subordination of mothers and their exclusion from the newly established political order. The overview of matriarchal societies through different times and civilizations, overthrown by

violence inherent to the patriarchal state represents a significant part of the book. Establishing the knowledge on the existence of matriarchal societies opens the possibility of its reestablishment. According to the author, the main goal of the modern state is the separation of mother and child, enabling the possibility of wars and expansion, providing the argument for inheritance of violence in the system. Regarding the economy, the matriarchal order represents a pre-class society which, being “beyond the reach of market economy demonstrates that rivalry with nature is not necessary”. Drawing on the second wave feminism matriarchal research, inherent to German and Austrian authors whose arguments establish the majority of theoretical framework of the book, the conclusion once again states the advantages of matriarchal social order. This is primarily the commitment to the principle of responsibility without domination that makes it an optimal model for social sustainability.

The book *Motherhood in Patriarchy* offers a broad overview of the historical, psychological, anthropological and philosophical concepts following the socially important task of childrearing, but is doing so from a rather overcome perspective. Though the points on the need of stepping away from double-burden of women and work-life balance approach that places women as the center of the problem need to be revisited and deconstructed, the nature-affirmative approach might not provide the right solution. Revealing the instrumentalisation of women’s question for the purposes of dominant political and economic priorities, i.e. the comprehensive system criticism might be more adequate approach. Feminist political economy has addressed the question of motherhood by placing the social reproduction in the center of the analysis, as opposed to the approach of mainstream neoclassical economy. Though this broadly fits the main argument of the book, the achievements of feminist political economy have passed without references. Regarding gendered division of labour the author insists on binary oppositions, detracting the technology as a male sphere of activity and even stating that “birth control techniques have never been liberating for women but used as a means to discipline female creative nature”. To call the possibility of gaining control of ones own body unliberating is, if anything, strange. The outlined theses draw many questions, but the two specifically attract attention: in the proposed matriarchal order, what happens with women who do not want/cannot become mothers? If the (soft) power in the matriarchal society is established on the ability to give birth, these women are outcaste from the community. Continuing on the criticism of gender theory and the stance on fixed identities, in the proposed society what happens with the LGBT persons? These main disadvantages of motherhood utopia denounce the request for adequate valorization of the important social task of giving birth and upbringing of children, by using essentialisms and rejecting technology as the means to its goals. Based on the common natural ability to give birth, the monolithic understanding of women as a homogenous group overcomes all other differences, hence annulling the thesis on patriarchy as a just social order.

Though the book cover states otherwise, these unfortunately cannot be taken as the proposals for a change.

Dorothee Bohle and Bela Greskovits, *Capitalist Diversity on Europe's Periphery* (Ithaca and London: Cornell University Press, 2012)

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The book of Bohle and Greskovits aims to show how, when, and why the economic performance of the Central and Eastern European (CEE) countries differs from the rest of the world and within own range. In that respect, the statistical and explanatory argumentation emphasizes differences more than similarities of the region, thus rejecting the widespread perception of post-socialist state economies as homogenous. In the absence of monolithic unity, the different degrees of economic fragility and political stability gain relevance. At the same time, as the authors suggest, the post-socialist states share similar communist experience, historical legacies, and economic challenges of transition. Accordingly, the theoretical framework of the book is largely based on the scrutiny of capitalism development through the prism of major paradigms, e.g. Polanyi's 'The Great Transformation'.

The book includes several groups of countries under analysis: the Baltics (Estonia, Latvia, and Lithuania), the Visegrad Four (the Czech Republic, Slovakia, Hungary, and Poland), Southeastern European (Bulgaria, Romania, and Croatia) – and Slovenia separately. Although almost all these countries pursue similar goals of neoliberalism, the varieties of their actual economic performance differ according to the main features of the group under scrutiny. Thus, the Baltic States represent the *neoliberal model* of capitalism, the Visegrad group can be introduced under *embedded neoliberalism*, whereas Slovenia exercises what is called *neocorporatism*. The authors do not provide a specific name to the group of the Southeastern states, but following the main logic of the book, one can place them with the Baltics in the category of pure neoliberalism; although the Southeastern group was much less successful in that respect.

The distinction of CEE countries shape the hexagonal "diamond" that includes several macroeconomic indicators: states' governmental policies; the levels of democracy; market efficiency; efficacy of macroeconomic coordination; abilities to create a welfare state, and representation of corporatism interest within each single case (pp.19-22). The creation of such a complex and sophisticated model allows to answer the general question of the book: is there one or many post-socialist capitalisms? The answer is unambiguous: the CEE states' fundamental differences in

macroeconomic policies within a single frame of market capitalism confirms Polanyi's approach and of all those who appeal to the varieties and diversity of capitalism. According to the authors the only country fulfilling nearly all the "requirements" to become a mature Western-type welfare state is Slovenia, while its neighbors (Romania, Bulgaria and Croatia) are laggards. The authors argue that contrary to the initial expectations, there is no convergence and transformation of all Central Eastern European countries into a uniform Western-type capitalist economy.

What is the story told by this analysis? First, it is correct to assert that the quantity of conducted reforms and their speed of implementation *does not* guarantee their quality. While some Baltic and Visegrad states competed in 1991-1992 with respect to swift marketization, Slovenia had already started in "pole position". The Slovenian success can be attributed also to the fact that the country "cumulated impact of reforms many of which had been initiated before and brought to competition after the end of socialism" (p. 27). One can conclude, that being among the front-runners by the beginning of transition, eventually did not guarantee being on the top of welfare state construction at the end because the actual price for rapid reformism can be unbearably more costly than the costs for gradual transformation. Second, the issues which have seemed to be settled down during the rapid transformation, can come to the surface later in a form of the recession and intrinsic conflicts, undermining overall state's capacity - which has been illustrated by the most recent financial crisis. This suggests that even when aiming to consider the CEE post-socialist space as a whole, there is a difference between at least two sets of countries: those who get closer to establishing effective market capitalism, enhancing own economic and political integration with the West (semi-cores) and those trying to challenge the success of the former (semi-peripheries).

Overall, although "Capitalist Diversity on Europe's Periphery" was written two years ago, i.e. relatively recently, nonetheless some things have already changed since then significantly. In July 2013 Croatia officially joined the European Union (EU). While it may be too early to talk about particular effects from that decision, it is quite obvious that all of the post-socialist states considered joining the EU as the crucial goal of their foreign policy agenda. The second important change can be observed in Latvia, a recent joiner of the Eurozone. According to the current agenda, the last Baltic state's accession to the Eurozone is a matter of time¹ and Lithuania will introduce the European single currency by the beginning of 2015. The deal with the European currency is more complex compared to the common willingness of the post-socialist states to join the EU. That is because several countries are not prepared to make this step, understanding that costs could be

¹ "Who can join and when?". 2014. Online at: http://ec.europa.eu/economy_finance/euro/adoption/who_can_join/index_en.htm Last access: 7 April, 2014.

harmful for both joining and host sides. Obviously, Hungary, Romania, or the Czech Republic will try to avoid the Greek experience. Moreover, national economies in these countries are still functional and thus all pros and cons are to be taken into account today in order to escape "gathering stones" of hasty decisions tomorrow. In light of these arguments, the European integration appears to be ongoing despite its continuous challenges. Considering all the economic achievements, successes and failures of the post-socialist Europe, it is somewhat clear that some states like Slovenia represent rather semi-core, than semi-periphery. At the same time, as the authors themselves argue, "in terms of international economic integration, none of the East Central European states appear to us as fully *peripheral*"(p.47).

The recent financial crisis made more vivid the differences of overall economic performance within the post-socialist world. It gave some food for thought about how macroeconomic models of the CEE states can be reshaped in a long-term perspective, accepting the possibility of their full revival within the frame of democratic improvement and betterment. However, making a consonant to the authors' main conclusion, it is still not so much room for exclusively positive expectation from the coming decade. Obviously, new economic shocks can be unbearable for some of the EU states, and the right question to be asked by that time is how those future issues will be handled without undermining already weak capacities of these states.

The book is highly recommendable for all those who want to deepen their understanding of how transformation to market-oriented capitalist economy works in general, and those who seek to enriching their knowledge in post-communist economic transition specifics in CEE particularly, considering the role and importance of state capacities. At the same time, due to already changed environment the book is appreciated to be scrutinized alongside with the latest political and economic changes of the region.

Anders Åslund, *How Capitalism Was Built The Transformation of Central and Eastern Europe, Russia, the Caucasus, and Central Asia. Second Edition.* (Cambridge: Cambridge University Press, 2013)

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One of the initially crucial questions that has come to the agenda of political economy right after the collapse of the Soviet Union lied in the realm of defining and *understanding transition* as a specific process and period. The question itself originated a lot of discussion, as neither scholars-theoreticians, nor pure practitioners in the field of international politics and economy could find a common

agreement on defining precisely the very notion of *transition*, its timeframes and implications. In fact these discussions are still ongoing, as interpretations of the phenomena of post-communist transition largely vary from one case to the other, proving the absence of a single approach and view toward this issue in the European and overseas scientific community. In this respect, this work is chosen because it encompasses nearly all the author's views and opinion on economic and para-economic aspects of transition.

From the beginning of his work, Aslund argues that even if the exact moment and sudden collapse of communism had been unpredictable, yet to a certain degree people clearly understood that the system has been doomed to a failure. Simultaneously, the sudden collapse directly affected on the nature of transition in the post-communist space, which was unique in its essence.

By the moment when planned economy proved its practical inability to exist any longer, dramatic transformation of economic interrelations among countries was characterized by a number of essential features. Those features were largely a consequence of a simple fact that the rest of the world had not had any alike empirical experience of that sort of transformation, i.e. immense shifting from planned economy to an entirely opposite economic formation in face of capitalism.

First feature is *unevenness*, seen in the difference of interstates' ability of proper economic performance in terms of challenging the issues of transformation, and establishing open market system guided by democratic principles. Perhaps, the most vivid examples of unevenness of transition was the change of GDP levels(p.66),or the difference in privatization levels which also vastly varied(pp.190-201).The unevenness of transition also bared several cases when countries like Belarus, Turkmenistan, Uzbekistan failed to change their economic systems toward market-oriented economy and to establish democratic institutions in qualitative terms, remaining mostly unreformed(pp. 2-4).

A second important feature is defining transition timeframes. As the author alleges, post-communist transition has been a protracted process and *is not over yet* because of three aspects: a)several states have not achieved so far the same level of economic performance as they had had before the transition; b)those initial economic and political objectives, that the majority of countries declared by the moment of departure from the communist rule, still remain unattainable; c)transition and recovery from the concomitant crisis and slump occurred in different countries with different time intervals: if the Baltic States and Central Europe already reached the positive level of economic performance by the 2000's, the post-Soviet countries, like Armenia, Georgia, or Azerbaijan, only started to show positive rates by that time(Ch.3).Thus, it would have been more correct to talk about different levels of success in transition, rather than about decisive overcoming of that phenomena.

The third crucial feature of transition is 'exogenous' factor of *foreign support*: unequal financial, institutional, advisory and other aid distribution across post-communist states. Aslund's affirmation that "only the future EU accession countries received timely Western assistance"(p.8) proves disproportional and perhaps politicized approach of the advanced Western economies to provide equal support to all post-communist states, but rather firstly to those of geographical and political proximity to the West.

The unevenness as the first and most broad feature of transition which amalgamates all other features and makes them to be considered through the own prism, leads the author to infer that all twenty one post-communist stories of transition can be formally divided into three main groups in respect to their economic and political performance: successful stories (mostly by then future EU member states,- CEE and the Baltic states),partially successful (the majority of the post-Soviet countries),and unsuccessful(those three mentioned states who failed democratic transition).Nonetheless, this simple differentiation should not misguide a reader: in my view, this severe division of countries should not be taken for granted, as there are still some room left for improvement, seen at corresponding possibility of leaping from one group into the other exactly because, as the second feature states, post-communist transition is not over.

However, because of sharp distinctions in the initial readiness to establish new political and economic order, different states have chosen different ways of reformation, presented in the two fundamental forms of transition: some have preferred fast acceptance of new policies, named by Aslund as radical reforms, whereas others have stood for relatively slower implementation of transformation policies, known as gradualism.

The issue of the speed of transition has been practically one of the most important in the agenda of the newly emerged states. At the same time, while talking about radical reform and gradualism one should confess that though these approaches *are contradictory in terms of defining the very process of economic change and reforms, albeit they are not irreconcilable in terms of shaping the ultimate goal of that process*. Thus the proponents of radical reform and gradualism both largely agree that, eventually, the ultimate results of transition, disregard to the speed, should be aimed at establishing "a market economy leading to higher economic efficiency, economic growth, and an improved average standard of living"(p.37).Additionally, both approaches find common determinant in defining the importance of a state's role. A state should be capable to exercise hard budget constraint policies - an important requisite for successful transition.

BOOK REVIEWS

Generally, Aslund clearly positions himself as a proponent of *radical reformism*, and believes that unlike gradualism in radical reform strategy a necessary accumulation of critical mass for growth and quantitative reorientation of economy toward market-oriented one is conducted in a quick and sharp way which allows to reduce time and money costs to achieve full liberalization. Aslund argues that gradualism itself was taken as a proper way of reforming mainly by those who sought to benefit by expanding time frames of transition. The more transition lasts, the better conditions could be shaped for rent-seeking. At the same time, one should bear in mind that the pitfalls of transition, like rent-seeking or spontaneous privatization (which is to be distinguished from radical reformism), have occurred in *both* types of countries: those who tooled them up with radical reform approach, and those who introduced gradualism, differing only by the level and deepness of their affect.

Overall, this book is a perfect factual illustration of how the post-communist transformation occurred and why the issues of transformation are still relevant and salient, even if more than twenty years have passed since the collapse of planned economy and formal beginning of transition. The relevance of the work becomes undoubtable especially after the last financial crisis: the latter has proved the fact that the states are unable to tackle any global issue without joint efforts to do that and finding consent among each other. At the same time, Aslund's work still leaves some room for unanswered questions.

Mark Pennington, *Robust Political Economy: Classical Liberalism and the Future of Public Policy* (Cheltenham: Edward Elgar, 2011)

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Mark Pennington's *Robust Political Economy: Classical Liberalism and the Future of Public Policy* deals with the defence of classical liberalism within the perspective of politics and the economy. The author, being a professor of political economy, seeks to highlight the dilemma which is seen confronting liberalism on its face. To proponents, liberalism poses no principled concern in politico-economic point of view. Liberalism originated from basically the values of private property and profitable exchange of commodities and services; markets should be unrestricted and the actions of business partners should be regulated only by forces within, which serve to as well monitor the actions of producers in such a way that resources incline to drift directly so as to serve the interest of consumers. This is the *raison d'être* that 'marked resistance' to the ideology (p.1). In his book, Pennington sought to follow the likes of the greatest defenders of liberalism in the twentieth century such as F.A. Hayek and Ludwig von Mises.

Pennington's book is divided into two parts. The first part deals with the core objections to classical liberalism in Europe, United States and other countries in Asia and Africa. The second part turns to give applied analysis of what the author gathered. In this first part, Pennington argues for 'minimal' intervention rather than absolute 'welfare state'. To him the era of welfare system should be gone for good. So he challenges the arguments against classical liberalism (p.2). Yes, as the author shows, robust political economic demands that compassion (reads, welfare state) in the management of the economy should be relaxed if things are to work perfectly.

Pennington's emphasis is that 'the results of classical liberalism order cannot be considered 'just' and 'unjust' because they are not based on obedience to a unitary system of commands' (p.6). The author further emphasises that 'classical liberalism recognises that states may have an important role to play within a liberal society' (pp.6-7). This is ambiguous to say the least. It is worth accepting Pennington's view for this part that classical liberalism is not a perfect order. Even with the liberalised economies springing up around us the question of social justice still becomes a mirage if at all it ever exists in the lexicon of the proponents of classical liberalism (p.9). A good example is the spontaneous emergence of the various "Occupy" movements in Europe and America which came no doubt as a result of discontent with the liberal order.

Pennington discerningly scrutinizes many of the arguments against classical liberalism; the most prevailing is the issue of 'social justice.' Cases in point are the business and political benefits accruing to small group of people courtesy of classical liberalism (p.24). Predominantly this is the point when monopolistic tendency preys on people because of liberal institutions' 'morally corrosive effect on the social order' (p.51). Society is not the benchmark for a shared vision for the goodness of all. What is known as 'common good' is hardly found in the people's psyches under the much touted classical liberal order (p.52).

Pennington's comparative disagreement is very important to be cited again here. Democracy is confirmed to be the best system of governance. It is better than dictatorship and chaos. But the condition of the citizens of the liberal order calls for concern. Interestingly the author brings to fore some studies in Europe and the United States where he says that voters in these advanced liberal democracies 'tend to be ignorant of even the most basic political information' (p.66). Is this a mere coincidence? Well, Pennington should have said so in order to help readers unravel the role of the so-called mainstream media. There is also corruption and 'social instability wrought by unregulated markets' (p.82), including unhealthy adverts and competitions which devastate the rights to makes choices in the local markets (p.95). Consumers are left under the mercy of middlemen, retailers and worst of all, inhumane brand names. In essence the issue of 'social justice' is thrown to the dogs (p.145).

Pennington painstakingly defended the criticisms against classical liberalism. Examples abound, in the condemnation against competitive market where he argues in favour of its rationale. The author sees the function of the competitive market as a way of making it possible to allocate resources to people likely to 'add value' (p.152). Who are the people that are likely to add the much talked about value as Pennington propounds? Consumers are groaning as a result of exploitation; likewise workers who survive daily under pittance and inhumane conditions. Pennington's assertion should be critiqued in that he says that 'a more robust way of addressing these problems may be through voluntary collective action rather than enforced progress of tax-financed 'welfare' (p.155). This is the last that struck the camel's back which is the non-existent of welfare which is being taken over by privatisation.

Pennington once more observes that 'reading groups, religious associations, sports teams, newspapers and Internet-based social networks might all compete in the provision of educational opportunities as might the potential for people to acquire skills via employment and vocational training' (p.157). Nowhere has classical liberalism done a big blow than in the field of education. Pursue of knowledge is being mocked at. Schooling is arguably the last bastion of the welfare state and by virtue of the liberal theories it is unimportant to be given priority. For, relationship from top to bottom is 'based on the pursuit of narrow self-interest' (p.174). The various avenues for learning mentioned by Pennington play divergent roles but will never become the proper substitute as he predicted for the formal school system we know.

Pennington's book is well written for those interested to test the waters of classical liberalism. Reform is desirable due to time frame within which activities unfold. The problem, in my opinion, is when reform is subjected to liberal test. Curious as it seems even with Pennington's findings in terms of the much advertised development programmes spearhead by classical liberalism, he ironically laments that 'development programmes such as those of the World Bank are unlikely to be attuned to cultural and economic circumstances on the ground' (p.208). One wonders what kind of "development" programmes should be accepted by global policy makers if not the one scripted by the World Bank?

I enjoyed reading Pennington's book for its extensive research and staunch protection offered to and codified in favour of liberalism. This, perhaps, is the biggest asset in Mark Pennington's book. No need however to discredit further that social justice is not part of the robust political economy of liberalism. I am aware that social business enterprises are springing up even in Europe and the United States, a sort of reversal of political economic role in social coexistence. Understandably society is seeing the need to provide a breathing space to social justice. This methodology may work positively in the years to come. In conclusion I

do not believe with the author's view that 'from the current wreckage,' the world would 'see the rebirth of classical liberalism as a political force' (p.267). For, the 'wreckage' is directly coming to us, whether or not people agree, as a result of the policies brought about by the same chaotic classical liberal order.

***Confucian Perfectionism: A Political Philosophy for Modern Times.* Joseph Chan. (Princeton: Princeton University Press, 2014)**

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The attempts (if not desire) to understand the motivations of Chinese policy-making and governance practices seem to be gaining increasing urgency in what is nearly universally acknowledged to be the "Asian century." In particular, the attention to the emergent dynamics of international interactions has been facilitated by the break-up of the Cold War order, which has allowed a number of actors to extend their international roles and outreach. In this respect, thinking about the shifting contexts of global politics has often gravitated towards the realms of fiction and fantasy. This seems to be particularly the case when grappling with the nascent international agency of China—an actor, whose conceptualization in world politics often straddles the invention/reality divide.

Beijing's enhanced confidence and ability to fashion international relations seems to have provoked both interest and anxiety. In particular, (Western) observers have been debating whether the ongoing transformations in China are spelling a move towards a more open liberal democratic state or to the entrenchment of totalitarian practices. Joseph Chan's investigation addresses the pervasive uncertainty underpinning these processes by undertaking a detailed analysis of the philosophical and intellectual traditions underpinning China's policy practices. His suggestion is that while impacted by current contingencies, the future of China's governance practices – both domestic and international – will be framed by attitudes based on interpretations of the past. As Chan indicates, looking back at past experience will necessarily provide indeterminate outcomes on the particulars of Chinese thinking about governance.

The thrust of Chan's argument is that Confucian practices and thought not only offer unparalleled insights into China's rise to global prominence, but that they also provide a global model that can be emulated by "other societies whose cultures may benefit from contemplating, and perhaps applying in practice, the deepest principles of Confucian thought" (p. 204). In short, Chan's analysis suggests that the democracy-totalitarianism bifurcation that seems to dominate so much of current debates on China's future trajectories tends to occlude a far more nuanced

understanding of governance rooted in China's own traditions. Thus, neither "democracy", nor "totalitarianism" are relevant labels that capture the full spectrum and complexity of Beijing's policy contexts and practices – in fact, Chan implies that they are inappropriate as shortcuts for explanation and understanding of China's domestic policies and international outreach. In this setting, the contention of the book is that China promotes a distinct Chinese mode of meritocracy that promotes Confucian perfectionist approach to politics (on both the domestic and the world stage). As Chan demonstrates, the outlines of this model are fairly straightforward: it merely "assesses social and political institutions with reference to the Confucian conception of the good" (p. 18).

The book articulates the framework of the model of Confucian perfectionism in two separate, but interrelated moves. Firstly, it considers the connections between political authority and political institutions in Chinese political traditions. What is particularly interesting here is that Chan offers probably the first-to-date definitions of a Confucian understanding of "the good life" – namely, as "a broad conception that takes material well-being, moral self-cultivation and virtuous social relationships as constituents of 'the good life' for a normal human being, with the ideal of sagehood as the highest good" (p. 44). Secondly, the book undertakes a parallel assessment of the notions of human rights, civil liberties, and social justice. Such a comparative study brings together both Confucian and Western perspectives on political theory. The emphasis, however, is on the Chinese content of these concepts and the suggestion that a virtuous political process "requires citizens to be open-minded, to justify opinions with reasons that others can share, to attempt to limit the extent and depth of disagreement" (p. 201). Thus, as long as Confucian perfectionism imbibes actual policy practice, human rights – as understood by Western democratic theory – are not a requirement of governance. Yet, should government fail the political ideal of Confucianism than human rights have to be installed as an "instrumental fallback apparatus" (p. 113).

In this respect, Chan's framework is both rarely original and profoundly disruptive of established Western ways of doing and thinking about democratic politics. As the book demonstrates, the patterns of China's policy making presents an intriguing intersection of the discursive memory of the past with the contexts of the present and the anticipated tasks of the future. Chan's analysis provides a stimulating framework for the discussion of the prospective trajectories of Chinese governance. At the same time, his analysis offers a wealth of solid knowledge on the evolution, patterns, and practices of China's policy thinking and practice. Thus, to the buffs of Chinese politics, Chan's account offers a superbly researched assessment of the strategic culture underpinnings Beijing's governance. Moreover, Chan's study of the long shadow of Confucian political philosophy uncovers the ideational considerations framing Beijing's current policy outlook. It is expected that the book will be welcomed by students and scholars alike – especially, those interested in Asian studies, political philosophy, democratic theory, comparative politics, and

international relations. At the same time, Chan's careful examination of the impact of Confucian thinking on China's current governance mechanisms makes available a rarely compelling perspective that is bound to attract policy makers and pundits interested in Chinese strategic thinking.

Mats Benner (ed.), *Before and Beyond the Global Economic Crisis: Economics, Politics and Settlement* (Cheltenham: Edward Elgar, 2013)

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In Search for a Politics, Economy and Society After the Crisis

The economic crisis has been and continues to be a hot topic within the field of social science. Recently published book *Before and Beyond the Global Economic Crisis: Economics, Politics and Settlement*, edited by Mats Benner, presents a rich volume of essays, concluding the project 'After the Crisis - a research programme on the political economy of the future', conducted at the Pufendorf Institute at Lund University from August 2009 till May 2011. This eclectic collection of various insights on economic crises, their historical roots, the factors that led to them, and, especially, a wide and deep discussion of institutional responses to crisis contribute to vast academic literature on the topic.

As the editor of the book advocates, the key issues emerging from the crisis are analyzed across a range of fields, namely macroeconomics, politics, economic history, social policy, linguistics and global economic relations. The book aims to provide the ways out of the current crisis and to analyze what lies beyond it. Given the interdisciplinary approach and the diversity of topics scrutinized, there can be several main groups of questions distinguished. The first group of essays – chapters 1 to 4 – dwells on structural composition of the economy prior and after the crisis, revealing the evolving patterns of growth and regulation beyond the crisis. Sections 5 to 7 explore social and political consequences of economic crises, with particular emphasis on Swedish experience in the past. The remaining part of the book examines the forms of society, economy and polity after the crisis, with the last chapters focusing on the means to handle the current crisis and their relationship to economic growth including socio-economic development within new economic system.

The book's strengths stem from interdisciplinary research and a diversity of questions analyzed in response to crisis. Chapter by chapter, the volume builds an extensive overview of economic development, theoretical discussions and comparative studies, including the cases from 20th century. It provides interesting

reasons and explanations of the recent crisis. Consequently, the long term impact of current economic crisis is portrayed through exploration and summary of other ways, patterns and solutions developed after the other crises in the past, mainly from Sweden's experience. Several comparative studies, covering mostly Europe, allow to make even further reaching conclusions. Furthermore, the views and recommendations presented in most of the chapters are equally useful for scholars and policy-makers. Some of the texts literary provide road-maps for actions, policies or areas for future research in various disciplines. For example, Jonung indicates policy recommendations regarding macroprudential supervision, targeting the role of central banks and financial stability council quite to the point of the ongoing discussion in the European Union in the last years, whereas Boyer extensively elaborates on the future research agendas in post-crisis finance and macroeconomics. As a result, the book will be interesting not only for scientific community, including academics, students and researchers, but also policy-makers in related fields of policy, will find the volume useful for the information and reference. What is more, the reference to the past enlightens crucial transformations, which can seem improbable at the moment.

However, several remarks should be made regarding the weak sides of the book. As much as the book aims at covering all the most important issues in the fields of economics, political science and sociology, the coverage includes only micro-scale studies, with exception of theoretical and few comparative macro-scale works. Given the interdisciplinary approach the authors have utilized, as well as the cases selected, some researchers may find portions of the book, or chapters, to be somewhat superfluous, as they may find section devoted to other disciplines unnecessary for their purposes. Additionally, while there is some attention given to Europe and other countries in the world, like China, the main focal point are changes in Sweden. As such, academics interested in these transformations elsewhere may not find this book of particular importance. Readers investigating these specific topics and country may find a particular chapter to be useful, but this is not a book to be read from front to back cover, as the chapters seem quite disconnected and there is little overarching continuous theme between the essays and their contents, besides the general issue of crisis. Moreover, one will find strange the book's main target of analysis - Sweden. As much as Swedish case can be seen as followed and representative example of the issues in other countries, there are some observations to mention. The differences between countries can be extreme. Even in European Union, member states vary on the basis of domestic policies, regulatory structures, monetary and fiscal policies, not to mention institutional frameworks, electoral systems or social structure. This can lead to different experiences, leading to different solutions and lessons to learn in the future. On top of that, comparison between Sweden and other countries would have quite contributed to the volume, leaving readers more convinced about windows for opportunity, especially for policy change. Simultaneously, combination and integration of qualitative and quantitative methods would have helped to provide

broader picture of the situation. Finally, a reader might feel discontented with some mismatches, ambiguous reasoning and decisions of the authors, such as general comment that post communist countries were not successful in transition (chapter 1); or a choice to analyze just two texts for each category from the same year, and then conclude about finding no variation in the texts and little effect of crisis on public rhetorics from basically just few sources (chapter 5). Likewise, chapter 9 might leave a reader unsatisfied with only several pages of the analysis of the case of China, regarding responses to crisis, paying insignificant attention to housing affordability and migration problems.

Overall, the volume remains an informative reference on economic crisis, identifying possible ways, patters and solutions for more sustainable economy, society and polity in the future. The texts present possible upgrades and new functioning of institutions, based on the analysis of existing frameworks and cases in the past. The crisis is not only a challenge, but also an opportunity to address long term problems by reconsidering established conventions. Interdisciplinary book's profile demands a versatile reader, concerned about different questions and advanced in various disciplines. As each chapter addresses the key issues of crisis from macroeconomics, politics, economic history, soivial policy, linguistics and economic relations, there is any broader connection or common trends between the texts of specific cases. *Before and Beyond the Global Economic Crisis: Economics, Politics and Settlement* paves the way for future research on crisis, pioneers by contributing to the question of the analysis by impressive interdisciplinary approach, and presents multiplicity and complexity of addressing post crisis environment nowadays.

Mark A. Menaldo, *Leadership and Transformative Ambition in International Relations* (Cheltenham: Edward Elgar, 2013)

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Formulating and managing international relations is – for obvious reasons – closely tied with political leaders and their motivations. It is therefore relevant to look into what distinguishes the unique characters of the decisive actors, examining their “transformative ambitions”, which “often combine a desire for personal achievements with service to the common good” (p. 5). While realist leaders strive for their states’ and their own survival, and for them the security of their states is top priority on the political agenda, strategy is assumed to be the dominant feature in the ambition of both democratic and autocratic leaders according to the theory of strategic political survival. Mark A. Menaldo offers a systematically critical investigation of both, together with what personality scholars think about political

ambition, proposing: "individual ambition can have a public scope beyond private aggrandizement" (p. 9). *Leadership and Transformative Ambition in International Relations* is a well-researched account with clear arguments presenting an alternative approach to understand the nature and consequences of the ambitions of political leaders, thus, to contribute to the better understanding of foreign policies and international affairs in general.

In seven chapters a very disciplined and clearly argumentative line of thoughts conducts the reader in the role statesmanship plays in foreign affairs. Many exemplary political leaders ranging from Otto von Bismarck to Woodrow Wilson, Charles de Gaulle and Pericles, and fundamental political thinkers such as Aristotle or Niccòlo Macchiavelli are shown as case studies in the analysis. As realists think, while strategic leaders want to grab and hold power – fostering their own interests – , to get prepared for survival becomes their primary and foremost ambition. Illustrating this issue with the cases of some Latin-American dictators, such as Alfredo Stroessner of Paraguay and Fidel Castro of Cuba, Menaldo highlights the role of unique personal characteristics to drive ambition and how politics is directed. From this point of view, Castro did differ from Stroessner as he did not only capture and possess all moral and political authority, but also "transform and reinvent Cuba" (p. 51) and introducing a new political culture with all its revolutionary and transformative – as he thought – values, norms, attitudes and beliefs.

Although realism can offer an interpretative framework on, for example, power maximization and how this benefits leaders, it is "not interested in the traditional view of leadership [...] [and] qualities such as courage, moderation, prudence, justice, and patriotism" (p. 54). Menaldo points out that neither realism, nor the strategic perspective theory deem the behavior of leaders as much responsible for the actual practice of statesmanship as the personality approach, which draws our attention to the character of the leader.

Bismarck's example first offers a thought about how "he perfectly exploited opportunities but could also show restraint" (p. 32) while – as a leader genius – applying realpolitik both in terms of his desire for Prussia's international role and with the unification of Germany; but second, also to "his realism [...] which] undermines some key realist premises," as long as he happened to be "a political and moral relativist" (p. 33). Both domestic (internal) politics and external affairs are important terrains of the investigation of political ambition and leadership, in particular, if we accept Menaldo's argument that leaders are first of all accountable to the people who voted for them, or support them to hold any high office. Another example in the book is Pericles, the prime leader of democratic Athens, who also proved how important it was to link domestic and foreign policies. He did not want only to foster democracy in Athens, but also to reorganize the Athenian Empire at its height to strengthen its position those days.

The issue of power that can highly motivate a number of individuals provides another intriguing perspective of the personality approach. Those people who are driven by grabbing and keeping power chase resilient solutions; they “have a problem adapting to political contexts that demand flexibility” (p. 57). The list may be long mentioning autocratic leaders such as Saddam Hussein or Robert Mugabe.

Woodrow Wilson is a manifestation – to Menaldo – of a political personality whose goals “were as breathtakingly ambitious as they were unconventional,” (p. 63) trying to offer a new international order based on – among others – collective security and self-determination, as laid down in his speech delivered to the US Congress on January 8, 1918. His proactive engagement in international politics assumed not only political but also moral leadership, emphasizing the importance of the proper interpretation of interests, and therefore, the possibilities rhetoric offers, “that could capture the hearts and minds of the public” (p. 64). Today, this approach in international relations is better known as ‘soft power’, which has become an inevitable part of how states and other non-state actors can foster smarter policies of behavior in the global arena.

Mark A. Menaldo offers a critique of James MacGregor Burns’ theory of transformational leadership (in chapter 4), stating that Burns “abstracts too much and misses the realities of regime politics and concrete expressions of political ambition” (p. 81). Menaldo is successful in expanding the idea of transformational leadership by pointing out the significance of self-realization in understanding this complex notion. Virtue and honor, courage, political ambition and justice, but most important of all, “magnanimity [which] involves all the other virtues Aristotle examines in [his book] *Ethics*” (p. 100), and “entails great political ambition and also concerns honor, but not just any kind of honor. [...] the desire to take part in great deeds” (p. 110). Who can be the successor – in practical terms – to carry on with the achievements? Pericles, for instance, is presented as one of the greatest transformative and most innovative leaders who relied too much on his own statesmanship, and although “had a unique ability to guide Athens’ imperial might and resolve tension between democracy and empire,” could not “pass the torch when he was gone” (p. 170).

Leadership and Transformative Ambition in International Relations is a strong scholarly contribution to the study of international relations. It is based on a deep understanding of the phenomenon of ambition in politics, which can present more aspects for further investigation, in particular, the moral perceptions of leaders and their connection with the political regime. The author succeeds in his original goals to uncover the complexity of the role of statesmanship from an innovative angle departing from leaders’ political ambition. One of the strengths of the book is how neatly the different chapters are sewn into a coherent flow of discussion: each

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chapter closes so swimmingly presenting the major problem the author will elaborate on in the next one. His sophisticated and highly plausible argumentation – although sometimes, especially in the first couple of pages seemingly more repetitive and didactic than needed –, together with the fine analytical portraits of exemplary leaders, as well as the selection of references (pp. 177-192), all result in a volume, which can be recommended to academics, students of IR, political science and history, but certainly to politicians and policy-makers as a handbook to use in their own learning processes.

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