



EU Policy Review Vol. 1 2021

Edited by
Antonios Nestoras



EU Policy Review, Volume 1 (2021)

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The European Liberal Forum (ELF) is the official political foundation of the European Liberal Party, the ALDE Party. Together with 46 member organisations, we work all over Europe to bring new ideas into the political debate, to provide a platform for discussion, and to empower citizens to make their voices heard. ELF was founded in 2007 to strengthen the liberal and democratic movement in Europe. Our work is guided by liberal ideals and a belief in the principle of freedom. We stand for a future-oriented Europe that offers opportunities for every citizen. ELF is engaged on all political levels, from the local to the European. We bring together a diverse network of national foundations, think tanks and other experts. At the same time, we are also close to, but independent from, the ALDE Party and other liberal actors in Europe. In this role, our forum serves as a space for an open and informed exchange of views between a wide range of different actors.

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Introduction

The EU Policy Review is a collection of papers published by the European Liberal Forum in course of the past year. This review encompasses a wide range of contributions in which experts from academia, policymaking, and industry critically discuss topics of crucial relevance for current EU policies and politics. The issues raised vary from foreign policy to digitalisation, from climate to culture, from disinformation to nutrition standards.

The scope of topics is as diverse as was the EU policy agenda in 2021. This was a year in which the political debates were preoccupied with the ongoing pandemic, external threats, internal crises, engaging Europeans into co-creating the face of Europe, and preparing the legislative ground for the EU's long-term transition towards a digital, sustainable, and more just future. Each of these topics inspires debates and contradictory positions, both within the liberal family itself and vis-à-vis its ideological competitors. In this context, the role of the ELF as a think tank is to provide liberal-minded policymakers, experts, and people at large with a reliable point of reference and innovative expertise. Our mission here is dual: to supply much-needed expertise for addressing urgent concerns, while also spotting and raising the issues and trends that are yet to come. As a result, this review is an insight into both current and upcoming debates.

What unites all the contributions is their topicality, evidence-based judgement, and liberal standpoint. The guiding principle driving our policy, research, and editorial activities is to combine high-quality content and long-term vision with a practical approach. Engaging scholars and practitioners from across Europe, we are gathering the brightest ideas and rigorous research and presenting them in such a way that they make a difference in the actual context to which they relate. The goal is to make complex subjects accessible and theoretical ideas fit for practical implementation. High-level research and visionary insights are refracted and presented in ways that match policy needs and that can be readily adopted by policymakers. In this way, we provide scholars with a platform for sharing their findings, policymakers with a solid background for informed decision-making, and all others with food for thought and clarification of complex and controversial matters.

ELF publishing activity in 2021 is a clear sign of our commitment to these goals as well as material proof of our contribution to the debates. This anthology displays a wealth of studies and in-depth expertise in EU affairs and liberalism, curated, and brought together by ELF with the aim of suggesting out-of-the-box liberal solutions. In 2021, our vision started

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delivering its first tangible results, in the form of both numerous publications and engaged policy responses.

Apart from the variety of topics, this publication is marked by a variety of formats, namely: discussion papers, policy briefs, policy papers, research papers, and books reviews. These formats serve different purposes: from sparking discussion to providing background information to suggesting concrete ways of dealing with a problem. In their own ways, each of the formats aims at presenting the topic in a form that is distinct, concise, easy to grasp, and amenable to being put into practice by policymakers.

Discussion papers

Discussion papers are conceptually shaped around presenting alternative liberal views on a particular issue. They are typically co-authored by two experts expounding contradictory or complementary arguments. 2021 discussion papers touched on controversial questions relating to the financial, institutional, legislative, and technological basis of the EU.

Graham Bishop and Giuseppe Russo, in *Banking Union: Imminent Crisis and Possible Solutions*, discuss preventing banking crises and increasing the role of innovative machine learning and data analytics. The authors analyse traditional ways of anticipating and preventing crises and suggest alternative solutions to strengthening financial stability. Throughout the paper, they critically reflect on each other's perspectives and positions.

The topical question of the EU's future institutional framework was discussed by Renaud Dehousse and Simon Hix in *Nothing is Lasting without Institutions: Setting the Scene for the Liberal White Book Europe 2030*. Hix presents his thoughts on envisioning the institutional framework, and Dehousse analyses the institutional changes after the Lisbon Treaty. The authors comment on each other's perspectives and suggest complementary standpoints.

In *Post-Pandemic Legislatures: Is Real Democracy Possible with Virtual Parliaments?*, Olivier Rozenberg considers the controversial topic of parliamentary democracy in the times of technological progress. On the one hand, technologies open a whole new horizon for facilitating the legislature and making it more efficient and functional. On the other hand, the intense use of technologies undermines the very (human) nature of parliamentarism. This discussion paper brings together divergent views and arguments to demonstrate both the risks and opportunities in this area.

Francesco Cappelletti and Luigi Martino brought together concerns related to cybersecurity and the possible solution provided by the cooperation between private and public sectors. In *Achieving Robust European Cybersecurity through Public-Private Partnerships: Approaches and*

Developments, the authors discuss the overall regulatory limitations as well as the characteristics of the private–public partnerships in the field of cybersecurity specifically. The paper highlights the strategic relevance and innovative potential of bridging these areas and ensuring a functional liberal framework for their closer cooperation.

The area of EU climate governance is explored by Bjorn Lomborg and Sebastian Oberthür in the discussion paper *Costly Trade-Offs versus Cost of Inaction: Divergent Views on the Risks and Benefits of EU Climate Governance*. They present their contradictory arguments on the surplus or, on the contrary, insufficiency of the EU policies with regard to fighting climate change. Coming from opposing standpoints, the authors outline their vision on what a reasonable cost-benefit in this area should look like.

Policy briefs

In contrast to discussion papers, policy briefs are relatively short papers providing concise expert information on a concrete topic or policy measure. They are designed for readers seeking reliable background information on an issue as well as how to interpret that issue from a liberal point of view.

In *A StratCom for Liberals in a Post-Covid Europe*, Radu Magdin provides an overview of how the pandemic increased threats to and attacks against liberalism and the ways to address this through shaping coordinated strategic communication. Continuing the topic, *Europe's Party Politics: Liberal, Illiberal, or Quasi-Liberal* by Takis S. Pappas looks at the current landscape of Europe's party politics and sheds empirical light on whether the talks about the decline of established liberal parties is backed up by empirical evidence.

On another note, Gerard Pogorel shares his expertise on the potential of 5G for shaping the European economy. *5G for Industry 4.0: Actors, Challenges, and a New Start for Europe* presents the potential of 5G as a transformative economic force for Europe and highlights the actors best positioned to set this process in motion.

Policy papers

The most practice-oriented – and the most numerous – among our publications, policy papers present an in-depth perspective on a specific topic or concern. They provide relevant background and context, raise or highlight a problematic point, review it through liberal lenses, and finish with concrete policy recommendations targeted at policymakers and experts. 2021 policy papers address technological development and social policy issues as well as such targeted concerns as nutrition standards, disinformation, nuclear energy, and space.

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In *Enabling Healthier Dietary Choices in the European Union*, Vincent Delhomme focuses on the domain of public health and addresses the topical issue of providing consumers with accurate information about the nutritional quality of food products. He critically assesses the current EU legal framework and suggests two reforms for improving its major shortcomings.

Turning to the technological domain, in the paper *A European Audio-Visual Area for the Age of Global Entertainment*, Gerard Pogorel talks about the impact of digitalisation and the pandemic on the transformation of the entertainment field. Arguing that pre-existing trends in the audio-visual sector have been further accelerated, he reflects on how the EU could strengthen its creative capital and global influence in this vibrant domain driven by new technologies and global giants. Gerd Leonhard, in *The Next 10 Years: How Europe Can Shape and Create a 'Good Future'*, outlines his visionary ideas on the technology-driven changes that await Europe and the world in the upcoming decade. Exploring the complexity of factors that will be shaping our future, he outlines a programme for Europe's 'new Operational System': a set of innovative ideas and perspectives that could increase Europe's ability to match the new era.

Maria Alesina, in *Towards a Social EU? A Liberal Vision for the Porto Social Summit*, reviews European social policy and the opportunity for updating it at the 2021 Social Summit. To provide European liberal policymakers with a precise yet flexible common agenda in this controversial domain, she brings together guiding liberal principles and a list of concrete policy priorities and measures, backed up by relevant national success stories. Continuing the topic, the paper *Conference of the Future of Europe: Towards a New Social Contract and a Europe that Works for Everyone* by Radu Magdin explores people's lack of trust in institutions and the related popular support for protectionism and nationalism. Arguing that the Conference on the Future of Europe presents a window of opportunity for the EU to renew the existing social contract, the author provides recommendations for the social reforms necessary to achieve this.

In *European Strategic Autonomy in Space, through Space*, Piero Messina reflects on how mastering space technologies will continue to play a major role in geo-political competition. He argues that mastering data and reaching autonomy in space applications will allow Europe to remain a key player in the international arena.

In *The Rise of China in the Information Domain? Measuring Chinese Influence during the Covid-19 Pandemic*, Antonios Nestoras and Raluca Cirju address the topic of 'infodemic' in Europe and the difficulties around understanding its impact. Based on empirical evidence, the authors suggest that evaluating public opinion and perception is a reliable way to assess and measure the influence of foreign disinformation campaigns in Europe.

Mark Lynas in *EU Taxonomy and Nuclear Energy: How to Fix Europe's Energy Crisis while also Achieving Climate Neutrality* argues for reconsidering the role of nuclear energy in the EU taxonomy. Presenting a range of scientific points and realistic calculations, he puts forward an idea that including nuclear in the equation is the only solution for Europe to reach its climate objectives.

Research papers

Of all ELF publications, research papers are the most academic in nature. They provide a platform for scholars to present their original evidence-based research in a form that follows rigid academic standards yet is easily accessible for policymakers and non-expert readers.

Clean Hydrogen and the Future of Energy, the Environment, and Economic Growth in the European Union by Ricardo Silvestre studies the role of adhering to liberal values in ensuring a functional carbon-free hydrogen market. The author argues that, alongside governmental regulations and investment, the crucial success factor is based on strong private–public cooperation and a free market benefitting both citizens and industry.

Analysing another future-oriented issue, Victoria Bäck, in her *Unlocking EU Roads: The Importance of Policy for Automated Driving*, sheds light on the quickly developing field of self-driving vehicles. She presents a synthesised analysis of EU regulations and argues that updating some of these is necessary in order to keep up with the technological progress and unlock the potential of this industry.

Book reviews

Complementing discussion of topical concerns and the provision of fundamental background information, ELF's book reviews familiarise interested readers with classical liberal works. Written by experts, they provide brief outlines of the original content and point out the books' relevance to current European affairs.

The works and liberal perspectives of nine authors – from John Stuart Mill to Robert Nozick, from Milton Friedman to Friedrich August von Hayek – are summarised in short and engaging reads. Debating the role of humanities in education, the minimal law, social justice, individualism, revolutionary and utopian perspectives, the liberal vision of democracy and progress, these book reviews never lose sight of the contemporary context.

To sum up, the EU Policy Review presents a summary of ELF's work as a liberal think tank and outlines the current landscape of liberal debates on and strategies for shaping the European project and liberalism itself.

Introduction

2021 was a big and important year, a year of big beginnings and bold steps. Constantly expanding our network of academics and experts, we aim to help the liberal family to proactively put new topics on the agenda and shape their development according to our values and research-based knowledge. In this way, we fulfil our liberal striving for proactively shaping the future instead of merely coping with it as it unfolds. In 2022 we will continue to reify our vision for the future – the future of our projects and intellectual collaborations but, first and foremost, the future of Europe itself.

Dr Antonios Nestoras
Head of Policy and Research
European Liberal Forum

Discussion Papers

Discussion Paper

Banking Union: Imminent Crisis and Possible Solutions

Graham Bishop¹ and Giuseppe Russo²

Abstract

The European banking system has developed important tools to help to prevent banking crises in the future, because spillover effect within a highly integrated system would have devastating consequences. New technologies could complement existing preventive control tools by applying innovative machine learning and data analytics in addition to the existing warning systems. This would lead to better forecasts of risky behaviour and potential bank crises.

Section 1: Preventing Banking Crises at the Micro-level: New Technologies and New Mechanisms

Giuseppe Russo

1.1 The standard way to avoid bank crises

The Banking Union is a step forward in the process of European integration. During the financial crisis of 2008 and the sovereign debt crisis of 2011–2012 one could see that the robustness of the banking system is a key asset for the transmission of monetary policies; moreover, credit is essential for the resurgence of economies emerging from a recession. Secondly, the costs of restoring a possibly disrupted financial system are enormous and difficult to sustain without causing a prolonged recession. Thirdly, the entire euro system is in danger of a potential collapse from the uncontrolled spreading of counterpart risk in the interbank deposit market. This could happen if interbank lending is frozen by a likely crisis originating in another part of Europe. The European banking system, however, has different characteristics from the North American banking system, which, alongside a relatively large number of local

¹ Graham Bishop, Consultant on European Integration.

² Giuseppe Russo, Director of Centro Einaudi, Turin.

banks, maintains several banking professionals operating massively in all the States of the Union.

In Europe, on the other hand, alongside the smaller banks, which are always present and have a specific entrepreneurial DNA, there exist large banks, which, however, still have a well-defined national characterisation, even if this character is likely to decline over time in the Union, as the integration and thus the mixing of national economic systems will continue. However, there are currently many limitations. Behaviours caused by low integration may result in damage to the whole system. Additional institutions of the European banking system are currently needed to make it more secure, overcoming the original limited integration. Part of this credit safety is directly dependent by the instruments of the European Central Bank (ECB), in particular by the instruments of direct intervention in banking liquidity, when the interbank liquidity market suddenly contracts due to the spread of pessimistic expectations about particular regions of the euro area.

However, the extraordinary levelling of conditions for access to liquidity does not solve every condition of potential crisis in banking systems, although it may reduce contagion between banks in different countries. In order to have a truly secure banking system, banking safety must be inherent in the process of granting credit and selecting investments, as these involve taking risks. From this point of view, the banking system is underpinned by special regulations concerning the methodology of risk assessment and the calculation of correct proportions between risks and the net equity to protect the depositors and the market against crises that may exceed the specific reserves. The assumption of restrictive regulations both on the assessment of risks, with particular weightings for selected asset classes, also in relation to their concentration, and on the minimum capital requirements can be considered as a precautionary measure. It reduces the probability of losses that may exceed bank liquidable assets, but it does not exclude them.

Moreover, these regulations have the effect of restricting competition between banks as investors and professional loan-makers. Even for this reason, we experience a continuous growth of the bank average size. Banking firms subject to strict standards of risk management and capital endowment are unlikely to outperform each other, except – for example – by increasing their scale and distributing fixed structural costs over a larger amount of investments and related revenue streams. The growth in the size of banking companies has in the past led to an increase in territorial coverage and therefore an obvious increase in the granularity and lower riskiness of their portfolios. Apart from the fact that the golden age of local banks is probably done, with the emergence of online banking activity, vanishing the geographical relation between banks and their customers. In any case, the race for banks that are increasingly large but little differentiated by business model is

a factor limiting competition, which should also be taken into account by regulators.

1.2 The need to anticipate banking crises

Is there a different way to approach the problem? In order to reduce the impact of crises, there is no doubt that banks need to be more solid in terms of equity capital, but it is not enough, because this policy provides for static supervision, although administrators and auditors are required to check for the consistency of the risk appetite framework in the continuous, in relation to capital supervision. Losses in excess of capital may occur because of the leverage, that is naturally necessary to the banking business

The system of prudential supervision, with intertwined European and national levels of supervisory bodies, mitigates but does not solve the problem. In fact, it is well known that supervision intercepts banking crises late for a normal recovery. Banks may access to more liquidity facilities compared with other business. For this reason, a banking crisis become evident only when the deterioration of assets value is well in course. The supervisors' inspection activity is based on sampling rule and may not be coincident with the more troubled cases. With the quantitative easing (QE) monetary policies in action, the facilitation to liquidity access can hide the real solvency crises of some banking institutions.

It is therefore necessary to intercept banking crises in advance and before they impact on the books: for this reason, it is necessary to study their origins.

1.2.1 Crisis predicted by macroeconomic data and environment

In general, studies of the origin of banking crises are based on macro-economic factors. Recognised precursors of credit crises are macro-economic conditions characterised by trade deficits, speculative bubbles prevailing in asset markets, both in the real estate and in the Stock and bond markets, normally related to conditions of excess access to the credit. These precursors have a general nature and are valid for the entire banking industry of a certain territory. Naturally, we have seen in the past banking crises that – within the banking industry – there is a distinction between companies that fall into the crisis and companies that do not fall into the crisis. The premonitory signals of a macroeconomic derivation are therefore suitable to signal when a banking system should be focused by regulators, in order to prevent possible crises, but they are too general to suggest in which banks of the system prevail risks such to become a threat of one or more failure. In hyper-liquid market conditions, such as financial markets, since expansive monetary policies and QE have prevailed as measures supporting real economies, the delay in identifying banking crises can be considered a much more likely event

than under normal liquidity conditions, since, even if this condition is not always respected, a solvency crisis should be anticipated or manifested by a liquidity crisis.

1.2.2 Crisis arising from the credit portfolio dynamics

Distinguishing between banking undertakings is subject to the same macroeconomic risk environment in order to identify at an early stage those that may actually enter a crisis should be preferred to resolution mechanisms, which may involve the economic responsibility not only of shareholders, aware of the credit risk of their investment, but also of the holders of the most common bonds and deposits, who are not aware of the risk they run and who do not have, unlike shareholders, levers to address and orient the bank management. Moreover, they are certainly not involved in the remuneration of the credit and investment risk, like shareholders. The consequences of banking crises have naturally led regulators to a prudential supervision of banks; they impose capital buffers to reduce the risk of default, and the system identified the central bank to act as lender of last resort in the event of liquidity crises, possibly anticipating solvency crises.

The possibility of identifying banking crises at an early stage remains to be explored, not because of the changing macroeconomic environment, but for reasons related to the credit and investment portfolio formation process. In other words, the microeconomics of credit management is not considered in revealing banking crises. On the contrary, it is precisely within the management processes that banking crises arise and, in particular, get worse. It is well known, for example, that in the event of financial stress, credit portfolios change their inner behaviour. In particular, the ETD (Extended Time to Default) in the event of external stress changes very quickly and in a differentiated way for different credit segments already present in the portfolios. In other words, worsening macroeconomic conditions may impact portfolios apparently characterised by the same average original PD (Probability of Default) in very different ways depending on the composition and direction of the sudden change in the aggregate ETD, as a result of the change in the ETD of the sub-portfolios. Therefore, an 'a-priori' identification of the ETD under simulated stress conditions could provide an initial 'a priori' monitoring of the different riskiness of credit portfolios. This could either have an impact on regulatory capital requirements: for example, by providing for upwardly adjusted requirements for more sensitive portfolios, in case of external financial stress, to the shortening of the ETD. In fact, it is well known that unexpected crises may require an increase in the capital buffer in periods not compatible with the management's exercise of options to access the new equity capital market, which becomes illiquid precisely towards the financial sector when it enters a clear crisis. An extraordinary buffer, available a priori and consistent with the ETD's

sensitivity to financial stress, could be used to buy time for managers to manage the transmission of the crisis to the bank's loan portfolio. What happens during the onset of the crisis may provide inspiration for tools to avoid it. Not all banking crises, when they arise, would have been inevitable. The negative outcome of crises is often linked to mismanagement in the last periods of their exercise of control. With a given capital buffer, the emergence of a crisis leading to asset write-downs should lead to a risk reduction strategy to protect the capital buffer; however, if the signs of a crisis are not caught early, the decline in banking margins could lead managers to accelerate the consumption of the capital buffer, thereby taking more risk rather than holding it back. The possible sudden evolution of the ETD which could be in addition to managerial decisions not in favour of the bank crisis containment provide an opportunity to introduce additional Early Warning systems into the banking system.

1.2.3 Existing warning systems against banking crises

The Early Warning Systems implemented by the macro prudential supervision makes wide use of quantitative techniques applied to economic and financial databases at the macro-level. They are divided into simple indicators, composite indicators and quantitative models. In accordance with Aldasoro's recent publication,³ the indicators, simple and combined, are chosen and computed to be timely, updateable in real time and easy to interpret, which means that they give unambiguous signals and produce few false signals only. Reading the survey by Aldasoro et al. some macroeconomic indicators are the common base to forecast bank crises. Among the main indicators we encounter the total loans, the overall and household debt service ratio and the cross-border claims in a certain economy. As the authors illustrate, the need to have indicators that identify all banking crises in advance, however, contrasts with the number of false signals that they produce. Moreover, the calibration of the 'trigger' levels, i.e. the level at which an intervention occur by the authorities, must be fine-tuned from country to country and there is no guarantee that the absolute level calibrated on a past historical period will have the same predictive value in the future, even in the same country. Composite indicators could better fulfil this function. In general, as recent research has stated, to improve these systems we must move from univariate models to multivariate models such as logit and probit.⁴

³ Iñaki Aldasoro, Claudio Borio, and Mathias Drehmann (2018), 'Early warning indicators of banking crises: Expanding the family', *BIS Quarterly Review*, March, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3139160.

⁴ Lucia Alessi et al. (2015), 'Comparing different early warning systems: Results from a horse race competition among members of the Macro-prudential Research Network', ECB, MPRA Paper No. 62194, 20 February, <https://www.researchgate.net/deref/https%3A%2F%2Fmpra.ub.uni-muenchen.de%2F62194%2F>.

1.3 From indicators to big data and machine learning

The progress in methodologies applicable to the prediction of discrete events (which can be a crisis, or even a pre-crisis situation of a banking system) has recently been enriched by the techniques of artificial intelligence and deep learning. With the progress of these techniques we could move on from data-based warning systems, which involve an a priori choice of the relevant predictive variables toward systems based on the valuation of the crisis formation processes. These methods help to identify, within very big databases, the variables to be used.

Alessi and Detken have recently used the 'Random Forest' model, a classic machine learning model, to classify and predict banking crises.⁵ The model has proven to be effective in identifying, ordering and prioritising numerous indicators that anticipate banking crises, in a much broader range than what we usually choose for simple and composite indicators. We believe that the experience accumulated in these indicators should be appropriately considered by regulators. It is good to say that there is no uniform judgment on the superiority of deep machine learning models, which would not exceed the predictive capacity of multivariate logit models.⁶ However, the latter result is strictly conditioned by the dataset on which the models were tested simultaneously and which, by necessity, was the subject of an a-priori choice, i.e. before comparing the predictivity of models and systems.

The potential superiority of deep machine learning models, on the other hand, is precisely that of achieving superior predictive results by including the choice of variables in the objectives of the predictive model. This seems to us to be the frontier that must now be not only challenged but moved from the territory of macroeconomics to the terrain of micro-banking. The Alessi and Detken model performs the function of identifying in advance a banking crisis within an homogenous territory. The usefulness is clear for macro-prudential supervision: a banking union country on which the Early Warning signal has been triggered by the model may be the subject of precautionary policy measures. This could prevent the crisis from exacerbating and the contagion to other banking union countries. But the border must be moved further forward.

1.3.1 From macro to micro approach

Many banking crises do not have systemic roots, but have fundamentals that are local, sectoral, and corporate specific. In many cases the root

⁵ Lucia Alessi and Carsten Detken (2018), 'Identifying Excessive Credit Growth and Leverage', *Journal of Financial Stability*, 35, 215–225.

⁶ Johannes Beutel, Sophia List, and Gregor von Schweinitz (2019), 'An Evaluation of Early Warning Models for Systemic Banking Crises: Does Machine Learning Improve Predictions?', *Journal of Financial Stability*, 45, 100693.

of the banking crisis is mismanagement, which reveals an operational weakness. Managers who underestimate the emergence of losses, both on investments and loans, do not reduce leverage to protect the equity and thus the sustainability of the banking business, but rather could increase the credit or investment leverage to meet the objective of stabilising dividends. If the investment or credit market environment is characterised by bubbles or a generalised increase of the financial risk, the managers' strategy may fail, while being pursued in the interests of shareholders. The cost of management errors is very high in these cases, because the realisation of the corporate banking crisis can lead to consequences not only to shareholders.

Bank crises, as is well known, may spread through interbank credit channels and undoubtedly may also have an impact on demand and therefore on the local income. It has been seen above that machine learning and/or artificial intelligence models can be useful in identifying potential banking crises. This would decrease the impact of bad management. In addition, shareholders could take prompt action, for example with a capital increase or by demanding the restructuring of the bank. This could result in a great value to the European Banking Union, both by reducing the number of potential crises and by reducing the potential for bank business risks to evolve into sectoral and, later, eventual systemic risks.

1.3.2 A roadmap to a bank crises warning system based on machine learning

This paper cannot draw definite conclusions, but the path of prevention of business and industrial risks in the banking sector could be promising, through Warning systems based on self-learning techniques and calibrated not only on data coming from the financial sector and from aggregated national data, but on micro data from individual banking companies. As is well known, companies already use quantitative and qualitative assessment systems for credit risks, market risks and even operational risks.

Such internal models could provide first level variables for machine learning models and especially dependent variables. Possible variables are:

- PD (Probability of Default);
- EL (Expected Loss);
- ETD (Expected Time to Default);
- VAR (Value at Risk)M and TVAR (Tail Value at Risk).

These and other variables indicating the risk dynamics running an individual banking enterprise should be linked to a wide and big pool of local and business variables potentially anticipating adverse developments of

risk indicators and its acceleration over time. Companies' datasets should track a large number of variables, leaving the selection of those impacting on risk to the running of the machine learning algorithms.

We must also certainly recognise the issue of collecting and sharing datasets useful for creating and calibrating micro-prudential surveillance models that could arise from the application of deep and machine learning. To make this scenario possible, banking companies should make their data available, appropriately anonymised, in order to create unique databases for the estimation and calibration of models. The databases should be large enough to isolate test-sets other than model estimation and calibration sets. The application of the models to the scale of individual banking firms should be introduced through an experimental phase, before being used for real time crisis prevention purposes. If the adoption of the models were voluntary and not mandatory, they could be encouraged.

The results of the models applied at the micro-business level of banks should be targeted differently depending on the intensity of early warning signals. Weak signals should be primarily addressed to the bank management, the internal supervisory bodies and the banking boards. Medium- and especially high-intensity signals should be made explicit to supervisors. It is desirable that internal Earnings Warnings could trigger streams of virtuous actions to prevent non-systemic banking crises, timely reducing the leverage and the risky exposure, protecting shareholder capital and fostering it, including the raising of new capital. A successful system of machine learning warning system of bank crises at the micro level would be superior to the current system, which sometimes late in detecting the crisis, expensive and not always fair in applying resolution mechanisms. These may even result in economic and financial costs for individuals without substantial responsibility for the credit and investment management process.

Comment by Graham Bishop on Section 1

Professor Russo has provided an interesting paper that reviews some of the historical features of banking crises. He has reviewed the characteristics of national banking crises and shows why the Eurozone's Single Supervisory Mechanism (SSM) became necessary after the Great Financial Crash (GFC) of 2007/8 and the 2012 euro crisis.

There were a number of lessons to be learnt from those crises and he correctly highlights the perennial behaviour of bank management in continuing to take credit risk even after the deterioration in economic fundamentals might have suggested a more cautious approach.

For the supervisory community, there is always a tension about the best solution but Professor Russo comes down firmly in favour of steps to avoid resolution of the bank if possible. However, that underlines the

weakness of the bank's stakeholders other than shareholders as it is they alone who have the power to discipline management.

He develops interesting points on the application of artificial intelligence and machine learning – concluding that the natural consequence is that the 'golden age of local banks is probably done'. However, it would be useful to have his analysis of applying machine learning to the current, Covid crisis. Is it actually possible as there is no precedent to be learnt from?

Moreover, for the first time the entire EU banking system has been struck by a single event across all member states rather than the typical historical pattern of a series of national crises that subsequently spill over into other states – requiring an EU-wide regulatory response.

Section 2: Two Partial Solutions to the Imminent Banking Crisis

Graham Bishop

The entire financial system is about to be stressed to a greater extent than anyone ever imagined because the decline in GDP this year could be at least twice the decline during the GFC in 2008/9. The recent Financial Stability Review from the ECB underlines the gravity of the situation.⁷

Because of this unpredictability inherent in the Covid-19 related crisis, we should be cautious in applying existing instruments – such as the Bank Recovery and Resolution Directive (BRRD)⁸ – potentially to large swathes of the entire banking system rather than an occasional individual bank. Moreover, several instruments have been proposed to tackle the current crisis of excessive public debt – to avoid the 'doom loop' linkage between banks and their sovereign government.

Ensuring transparent strength bank of balance sheets is crucial to avoid having to risk resolving a swathe of banks. Creating financial instruments that could balance risk and reward means reviewing the full range of banks' capital instruments. If, particularly in these times, investors are looking for profitable but risky bonds, then they will willingly bear a fair risk rather than transferring it to taxpayers.

⁷ ECB (2020), 'Pandemic increases risks to financial stability', Press Release, Directorate General Communications, 26 May, <https://www.ecb.europa.eu/press/pr/date/2020/html/ecb.pr200526~cbbd04bd5d.en.html>.

⁸ European Parliament (2014), 'Directive of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms', 59/2014/EU, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0059>.

This author continues to believe that a variant of his long-standing proposal for a Temporary Eurobill Fund (TEF) remains politically and financially feasible.⁹ Furthermore, in the short term, the economic crisis linked to the emergency we are experiencing will require the issuance of large additional loans by governments. An interesting opportunity presents itself as the Eurozone gears up for the new Recovery Fund: a pooling (but avoiding mutualisation) of short-term issues in combination with their short-term nature, could prevent moral hazard. Thus, exposure to those who do not keep their promises will be reduced swiftly as short-term debts mature and are not renewed. At the same time, this specific form of pooling would create political solidarity in a time of crisis.

Concrete solutions are proposed that can ensure both 'safe assets' for banks and strengthen financial stability will enhance credibility within jurisdictions and – not least – among citizens.

Introduction

As the economic consequences of the Covid-19 pandemic deepen, the risks of a renewed banking crisis are rising rapidly – despite the measure taken after the GFC to ensure that banks never have to be bailed out by taxpayers again. But banks still remain inextricably linked to the financial health of their home sovereign state: the 'doom loop'.

This paper proposes two measures that could help – but there are no complete, magic solutions:

1. *Bank capital*: This will probably need to be bolstered once the massive economic losses are fully accounted for. In its latest Financial Stability Review, the ECB expects that the capital draw from loans losses – *at the lower bound* – will exceed the value of the newly-permitted €140 billion drawdown on regulatory capital. The estimated loss range runs up to perhaps €500 billion – equivalent to a third of Tier 1 capital. But the history of the 2008 GDP decline suggests the loan losses could be much higher as ECB forecasts are now in a range of 8–12% decline – so at least twice the 2008 severity.

Against this background, equity investors are unlikely to subscribe for new shares in banks – especially without any dividends. However, bond investors have shown a huge appetite for higher yielding instruments and should be encouraged to invest in banks' Additional Tier 1 (AT1) instruments. *But they are only likely to do that if they believe they will be treated fairly.*

⁹ G. Bishop (2018b), 'Temporary Eurobill Fund (TEF): 30 FAQs', Graham Bishop.com, 9 May, <https://www.grahambishop.com/DocumentStore/32049afc-b865-45a8-89a7-da5792dbd dcc.pdf>.

2. *Eurobills*: These can stabilise public finances, encourage a return to sound economic management as soon as possible, and provide a 'safe asset' to diminish the doom loop. Eurobills could form part of the funding package for the Recovery Fund to be launched by the European Commission and also help to create a financial asset that would enhance the international role of the euro.

2.1 Commentary on banking problems

The STOXX index of EU bank shares hit a peak for the year on February 18 of 102 (back up to the same level as 1/3 of a century ago!). A month later the index sank to 49 (before rebounding somewhat) as bank shareholders began to digest the Covid-19 implications – pricing banks at perhaps a third of their published book value.

Why has the stock market been so obviously worried for a decade? The ECB and the European Banking Authority (EBA) have been producing learned reports on the banking sector. These highlight the basic problem clearly: Europe's banks are insufficiently profitable. For the big banks that the ECB supervises, return on the equity that shareholders have paid in is under 6% – *on average*. The ECB now expects it to decline to 2.4% in 2020 and recover only slightly to 3.5% in 2021. But the cost of their capital is in the 8–10% range – an unsustainable gap in the long run.

2.1.1 EU regulatory response to the Great Financial Crash of 2008/9: taxpayers must not pay again

On this score, there was some 'good news' – until Covid-19 struck – as the EU has enacted the BRRD to enable failing banks to be 'resolved' (re-capitalised by someone other than the state, sold to a strong bank or liquidated if all else fails) over a weekend. However, if you do not believe that in a crisis BRRD will function as intended then, implicitly, you believe there is a chain that may break. It seems that not even the regulators believe in the full working of BRRD! The European Parliament recently published a report stating that 'very few European banks could be described as resolvable' if they had to meet the regulator's (currently only draft) standards.

To complete the 'good news' from the past, the third iteration of the Basel rules must soon be put into EU law. Even the EBA thinks that will require about 10% more capital in the banks. They will then be super-safe, but the same question again: where will this capital come from? Will shareholders be willing to buy new shares? The ECB now calculates that *no* major banks are priced above their 'book value'. The weakest banks are priced at just over 10% of its stated book value – while the average hovers around one-third of book value. So a major issue of shares would dilute the value of existing shareholders. Naturally, they may not be keen to agree to such a policy.

Are there other solutions? Even today, bankers are not popular with citizens so it is difficult for politicians to advocate that banks should 'double their profits' – to match US banks 'normal' profitability. But such a rise in profits would solve the problems easily. The EBA rather lamely suggests cutting expenses is 'presumably' the main route to increasing profitability. But there is another simple and quick solution for an individual bank: cut the size of its balance sheet so that the existing capital arithmetically becomes a higher proportion of its assets – as required by the regulator. However, in aggregate that would spell disaster for the already-fragile EU economy as the supply of credit to firms and individuals would be reduced. That might induce another round of 'expected loan losses'; perhaps actually putting banks into losses that reduce their capital. The dreaded vicious spiral could then be under way – ironically, triggered by the well-meaning and individually-sensible policies enacted after the GFC.

Having watched many crises brew up during my decades in the financial markets, there are now some eerie parallels with earlier cycles that are increasingly concerning. Policymakers say they have learnt the lessons and the new rules ensure that the previous crisis cannot be repeated. However, there is a large light that has been flashing ever-stronger orange for a long time: the stock markets are sending a powerful message about the poor health of EU banks. Pre-Covid, the average EU bank stock had hardly risen in 30 years and they had never recovered from the effects of the GFC in 2008/9 (See earlier chart). In sharp contrast, US banks nearly tripled after the GFC – until the recent Covid-19 crash.

Highly profitable banks could generate the required capital quickly by retaining more of their earnings rather than paying it out as dividends. But the ECB's forecast of low – and sharply declining – profitability suggests that will not be possible in the EU. However, it forecasts the average of all banks. Many banks are above these averages, but – by definition – many are below the average and could be a weak link. In any case, this possibility has just been taken away as the regulators exert huge pressure on banks to suspend their dividends entirely.

2.1.2 EU regulatory response to the Covid-19 crisis

The regulatory response so far has been based on action at two levels: relief measures for both capital buffers and provisioning for loan losses. The Pillar 2 Guidance buffers were released immediately and the more relaxed Capital Requirements Directive (CRD) V composition of capital for Pillar 3 Requirements was immediately implemented. Together, this amounted to a release of €140 billion of Common Equity Tier 1 (CET1) capital – about 10% of the total in the banking system. So far so good.

More controversially, banks were permitted to use more flexibility in the treatment of non-performing loans (NPLs) and the 'expected credit

losses' that will have to be reported under the recently implemented International Financial Reporting Standards 9 (IFRS 9). If debtors do not pay due to a public moratorium then that individual debtor should not be treated as a missed payment. Moreover, that categorisation does not click in until a payment is 90 days past due. The new accounting standard (IFRS 9) is now in force so that there should only be a fear of 'reality' by investors: swiftly reported 'expected losses'. However, it is worth noting that the ECB reckons about a third of all losses may be passed on to government via the guarantees the governments have issued.

Even before the Covid-19 related crisis, the EBA reported on risks and vulnerabilities and found an increasing share of banks are expecting a 'deterioration of asset quality' – bureaucratic-speak for rising loan losses. The leading credit-rating agency – Moody's – has downgraded EU banks for exactly this reason. If loan impairments push a bank into loss, then it will be under pressure to raise more capital to compensate, especially once the contingency buffers have been exhausted. But the ECB feels that banks may be reluctant to allow capital levels to sink too far out of fear of stigma.

Where could the new capital come from? Two types of capital are relevant:

1. CET1 – normally ordinary shares – but large scale issues of new shares would involve massive dilution for existing shareholders when new shares would have to be marketed at less than a third of 'book value'. Moreover, the strong pressure by regulators to suspend dividends makes new shares even less attractive to investors.
2. However, a modest portion of Tier 1 capital can be supplied by AT1 capital instruments sold to professional bond investors – at the *right* price – as I will explain below.

The problem of any perceived relaxation of loan-loss accounting standards

Investors already seem to have had major concerns about the genuine quality of bank assets in the period before Covid-19. The halving in value of EU bank shares in the month since the pandemic started suggests a very sharp rise in these concerns. If the authorities now connive to reduce the credibility of stated assets even further, then we may have started slipping down a slope where there may only be one buyer of new bank equity if (or more accurately, when) it is needed. The risk of taxpayer bail-outs – *de facto* nationalisation – may return very quickly (despite all the legislation after the GFC) unless bond investors are willing to buy AT1 'capital instruments'.

2.1.3 Potential impact of loan losses

The problem of losses could be huge. The major US banks have already reported their first quarter earnings and reported \$24.1 billion in loss provisions – an increase of \$18.7 billion from 1Q 2019. These provisions were 0.6% of their loan portfolios, but net earnings were still \$10.1 billion. How bad could it get? As an example, JP Morgan took an extra \$6.9 billion in provisions, but The Economist reckoned the bank could finish up with \$45 billion of loan losses – based on the 2007/9 experience.

The *Financial Times* recently published an article from the US official who oversaw the Troubled Asset Relief Programme (TARP) in 2008. He pointed out that ‘in 2008, US taxpayers injected about \$200bn of capital to strengthen banks. Raising that amount from private investors today, as a strong, preventive measure, would ensure that large banks can support the economy over a broad range of virus scenarios’. Shareholders might look more kindly at such calls when the top four banks are selling at around 80% of book value – rather than the 40% average of large EU banks.

Most EU banks will report Q1 earnings during May and should begin to reflect the expected shrinkage of GDP in 2020: recently estimated by the European Commission at nearly 8%, with risks biased to the downside and an incomplete recovery expected in 2021. Reports so far suggest average earnings have roughly halved – even after reflecting the more relaxed loss provisioning at this stage. As the GDP decline in 2020 is expected to be roughly twice that in 2009, incurred losses may turn out to be dramatic. The ECB now expects profitability in 2020 overall to be less than half that of 2019.

The ECB’s Financial Stability Report suggests (see its Chart 5.2) that the *lower bound* (author’s emphasis) of the potential loan losses may create a *minimum* draw on capital of just under €200 billion – so somewhat above the value of the newly-permitted €140 billion drawdown on regulatory capital. The estimated loss range runs up to perhaps €500 billion – equivalent to a third of total Tier 1 capital.

The history of the GFC suggests that could be a serious underestimate of potential losses. Vol 16.1 of the European Commission’s Quarterly Report on the Euro Area ([link](#)) provides a useful chart showing the development of NPL ratios versus GDP. The ratio rose from under 2% to about 8% – generating a near-€1 trillion pile of NPLs at the peak in 2014. But the GDP decline was ‘only’ 4.5% versus the 8–12% range now expected by ECB for this year. *Should we be expecting NPLs to approach €2 trillion after the ECB’s estimated lag of perhaps three years? That would substantially exceed the entire Tier 1 capital stock of the euro area banking system.* However, the ECB estimates that government guarantees may mitigate perhaps a third of these losses – substantially reducing the strain on the banking system but transferring it to public finances instead.

Jan Schilbach, a researcher at Deutsche Bank, recently published a paper at SUERF that reviewed many of the issues facing the largest EU banks.¹⁰ He made several powerful points:

- Loan loss provisions last year were already up 18%. In the GFC, they rose to 4.3 times pre-crisis levels.
- Profitability is weak – about half the level of US banks. In the GFC, profits fell from €131 billion to a €53 billion loss. But net income has only recovered to €74 billion for the largest institutions.
- The scenario that is unfolding is likely to be more severe than the latest EBA ‘adverse’ stress test of 2018
- ‘*The aggregate capital ratio could plummet into single digits* [this author’s emphasis]. On the other hand, the stress test was based on a static balance sheet and did not take into account banks’ mitigating measures such as de-risking and raising/injecting capital from private or public sources . . . After the crisis, there should be enough time to rebuild capital positions.’

His optimism is admirable but ‘de-risking’ balance sheets is a polite term for cutting lending – the last thing needed by public policy in these circumstances. *Moreover, we come back to the core problem of who is likely to be willing to inject new equity capital at this stage – other than taxpayers? However, as explained later, some help could come from bond investors via AT1 capital instruments.*

2.2 Safe assets: Sovereign Bond-Backed Securities versus Corona bonds versus Eurobills

The need for ‘safe assets’ has been clear for a long time and was analysed by the Expert Group on DRF and Eurobills in 2014 and again by the ESRB in 2018.¹¹ This author was a member of that Expert Group and presented

¹⁰ “Société Universitaire Européenne de Recherches Financières”, original name of The European and Money and Finance Forum, a non-profit association established on 25 November 1963 in Louveciennes, France [...] focusing on the analysis, discussion and understanding of financial markets and institutions, the monetary economy, the conduct of regulation, supervision and monetary policy, and related issues’ (<https://www.suerf.org/about-suerf>). See J. Schilbach (2020), ‘European banks in the corona crisis’, SUERF Policy Note, Issue no. 152, April, <https://www.suerf.org/policynotes/11909/european-banks-in-the-corona-crisis/html>.

¹¹ Selected Extracts from DRF/Eurobills Expert Group Conclusions (for the full report of the Expert Group see http://ec.europa.eu/economy_finance/articles/governance/2014-03-31-redemption_fund_and_eurobills_en.htm). Possible objectives of schemes of joint issuance of debt

- The eurobills idea has been put forward with the primary objectives of stabilising government debt markets by reducing Member States’ rollover risk and of fostering the

his plan for a Temporary Eurobill Fund that would be a 'safe asset' as well as providing several other policy benefits.

2.2.1 Sovereign Bond-Backed Securities

In recent years, there have been many proposals for 'European' financial assets that have been conceived from the 'top down' to meet a perceived need to bolster the financial stability of the Eurozone. These plans include my own proposal for a Temporary Eurobill Fund, European Safe Bonds/Sovereign Bond-Backed Securities (SBBS);¹² various shades of coloured bonds and debt redemption funds. The European Commission actually published a proposal for SBBS but it has made no progress. The key critique was made by the European Sovereign Debt Managers (ESDM) Committee and I published a comparison of their criticism of SBBS, and why my TEF proposal avoided these problems.¹³

2.2.2 Corona bonds

In a fast-changing situation, the European Council has agreed to the proposal from their finance ministers in Eurogroup for a €500 billion package of aid from the ESM, EIB and the new SURE unemployment fund. But this does *not* include any form of 'corona bond' as many protagonists are calling for mutual guarantees. However, ESM President Regling has already called for a further €500 billion of funding and this appears to be politically feasible after the joint interventions of Chancellor Merkel and President Macron.

The European Parliament may have found the right form of words by calling for a 'massive' recovery plan financed by an increased EU budget, existing EU funds and financial instruments, and 'recovery bonds' guaranteed by the EU budget but carefully ruling out the mutualisation of past debt. The Merkel/Macron proposal is that the European Commission

integration of financial markets through the creation of a safe and liquid asset. Such an asset would also contribute to reversing the trend towards market fragmentation and support monetary policy transmission.

- Introduction of any scheme of joint issuance could only be one step contributing to financial market integration, amongst other possibly needed steps, including those aiming at structurally strengthening Europe's banking sector. It should also be noted that no asset is completely risk-free. Creating a jointly issued government security that will be regarded as a safe asset for investors will thus imply some residual risk to governments participating in joint issuance.

¹² SBBS are securities backed by a diversified portfolio of euro area central government bonds, proposed by the Commission in 2018, based on the European Systemic Risk Board (ESRB) task force's studies from 2016 (https://ec.europa.eu/info/business-economy-euro/banking-and-finance/banking-union/sovereign-bond-backed-securities-sbbs_en).

¹³ G. Bishop (2018a), 'Commission to propose SBBS framework: But Temporary Eurobill Fund is very different – with wider benefits', Graham Bishop.com, 23 March, https://www.grahambishop.com/ViewArticle.aspx?ID=37872&CAT_ID=438&Search=.

could borrow in its own name – secured by a pledge of repayment from the EU's budget.

2.2.3 Eurobills

My proposal for a Temporary Eurobill Fund has always had three core objectives:

- Re-enforce financial stability.
- Provide: a 'safe asset' for banks to reduce the 'doom loop' with their government; a 'Risk Free Rate' yield curve to support CMU; a simple savings vehicle for citizens.
- Build trust amongst states, institutions and citizens to assist a European *demos*

The clear principles are also designed to foster progress in deepening EMU:

- No mutualisation of debts.
- Strengthen the post-GFC crisis economic governance system.
- A proper role for market discipline.
- Financial solidarity with states that respect the rules yet lose market access.

The Covid-19 crisis is only likely to re-enforce the need to achieve these objectives in a world of much larger public debts where there is an increased risk of financial instability for the Eurozone as a whole flowing from the interaction of both enlarged public debts and weakened banks. The doom loop has *not* been removed by policy actions since the GFC – despite the good intentions.

However, it feels extraordinary that until Covid-19 struck, there was a looming practical difficulty that would be faced by Eurozone debt management offices (DMOs): lower deficits and lengthening of debt portfolio maturities inevitably lead to more modest short-term debt issuance of bills. The natural result for many DMOs individually would have been lower liquidity and thus higher costs. But there would also have been a macro cost for the Eurozone: less attractive assets for global reserve managers and sovereign wealth funds, quite apart from ordinary institutional investors and banks. This detracts from the global role of the euro and the current proposals for funding Covid aid have not been designed to rectify this problem as a by-product. This major goal of the EU may not be the top priority in the heat of the crisis but '*never let a good crisis go to waste*'!

2.2.4 Structural problem facing Euro-denominated bonds (detailed technical comments)

(Note: *data as of mid-2019* but the picture will change rapidly as the huge Covid-19 deficits are funded in the months ahead)

- In aggregate, they are the second largest sector, at 24% of the near €80 trillion of bonds in dollars, euro, sterling and yen. US dollar bonds account for 53%. But the *currency segments* of the global bond markets have very different structures e.g.: In the US, ‘mortgage-related’ bonds are 62% of the size of the US treasury market itself. By contrast, European residential mortgages are largely on private banks’ balance sheets – hence the disproportionately large share of banks in the EU’s financial system.
- Non-financial corporations: dollar bonds outstanding are four times the size of euro bonds – reflecting the dollar corporate bond market’s role as the principal supplier of non-bank credit corporations world-wide. The big question for capital markets union (CMU) is whether the euro bond markets can become an equivalent credit supplier – first for the euro area itself and then perhaps later for those companies who trade with one of the world’s major trading blocs.
- General government: The striking feature is the relative scale of Japan’s government bond market – at 74% of total yen bonds versus less than 50% in the other regions.
- Maturity structures are strikingly different: the euro area 1–3 year index bucket is just 19% of the total versus the 40% of North America. However, it is the enormous liquidity of the shorter-term US Treasury markets that gives the US dollar a pivotal role as the global reserve currency.

The contrast with the US Treasury’s bill market is even starker: on Bloomberg’s definitions, the US T-Bill market is €2,189 billion outstanding. This is more than five times the aggregate size of the corresponding euro-denominated market and nearly 100 times the size of Germany’s, who acts as European benchmark. When global investors are looking for a highly-liquid short-term reserve asset of high quality, the relative size of the markets may well steer them away from euro-denominated assets to dollar assets – underlining the current reserve currency attractions of the US dollar. A suitable ‘European safe asset’ market could provide something of a counterweight.

2.2.5 A solution that will be even easier as Covid-19 reshapes public debt

The combination of lengthening maturity and declining deficits in the euro area has led to a major shrinkage in the volume of short-term paper outstanding. ECB reports that the under-one year sector of the general government debt has declined by nearly a quarter, from 9.8%

of GDP in 2014 to 7.5 % in 2018. This rate of decline is nearly four times the rate of reduction in the over-one year sector – indicating an entirely understandable, debt management decision when interest rates are at a record low. However, there are some logical consequences: Bloomberg reports that ‘central government bills’ outstanding are now only €410 billion – 3.5% of GDP. Moreover, France and Italy account for more than half this total. Including Spain, these three issuers account for nearly three-quarters of the amounts outstanding. Surprisingly, Germany is only the fifth largest issuer – accounting for just 6%.

An instrument such as the *Temporary Eurobill Fund*,¹⁴ based on senior loans from the common issuer to the Member States, could be launched initially by a ‘coalition of the willing’ Member States – rather than the whole of the euro area. A key step to increase the size to a globally significant scale could be to encourage participants to offer a conversion of national bonds into the common bills once their bonds’ remaining life shortens to match that of the longest bills. As an example – *based on mid-2019 data* – just the three largest bill issuers would then increase the TEF bills due for redemption by end-2020 from €0.3 trillion to €1.2 trillion. If the whole euro area participated, the bills outstanding would go from €0.4 trillion to €1.7 trillion – a globally significant market that should enhance the international role of the euro.

The euro area’s struggle to develop a robust governance structure flows inexorably from its need to control the ‘moral hazard’ that is inherent in the creation of an economic and monetary union. During the original design process, few observers thought that the government of a Member State would ever actually behave in the way that Greek governments have now done repeatedly. The nightmare has turned into reality – and it cannot be allowed to happen again as that might be on a scale to put the very existence of the euro in doubt. Chancellor Merkel stated very plainly ahead of the March 2019 European Council, ‘If the euro fails, Europe fails.’ The euro is far more than just a currency. Alongside the European institutions, it is ‘the strongest expression of our will to bring the people of Europe together in friendship and in peace’.

What is this ‘moral hazard’? The US economist Paul Krugman defined it rather pithily as ‘any situation in which one person makes the decision about how much risk to take while someone else bears the cost if things go badly’. The Greek situation now epitomises this dilemma as the euro area wonders how much of its total public sector exposure – around €250 billion – will be at risk if ‘things go badly’.

Beyond the direct benefits to financial integration and stability, a properly designed Eurobill system can provide a concrete mechanism state-by-state:

¹⁴ Bishop, ‘Commission to propose SBBS framework’.

- to reward good economic performance;
- penalise lack of effort;
- operate with the grain of the markets to graduate the carrot and stick incentives for each state;
- minimise the eventual costs if a state insists on pursuing economic policies that are likely to end ‘badly’;

As Eurozone debt managers’ gear up to fund huge additional borrowings, they will look across the maturity spectrum. This should be the time to look afresh at pooling short term issuance as the risk of moral hazard by any participant is greatly reduced by the short-term nature of the debt. If a state does not fulfil its promises, its access will be reduced naturally as the debts mature and are not renewed. *But the pooling is a powerful political signal of solidarity at this moment of crisis. Should the European Commission take the lead when (still, if) it borrows in its own name?*

2.3 Bank capital (detailed technical comments)

The EBA has recently pointed out the massive shortfall in minimum requirement for own funds and eligible liabilities (MREL) issuance of these banks – even before Covid. Some banks face a daunting task in raising an additional €178 bn of MREL capital (EBA Report Feb 2020¹⁵), quite apart from rolling over maturing bonds. The thicker the AT1 ‘buffer’, the less likely is resolution – thereby reducing the cost of other MREL bail-in-able capital and (in the extreme) even its availability.

As already discussed, most EU banks probably cannot raise equity. This is indeed a major problem, but it could be minimised by encouraging these banks to boost their capital by issuing AT1 bonds. AT1 issuance must be equitable to investors, issuers and society so contribute to solving the problems identified by the equity markets so vividly in the last month – quite apart from the last few years. Investors providing this patient, long-term (perhaps permanent) capital should expect to be treated fairly, and certainly equitably with other stakeholders in the bank. If they feel this is not the case, they will not supply it so banks in need of capital will have to turn to the only other source – taxpayers.

I recall my earlier comments about the type of investor who might buy these AT1 instruments. They must be professional investors with a high-risk appetite and a diversified portfolio so that they themselves will not be de-stabilised by any losses. Under no circumstances should retail

¹⁵ European Banking Authority (2020), ‘EBA shows banks’ progress in planning for failure but encourages them to issue eligible debt instruments’, News & press, 17 February, <https://eba.europa.eu/eba-shows-banks%E2%80%99-progress-planning-failure-encourages-them-is-sue-eligible-debt-instruments>.

investors be allowed to take an uninformed and concentrated gamble by buying AT1 issued for example by their 'own' bank.

Society has expressed its view recently by enacting the Capital Requirements Regulation 2 (CRR2) legislation so any developments must be consistent with the letter and spirit. *The 'objectives' of the relevant provisions are clearly laid down in the guidance in the Preamble: 'essential . . . the instruments have a high loss absorption capacity' and that they 'should not be subject to set-off or netting arrangements which would undermine their loss absorption capacity in resolution'.*

Could this open the way to novel AT1 instruments at this critical juncture? Now is surely the time for the regulatory community to take full note of ECOFIN's 16 April statement 'We welcome the recent statements by the European Commission, the European Central Bank, the Single Resolution Board, the European Banking Authority and the European Securities Markets Authority on the application of regulatory and accounting requirements for financial institutions in the current exceptional circumstances.'

Should the flexibility stop with 'Finally, we welcome supervisory flexibility expressed by European supervisory authorities regarding deadlines of supervisory reporting and public disclosure'? The 'recent statements' called for *maximum use of any flexibility* in existing legislative texts, rather than *maximum obstruction of use* of the precise wording recently enacted by the co-legislators.

Why do banks not make maximum use already of AT1 opportunities to raise core capital – given that legislators have gone to substantial trouble to create the rules for the instrument? Explanations include:

- **Regulators** seem to discourage issues as they may feel that political pressure from retail investors for a bail-out means that the loss absorption requirement cannot be fulfilled. The low levels of regulatory capital that trigger the loss-absorption characteristic mean that the bank will – in practice – already be a 'gone concern' so AT1 capital may not aid the bank's recovery as a 'going concern'
- **Issuers** may be concerned by the relatively high coupon now required to induce investors to purchase. Their choice is issuing equity to taxpayers that massively dilutes shareholders' stake in the business permanently OR an AT1 with a high coupon now but with a call option in five years (the minimum permitted by CRR2) once the economies (and thus the bank) have recovered so that more normal terms can be obtained for a re-financing.
- **Investors** do not feel they are being treated fairly as the *high coupon is non-cumulative* – unlike other *discretionary* payments made by banks such as dividend or bonuses to the staff. Currently, the coupon for a reasonable bank may be around 5% (versus negative yields for many EU governments). So a difficult year for a bank may mean a

dividend cut/suspension that can be made up later, but the AT1 holder loses 5% permanently. Yet equity holders are meant to be shouldering the greater risk! AT1 may be trading currently at about 5% 'yields to maturity' where maturity is actually never as these instruments are perpetual – unless called. This feature makes them permanent capital unlike a normal bond. But the 'yields to call' are in the 7–9% range. *If investors became confident that a very high yields could be earned even for just say five years, then capital inflows could be massive.*

The purpose of non-cumulative AT1 coupons

CRD IV Article 141 sets out the 'capital conservation measures' that impose restrictions on the Maximum Distributable Amount (MDA) that can be distributed if a bank's CET1 levels were about to fall below the combined buffer requirement if the distributions were made.

The key unfairness for AT1 holders is that (a) dividends and (b) discretionary bonus/pension etc. payments are *not* contractual commitments so a decision not to act does not create the clear need for an accounting provision for a continuing liability. As these are discretionary payments, the bank is at liberty to make special payments when health is restored. Effectively, payments to these stakeholders can be cumulative.

However, the rule for AT1 coupons is entirely different. If a formal contractual obligation to pay a coupon were simply postponed *and made cumulative*, then the accounting profit for calculating the MDA would be unchanged. Only cash flows would be reduced. That would defeat the entire purpose of the MDA calculation.

Comment by Giuseppe Russo on Section 2

Graham Bishop's proposals to stabilise the Monetary Union and the European Banking Union focuses on two aspects: the first concerns the refinancing of public debt in the near-term part, as an alternative to Eurobonds, the second focuses on the problem of bank solvency.

First, the proposal for a Temporary Euro-Bill Fund (TEF) seems attractive because it is a market proposal; because, secondly, it is a proposal that does not lead to a total mutualisation of national debts with risk sharing and moral hazard problems. Furthermore, thirdly, it is a proposal that does not create additional debt but contributes in every respect to stabilising market access and levelling out the cost of this access for all debt issues with a residual maturity of less than two years.

A TEF is highly advisable for its role in creating European solidarity not in financing but in equalising market access in the various European

countries, and it is also a very good proposal because it is easily achievable and also because it is able to create a new and highly attractive financial instrument for banks treasurers, companies financial officers, insurers and fund managers oriented towards safe short to medium-term investments.

I hope that the European institutions will follow this suggestion, the essentials of which are well outlined in Bishop's paper and which perhaps requires a little more detail on the legal side.

With respect to the second aspect, namely the capitalisation of banks when a crisis occurs, it is well known that in this condition a new public equity offer launched on the market is a difficult move from the banking side. This is because the stock market prices of bank shares are listed below than their respective book values and any new would mean a strong dilution of existing shareholders.

Bishop's solution is probably effective, and it is a solution that allows existing loans to be maintained. He proposes to act on the attractiveness for the market of alternative capitalisation instruments (AT1). These hybrid instruments (perpetual and callable) support banks capital but are not very attractive to investors because of their issuance clauses, which basically prevent the return on these instruments from taking advantage of the market phases in which they are expected to rise. But this would be resolved by changing the issuance clauses, for example by providing for the cumulation of coupons when suspended due to adverse profit and loss numbers (they cannot be cumulated, according to today's rules). Cumulating the coupons could make these instruments attractive from the investor side and allow a real alternative to capital increases that punish shareholders.

This proposal could be completed with a review of fund managers' views and with an analysis of the sustainability of such cumulation, which could also result in the erosion of future dividends. However, Bishop's suggestion is acceptable and brilliant, and I hope it is taken into consideration by European banking authorities and managers.

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Discussion Paper

Post-Pandemic Legislatures: Is Real Democracy Possible with Virtual Parliaments?

Olivier Rozenberg¹

Abstract

Parliamentary democracy is an issue where it is easy to be pessimistic. Analysts have put emphasis on the fact that ‘2 billion people have parliaments shut or limited by Covid-19’ as of April 2020.² Many deplore those leaders from Malaysia to Hungary who have taken advantage of the health crisis to obtain new and on occasion unlimited powers.³ This contribution does not share such pessimistic views. Globally, and especially within the European Union, legislatures have proved both their resilience and adaptation capacity in the time of Covid-19. Yet the use of technological devices also brings into question the very nature of parliamentarism as this raises both opportunities and concerns regarding the concrete functioning of legislatures.

1.1 Challenging the parliamentary backlash thesis

Covid-19 has not killed parliaments in countries where these institutions were present, ancient, and functioning. The point has been established by a Franco-Israeli team of scholars who compared 160 countries in the world.⁴ They stated that there have been successful attempts

¹ Olivier Rozenberg, Associate Professor, Sciences Po Paris.

² Claire Provost, Nandini Archer, and Lydia Namubiru (2020), ‘Alarm as 2 billion people have parliaments shut or limited by COVID-19’, *openDemocracy* 50.50, 8 April, <https://www.opendemocracy.net/en/5050/alarm-two-billion-people-have-parliaments-suspended-or-limited-covid-19/>.

³ Yvonne Tew (2020), ‘Constitutionalism in the time of Corona’, *I-CONnect* (blog of the International Journal of Constitutional Law), 10 June, <http://www.iconnectblog.com/2020/06/constitutionalism-in-the-time-of-corona/>.

⁴ Team composed of Ittai Bar-Siman-Tov, Cyril Benoît, Gal Ifergane, Asaf Levanon, Israel Waismel-Manor and myself. See: Ittai Bar-Siman-Tov (2020), ‘Parliamentary activity and legislative oversight during the Coronavirus pandemic. A comparative overview’, Bar Ilan University Faculty of Law Research Paper No. 20–06, 22 March, <https://ssrn.com/abstract=3566948>.

from authoritarian leaders to take the opportunity of the pandemic to close or limit their legislatures. Yet, this is observed mainly in countries with an intermediate level of democratic development. In established liberal democracies, legislatures generally remained open during the peak of Covid-19 – using specific procedures however. If one takes for instance the 20 most developed democracies according to the Freedom House index,⁵ parliaments have been closed in only two (the UK and Switzerland) and been almost closed in one (New Zealand).

There are still some exceptions to this. In Hungary, Prime Minister Viktor Orbán obtained special prerogatives with no sunset provision, moving that country further away from Europe's liberal democracies. The same can be said of Serbia or North Macedonia. While these cases are not anecdotal, this list of countries suggests that such regimes were already suffering from democratic backlash. Authoritarian leaders were already there, and they simply took hold of the pandemic opportunity to strengthen their positions.

It should also be recalled that public gatherings have been especially dangerous in the time of Covid-19. Legislatures have closed, half-closed, or turned into virtual forums not because they are legislatures but because they are supposed to gather human beings. Some parliaments, such as the French National Assembly or the Iranian Parliament, were even identified as pandemic clusters during the crisis.

Despite the restrictive shutdown situation, many parliaments in Europe and elsewhere continued to perform their two main tasks: law-making and oversight.⁶ Bills were passed to grant governments extraordinary powers or adapt financial bills. In many cases, these were discussed and amended despite the exceptional circumstances and pressure to use fast-track procedures.⁷ MPs also developed all kinds of oversight tools such as parliamentary questions or investigative committees. It is likely that governments were more influential and less controlled than they would be in ordinary times. Yet the times were extraordinary. Classical authors such as the French revolutionaries Mirabeau and Sieyès suggest that during periods of extreme crisis, the balance of power between government and parliament should be modified. A new kind of cooperation, called 'concurrent powers' (*le concours des pouvoirs*), should be pragmatically found in order to conciliate the efficiency of ministers and

⁵ <https://freedomhouse.org/>.

⁶ We follow here the conclusions of the comparative survey by Tom Ginsburg and Mila Versteeg (2020), 'Binding the unbound executive: Checks and balances in times of pandemic', University of Virginia School of Law, Public Law and Legal Theory Research Paper No. 2020–52.

⁷ For instance in Canada: Jonathan Malloy (2020), 'The Adaptation of Parliament's Multiple Roles to COVID-19', *Canadian Journal of Political Science*, 53(2), 305–309.

the deliberation of parliamentarians.⁸ In contrast to the Montesquieuan framework based on the balance of powers, concurrent powers organise a subtle and complex division of tasks between institutions depending on the procedural steps. This wartime theoretical framework de facto applied during the special weeks of spring 2020.

Furthermore, the deepness of the crisis also recalls the incomparable virtues of parliamentarism. The severity of the ongoing emergency situation calls not only for decisions to be made but also for places to be defined for discussing major choices regarding civilisation.

Furthermore, the deepness of the crisis also recalls the incomparable virtues of parliamentarism. The severity of the ongoing emergency situation calls not only for decisions to be made but also for places to be defined for discussing major choices regarding civilisation.⁹ On some occasions, legislatures have acted as symbolic loci in staging national unity. These emotional arenas serve to show the nation's sorrow for the victims and gratitude towards 'essential' workers, especially in hospitals.¹⁰ In other cases, a minimal but resilient pluralism has enabled contradicting the official government discourse as well as scientific and medical views. Legislative debates indeed bring with them pro et contra views that contribute to the drastic relativising of any official truth, be it political or scientific in nature.¹¹ There are reasons to believe that this is good not only for the quality of public debate but also, at the end of the day, for the governing capacity of authorities. In France, for instance, the government decided to organise a parliamentary debate and non-binding vote on a smartphone application for digitally tracing the virus on 27 May 2020.¹² The legitimisation of parliament, as well as the fact that such debates force each party to take a position, seemed to safeguard a highly contested governmental team.

To summarise, there are good reasons to praise the adaptive capacity of parliaments and the virtues of parliamentarism in times of severe crisis. Yet it bears mentioning that the quality of parliamentary representation has undoubtedly suffered due to the coronavirus: for example, disadvantaged MPs who were elected remotely vis-à-vis the parliament building or female MPs who were trapped by domestic tasks.¹³

⁸ Félix Blanc (2017), 'Le concours des pouvoirs aux origines du régime constitutionnel en France et aux États-Unis', *Jus Politicum*, (18).

⁹ Jonathan Murphy (2020), 'Parliaments and Crisis: Challenges and Innovations', INTER PARES, Parliamentary Primer No. 1, 51.

¹⁰ S. Fineman (1993), 'Organizations as Emotional Arenas', in S. Fineman (ed.), *Emotion in Organizations* (London: Sage), pp. 9–35.

¹¹ Kari Palonen (2016), *From Oratory to Debate. Parliamentarisation of Deliberative Rhetoric in Westminster* (Baden-Baden: Nomos).

¹² 'Coronavirus: après l'Assemblée, le Sénat valide l'application StopCovid', *Le Monde*, May 2020.

¹³ Inter-Parliamentary Union (2020), 'Gender and COVID-19: A guidance note for parliaments', <https://www.ipu.org/gender-and-covid-19-guidance-note-parliaments>.

1.2 Assessing the hypothesis of a virtual parliament

While legislatures stood firm – except when democracy was already under stress – many have adopted new ways to debate and make decisions. Electronic devices enable MPs to act from a distance, either through fully virtual events or partially virtual ones. The digitisation of legislatures had already started before Covid-19, but the virus greatly accelerated it. For instance, the Welsh Senedd now holds fully virtual meetings, while Chile has changed its constitution to permit virtual parliamentary decision-making. The question remains whether this process is compatible with the very nature of modern parliaments. Legislatures have indeed been thought of as physical places where human beings sit, talk, and decide together. Thinkers like Jeremy Bentham describe in detail how such gatherings should take place and the way parliamentary rooms should be organised. Is it possible for legislatures to become virtual without losing their soul? An initial response consists of comparing the two main types of parliamentary activity in terms of their virtual functioning: legislation and oversight. The lack of physical meetings appears to be seriously detrimental to parliamentary influence over law-making.¹⁴ A minister may be swayed more heavily when she physically enters the parliament building – a place where she is, in a way, isolated from her advisors and services. In addition, the possibility for backbenchers to conduct informal discussions in lobbies, the glances exchanged by participants during committee meetings, or the involuntary body language of orators are all subtle elements which disappear behind a computer screen. This lack of informal politics is especially detrimental to cross-party cooperation, which is a true source of parliamentary influence.¹⁵ When MPs from different parties are not forced to sit in the same room week in and week out, they miss occasions to get to know each other that cannot be replaced by virtual (but more visible) so-called Facebook friendships.

Oversight, by contrast, may be practised from a distance. It is indeed a much more flexible type of activity, covering a diversity of collective as well as individual tools (like questions). Accounts of the corona period in France have actually shown that the parliament compensated for the loss of legislative prerogatives through investing in elaborated and renewed forms of oversight.¹⁶ The pressure placed on ministers' shoulders may be

¹⁴ This does not mean that a virtual legislature would not be influential at all, as much of the influence operates through informal activities of frontbenchers, and especially rapporteurs, that could continue, virtually or not, with a virtual parliament. I just think that virtual legislatures are less influential.

¹⁵ Meg Russell and Daniel Gover (2017), *Legislation at Westminster. Parliamentary Actors and Influence in the Making of British Law* (Oxford: Oxford University Press).

¹⁶ Priscilla Jensei-Monge and Audrey de Montis (2020), 'La lutte contre la crise sanitaire provoquée par le Covid-19: un repositionnement stratégique du Parlement au sein

more limited when they are questioned through digital devices than in plenary during question time. Still, the accountability process is able to function: ministers have to justify publicly what they have done and make commitments for the future.

A secondary response considers whether the theoretical virtues of parliamentarism may still operate in the virtual word. Four points may be distinguished here.¹⁷ In the first place, debates in parliament, whatever their ends may be (law-making or oversight), are supposed to produce opposing views on a given topic – something essential for testing the intrinsic quality of the majority position and feeding public debate. This pro et contra feature can still emerge online and behind screens. Yet, its virtual aspect will probably lead to fewer colourful debates – knowing that colourful debates not only put on a nice show but are also a way to generate a plurality of viewpoints. The unforeseen development of certain exchanges, their rhetorical effects, the emotional range of some claims are more likely when orators are physically present and all contribute to maximising the pro et contra aspects of the debates. There are arguably different styles of legislatures; ‘working parliaments’ should be less impacted than ‘talking parliaments’ in the virtual world. In the end, though, the generalisation of Zoom meetings could turn all European parliaments into the European Parliament: a quiet place where rhetoric, jokes, and emotions are put aside most of the time. What is less embedded into the political culture is the fact that any parliamentary debate should be given some fluidity, especially when amendments are being discussed. The president usually enjoys some agency over the sitting conduct when a debate needs to be slowed down or sped up, depending on its internal dynamics. Again, this can be realised behind a screen, but it is definitely more difficult to do.

Additionally, parliamentary debates can be understood as devices aimed at motivating and controlling the MPs themselves.¹⁸ Against the threat of free-riding, debates serve as incentives for MPs to participate in parliamentary life. They may also strengthen party cohesion through the management of orators. The observations made after a few weeks of virtual parliaments are more negative in this respect. The virtuality of these meetings has further fuelled MPs’ great propensity to delegate their work and conduct several activities simultaneously. A major selling

des institutions’, *Confluence des droits: La revue*, 22 July, <https://confluencedesdroits-larevue.com/?p=1275>.

¹⁷ Olivier Rozenberg (2018), ‘Why Should Parliaments Continue to Debate? The Intertwined Virtues of Parliamentary Debates’, *Redescriptions*, 21(2), 148–166. See also A. Finlayson (2017), ‘What Is the Point of Parliamentary Debate? Deliberation, Oratory, Opposition and Spectacle in the British House of Commons’, *Redescriptions*, 20(1), 11–31.

¹⁸ S.O. Proksch and J.B. Slapin (2015), *The Politics of Parliamentary Debate* (Cambridge: Cambridge University Press).

point for physical meetings is that, by definition, MPs themselves must be present and it may be publicly known if that is not the case. In the Zoom world, there is continuous uncertainty not only over MPs' level of attention but also their very identity: who is really behind the screen? The MP or her assistants? This constitutes a severe threat, as it enables more free-riding among MPs. It is also an issue regarding democratic accountability. Transparency is central to the functioning of legislatures and in order for voters to judge their representatives.¹⁹ The current situation runs the risk of making this transparency requirement purely formal, given the veil of ignorance permitted by electronic devices. In addition, many MPs who have a taste for making speeches may be frustrated by virtual exchanges. With semi-virtual events, participants may also suffer from a sort of rhetorical inequality among themselves. Those who are there in person can be subtler, adjust their tone to the visible reception of their speech, play with vocal cues, use their body language, or even exceed their time by a bit. Those who are there remotely are merely speaking to a computer.

Furthermore, debates are also aimed at legitimating parliamentary democracy. The fact that representatives are debating, not just voting, develops argumentative claims that feed public debate and, beyond that, create a show for voters to identify with. The rather conservative view that digital meetings reduce the legitimising power of legislatures will not be developed here. Though it is true that parliamentary decorum is severely limited via Zoom, Skype, or Cisco, it should still be admitted that parliaments' legitimising power in most contemporary democracies was already under threat for reasons independent from the use of e-devices. The deep trust deficit of legislatures, parties, and politicians calls for investigating the opportunities offered by new communication tools which could bring voters and representatives closer together. Virtual meetings are not the only solution for developing public engagement with parliaments; they may not even be the main ones.²⁰ Still, they obviously do offer new possibilities. The unity of locus for non-virtual parliaments efficiently guaranteed the monopoly of elected representatives over debates. This topography served as the MPs' protection against 'strangers', as visitors are referred to in Westminster. Those allowed to sit down are the same ones who are allowed to speak. With virtual parliaments, this confusion is removed and 'strangers' can more easily participate in (partially) parliamentary debates. We can imagine, for instance, NGOs, civil society representatives participating in virtual meetings with MPs at early stages of the legislative procedure. This

¹⁹ F. Guizot (2002) [1851], *The History of the Origins of Representative Government in Europe* (Carmel, IN: Liberty Fund).

²⁰ A. Walker, N. Jurczak, C. Bochel, and C. Leston-Bandeira (2019), 'How Public Engagement Became a Core Part of the House of Commons Select Committees', *Parliamentary Affairs*, 72(4), 965–986.

possibility should obviously be regulated but, considering the worrying removal of legislatures away from the people, this is rather good news for democracy. There are no reasons why parliaments should be the last places where the dividing line between politics and society can be strictly maintained. Finally, parliamentary debates ultimately serve to restrict the authoritarian nature of power. They force ministers to listen to criticism and respond to it. They transform the exercise of power into the practice of language. They breach the monopolistic claims of knowledge officials tend to make. To reiterate what was said already, virtual parliamentary debates can perform the task with a less colourful style than, let's say, Westminster question time. Another problem caused by e-conferences is that they de facto empower those in charge of controlling the electronic devices – usually members of the parliamentary majority. The president of the meeting may cut the microphone or even the camera of an MP once her speaking time has been exceeded. The right to reply, quite often less formalised than the right to question, may also suffer as a result of the distance between orators. The problem of authoritarian management of legislatures goes beyond their virtual functioning (mics are already often muted), but e-devices may strengthen it.

1.3 Conclusion and recommendations

This discussion paper has claimed that, despite some isolated cases, democratic legislatures did their best to continue working during the exceptional Covid-19 weeks. This suggests that parliaments are remarkably resilient institutions, able to adapt. The development of virtual ways of discussing and deciding, however, bring with it a series of threats and opportunities that should foremost be discussed in detail rather than globally opposed or praised.

This discussion paper concludes by formulating three reform perspectives for the future regarding the virtualisation of legislatures:

1. *How should a partly virtual legislative procedure be designed?* A major feature of law-making in parliament is the iterative character of the procedure. Between written and oral forms, committee and plenary stages, debates on the general aim of the law and on the details of the articles, the way in which a bill is discussed regularly changes in order to benefit from the advantages of each tool and to limit their inconveniencies. In the future, a similar movement could be elaborated for the virtual part of the legislative procedure: it could be limited to specific stages only with the necessity to keep incarnated moments. Which steps should be banned from being a virtual event? I am inclined to say, the general discussion in the plenary, but the relevant answer can only be elaborated through debates . . . in parliament.

2. *How should a 'parliamentary Zoom' be designed?* The electronic devices enabling to organise virtual meetings could be adapted to the specificity of parliamentary politics, as it is the case for other kinds of social activities like education or business. Four points are worth considering:
 - the identification of the speakers: MPs could possibly be sometimes forced to use their cameras, just as they are sometimes obliged to make their votes public;²¹
 - the interactions and liveliness of virtual debates: MPs need applause/laugh/indignation/bored buttons;
 - the opposition's rights: cutting of the microphones or cameras should be regulated and the right of reply protected, which would probably require adding new provisions to Standing Orders;
 - outside participation in the debates: a clear distinction could be made between meetings and certain steps of the legislative procedure where MPs monopolise speeches and other steps where NGOs, lobbies and citizens could take the virtual floor. As said, parliamentary procedures are iterative and could perfectly alternate between different phases.
3. *How could virtualisation help to settle a genuine multi-level parliamentarism?* Covid-19 has laid emphasis on the multi-level aspect of modern governance. Its major problems are transnational, starting with health and the environment. Many solutions are local, as illustrated by the key role regional governments have played in the management of the crisis. These changes call for the development of further parliamentary representation at all decision-making levels.²² Yet this emerging multi-level parliamentarism suffers from coordination problems across arenas, which is a source both of information loss and moral hazard. In this sense, electronic devices could be of help. Joint meetings of committees belonging to assemblies from different countries and/or levels of governance could help to coordinate political actors and circulate information. The simultaneous and automatic translation of conversations, under testing at the European Parliament, could also help to transcend language barriers. The technical management of such debates could be a future task for the European Parliament – whether this assembly participates in the debates or not. The budget, infrastructure, and experience of the Strasbourg Assembly, as well as its multi-cultural identity, could indeed enable it to become a sort of

²¹ Alternatively, parliamentary clerks could certify that MPs are behind their screen as they certify, in many parliaments, that they are present in committee rooms.

²² N. Lupo and C. Fasone (eds.) (2016), *Interparliamentary Cooperation in the Composite European Constitution* (Oxford: Hart Publishing); Ben Crum and John E. Fossum (eds.) (2013), *Practices of Inter-parliamentary Coordination in International Politics: The European Union and Beyond* (Colchester: ECPR Press).

public utility for virtual parliamentary democracy in Europe. Yet the experience of virtual bilateral meetings between national parliaments and/or with the European Parliament suggests that the technical feasibility is less what's at stake than the MPs' genuine commitment in and to virtual debates.

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- people have parliaments shut or limited by COVID-19'. *openDemocracy* 50.50, 8 April, <https://www.opendemocracy.net/en/5050/alarm-two-billion-people-have-parliaments-suspended-or-limited-covid-19/>.
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Discussion Paper

Nothing Is Lasting without Institutions: Setting the Scene for the Liberal White Book Europe 2030

Renaud Dehousse¹ and Simon Hix²

Abstract

European integration relies on well-functioning institutions. This ELF Discussion Paper is based on the contributions by Simon Hix and Renaud Dehousse to ELF's Expert Forum on the Future Institutional Framework which took place on 3 July 2020 as the launch event of the process towards the Liberal White Book Europe 2030. The two distinguished authors offer their perspectives on 'Rethinking the institutional framework' and on 'Institutional change in the post-Lisbon period'.

Preface

Nothing is possible without men,
but nothing is lasting without institutions.
Jean Monnet, *Mémoires*³

This Discussion Paper derives from the first Expert Forum in the 'Liberal White Book Europe 2030' project of the European Liberal Forum in July 2020. More than 40 scholars and thinkers joined a virtual meeting on the 'Future Institutional Framework' for a day-long discussion of the big institutional issues facing the European Union in the years ahead.

The EU institutions have – finally – started the preparations for the Conference on the Future of Europe. This puts the future of the institutional framework firmly on the political agenda. With the next European Parliament elections only due in 2024, the time has come to think about the Future Institutional Framework and to develop ideas for its reform with a view to the year 2030.

¹ Renaud Delhouse, President, European University Institute.

² Simon Hix, Harold Laski Professor of Political Science, London School of Economics.

³ Jean Monnet (1976), *Mémoires* (Paris: Fayard), 412.

Amongst many other issues, three major institutional reforms have been listed in the political guidelines of the European Commission for 2019 to 2024:

Firstly, the question of how the President of the Commission will be proposed and elected in the future.

Secondly, the 'special relationship' between the Commission and the Parliament that Ursula von der Leyen has announced. It is expected to include an indirect right of initiative for the European Parliament and would make the voice of MEPs more audible.

And, thirdly, the introduction of transnational lists for the next European Parliament elections on which the Commission President has spoken out in favour.

We hope that the analyses in this Discussion Paper will inspire and inform not just the debates surrounding the Conference on the Future of Europe, but also the discussions that will certainly continue thereafter.

Professor Simon Hix, the author of the first contribution in this Discussion Paper, delivered the keynote speech at the Expert Forum. He identifies three types of institutional challenges for the EU and argues that a new institutional design for the EU should try to address all three of them. He examines how a new grand bargain could look like and sees an opportunity in the post-Covid world to 'build democracy back better'.

Professor Renaud Dehousse, the author of the second contribution, gave the final talk that concluded the Expert Forum. He provides an overview of the evolution of the EU institutional system. The post-Lisbon decade was characterised by opposite trends: more transfers of powers to the EU and more intergovernmentalism, more politicisation combined with attempts at shielding key decisions from political interference. He then draws some lessons on the dynamics of institutional change in the European Union.

Each of the two authors also provides a brief comment on the other's text.

We are very grateful that Renaud Dehousse and Simon Hix agreed to having their speeches published in the written form of this ELF Discussion Paper. By publishing this Discussion Paper, the European Liberal Forum hopes to stimulate further discussion about the future of European integration.

The 'Liberal White Book Europe 2030' project continues with eight other Expert Forums. It will conclude with the publication of the White Book that will be presented at the ALDE Congress in Spring 2021.

Valentin Kreilinger⁴

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Section 1: Rethinking the Institutional Framework

Simon Hix

Abstract

The EU is facing (at least) three types of institutional challenges: a lack of policy responsiveness, a democratic deficit, and differentiated integration. A new institutional design for the EU should try to address all three of these challenges. The major challenge, though, is growing heterogeneity of policy preferences between member states and citizens. One possible solution is a new 'grand bargain', where in return for more majoritarian decision-making at the EU level there would be radical decentralisation of power in some areas and more flexibility in others. The EU also has an opportunity in the post-Covid world to 'build democracy back better' – to use our new experiences of interacting online to foster greater engagement of citizens with the EU, more interactions between MEPs and national parliaments, and to introduce online voting in the 2024 European Parliament election.

Introduction

I am speaking here today as a European, not as a Brit.⁵ So, if you can, suspend belief for the moment and imagine that I am not a British citizen, but a citizen of the EU. I care passionately about the European project, I have been involved in the institutional design of the EU starting with the Intergovernmental Conference that led to the Amsterdam Treaty in 1999, when I was an advisor to the British government at that time. And I have been involved in each of the various treaty reforms since then. I have always been a little disappointed with the outcomes of these reforms; but, such is the life of a political scientist of constitutional design!

So, what I thought I would do today is give an overview of some of the main issues in the institutional design of the EU, to try and stimulate some of our discussion today. I am going to talk about what I think are three different types of what I call 'institutional challenges'. There are, of course, many different types of challenges the EU faces relating to the institutional design – today I will focus on three of them.

I will then explain why I think there is actually an interesting window of opportunity for Europe, and also for liberals in Europe, when thinking about what I call 'building democracy back better'. We have had a lot of discussion about 'building the economy back better', to create a

⁵ This section is based on the keynote speech by Simon Hix delivered at the ELF Expert Forum on the Future Institutional Framework which took place on 3 July 2020.

new normal in a post-Covid world that is different from and better than the old normal. I think we should also be thinking about how we can try to build democracy back better. Some of the things we have learned during the Covid crisis, as well as some new practices that have been put in place as a result of what's happened over the last few weeks and months, I think we can reinforce. I will also make the case that there is a significant opportunity to build democracy back better at European level in the coming months and years.

1.1 Three types of institutional challenge

1.1.1 Institutional challenge 1: Policy responsiveness

The first set of institutional challenges the EU faces relates to what I call 'policy responsiveness'. Here, one of the frustrations of citizens in Europe is the apparent lack of responsiveness or lack of ability of the European institutions to take decisive action to address key challenges – for example with the Eurozone crisis, the migration crisis, the response to the rise of China globally, the battle between China and the US in global institutions, and most recently, of course, with the Covid crisis. There is also a lack of policy responsiveness on a more mundane day-to-day level, with the inability of the EU to generate growth in the Single Market, or to think radically about how to transform the Single Market framework to work for all citizens in Europe.

The basic architecture of the Single Market has been built very effectively. In fact, creating a single market on a continental scale, with the free movement of goods, services, capital and labour across our continent of half a billion people is (if you think in broad, historical and geographic terms) a remarkable achievement. Nevertheless, there is a sense that, over the last 10 to 15 years, the Single Market has not generated the growth that is needed to be able to secure jobs, opportunities, and prosperity for our citizens. Why is that? I think this is partly due to the inability of the EU to think creatively about how to change that regulatory architecture of the Single Market, which would unleash new incentives for new opportunities. And why has the EU lacked such policy creativity? The fault lies at the heart of the way the EU governance system works.

The EU operates through a mix of supranational and intergovernmental decision-making. Governance via supranational mechanisms is similar to a quasi-federal structure where the Commission has the right of legislative initiative, and laws are then agreed via the Council and the Parliament, with increasing input from national parliaments. This mode of decision-making involves lots of checks and balances – which, on the one hand, is a great thing – but the trade-off of having lots of checks and balances is, of course, policy gridlock. Moreover, governance via intergovernmentalism implies unanimous agreements between all the

member states. By definition, this mode of decision-making means moving forward at the speed of the slowest member state.

And, add to the institutional constraints the increased number of member states – from 12 to 28, and now back to 27 – and the increased heterogeneity of the policy preferences of the member states. In addition, there is growing heterogeneity of preferences along several different policy dimensions. There are increasing divisions over how the market should be regulated and the design and operation of economic and monetary union, for example over whether there should be a fiscal union of some kind, whether this fiscal union should be based on loans or based on some sort of redistributive structure. On these issues, the split is largely a North-South divide. There is also growing preference heterogeneity on a social dimension: on social policy, migration policy, attitudes towards sexual minorities, and now increasingly the arguments about democracy and human rights, vis-à-vis Hungary and Poland. On this dimension, the divide is often East versus West. Together these two dimensions create a deep heterogeneous structure, and if you add on top of that heterogeneous structure the EU's governance architecture, with lots of checks and balances and decision-making largely by unanimity, the result is policy gridlock.

Hence, as a result of the combination of institutions and preferences it has become very difficult for the EU to respond to the policy challenges it faces. So, we need to think creatively about how to overcome this gridlock.

One thing I have been pondering for some time is: what would a new 'grand bargain' look like? When faced with gridlock in the past, the EU has overcome these challenges via a grand bargain across a range of policy issues: in particular in the Treaty of Rome, and the Single European Act. One could go further back and see that the design of the US Constitution was also a grand bargain between larger and smaller US states, that allowed for policy to move forward in return for a particular institutional design, which guaranteed the interests of the smaller states. In the EU context, the Single European Act involved moving to majority voting (a more federal model of decision-making) in return for market integration, environment policies, social policies, and redistribution from richer to poorer states, via a doubling of the structural funds. Hence, the Single European Act was the grand bargain between richer and poorer states as well between centre-left and centre-right parties.

So, what could be the grand bargain now? What can be given to member states and politicians who oppose more EU integration in return for allowing more decisive decision-making at the EU level – such as majoritarian decision-making over fiscal policies, genuine burden-sharing of refugees, or more radical reform of the Single Market (e.g. in digital services)? Given the heterogeneity of preferences, I believe that what needs to be offered in return is radical decentralisation where that

is possible, for example, with much more flexibility in the design of rules in the Single Market, such as by bilateral or multilateral policy innovation.

One example of this could be in the area of mutual recognition of services. Policy gridlock and heterogeneous preferences prevented the passage of the Services Directive, which would have radically deregulated the services sector across the EU, which could have fostered innovation and job growth, but threatened some vested interests. Instead of a one-size-fits all model, could the EU move towards the US model of bilateral or multilateral mutual recognition of service providers between states? For example, the EU could enable Germany to recognise Austrian service providers, the Benelux recognising each other's providers, the Scandinavians to recognise each other's provider, Spain and Portugal, Central and Eastern Europe, and so on. Why not allow for much more flexibility, designing some basic regulatory architecture, but then allowing more flexibility and innovation within that regulatory structure? This would involve the Commission taking on a different role: not just as the regulator of the Single Market as a whole, but also as a facilitator of this kind of bilateral or multilateral policy innovation.

1.1.1 Institutional challenge 2: Still a democratic deficit (and the *Spitzenkandidaten* problem)

The second set of challenges, of course, is the old chestnut of the 'democratic deficit'. Here, there are lots of different levels to consider. One, of course, is European Parliament elections, which still do not really work the way we all, perhaps, would like them to work. Voter turnout has moderately improved, up to just over 50%, but there remains enormous variation in turnout between the member states, and turnout is still remarkably low in several member states, particularly in Central and Eastern Europe. The average turnout in Czech Republic, Croatia, Slovakia and Slovenia in the 2019 elections was only 28%. Citizens are just not engaged with European elections in many member states. Turnout is also significantly lower amongst younger people. The gap between people under the age of 25 and over the age of 55 has declined, but still only 42% of people under 25 voted in the 2019 elections. In addition, European Parliament elections remain dominated by national parties and national leaders, as they have been since 1979.

I had hoped that the *Spitzenkandidaten* would create some dynamism in the elections. There is some evidence in 2014 and 2019 that the *Spitzenkandidaten* process had a positive impact in the countries that engaged with it, in the countries that had candidates, and in the countries the candidate visited in their campaigns. But, the real problem, of course, is that the *Spitzenkandidaten* process was abandoned by the EU heads of government in 2019. While an increasing number of citizens had engaged with the process, it was then cast aside. I think part of the problem for the heads of government is that the process as it

currently operates does not encourage the very top politicians in Europe to put their names forward. Why would a sitting head of government risk standing in a European Commission election, except from the smallest member state (Luxembourg)? Also, the heads of government will only back a Commission president who has broad support across many member states and many political families, and they were not convinced that the winning candidate in 2019 (Manfred Weber) could command that support. In other words, the incentive structure for the key politicians in the process is misaligned. I don't know yet how to fix that, but I am sure that creative solutions could be found to make the process work.

One idea that the late Julian Priestley had was to move the whole process of candidate selection earlier, to encourage a broader debate and higher public profile, through a primary-like process within the European political families. I actually think the solution is the opposite: to choose candidates at the last minute. This would enable sitting heads of government and party leaders to consider putting themselves forward. For example, I think the Socialists, and the EPP both chose their candidates in 2019 too early. And, of course, the Liberals couldn't even come up with a single candidate. Ironically, had the Liberals come up with a single candidate, they may well have found themselves as the kingmakers after the process, given the balance of power in the European Parliament, and the role of the Renew group in the middle of the Parliament.

Another element of the democratic deficit is the role of national parliaments. Again, I think we should try to be far more creative in thinking about how to involve national parliaments and national MPs in EU policy-making. In the midst of the Covid-19 crisis, we are seeing a renewed focus in the public mind on national democratic institutions. This is not new, though. National parliaments have been fighting back for some time. For example, in the UK, the push for Brexit was as much about Conservative MPs in the House of Commons wanting to 'Take back control' from Brussels as it was about citizens wanting powers back. I will return to this issue later in the talk.

The other final aspect of the democratic deficit is public opinion. We like to talk these days about the fact that public support for the EU has risen in recent years, particularly since the Brexit vote. For example Eurobarometer data show that support for the EU has risen consistently since 2014/2015, and is now back to where it was before the financial crisis in 2008–10.

However, I think support for European integration in most member states is remarkably soft. Here, I am very much persuaded by the work of scholars like Catherine de Vries.⁶ Catherine identifies two underlying

⁶ Catherine de Vries (2018), *Euroscepticism and the Future of European Integration* (Oxford: Oxford University Press).

dimensions of public attitudes towards the EU. The first dimension she calls a 'policy dimension', which relates to how far citizens want policy to be made at the European level because they prefer policy outcomes from Europe to the average policy outcomes they get domestically. The second dimension relates to trust: do citizens trust the institutions in Brussels more than they trust their national institutions? Of course, these two dimensions are related, and member states that score highly on the first dimension tend to score highly on the second dimension too. Nevertheless, several member states are outliers: for example those who prefer EU policy outcomes to domestic policy outcomes but trust national institutions more (as in Germany and France, for example), or trust national institutions less but dislike EU policy outcomes (as in some states in Central and Eastern Europe). The UK is at the bottom on both dimensions: preferring national policy outcomes to EU policy outcomes, and trusting national institutions more than EU institutions. The real worry for the EU going forward, though, is that several member states, and particularly Sweden, are not too far from the UK in their profile across these two dimensions.

The problem for the EU is that although Brexit is extremely difficult and painful for the UK, in the medium-term the UK will be a pole of attraction. After Brexit there will be an alternative model of a relationship with the EU. In addition to the Swiss model and the Norwegian model, there will now be a British model. This could lead to some political factions in some member states claiming that if Britain can leave and seems to be okay, then they could do so too; and jump through that first stage of Brexit, through the painful exit negotiations, and take off the UK model off the shelf. Also, that British model may well be an attractive alternative for some member states who increasingly feel marginalised in EU policy outcomes and trust their national institutions more than EU institutions. In particular, the country that I would keep an eye on here is Sweden, which after Brexit is the largest economy in the EU outside the Eurozone, has close economic and cultural ties to both Norway and the UK, and whose public tends to trust Swedish democratic institutions far more than the institutions in Brussels.

1.1.3 Institutional challenge 3: Dealing with differentiated integration

The issue of Brexit relates to a third institutional challenge, of how to deal with differentiated integration. And, here, the internal and the external elements of differentiated integration are increasingly connected in some way. Within the EU, there is the *de jure* differentiation of the Eurozone and defence policies, but there is also the growing *de facto* differentiation in terms of different application of market standards, different applications of human rights, attitudes towards migration policies, whether people are going to opt in or opt out of different burden sharing regimes, and so on. The EU is increasingly becoming differentiated in its

application internally within the EU and, of course, externally, as I just mentioned, once Brexit is finished, there will be a new EU-third country model which will potentially be challenging.

The EU now has a huge variety of models. Although Michel Barnier likes to say that there are only two models of a relationship with the EU – a trade agreement model or the EEA model – in practice, every third country relationship with the EU is bespoke. Every model is *sui generis*, and increasingly these external models are in conflict with the structure internally, because of the policy spillovers of external arrangements and agreements on internal EU decision-making.

In the medium-term, institutional designers need to think about what the governance architecture should look like for our corner of the planet more broadly, in terms of what should be the architecture, not just for the EU, but for our continent as a whole. Here, I suspect we will head towards a two-tier model: with a federal core, where there is deeper economic and political integration, for example with common fiscal policies, common migration policies, common defence policies, a much more integrated politics; and an outer tier of countries who participate in the European Single Market on a continental scale.

In this regard, I think the Bruegel ‘continental partnership’ idea is quite interesting.⁷ Pisani-Ferry et al. came up with the idea of a continental-partnership in the summer of 2016 after the EU referendum in the UK – with the EU as a more integrated federal core, and a Continental Council for governing a broader Single Market with several non-EU countries (the UK, Norway, Switzerland, Turkey etc.) participating in that governance framework. This idea was probably a little too early in the debate; and it was quickly slapped down in Paris and Berlin for understandable reasons at that time. But, the general idea of thinking about how to create a European, continental-scale intergovernmental framework, perhaps with national parliamentary involvement, could be a good starting point for thinking about how to balance both internal differentiation and external differentiation.

1.2 Building (democracy) back better

Finally, I wanted to raise some other issues, as I see an opportunity for Europe. I consider these issues under the umbrella of ‘building democracy back better’. A British political philosopher once said that ‘If a citizen from the 1700s travelled through time and stood in Parliament Square [in London], he would be astonished how much has changed; but if he then set foot in the chamber of the House of Commons, he would be astonished how little has changed’. The point, here, is that we

⁷ Jean Pisani-Ferry, Norbert Röttgen, André Sapir, Paul Tucker, and Guntram B. Wolff (2016), *Europe after Brexit: A Proposal for a Continental Partnership* (Brussels: Bruegel).

have a structure of representative democracy, whether at the national or European level, that remains largely based on an eighteenth-century model. We need to think about how to update that model to meet the challenges of today.

Yes, democracy has worked, but our 'old' model of representative democracy is under strain. It is under strain from the challenge from populism. It is also under strain from technology and the fact that citizens can gather their own information and often become experts on politics far more than elected politicians can. For the first time, in almost every single policy issue you can think about, large proportions of the citizenship, of the public, are far more expert on the policy questions than the ministers, parliamentarians or civil servants are trying to make policy on those issues. This is a huge challenge to the standard structure of representative democracy, where we delegate responsibility to policy-makers and politicians, to govern in our interest, and increasingly we have an educated, sceptical citizenship.

In parallel, we have seen some aspects of democracy move online over the last few weeks and months, as we have locked down in the face of Covid-19. We have seen virtual parliamentary debates in the European Parliament, including virtual roll-call votes. Through VoteWatch we have been tracking what has been going on in the European Parliament, and the number of roll-call votes in the European Parliament has gone up dramatically over the past few months, which is quite interesting.

We have also seen increasing virtual interactions, within politics, between politicians and their voters. For example, David Farrell, a professor at UCD who is running several citizens' assemblies, has been telling me that some of these assemblies have seamlessly moved online. In fact, in some respects, citizens' assemblies are easier to organise online than they are in person, as they do not require people to travel away from their homes, and instead just need people to dial in for half an hour, or an hour, to participate and debate, and then go back to their normal daily lives. This significantly lowers the burden of participation, which makes it much easier for people to participate in these new forms of democratic deliberation. So, we should think about how can we use that experience, and use the technology that we have, and use the new practices that people have become used to, to build democracy back better.

1.3 An opportunity for the EU

This is particularly relevant for the EU because 'democracy beyond the state' should actually be easier now, with virtual participation, than it has ever been before. The biggest constraint on democracy beyond the state has been geographical distance. Once we move things online, a lot of that constraint is removed. I think we should be thinking creatively about new ways for citizens to participate in European Parliament plenary

sessions and committees, new ways for MEPs to meet with their constituents. Being an MEP is emotionally and physically very draining with all the travelling, and having to shuttle backwards and forwards, not just between Brussels and Strasburg, but also between Brussels, Strasburg and their home. It would be much less stressful for MEPs if they could organise virtual surgeries with their constituents, online and in a much more regular slot, each week, for example. There are also interesting possibilities for MEPs to get involved in national parliamentary debates. Some parliaments have allowed MEPs to participate in committee hearings. This could be systematised through modern technology, with MEPs giving evidence regularly to committees, via videoconferences. More frequent interactions of this sort would bring national parliaments and the European Parliament much closer together.

The final point I would like to make relates to electronic voting. When I teach 'voting' to my students at LSE – to about 350 18- to 19-year old students from all over the world in my first-year introduction to political science course – invariably one kid puts up a hand and asks: 'Why isn't there an app on my phone for me to be able to vote?' That's actually a really good question, and I don't have a good answer! I bet some of you out there who are a bit older than that will say: 'Oh, no! You couldn't have that, you have to have the classic process of going to the ballot box.' For many young people, this seems ridiculous. Why can't they vote online? I understand the significant security concerns of online voting. But, if we can figure out the security for transferring money between bank accounts online, then we should be able to figure out the security for how to be able to vote. I think we need to grasp the mettle of that. And, in fact, the EU has an opportunity to be ahead of the game on this: why not think about an EP2024 phone app that allows people to vote in the next European Parliament elections online or on their phones? In the Estonian national parliament election in 2019, 44% of people voted online. Just think how many more young people across Europe would vote in a European Parliament election if they could do so on their phones or online.

To summarise, the EU is facing a combination of existential crises. We all know the shopping list. I like to tell my students: 'Never underestimate the ability of the EU to find a way to muddle through. Don't bet against the EU.' I am less convinced of that mantra, I'm afraid. I am worried about the future of the EU. In response, we need to think about how to design an EU that is more decentralised, more flexible, and more differentiated. We should also be optimistic, though, and build on the new online experiences we have had in the current crisis as citizens, policy-makers, and politicians. Ask ourselves: how can we use the experience of moving life online to move democracy online? Can we use these new experiences to engage more people and particularly to engage more younger people in the democratic politics of the EU?

Comment by Renaud Dehousse on Section 1

Simon's perceptive remarks rightly emphasise a radical change in the context in which European issues are discussed. There was a time where European things were of interest to only a small share of the public. At each European election one of the main challenges was to convince people to go to the polls. Although there is today a much greater awareness of the relevance of Europe in an interdependent world, this has not translated into unqualified support for the EU, far from it. On the contrary, populist movements of various types have emerged in all member countries. Issues linked to Europe often play a central role in national elections but even more often they are used to mobilise support against 'Brussels' or the governments that come to terms with the EU. This is one of the great paradoxes of our times: The need for some cooperation amongst European countries to tackle joint challenges is perhaps clearer than it has ever been, but opposition to Europe has reached unprecedented levels.

Discussions about institutional reforms have always been difficult, in part for structural reasons (discussed below) but also because there is no real blueprint for what the European Union seeks to achieve: a political union of some sort in which old nation-states find ways to develop cooperation while at the same time preserving their distinctiveness. In the current context, however, the difficulty is bigger than ever: how can one improve the institutional machinery to enable it to respond to a series of challenges, old and new, without at the same time providing an easy target to parties and leaders who have built their political fortunes on opposition to Europe? Simon's talk has offered us a number of avenues that could be used to take up the challenge. One can only hope that the Conference on the Future of Europe will provide us with a real opportunity for those issues to be addressed effectively.

Section 2: Institutional Change in the Post-Lisbon Period

Renaud Dehousse

Abstract

This contribution provides an overview of the evolution of the EU institutional system in response to a series of crises that have marked the post-Lisbon decade. It highlights the ambiguity of the period, characterised by opposite trends: more transfers of powers to the EU *and* more intergovernmentalism, more politicisation combined with attempts at shielding

key decisions from political interference. It then draws some lessons on the dynamics of institutional change in the European Union.

Introduction

It is quite a challenge to return to so many issues when they have been addressed by so many stimulating speakers, but let me try to offer not a conclusion, but a series of remarks which hopefully can be of help with making sense of the challenges that lie ahead of us – us Europeans, not merely us, observers of the European scene.⁸

I would like to organise this short talk as follows. First, I will briefly return not on 60 years of integration, but perhaps on the most recent phase (the post-Lisbon phase) because I think it is telling us a number of things which we should think about in trying to organise our reflections about the Conference on the Future of Europe. Then, on that basis, I will offer some broader remarks perhaps on the dynamics of institutional change, which is largely what we've been talking about throughout the day.

Why start at Lisbon? One might say that it is a convenient start because it still is a recent change. But there's another point which I find interesting in that treaty, which is the fact that – like the draft Constitutional Treaty, which basically informed the writing of the Lisbon Treaty – that agreement was thought of by a number of people as providing a framework which was meant to last for a number of decades. How many wasn't clear, but some went as far as saying that it should provide the architecture of Europe for the following 50 years.

What has happened since? This has been central in today's discussion. A lot of changes. And what is interesting for us is to try and understand why this paradox came to the fore. Why is it that a framework that was meant to be stable was immediately followed by a series of very substantial changes? The answer, of course, lies in the fact even before the Lisbon Treaty came into force it was followed by a series of crises. They can be labelled in different manners – we had a financial crisis, an economic crisis, a sovereign debt crisis, we came very close to a banking crisis and a major migration crisis. All this against a background in which one could witness a gradual erosion of support for European integration and the emergence in all member countries of ever-stronger populist, anti-European parties.

This background largely accounts, actually, for a number of the changes which I hinted at. Why did we have changes? Because they were needed. We had innovations that filled in a lacuna in the setup of

⁸ This section is based on the final talk by Renaud Dehousse delivered at the ELF Expert Forum on the Future Institutional Framework which took place on 3 July 2020.

the treaties. There was a monetary union, but a rather loose economic union, and no backstop system in case of trouble. So, one had to create a backstop scheme – which was done with the creation of the European Stability Mechanism. In exchange for this, of course, the so-called ‘creditor countries’ demanded a number of things. They demanded a tightening of macroeconomic policy, and that’s why we had the ‘Six Pack’, the ‘Two Pack’, the ‘Fiscal Compact’, and so on. And in the field of banking regulation (which is of course of crucial importance in Europe because, unlike what you have in the US, the economy is largely financed by banks), the rescue packages that were put together were sort of compensated by the fact that the supervision of banks was removed from the hands of national regulators and transferred to a very strong European regulator, namely, the European Central Bank. As it was often the case in the history of European integration, this period was characterised by tensions between opposing forces: a tension between a demand for more intergovernmental control and functional pressures in favour of greater centralisation in some areas, on the one hand, and a tension between the classical view of European governance as apolitical and the growing politicisation of European public policy, on the other.

2.1 Intergovernmentalism or supranationalism?

If you think about the innovations of the post-Lisbon period, you can’t help but be struck by their ambiguity. I just want to focus here on two points which have come to the fore in this morning’s discussion. Has the system become more intergovernmental or more supranational? Well, you could argue both ways.

In terms of process, the dynamic of change is extremely intergovernmental in the sense that big deals were struck in numerous meetings of the European Council (I think a record was in 2011 when there were no less than 11 meetings of the European Council) and, in a number of cases, they even gave birth to agreements concluded outside the framework of the treaty. Think of the ‘Fiscal Compact’, think of the Single Resolution Mechanism. For different reasons, it was decided to move out of the framework of the EU treaty. Moreover, if you look at the political dynamics of the time, very often you can see that the Commission appeared side-lined, with a key role played by the European Council President. No wonder then that you find in the literature a number of interesting references suggesting we witnessed a shift to so-called ‘new intergovernmentalism’.

But look at the impact of those changes. Who gained power, and who lost? Well, who gained power most spectacularly in that period was arguably the most federal institution in the EU, namely the European Central Bank. As is widely known, the ECB became extremely entrepreneurial under Mario Draghi, and actually acquired *de facto* power very similar to the power of lender of last resort, which people thought it had been

denied by the Maastricht Treaty. It also acquired a huge role in European macroeconomic policy, to such an extent that both the current president and her predecessor at the helm of the ECB, have called for a stronger political arm in the conduct of European macroeconomic policy, as on its own a central bank cannot address all the problems of the Eurozone. Similarly, if you turn to fiscal policy in the post-Lisbon period, what you see is a clear strengthening of the Commission's surveillance and enforcement powers. It is written in full letters in all the instruments I have mentioned. And those powers were not left dormant; they were used by the Juncker Commission in a way that did not please all member states.

So, there is ambiguity as regards the sense of direction: are we moving towards more supranationalism or towards more intergovernmentalism? You might argue that we have moved in both directions – a schizophrenia to which I will return in a moment.

2.2 More or less politics?

What about politics, then? Another element which has been discussed at some length this morning. Have we moved toward more or less politics at the European level? Again, there is a fair deal of ambiguity. It is clear that the changes in the realm of economic policy I just referred to were motivated by an attempt to de-politicise decisions in the field of European macroeconomic policy by transferring very important regulatory or control powers to independent institutions, such as the European Central Bank or the European Commission.

But the same period also witnessed a fairly significant change in the electoral dynamics with the invention of the Spitzenkandidaten system. In this morning's discussion, I noticed that it was frequently regarded as dead. But is it so clear? What we know for a fact is that it has delivered a number of changes in the relationship between the European institutions. It has first delivered, with Jean-Claude Juncker, the first example of an indirect election of the Commission President, which really was not something on which I would have bet, for instance. It also had a strong impact over the organisation of the College of Commissioners, both in the Juncker and in the von der Leyen Commission. Likewise concerning the relationship between the Commission and the European Parliament. For instance, in the first part of the Juncker mandate, there was not a 'grand coalition' with a proper agreement that spells out in detail what the executive will do in every area, as you have in some countries, but at least a systematic attempt at organising convergence between the main members of the coalition. There was also a clear willingness on the part of the Commission to cultivate the relationship with the European Parliament, which had been of vital importance in the election of the new Commission President. Even though the current Commission President was not one of the candidates who ran for that position, she has given

ample evidence of her intent to respond to the concerns expressed by voters in the 2019 election – hence for instance the importance given to a European Green Deal in the Commission’s agenda.

So, again, we have a contrast between two trends, a contrast that of course, on some occasions, created its own lot of political conflicts... It is clear that the reasons that militated for the Commission’s powers to be reinforced with the Fiscal Compact, for instance, had much to do with the vision of the Commission as an independent / apolitical body. And when Juncker said ‘I’m the politically elected president of a political Commission, and therefore, everything we do is to be informed by this political mandate’, it ran against the dominant vision of those who had wanted the strengthening of the Commission’s monitoring and enforcement powers in that area. Hence the many clashes between, for instance, Germany and the Juncker Commission regarding economic policy and also the proposals that were regularly leaked or voiced informally – by, for instance, Wolfgang Schäuble – suggesting that one should take away from the Commission’s hands a number of prerogatives which clearly are incompatible with the idea of a political Commission, such as control of member states’ fiscal policies, its monitoring of competition policy, and so on and so forth.

So, to conclude on this very sketchy review of the last decade, I would say that there’s been a lot of movement but also a lot of ambiguity in the sense of direction. This is something that we should reflect about when we try to anticipate what is the potential of the future Conference on the Future of Europe.

2.3 The dynamics of institutional change

There are three points essentially that I wish to make in this part. The first is to try to make sense of the evolution I have described (and I would argue, the same remark applies to the entire European integration process). What you see is a very strong resilience of the core model of supranational integration. True, this model has been challenged from all sorts of corners and that It is been made more complex by enlargement, notably by the greater heterogeneity of member states’ preferences, as was said this morning by Simon Hix. At the same time, however, despite the great creativeness of successive treaty drafters, you see a remarkable stability on the whole system. The EU has not become the centralised super-state that some in the UK thought it would become. Nor has it done away, on the other side, with the atypical powers enjoyed by its supranational institutions. Think of the Commission’s right of initiative: It has been repeatedly challenged, but it is still there. There have been for quite some time proposals to grant a role to the European Parliament at this level, but this hasn’t led to systematic attempts at doing away with the Commission’s right of initiative

yet. On the whole, the EU system which has been very much criticised has also proved that somehow it was able to resist pressures in various directions.

Change there was, and this is my second point, but it has always been of an incremental nature. I know that we've had (with the so-called Constitutional Treaty) an attempt at creating a kind of constitutional momentum, with a lot of constitutional rhetoric. But I don't think that that treaty really signalled a clear-cut rupture with the past. If you look at the substance of the proposed changes, it is fair to say that it was mainly trying to capitalise on a number of innovations that had been initiated or introduced in earlier treaty reforms. In other words, despite the constitutional rhetoric, I see more continuity than change.

Why has incrementalism been so pervasive? Is there, somewhere, someone who is a real advocate of incrementalism? I don't think so. This has to do with structural features of the institutional reform process, namely the fact that national governments retain the central role in this process and, to make things more complex, they must agree unanimously to all formal changes. That explains why, for instance, the big changes that we witnessed in the history of European integration were largely driven by functional needs. I'm not saying this as an apology of neo-functionalism – that would require another discussion – but it seems clear to me that one of the main lessons that can be drawn from 60 years of European Union integration is that institutional changes largely respond to functional needs. That, in my view, is unlikely to change in the foreseeable future.

If unanimous agreement is necessary, then reforms will by necessity need to appeal both to different camps. And, as we heard this morning, there are many more camps today than there used to be in the past: We don't have simply supporters of more integration versus supporters of states' rights; we have different visions of fundamental values, both in the realm of economic and social policy and in the realm of fundamental rights, and that really makes it much more difficult to find elements of a 'grand compromise'. And for such an agreement to see the light of the day, we need people or institutions to orchestrate the convergence, for it will not take place mechanically.

To sum up, if I were to make a prediction about the future, I would argue that it is likely to look like the past in more than one respect. I would be very surprised if the Conference on the Future of Europe, no matter how it will be organised, were to lead to a large-scale reform where one would revisit the entire European house from the foundations to the roof. If it leads to anything, it will be because there is agreement amongst a sufficient number of countries on the existence of a number of common challenges calling for joint action at the EU level. Of course, there will be room for some logrolling: It has been the case in the past and it is likely to be so in the future

because it is indispensable in a system where unanimity is required. But, short of a 'big bang', which I cannot predict, I really would not anticipate more.

This is not a pessimistic forecast. Europe has ahead of itself such a large number of important challenges it would be wrong to derive from what I said the conclusion that only modest change will be achieved. The changes we noticed in the last decade were not modest. They are far from complete; they have created all sorts of imbalances. If only those problems are addressed, you can expect very substantial change in the future.

Comment by Simon Hix on Section 2

I very much share Renaud's perspective on the development of EU politics and policy-making over the past 15–20 years, in particular his claim that there has been a rise of intergovernmentalism, where the European Council has emerged as the dominant arena for agenda-setting, deal-making and conflict resolution; and his observation about the tension between the politicisation of the Commission and the its role as the 'guardian of the treaties', a neutral regulatory, and an impartial overseer of member states' fiscal policies.

The second issue, here, has interested me for some time, as previous treaty reforms have not explicitly recognised this tension. The 'election' of the Commission President by a (qualified) majority in the European Council and an absolute majority in the European Parliament inevitably politicises the choice of one half of EU's dual executive, and the Spitzenkandidaten process is a logical consequence of this. But, following the debacle of 2019, the EU now faces a choice: either accept the politicisation of the choice of the Commission President (as a means to address one aspect of the democratic deficit), but then isolate some powers from the political role of the Commission (for example by delegating competition policy and regulatory oversight to independent agencies); or depoliticise the choice, by abandoning the Spitzenkandidaten process, and attempt to maintain the charade that the Commission is an 'unelected civil service'.

I would go even further, in that I believe the broader choice for Europe's leaders and citizens in the current post-consensus world is whether or not to politicise the EU-level political system more broadly. Are there any EU-level policy issues where politicised majoritarian contested politics can be tolerated by publics and national political leaders? If the answer to this question is 'none', then the EU will not be able to evolve beyond the current sub-optimal and gridlocked system of inter-

*governmentalism – which in the past I have described as a ‘supersized Switzerland’ model of the EU.*⁹

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Programme of the Expert Forum

Future Institutional Framework

Expert Forum – Liberal White Book Europe 2030

Zoom Meeting

03 July 2020, 09h30 – 15h30 (CEST)

09h25 **Participants connect to the online Expert Forum**

09h30 **Welcome & Presentation of the Liberal White Book Europe 2030 project**

Daniel Kaddik, Executive Director, European Liberal Forum

09h40 **Introduction to this Expert Forum**

Valentin Kreiling, Policy and Research Coordinator, European Liberal Forum

09h45 **Rethinking the Institutional Framework**

Simon Hix, Pro-Director for Research and Professor of Political Science, London School of Economics

10h30 **Break**

Moderator: Diane Fromage, Assistant Professor of European Law, Maastricht University

10h35 **A more democratic European Union**

Short input statements:

- Heather Grabbe, Director, Open Society European Policy Institute, Brussels

⁹ Simon Hix (2011), ‘Where Is the EU going? Collapse, Fiscal Union, a Supersized Switzerland or a New Democratic Politics’, *Public Policy Research*, 18(2), 81–87.

- Göran von Sydow, Director, Swedish Institute of European Policy Studies, Stockholm
- Wolfgang Wessels, Jean Monnet Chair for European Politics and Director of the Centre for Turkey and European Union Studies, University of Cologne

followed by a discussion among all participants.

Discussion topics: *How can the EU become more democratic? What role can the Conference on the Future of Europe play for this? What needs to be changed in time for the 2024 European Parliament elections?*

11h35 **Break**

11h40 **Governing differentiation in a multi-speed EU**

Short input statements:

- John Erik Fossum, Professor of Political Science, ARENA Centre for European Studies, University of Oslo
- Frank Schimmelfennig, Professor of European Politics, ETH Zurich
- Marlene Wind, Professor in European Politics and Law, University of Copenhagen

followed by a discussion among all participants.

Discussion topics: *What is the current state of the multi-speed EU? How can the EU evolve into a more flexible, but also more coherent entity? Is the gap between the Eurozone and the EU27 narrowing or widening?*

12h40 **Break**

Moderator: Eva-Maria Poptcheva, Advisor in the Cabinet of the Secretary-General of the European Parliament

12h45 **National parliaments and subsidiarity control**

Short input statements:

- Katrin Auel, Head of Research Group, European Governance and Public Finance, Institute for Advanced Studies, Vienna
- Nicola Lupo, Professor of Public Law at the Faculty of Political Science, LUISS Guido Carli University, Rome
- Thomas Winzen, Lecturer in Government, Department of Government, University of Essex

followed by a discussion among all participants.

Discussion topics: *How do national parliaments currently control the subsidiarity principle? Is there room for improvement? What other tasks do/should national parliaments fulfil?*

13h45 **Break**

13h50 **Are the 2020s another treaty change decade?**

Short input statements:

- Ben Crum, Professor of Political Science, Vrije Universiteit Amsterdam
- Adrienne Héritier, Emeritus Professor, European University Institute
- Andreas Maurer, Professor of Political Science and European Integration Studies, University of Innsbruck

followed by a discussion among all participants.

Discussion topics: *What are the lessons learnt from the previous reform processes? Where did they fail, where did they succeed? How can we avoid the mistakes?*

14h50 **Final talk & Conclusions**

Renaud Dehousse, President, European University Institute

15h30 **End of Expert Forum**

Discussion Paper

Achieving Robust European Cybersecurity through Public–Private Partnerships: Approaches and Developments

Francesco Cappelletti¹ and Luigi Martino²

Abstract

Today the opportunities offered by cyberspace and information and communication technologies (ICT) provide significant benefits that have changed how businesses operate, governments function, and people live. The relatively recent birth of this new dimension has also affected inter-state relations and, more broadly, the dynamics of the international arena. Notwithstanding the relevant positive effects enabled by the information revolution, according to empirical evidence, there is a ‘dark side’ of cyberspace. In recent years, European cybersecurity regulations have seen an unprecedented development, providing the legal basis for a future in which the cyber domain and environment is independent in terms of its innovative capacity, security, and resilience. Nevertheless, it has become clear that Member States need to equip themselves with the necessary technical and regulatory tools to counter cyber threats. This should result in strategic area investments and, when in place at the European Union level, these could be the key for optimising development in the field. Consequently, the mixed convergence of private ownership/management of cybersecurity skills, as well as public and private obligations and responsibilities, have convinced policymakers to consider the ‘partnership’ between public and private stakeholders (i.e., public–private partnerships, PPPs) as the correct remedy for mitigating cyber risks and strengthening security. This cooperation between the public and private sectors could prove crucial in order to stimulate such developments and foster the European cybersecurity market.

The first part of this discussion paper, by Luigi Martino, takes into account the regulatory aspect of collaborations with private actors in

¹ Francesco Cappelletti, Research Fellow, European Liberal Forum.

² Luigi Martino, Professor of Cybersecurity and International Relations, University of Florence.

the European context. It shows that improving the implementation of regulations and frameworks is a fundamental step in achieving a strong cybersecurity structure. The second part, by Francesco Cappelletti, analyses the characteristics of PPPs in the cybersecurity field within the broader context of cooperation with the private sector and examines how this could stimulate the development of the European cybersecurity market while following a liberal approach.

Both in terms of the market and fair accessibility (especially for small and medium enterprises, SMEs), a liberal approach is the optimal solution to the long-standing issues of accountability, reliability, and relationships between parties. At the same time, as the authors argue, PPPs in the field of cybersecurity need to be guided by a regulatory framework that favours their development while also ensuring the protection of citizens' rights.

Section 1: The Diffusion of PPPs on Cybersecurity and Protecting Critical Infrastructures from Cyber-Attacks: The European Union Approach

Luigi Martino

The question of defining specific policies for critical infrastructure protection (CIP) has been debated by European institutions since the beginning of the twenty-first century. Immediately after the 9/11 terrorist attacks in the United States, and the terrorist attacks on EU territory (Madrid 2004 and London 2005),³ the European Commission started a debate on how to protect those infrastructures which, in case of attacks or incidents, would have an impact on the safety of citizens and the security of Member States.⁴

Hence, in EU policy documents the term 'resilience' arose as a key element of critical infrastructures (CIs) in relation to the strategic priority to guarantee service (or business) continuity in case of destructive and

³ United Nations Office of Counter-Terrorism (UNOCT) and United Nations Counter-Terrorism Committee Executive Directorate (UNCTED) (2018), 'The protection of critical infrastructures against terrorist attacks: Compendium of good practices', 91, 109, https://www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/files/documents/2021/Jan/compendium_of_good_practices_eng.pdf.

⁴ See R. Setola, E. Luijff, and M. Theodoridou (2016), 'Critical Infrastructures, Protection and Resilience', in R. Setola, V. Rosato, E. Kyriakides, and E. Rome (eds.), *Managing the Complexity of Critical Infrastructures. A Modelling and Simulation Approach* (Berlin: Springer), pp. 1–18; European Commission (2001), 'Network and information security: Proposal for a European policy approach', COM(2001) 298 final, Brussels, 6 June, 9; H. Carrapico and A. Barriha (2017), 'The EU as a Coherent (Cyber)Security Actor?', *JCMS: Journal of Common Market Studies*, 55(6), 1254–1272.

unpredictable events.⁵ The Commission even established the European Programme for Critical Infrastructure Protection (EPCIP), acknowledging the relevance of proactive cooperation between the owners and operators of CIs (both public or private) and the national authorities of Member States.⁶ In particular, the main goals of the EPCIP are based on three key strategic areas:

- a) creating a procedure for the identification and designation of European Critical Infrastructures (ECI) and a common approach to the assessment of such infrastructures' protection when improvements are needed;
- b) designing measures to facilitate the implementation of the EPCIP, including an EPCIP Action Plan and the Critical Infrastructure Warning Information Network (CIWIN) funding projects on this specific issue;
- c) establishing international collaboration between the European Economic Area (EEA), the European Free Trade Area (EFTA), and the United States and Canada.

Indeed, regarding the concept of CIP, the *Green Paper On A European Programme For Critical Infrastructure Protection* outlined the need to guarantee 'business continuity' of services provided by CIs as well as to protect citizens of the Union from terrorist attacks.⁷

The responsibility issue, which is being used as a lever by European policymakers to establish appropriate models of collaboration between public and private sectors, was established in the Commission communication that states ensuring CIP '[...] is a shared responsibility: no single stakeholder has the means to ensure the security and resilience of all [...] infrastructures and to carry all the related responsibilities'.⁸ The responsibility issue was also raised by the Council resolution of the same year on a collaborative European approach to network and information security,

⁵ B. Hämmerli and A. Renda (2010), 'Protecting critical infrastructure in the EU', CEPS Task Force Report, Brussels, 15 et seq.; C. Pursiainen and P. Gattinesi (2014), 'Towards testing critical infrastructure resilience', JRC Scientific and Policy Reports, 14–17, <https://core.ac.uk/download/pdf/38627770.pdf>.

⁶ European Commission (2006), 'Communication from the Commission on a European programme for critical infrastructure protection', COM(2006) 786 final, Brussels, 12 December.

⁷ European Commission (2005), 'Green Paper on a European programme for critical infrastructure protection', COM(2005) 576 final, Brussels, 17 November, 2, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52005DC0576>. See also G. Christou (2016), *Cybersecurity in the European Union. Resilience and Adaptability in Governance Policy* (London: Palgrave Macmillan), 122, ISBN 978-1-137-40052-9.

⁸ European Commission (2009), 'Protecting Europe from large scale cyber-attacks and disruptions: Enhancing preparedness, security and resilience', SEC(2009) 399, Brussels, 30 March, 5.

which emphasises that '[...] the ICT sector is vital to most sectors of society, making Network and Information Security a joint responsibility of all stakeholders, including operators, service providers, hardware and software providers, end-users, public bodies and national government'.⁹

To the issue of collaboration with the private sector, the same resolution adds: 'The importance of an active and knowledgeable European Network and Information Security community that contributes to the increased collaboration between Member States and the private sector'.¹⁰

In other words, the Council not only identifies the crucial role of the private sector to ensure the robustness and the resilience of CIs in case of incidents or attacks (i.e., business continuity) but also indicates public-private partnerships (PPPs) as the necessary instrument to mitigate, prevent, and provide an appropriate European response to the risks deriving from attacks on networks and information systems, recognising: '[...] the importance of multi-stakeholder models such as Public Private Partnerships (PPPs), built on a long term, bottom-up model to mitigate identified risks where such an approach delivers added value in helping to ensure a high level of network resilience'.¹¹

In this framework, the Commission establishes the conditions for creating an action plan in order to implement PPPs for the protection of CIs from cyber-attacks (the Critical Information Infrastructure Protection Action Plan). Several scholars have considered the ISAC (Information Sharing and Analysis Centre) model as a reference for the creation of a common platform between the public and private sectors for exchanging information. The ISAC was originally born in the United States in 1997 after the first attempted terrorist attack on the World Trade Center in 1993 and the 1995 events in Oklahoma City.¹² It is important to note that the European Union approach – prior to Directive 2008/114 (the

⁹ Council of the European Union (2009), 'Council Resolution on a collaborative European approach to network and information security', 2009/C 321/01, 18 December, section III, 2.

¹⁰ Council of the European Union, 'Council Resolution on a collaborative European approach', section IV, 1.

¹¹ Council of the European Union, 'Council Resolution on a collaborative European approach', section IV, 7.

¹² See N. Choucri, S. Madnick, and P. Koepke (2016), 'Institutions for cyber security: International responses and data sharing initiative', Working Paper CISL# 2016–10, Cybersecurity Interdisciplinary Systems Laboratory, MIT, Cambridge, MA, August, <https://cams.mit.edu/wp-content/uploads/2016-11.pdf>; J. Korte (2017), 'Mitigating Cyber Risks through Information Sharing', *Journal of Payments Strategy & Systems*, 11(3), 203–214; European Union Agency for Cybersecurity (ENISA) (2018), 'Information Sharing and Analysis Centres (ISACs). Cooperative models', Heraklion, Greece, file:///C:/Users/WELCOME/Desktop/Downloads/WP2017%20O-3-1-3%202%20Information%20Sharing%20and%20Analysis%20Center%20(ISACs)%20Cooperative%20models.pdf; A. Mermoud, M.M. Keupp, K. Huguenin, M. Palmié, and D.P. David (2019), 'To Share or Not to Share: A Behavioral Perspective on Human Participation in Security Information Sharing', *Journal of Cybersecurity*, 5(1), 1–13. For more info about ISAC, the EU, and PPPs, see E. Ouzounis (2018), 'PPP and ISAC in the

ECI Directive) and even up to Directive 2016/1148 (the NIS Directive)¹³ – until quite recently did not provide effective collaboration mechanisms between public and private actors, nor among Member States in the context of CIs protection.¹⁴

The main reason the Commission has identified for considering PPPs as a useful tool in this context is the result of a simple but practical syllogism consisting of a premise and two consequences: (a) the private sector ‘owns or controls’ a large number of CIs; (b) the implementation of security policies depends on the involvement of the private sector in the ‘definition of strategic public policy objectives as well as operational priorities and measures’; (c) PPPs ‘would bridge the gap between national policy-making and operational reality on the ground’.¹⁵

It is important to note that, in the EU regulatory framework (at an operational level), the concept of PPP applied to the protection of CIs from cyber-attacks is based on the actions carried out by ENISA (European Union Agency for Cybersecurity) and EUROPOL (European Police Office).¹⁶ In particular, these two EU bodies contribute to collaborations with national public authorities, European institutions, and the public or private sectors which are included in the CIP framework. These collaborations are organised mainly to facilitate the exchange of information and assistance and for the purpose of implementing the common standards of information sharing in the national legal systems.¹⁷

ENISA’s collaborations with the private sector aim to increase, from a technical point of view, the reliability and resilience of cyberspace and CIs. EUROPOL, on the other hand, sustains collaborations related to information sharing, according to the specific purposes of a law enforcement agency. EUROPOL has implemented specific PPPs aimed at fighting cyber-crime through the creation of support groups for the EC3 (European Cybercrime Centre) with a specific focus on operational rather than security aspects and a specific law enforcement-oriented approach. As Bossonf and Wagner claim, the EC3 signed several memoranda of understanding (MoU) with private operators in two specific sectors: finance and ICT. On the side of active assistance, the formalisation of PPPs follows the general goal of risk sharing. In addition to

EU’, Presentation, ENISA, Attiki, Greece, 14 December, <https://www.oecd.org/internet/global-forum-digital-security/events/gfdsp-dec2018-ouzounis.pdf>.

¹³ The Directive on security of network and information systems.

¹⁴ A. Rotondo (2019), ‘Cybersecurity e protezione delle infrastrutture critiche: l’efficacia del modello europeo’, in S. Marchisio and U. Montuoro (eds.), *Lo spazio cyber e cosmico: risorse dual use per il sistema Italia in Europa* (Turin: Giappichelli Editore), p. 127.

¹⁵ Rotondo, ‘Cybersecurity’.

¹⁶ Europol is the Union’s law enforcement agency, fully operational since 1999.

¹⁷ R. Bossonf and B. Wagner (2017), ‘A Typology of Cybersecurity and Public-Private Partnerships in the Context of the EU’, *Crime Law and Social Change*, 67(3), 267.

the exchange of information, cooperation with IT companies on the operational level is structured to include specific tasks such as criminal investigation, trojan elimination, and botnet detection.¹⁸

In the action against the Shylock trojan in July 2014, for example, the EC3 directed their operations thanks to the support of the NCA (National Crime Agency) of the United Kingdom, the FBI (Federal Bureau of Investigation) of the United States, and police agencies from the Netherlands, Italy, Turkey, Germany, Poland, and France, as well as the Symantec Corporation. It is also noteworthy that Microsoft, along with other companies, participated in the action campaign coordinated by the EC3 against the Ramnit botnet. Thanks to the Microsoft IoT (internet of things) suite, it was possible to group and analyse data in near-real time and monitor this threat. In this political-regulatory context, the European Public Private Partnership for Resilience (EP3R) emerges as a strategic programme at the pan-European level in order to develop and use PPPs in the context of CIs, especially in the telecommunications sector.¹⁹

The EU approach has identified, especially through the EP3R programme, the PPP model as an appropriate tool to combine joint efforts and capabilities in an open and inclusive cooperation between public and private actors who are all included in a multi-stakeholder governance framework.²⁰

However, the lack of operational activities of the European 'PPP model' has proven to be the weakness of the EP3R. Indeed, the absence of a key political role in the regulatory instruments of CI operators (particularly private actors) and the exclusivity of political authorities in defining means and goals have hampered the activities of this partnership – with negative effects both on results and on the policies of regulating and including private actors in decision-making processes.²¹

¹⁸ See Bossong and Wagner, 'A Typology of Cybersecurity', 280; C. Osborne (2014), 'Police, security firms team up and take down Skylock malware', ZDnet.com, 11 July, <https://www.zdnet.com/article/police-security-firms-team-up-and-take-down-shylock-malware/>; J. Hardoy (2015), 'Breaking up a botnet – How Ramnit was foiled', *Microsoft EU Policy Blog*, 22 October, <https://blogs.microsoft.com/eupolicy/2015/10/22/breaking-up-a-botnet-how-ramnit-was-foiled/>.

¹⁹ S. Purser (2011), 'The European Cooperative Approach to Securing Critical Information Infrastructure', *Journal of Business Continuity & Emergence Planning*, 5(3), 237–245; K. Irion (2013), 'The Governance of Network and Information Security in the European Union: The European Public-Private Partnership for Resilience (EP3R)', in J. Krüger, B. Nickolay, and S. Gaycken (eds.), *The Secure Information Society* (London: Springer), pp. 83–116; M. Dunn Cavelti (2013), 'A resilient Europe for an open, safe and secure cyberspace', *UI Occasional Papers*, No. 23, December, <https://ssrn.com/abstract=2368223>.

²⁰ Bossong and Wagner, 'A Typology of Cybersecurity', 276.

²¹ Bossong and Wagner, 'A Typology of Cybersecurity', 277.

It is no coincidence that the European cyber security strategy of 2013 referred to the EP3R as a tool 'to be implemented'.²² At that time, European policy makers re-affirmed the concept of shared responsibility between public and private actors in identifying the 'vulnerabilities of European critical infrastructure and encouraging the development of resilient systems'.²³

Moreover, the draft proposal of the NIS Directive has stressed, among other goals, the implementation of specific policies focused on private sector cooperation – including specific recommendations to the national authorities dictating the necessary measures to 'improve preparedness and engagement of the private sector'.²⁴ This cooperation will also build upon the progress made in the context of the 'European Forum for Member States (EFMS)', which has held productive discussions and exchanges on NIS public policy and can be integrated in the cooperation mechanism once in place'. It specifies that:

Since the large majority of network and information systems are privately owned and operated, improving engagement with the private sector to foster cybersecurity is crucial. The private sector should develop, at technical level, its own cyber resilience capacities and share best practices across sectors. The tools developed by industry to respond to incidents, identify causes and conduct forensic investigations should also benefit the public sector.²⁵

In this respect, the Commission identifies specific forms of collaborations between public and private sectors and suggests the creation of 'PPPs as platform' to involve all (public and private) stakeholders in sharing best practices from the field of cyber security and developing incentives to facilitate the implementation of measures needed to secure and protect CIs. In order to achieve the abovementioned purposes, the ENISA has created, inside the NIS platform framework, three working groups, with a specific focus on co-regulatory tools and related public policies with reference to risk management, information sharing and coordination in case of incidents between public and private actors.²⁶

²² European Commission, High Representative of the Union, Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions (2013), 'Cybersecurity strategy of the European Union: An open, safe and secure cyberspace', JOIN(2013) 1 final, 7 February, 7.

²³ European Commission, 'Cybersecurity strategy of the European Union', 2, 4.

²⁴ European Commission, 'Cybersecurity strategy of the European Union', 5–6.

²⁵ European Commission, 'Cybersecurity strategy of the European Union', 5–6.

²⁶ European Commission, 'Cybersecurity strategy of the European Union', 14. See also Bossong and Wagner, 'A Typology of Cybersecurity', 277.

Therefore, ENISA developed an ideal PPP model for the protection of CIs from cyber-attacks based on the European policy framework. Indeed, ENISA's premise is that:

The large number of PPP experiences worldwide has confirmed the value of such approach also for its flexibility and appropriateness for today emerging challenges including cyber-attacks mitigation, critical infrastructure protection and security and resilience of information and communications.²⁷

At the same time, European policy makers, aware of the need to promote a bottom-up process of policy building,²⁸ have encouraged all actors involved in the CI or essential service ecosystems to develop informal and formal collaboration mechanisms with governmental authorities in order to ensure CIs' adequate protection, especially from cyber risks.²⁹

The Commission's approach is as simple as it is practical. On the one hand, the rules for operators can considerably improve the protection of citizens, businesses, and European institutions against risks to CIs or essential services.³⁰ The regulatory approach of the NIS Directive is not so much about the reliability of the processes provided by the Directive itself, but rather about the formalisation of the collaboration between the public sector and the private sector compared to the obligations and security measures provided.³¹ On the other hand, 'the introduction of requirements to implement NIS [Network Information Security] risk management for public administrations and key private players would create a strong incentive to manage security risks effectively' and, in the long term, would favour the development of an ecosystem based on the model of PPP governance. 'In particular, the obligations placed on the Member States would ensure adequate preparedness at national level

²⁷ See European Union Agency for Cybersecurity (ENISA) (2015), 'EP3R 2009–2013 Future of NIS public private cooperation', 15 April, <https://www.enisa.europa.eu/publications/ep3r-2009-2013>.

²⁸ R.E. Matland (1995), 'Synthesizing the Implementation Literature: The Ambiguity-Conflict Model of Policy Implementation', *Journal of Public Administration Research and Theory*, 5(2), 145–174.

²⁹ European Commission, 'Cybersecurity strategy of the European Union', 13.

³⁰ Carrapico and Barrinha, 'The EU as a Coherent (Cyber)Security Actor?', 1265. For more info about contractual PPP, see: European Commission (2016), 'Strengthening Europe's cyber resilience system and fostering a competitive and innovative cybersecurity industry', COM(2016) 410 final, Brussels, 5 July, 12–13; P. Timmers (2018), 'The European Union's Cybersecurity Industrial Policy', *Journal of Cyber Policy*, 3(3), 363–384.

³¹ European Commission, 'Strengthening Europe's cyber resilience system', 3.

and would contribute to a climate of mutual trust, which is a precondition for effective cooperation at EU level.³²

Conclusion and recommendations

Encourage, Gather, Optimise: the PPP approach should aim at optimising functions and respecting the actors' specific characteristics, avoiding any dispersion of efforts which may lead to possible duplications on the part of other organisations or other forms of PPPs. Another key point is related to the role of government or public authorities, which should be mainly directed at reducing barriers to entry into the PPP framework and encouraging the private sector's active participation.

Aim at a Bottom-up Approach: PPP governance should initially be based on a top-down model that later, according to the numerical growth of PPP actors involved, should move to a bottom-up model – where newly introduced initiatives should not be adopted via a centralised approach, under the prominent influence of public or governmental authorities, but should be brought in based on common will among the 'community of participants'.

Look for Added Value: private sector participation should be preferred when it adds a clear value in terms of technical skills that can also be translated into some significant contribution (if required by national legislation) wherein private entities participate in the management of cyber crises that can have deleterious effects on citizens' safety or national security.

Indeed, the involved actors' intentions to prevent, mitigate, and react to cyber threats provide for the coordination of both public and private sector efforts. The organisational or institutional architecture, through the designated mechanisms and actors involved, can determine the analysis of a given threat, the collaboration between states, and the ability to respond effectively.³³ In the European context, for instance, these aspects could be included in the concept of 'shared responsibility' which, as stated above, is at the basis of the PPP concept itself.³⁴

Willingness and interests: these two points deserve additional emphasis. The first concerns the willingness of Member States to share responsibility and capabilities (i.e., power factors) on a decisive aspect

³² European Commission (2013), 'Proposal for a Directive of the European Parliament and of the Council concerning measures to ensure a high common level of network and information security across the Union', COM(2013) 48 final, Brussels, 7 February, 7–8.

³³ T. Chaudhary, J. Jordan, M. Salomone, and P. Baxter (2018), 'Patchwork of Confusion: The Cybersecurity Coordination Problem', *Journal of Cybersecurity*, 4(1), 1–13.

³⁴ See: S. Piattoni (2009), 'Multi-level governance in the EU. Does it work?', *Globalization and Politics – A Conference in Honor of Suzane Berger*, Massachusetts Institute of Technology, 8–9 May, <http://www.princeton.edu/~smeunier/Piattoni>.

of their survival (i.e., cyber security). The second concerns attempts to absorb the tensions lying between the different interests of public and private actors. For both points, the combination of governance mechanisms offered by PPPs (i.e., the multi-stakeholder approach) seems to allow for the recognition of decentralisation (i.e., distribution of practices and powers), of the cross-border and supranational nature of the problem, and of the effects of the decision-making process in terms of its complex causal dynamics (i.e., uncertainty caused by cyber-attacks or CIs by default). Therefore, the ability to respond can ultimately be strengthened by the PPP governance approach, which favours the application of measures and policies to increase the protection of CIs and essential services and facilitates, *inter alia*, information-sharing mechanisms with the private sector. The PPP approach applied to the CIP context, as recommended by ENISA, would lead to the development of a virtuous circle based on an 'osmotic' relationship between the various stakeholders that, *inter alia*, would allow each sector and each layer to increase – in a coordinated manner – its capacity for prevention, response, and recovery in the event of a crisis triggered by an incident or cyber-attack against CIs.³⁵

With that in mind, in order to strengthen PPPs at the European level and to enhance security and resilience:

- Due to the nature of cybersecurity and cyber-attacks, which could be highly interconnected and interdependent, this issue should be addressed at a supranational level.
- A PPP model should allow for the exchange of knowledge and best practices in order to build a common base among all stakeholders, including innovative SMEs, researchers, and academics.
- Cooperation with the private sector, being a key point from an investment perspective, could be influenced by regulatory actions.
- The PPP approach should aim at optimising functions and respecting the actors' specific characteristics, avoiding any dispersion of efforts which may lead to possible duplications on the part of other organisations or other forms of PPPs.
- The private sector has the competences related to networks and systems that fall within strategic objectives at the European level (e.g., the NIS Directive).
- PPPs should also be based on a clear governance framework with shared objectives that follow the principle of 'shared responsibility'.
- Public sector actors should reduce any economic barriers to PPP participation, as this could be a significant incentive for stakeholders to proactively participate.

³⁵ European Court of Auditors (2019), 'Challenges to effective EU cybersecurity policy', Briefing Paper, Review No 02/2019, 19 March, 49.

- Stakeholders and participants should invest in a comprehensive and pragmatic approach towards building partnerships at the European level, where all members (public and private) get real value.
- To reach an adequate level of cybersecurity, the States should also involve those actors who, although not falling within the seven sectors identified by the NIS Directive, play a central role for the success of PPPs, for example.

Comment by Francesco Cappelletti on Section 1

Luigi Martino describes in detail the framework of regulations and implementations regarding PPP projects in Europe with regard to cybersecurity and its infrastructure. His chapter takes into account the regulatory aspect as the matrix of a broad context in which policies must be implemented in close collaboration with private actors. It is clear from the text that the optimisation of relationships, as well as functions, must take into account not only the rules but above all their implementation by Member States (and political actors). The idea of 'optimising' the implementation of regulations and frameworks is also fundamental and, as Martino points out, one should aim to avoid creating structures that overlap one's own roles.

Finally, the described 'community of participants' who should take part in a bottom-up approach, is fundamental to fostering the development of a sector market. However, the question of political will seems to remain a determining factor, as does the willingness of the Member States to share within the Union not only strategy and regulations but also their implementation. Gathering political support for a reasonable and thoughtful discussion on cybersecurity seems to be the only solution to the challenge (which, as the text shows, affects every citizen). Moreover, a liberal approach both to the market, leaving no one behind (especially SMEs), and to regulations, which must exist as a basis to support the development of a digital market. Provided there are no barriers to entry created, this could be an optimal solution.

Section 2: Free Market and Cybersecurity in Europe: The Need for Strategic Public–Private Partnerships

Francesco Cappelletti

Introduction

The need to assist digitisation processes by providing a common cybersecurity standard within European infrastructure is the fundamental principle behind actions taken by European institutions in recent years to stimulate technological processes. While cybersecurity is a shared responsibility, integrated security by design and by default is a prerequisite for ensuring user confidence.³⁶

The European project of a Digital Single Market has also fostered the development of a European framework for cybersecurity, guaranteed by certifications for products developed in the field of information and communication technologies (ICT). The creation of such a framework is a fundamental step which could actually affect the way standards are set (bottom-to-bottom or top-to-bottom).³⁷ From a market perspective, creating an efficient framework could potentially allow products from one country to be placed on the internal European market according to generally recognised standards and in a way that eliminates the risk of barriers and fragmentation within the single market itself.

Cybersecurity is a vital sector representing one of the EU's CIs.³⁸ The usability of services in the cybersecurity market depends on different technologies; therefore, the acceleration of technological processes requires a cooperative approach towards the private sector. In this regard, cooperation between industries, research centres, and universities, on the one side, and governments, on the other, is necessary for the development of the process itself. SMEs and start-ups with high technological value are the key to success for a digitalisation strategy that aims at a multi-directional approach.

³⁶ Council of the European Union (2020), 'Shaping Europe's digital future – Council conclusions', 9 June, <https://data.consilium.europa.eu/doc/document/ST-8711-2020-INIT/en/pdf>.

³⁷ European Parliament (2019), 'Regulation (EU) 2019/881 of the European Parliament and of the Council on ENISA (the European Union Agency for Cybersecurity) and on information and communications technology cybersecurity certification (Cybersecurity Act)', 17 April, title 1, Art. 1, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0881&from=en>.

³⁸ European Cyber Security Organisation (ECSO) (2020), 'ECSO Barometer 2020: Cybersecurity in light of Covid-19', Report, 13, <https://www.ecs-org.eu/documents/uploads/report-on-the-ecso-members-and-the-community-survey.pdf>.

EU cybersecurity PPPs: Sharing security between public and private sectors

PPPs are a major model for project implementation in use, especially for the realisation of public infrastructures (such as roads, ports, airports, hospitals, energy plants, etc.). On the other hand, the private entity or entities participating in the realisation of a given project will gain income according to the type of contract. Fundamentally, these types of agreements allow the state to offload certain expenses during the execution of a project, ensuring the final product's quality through the evaluation of several projects in a public tender or based on specific agreements. Also, since such partnerships concern public service award contracts, this sort of cooperation must also be subject to specific regulations of the European Union. Broadly speaking, partnerships between public and private organisations follow some necessary procedures and definitions, widely described in the literature, that can be summarised through a few essential elements: i) solidarity, ii) mutuality, iii) commitment, and iv) sharing of responsibilities.³⁹

It also is necessary, when initiating a PPP-style cooperation, to quantify the results *ex-ante* through indicators that guarantee the contract's optimal prospectus as well as to quantify any additional costs that might occur.⁴⁰ Another fundamental stage is the Value for Money (VFM) analysis, aimed at investigating – in the medium or long term – the efficient allocation of resources, and which can be defined as 'the optimum combination of whole-of-life costs and quality [of the] service to meet the user's requirements', representing a fundamental part of preventive appraisal processes.⁴¹

Despite what has been said so far, PPP projects in the field of cybersecurity do follow some specific rules. The same *horizontal* relationship exists, so each party involved follows the basic rule of *quid pro quo*. A central point, in fact, is the balance between business and security. As far as the security sector is concerned, there are numerous examples where a large part of national security is entrusted through this kind of partnership. This is also true when it comes to cybersecurity and IT infrastructure, although countries are generally less inclined to entrust network

³⁹ E.H. Klijn and G.R. Teisman (2000), 'Governing Public Private Partnerships', in S.P. Osborne (ed.), *Public Private Partnerships: Theory and Practice in International Perspective* (London: Routledge), pp. 84–106.

⁴⁰ P. Burger and I. Hawkesworth (2011), 'How to Attain Value for Money: Comparing PPP and Traditional Infrastructure Public Procurement', *OECD Journal on Budgeting*, 2011/1, 48–50.

⁴¹ H. Martin (2013), *Advisory Facility, Value-for-Money Analysis- Practices and Challenges: How Governments Choose When to Use PPP to Deliver Public Infrastructure and Services* (Washington, DC: World Bank), 9.

supervision to private actors.⁴² Since there are certain peculiarities that cannot be assimilated to other PPP contexts, there are different forms of PPP in the cybersecurity field, depending on the purpose of the partnership itself and the degree to which the parties are involved in national security issues.⁴³

It can be said that because of the peculiarities of this type of partnership, these collaborations are not comparable to other types of PPP projects. First, the reliability of the strategic sector (i.e., cyberspace) bears considering, since a private security service provider would become the guarantor of a fundamental right – that of public and national security. On the one hand, collaboration with a private entity in this area needs to ensure the necessary crisis management capabilities. In the other hand, outsourcing control over strategic infrastructures could potentially be perceived as a weakness in terms of strategic sectors being controlled by the central government. For this reason, ‘institutional’ partnerships are often preferred when CIs need to be protected or when strategic sectors and private actors are involved in areas which (by law) have the public side as guarantor.⁴⁴ Such cooperation must clearly provide the preconditions for possible coordinated responses to incidents in order to make crisis management more efficient.

Second, the issue must be considered in the European context. Cybersecurity has been placed at the heart of the entire European digitalisation project, with further increased financing in the recent Recovery Plan.⁴⁵ This will be achieved by sharing part of the infrastructure and therefore (cyber) security and resiliency of the entire European cybersecurity environment at a supranational level. This quite is relevant, as the Commission not long ago affirmed the lack of an ‘efficient cooperation mechanism’ for Member States when supporting cybersecurity innovation and deploying ‘cutting-edge European cybersecurity solutions’.⁴⁶ In this context, cyber-PPP (cPPP) projects need to have collaborations that

⁴² M. Carr (2016), ‘Public-Private Partnerships in National Cyber-Security Strategies’, *International Affairs*, 92(1), 43–62. This is identified as a problem of ‘serious disjuncture in expectations from both “partners”’.

⁴³ European Union Agency for Cybersecurity (ENISA) (2017a), ‘Public private partnerships (PPP). Cooperative models’, Report, 20, https://www.enisa.europa.eu/publications/public-private-partnerships-ppp-cooperative-models/at_download/fullReport.

⁴⁴ ‘Usually, there are many services that this type of institution delivers, such as research, analysis, development of good practices and guidelines, help desk, security audits and some more focused services.’ ENISA, ‘Information Sharing and Analysis Centres’, 21–23.

⁴⁵ European Commission (2020), ‘The EU budget powering the recovery plan for Europe’, COM(2020) 442 final, Brussels, 27 May, 2, https://eur-lex.europa.eu/resource.html?uri=cellar:4524c01c-a0e6-11ea-9d2d-01aa75ed71a1.0003.02/DOC_1&format=PDF.

⁴⁶ European Commission (2018b), ‘Regulation of the European Parliament and of the Council establishing the European Cybersecurity Industrial, Technology and Research Competence Centre and the Network of National Coordination Centres’, COM(2018) 630

have been created with specific goals (goal-oriented PPPs) in mind,⁴⁷ such as raising awareness in individual Member States.

Third, the risks associated with the lack of a robust cybersecurity infrastructure are cross-cutting and potentially destructive for many sectors of the European economy. This is because the digitalisation of production processes and the use of technology within the service sector can potentially expose the entire digital structure to significant shocks. Moreover, increasing the level of network security within the European digital system is essential due to the imbalance in reactive capability in response to widespread cyber-attacks, since '[. . .] within the critical sectors, there are significant differences regarding the maturity level of cyber security. Therefore, some of the critical infrastructure operators will not be as ready as others [. . .]'.⁴⁸ It may also happen that a country recognises the risks to a specific sector or industry from cyber threats but is unable to address them. In this case, partnerships may be established which aim to identify private organisations where certain tasks can be outsourced, such as creating awareness or supporting the government in its implementation of infrastructure protection measures. 'Hybrid PPPs' have also been defined as a combination of both institutional and outsourced cybersecurity services, applicable in cases where a government '[. . .] does not have enough resources to deliver necessary cybersecurity solutions on a national level and starts cooperation with the private entity which has the appropriate expertise and can deliver these solutions'.⁴⁹

Before describing the effectiveness of initiatives and partnerships between the public and private sectors, it is necessary to consider how European institutions aim at advancing the whole cybersecurity system, in terms of both cooperation and resilience.

Discussing partnerships in the field of cybersecurity, one must consider the state of uniformity within various infrastructures at the EU level. That is, it is necessary to pass through regulation, and, in this sense, the Institutions aim at the standardisation of European cybersecurity. Although the European framework regarding cybersecurity still does not seem to be complete, especially with regard to PPPs – even more so in the way that European guidelines are transposed into national legislation – it is important to highlight some general developments to better understand the direction in which European cybersecurity is heading.

final, Brussels, 12 September, 4, https://ec.europa.eu/commission/sites/beta-political/files/soteu2018-cybersecurity-centres-regulation-630_en.pdf.

⁴⁷ ENISA, 'Public private partnerships', 24–27.

⁴⁸ European Union Agency for Cybersecurity (ENISA) (2017b), 'Stock taking of information security training needs in critical sectors', December, <https://www.enisa.europa.eu/news/enisa-news/stocktaking-of-information-security-training-needs-in-critical-sectors>.

⁴⁹ ENISA, 'Stock taking of information security training needs', 28–29.

One of the most important achievements to date is the Cybersecurity Act.⁵⁰ With this regulation, the European Commission demanded the creation of a European regulatory background, the *Common Criteria based European candidate cybersecurity certification scheme* (EUCC), recognised by all Member States. Such a framework should operate according to specific requirements and evaluation standards. The EUCC is based on the Common Criteria for IT Security Evaluation (CC) and the Common Methodology for IT Security Evaluation (CEM). It takes into account the respective standards (ISO/IEC 15408 and ISO/IEC 18045) with appropriate revisions made.⁵¹

As already described, an important issue when considering the possibility of sharing cooperative projects in cybersecurity at a European level is the evaluation of cybersecurity infrastructural development across Member States. A 'multi-speed cybersecurity' creates, from a strategic point of view, problems in a shared ecosystem because of the difficulty in coordinating different response capacities. Moreover, this could have an impact on the industrial ecosystem, especially among SMEs, which are more exposed to threats due to their inability to bear the costs of cybersecurity.⁵² For the purpose of adapting cyber infrastructure to emerging threats, the Network and Information Security (NIS) Directive requires Member States to create National Strategies for Cybersecurity (NCSs),⁵³ consisting of '[a] high-level top-down approach to cybersecurity that establishes a range of national objectives and priorities that should be achieved in a specific timeframe'.⁵⁴

Finally, the agreement on PPPs concluded by the European Commission in 2016 with the European Cyber Security Organisation (ECISO) is an example of cooperation in which the recent legislative

⁵⁰ European Parliament, 'Regulation (EU) 2019/881 on ENISA', Art. 48.

⁵¹ European Union Agency for Cybersecurity (ENISA) (2020), 'Cybersecurity Certification: EUCC, a candidate cybersecurity certification scheme to serve as a successor to the existing SOG-IS', v.1.0, July, 15–27. See also Common Criteria (2017), 'Common Methodology for IT Security Evaluation', v.3.1, <https://www.commoncriteriaportal.org/files/ccfiles/CEMV3.1R5.pdf>.

⁵² K. Kertysova, E. Frinking, K. Dool, A. Maričić, and K. Bhattacharyya (2018), 'Cybersecurity: Ensuring awareness and resilience of the private sector across Europe in face of mounting cyber risks', Study, The European Economic and Social Committee, 88–89, https://www.thehaguesecuritydelta.com/media/com_hsd/report/191/document/qe-01-18-515-en-n.pdf.

⁵³ European Parliament (2016), 'Directive of the European Parliament and of the Council concerning measures for a high common level of security of network and information systems across the Union', NIS Directive (EU) 2016/1148, 19 July. At the time of publishing, a legislative revision of the Directive, including an impact assessment and Article 114 TFEU, has been scheduled by the Commission for Q4 2020. See also 'New initiatives' from the European Commission.

⁵⁴ P. Kyranoudi and A. Sarri (2019), 'Good practices in innovation on cybersecurity under the National Cyber Security Strategies', Report, ENISA, ISBN 978-92-9204-308-7.

improvements described above can be applied.⁵⁵ Specifically, in the general framework of Horizon 2020,⁵⁶ the necessity to foster cooperation with the private sector in the field of cybersecurity was highlighted. Specifically, ECSO aims at the better implementation of research within the European digital market, the facilitation of projects by start-ups and SMEs, and ensuring the enforcement of existing security standards.⁵⁷

In the current framework, any evaluation of a public-private cooperation project in cybersecurity should also take into account the main existing standards and best practices regarding software security,⁵⁸ which, in addition to the EUCC, could overcome the problem many organisations face in evaluating the actual security of the software they use in a complex environment.⁵⁹ Mainly this is due to not being able to rely on in-house experts, who may or may not be capable of evaluating the weaknesses of the software in use. In fact, according to an ENISA report, on average, only a small number of technical experts within European industries are able to deeply evaluate such weaknesses. By applying these standards and best practices, the reliability and credibility of security systems can be increased.

Without claiming to be exhaustive, as seen, the projects of European institutions aim at setting tight standards to increase levels of (cyber) security. The possibility to achieve these results quickly could be fostered by implementing cPPP projects at the European level. There could be advantages for those who take part in these projects: they could rely on recognised standards to certify products – no matter their origin – within the partnership, thus promoting further assurance of the project's quality and reliability. Still, it is difficult to say that this would result in a reduction of risks that may arise in terms of shared responsibility in

⁵⁵ European Cyber Security Organisation (ECSO) (2016a), 'Contractual arrangement setting up a public-private partnership in the area of cybersecurity industrial research and innovation', Strasbourg, 5 July, <https://www.ecs-org.eu/documents/uploads/cppp-contract.pdf>. The ECSO was created in order to act as the Commission's counterpart in a contractual public-private partnership covering Horizon 2020 from 2016 to 2020. The majority of the 250 ECSO members belong either to the cybersecurity industry or to research and academic institutions in the field. To a lesser degree, ECSO members also comprise public sector actors and demand-side industries.

⁵⁶ From 2014 to 2020, Horizon 2020 (H2020) was the biggest EU Research and Innovation programme ever.

⁵⁷ ECSO, 'Contractual arrangement setting up a public-private partnership', 3.

⁵⁸ There are many recognised standards for software security specifically: ISO/IEC 27034 (one of the most detailed); ISA 99 / IEC 62443 (aimed at IACSs security); PCI SSC (for the certification of payment applications); Microsoft SDL (offering a complete framework for the software development cycle); and ISO/IEC 62304 (specific to medical devices).

⁵⁹ P. Drogkaris, F. Guasconi, R. van der Veer, and M. Valkema (2019), 'Advancing software security in the EU', Study, ENISA, 10–12, <https://www.enisa.europa.eu/publications/advancing-software-security-through-the-eu-certification-framework>.

strategic sectors, as the problem of unwillingness to shoulder them may persist.⁶⁰ It is certain that the legislative advancements that have now been put in place could favour some standards in response to possible threats.

Cyber-PPPs to promote the internal market, achieving cyber sovereignty

One of the most highlighted aspects of the recent development of European-level digital infrastructure is that of a Digital Single Market, i.e. to strengthen an internal digital market. This is also crucial for achieving cyber sovereignty in Europe.⁶¹ To reach this stage of independence for the entire European ecosystem, particular attention has been paid to developing a European cybersecurity market. This would also strengthen the European market, permitting the deployment of cross-border services inside the European Union and creating fair competition within the (internal) cybersecurity industry.

These prerogatives must be combined with an examination of the industrial context and the specific characteristics of this market. First, it can be perceived that a sufficient number of providers to create a critical mass capable of competing numerically in the cybersecurity market is lacking. Another important asymmetry is the ability of providers to deliver adequate services, especially when SMEs must respond to requests coming from much larger companies. Finally, it should be stressed that '[...] ICT [products are broadly] being driven by non-EU suppliers [making] Europe [dependent] on 'foreign' developed ICT products and services, the security of which is determined outside the EU and does not necessarily reflect EU requirements'.⁶² These characteristics can certainly be mitigated through the promotion of agreements with the (private) production sector of the cyber security industry.

Indeed, encouraging the implementation of cPPP projects in a coordinated manner within the European market would allow for concrete objectives to be reached in less time than in a situation of non-partnership – a situation where all a cybersecurity project's design costs (including the necessary know-how and R&D expenditure) are

⁶⁰ Jim Q. Chen (2019), 'A Framework of Partnership', *The Cyber Defense Review*, 5(1), International Conference on Cyber Conflict, 15–28, https://www.jstor.org/stable/26902660?seq=4#metadata_info_tab_contents.

⁶¹ European Commission (2015), 'A digital single market strategy for Europe', COM(2015) 192 final, Brussels, 6 May, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0192&from=FI>.

⁶² European Cyber Security Organisation (ECSO) (2016b), 'European cybersecurity industry proposal for a contractual public-private partnership', June, 40–41, <https://ecs-org.eu/documents/ecs-cppp-industry-proposal.pdf>.

borne by the individual EU Member States – while relying on the ability of the free market to assert itself.⁶³ In addition to the issue of efficiency, there is a need to continuously strengthen the sector and devote a lot of resources to areas such as research and maintenance. Above all, this would allow preventive action to be taken in limiting risk by proactively managing threats and moving away from the ‘current [European] approach of handling cyber-threats in a reactive mode’.⁶⁴ The EC has furthermore identified three main problems related to the EU’s cybersecurity capacities:

- 1) insufficient level of strategic and sustainable coordination and cooperation between industries, cybersecurity research communities, and governments to shield the economy, society, and democracy with leading-edge European cybersecurity solutions;
- 2) sub-scale investment and limited access to cybersecurity know-how, skills, and facilities across Europe; and
- 3) too few European cybersecurity research and innovation outcomes translated into marketable solutions and widely deployed across the economy.

In the absence of a well-defined cooperation mechanism for Member States to work together to improve the resilience of large-scale industrial cyber systems,⁶⁵ the issue of cPPP seems to be all the more relevant, providing an equivalent solution to the problem in terms of results (i.e., effective security and reliability).

Much certainly depends on the implementation of agreements in any partnership. Indeed, a cPPP strengthened by pre-defined standards at a European level would have a positive impact on the relationship between the public and private sectors in terms of *information sharing*, further strengthening their cooperation by also avoiding information asymmetries.⁶⁶ Yet it is the very ability to easily share information between sectors (i.e., public and private) that has in fact been identified as a weakness of the EU’s cybersecurity strategy.⁶⁷ In the case of PPPs,

⁶³ N. Jentzsch (2016), ‘State-of-the-art of the economics of cyber-security and privacy’, IPACSO – Innovation Framework for ICT Security Deliverable, No. 4.1, Waterford Institute of Technology, 9–10.

⁶⁴ ECSO, ‘Contractual arrangement setting up a public-private partnership’, 42.

⁶⁵ European Commission (2018a), ‘Impact Assessment accompanying the document proposal for a regulation of the European Parliament and of the Council establishing the European Cybersecurity Industrial, Technology and Research Competence Centre and the Network of National Coordination Centres’, SWD(2018) 403 final, Brussels, 12 September.

⁶⁶ Jentzsch, ‘State-of-the-art of the economics of cyber-security and privacy’, 21–22.

⁶⁷ European Commission (2017), ‘Assessment of the EU 2013 cybersecurity strategy’, SWD(2017) 295 final, Brussels, 11 September.

this problem would essentially be overcome, thanks to specific contracts and the early evaluation of projects.

Cyber-PPP projects carried out in a strategic and coherent way, with a common European framework, and for specific goals, may offer the parties greater guarantees at the design stage, making the whole partnership structures more solid. There is a lot which depends on the interests of individual countries in promoting this type of partnership.⁶⁸ This relates to the need for public authorities to be receptive to feedback from the private sector. In fact, private entities have greater knowledge of their specific sectors, and this is an advantage; in the case of cPPPs, this translates to the better protection of the infrastructure to which those entities belong.

Conclusions and recommendations

Rapid detection and coordinated response: given the increasing number of threats and the advanced technology of attackers, large-scale events remain difficult to predict, and the speed of any given response will determine the resilience of the system as a whole. PPPs in the field of European cybersecurity can play a key role in the development of an adequate and harmonised threat response system. In addition, this would foster the emergence of a thriving European cybersecurity industry, fostering the development of a single European market and contributing to the strategic independence and sovereignty of a Digital Europe.

Shared unified approach: the development of a unified monitoring approach to this type of partnership could help smaller companies to enter the market and compete with larger providers. This does not mean creating new regulations but rather institutionalising the access requirements for private partners at a European level, using security standards as an evaluation metric, and fostering fair competition.

Additionally, the existence of a common European system for accessing PPPs in cybersecurity could facilitate a meritocratic competition, within which small, virtuous companies would be able to compete fairly in the implementation of projects (due to their scalability) in a commonly shared infrastructure, favouring the market.

Technology vs. regulations: technological development remains central in the examination of cybersecurity risks, and this advancement follows a parallel path to the regulatory one. There is indeed a gap between the development of new cyber threats and the creation of procedures to strengthen and quickly adapt the system to such new threats. For this reason, it is crucial to consolidate collaborations with private market actors in the field of research so that they can follow the latest

⁶⁸ ENISA, 'Information Sharing and Analysis Centres', 35.

developments of technologies, offering cutting-edge services and continually updated solutions – which at the same time means remaining competitive on the market. Finally, cooperation with the private sector would encourage a continuous learning process in terms of best practices but also in terms of partnerships. In fact, private actors with greater experience could provide wide-ranging advice to institutions in terms of project operability and inspire smaller companies, as well.

To build common projects that can enhance the resilience of European cybersecurity and effectively achieve strategic independence, it is therefore advisable:

- to create a stable institutional and legal framework for cPPPs, accepted at a European level by all Member States and capable of eliminating the ‘bias of pessimism’ held by certain States that do not want to entrust parts of their network security to private entities;
- to increase political support for medium- and long-term initiatives, especially with regard to protecting strategic and productive areas of individual Member States, which allocate investments that are strategically capable of attracting large companies, but also especially SMEs, in the IT security sector;
- to involve the research and academic sector in designing theoretical cPPP models that can be implemented in an environment that fosters market competition;
- to create scalable projects at the European level that allow small companies and enterprises to compete in the cybersecurity sector;
- to facilitate investment in the sector through a harmonised tax relief system;
- and, finally, it is important to avoid regulatory fragmentation so that the shared European cybersecurity ecosystem can be strengthened.

Comment by Luigi Martino on Section 2

Francesco Cappelletti has provided an interesting chapter which reviews relevant points related to the development of European-level PPPs in the context of cybersecurity. He has reviewed the characteristics of the PPP as governance method and, therefore, the intrinsic characteristics of PPPs in cybersecurity due to the implications for Member States’ security.

In this view, the paper focuses on cooperation between the public and private sectors as a stimulus to foster the European market of cybersecurity, following a liberal approach. However, Cappelletti also underlines a step forward in building cPPP projects within the European framework.

He develops interesting points on the application of standards and information-sharing in PPPs, ‘further strengthening their cooperation by also avoiding information asymmetries’. However, it would be useful to

apply this analysis at an operational level too, involving stakeholders and European institutions, starting from a bottom-up approach and applying a more holistic understanding of cybersecurity as well as new and leading-edge cyber technologies. Indeed, cyber sovereignty in Europe is a point of cohesion in order to strengthen the EU's potential to act independently in the digital sphere and become a unique strategic actor in the realm of security at an international level.

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Discussion Paper

Costly Trade-offs versus Cost of Inaction: Divergent Views on the Risks and Benefits of EU Climate Governance

Bjorn Lomborg¹ and Sebastian Oberthür²

Abstract

This discussion paper examines the risks and benefits of EU climate governance from two very different standpoints. In the first part, Dr Bjorn Lomborg suggests that an unreasonable and exaggerated fear of climate change underlies EU climate policies. Lomborg claims that the result of this overinflated fear includes environmental policies demanding costly trade-offs, hurting many sectors of the EU economy and stifling innovation. Ultimately, he concludes that climate change is only one of the many challenges to consider when setting and adopting environmental policies in Europe.

In the second part, Dr Sebastian Oberthür explains how EU climate governance has made significant progress in recent years, including acceleration under the Commission's European Green Deal that was launched in 2019. Nevertheless, the European Union still has a long way to go to realise its climate and sustainability transition, which will require perseverance and a steadily evolving policy framework for more than a generation. Professor Oberthür identifies and discusses seven momentous challenges facing contemporary EU policy on the way towards this climate and sustainability transition. They indicate both the depth of change in governance still required and the long-term nature of the task.

The point of tension that emerges refers to the level of acceptable trade-offs vis-à-vis the cost of inaction in tackling climate change. According to Dr Bjorn Lomborg, EU climate governance is suffering from a sensible cost-benefit analysis which ignores other opportunity costs linked to climate change adaptation and more forward-looking technologies like geo-engineering. The response from Dr Sebastian Oberthür

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is that some trade-offs are inevitable, but the cost of inaction greatly exceeds the price of climate change mitigation.

Section 1: What Really Helps against Global Warming

Bjorn Lomborg

As we know more about climate change, the discussion about it becomes more and more irrational. If we want to make the world a better place, alarmism is a bad advisor.

Today, the discussion about climate change is increasingly shaped by one emotion: fear. This feeling is not surprising when one studies the books on the subject, for example, with titles such as *The Uninhabitable Earth*, *Field Notes from a Catastrophe*, or *This is the Way the World Ends*.³ Many politicians and campaigners tell us that 'the world will end in twelve years if we do nothing about climate change'.⁴ This rhetoric is having an effect: according to a survey from 2019,⁵ almost half of the world's population believes that humanity will likely become extinct due to climate change.

The alarmism is disproportionate to the scale of the problem. As I already pointed out in my 2001 book *The Skeptical Environmentalist*, global warming is a real and man-made problem. Scientists have collected more and more reliable data since then. Their projections of temperature changes and rising sea levels have been remarkably consistent over the past twenty years. At the same time, the public discussion has become more and more fear-based. The rhetoric of commentators and the media is increasingly radical and detached from scientific knowledge. If we look soberly at the findings of climate research, one thing is clear: global warming is real, but it is not the end of the world. It is a manageable problem. The distorted public perception is causing us to neglect other challenges, from pandemics to food shortages and political

³ D. Wallace-Wells (2019), *The Uninhabitable Earth: Life after Warming* (New York: Crown Publishing Group); E. Kolbert (2006), *Field Notes from a Catastrophe: Man, Nature, and Climate* (New York: Bloomsbury); J. Nesbit (2018), *This Is the Way the World Ends: How Droughts and Die-Offs, Heat Waves and Hurricanes Are Converging on America* (New York: St. Martin's).

⁴ J. Bowden (2019), 'Ocasio-Cortez: "World will end in 12 years" if climate change not addressed', *The Hill*, 22 January, <https://thehill.com/policy/energy-environment/426353-ocasio-cortez-the-world-will-end-in-12-years-if-we-dont-address>.

⁵ M. Smith (2019), 'International poll: Most expect to feel impact of climate change, many think it will make us extinct', YouGov, 15 September, <https://yougov.co.uk/topics/science/articles-reports/2019/09/15/international-poll-most-expect-feel-impact-climate>.

conflict. If we don't stop it, this false alarmism will leave the world a worse-off place.

How big is the damage caused by global warming? The outcome of three decades of climate economics shows us that the cost is moderate. The latest overview from the UN Climate Panel, updated with the newest data, shows us that – if we do nothing – the cost by 2100 will be about 3.6% of global gross domestic product.⁶ This value includes all negative influences, from the damage caused by stronger storms to additional deaths from heat waves. According to UN estimates, the average income of the world population will reach around 450% of today's level by the end of this century. A cost of 3.6% would mean that – if we do nothing about climate change – our prosperity at the end of the century will be 'only' 434% instead of 450% of today's level. Obviously, that is a problem, but it's clearly not the end of the world.

Scare tactics, however, lead governments to spend a lot of money on ineffective and inefficient measures against climate change. Worse still: the costs of these measures may disproportionately affect the poor of the world, for example, in the form of higher energy costs.

It is high time to straighten things out and think about how we can most effectively combat climate change without making humanity poorer.

1.1 A tax against market failure

The first step in tackling climate change is to introduce a tax on CO₂ emissions. Such a tax could greatly reduce emissions, helping to limit the most damaging effects of global warming, and at a relatively low cost. Without such a tax, the benefit of an emission goes to those who cause it, while the negative effects hit the whole population. This is a classic example of market failure. The best way to remedy this market failure is to price the issue. The question is: how high should this price be?

Perhaps the most important insight from climate economics is that while too much climate change has substantial costs, too much climate *policy* also has a considerable cost. Since we have to pay for both, we have to find the right level of climate policy to minimise the total cost of both climate change and climate policy.

This is the insight that won Professor William Nordhaus the Nobel Prize, the only climate economist ever to achieve this. According to his model, which attempts to include all costs for the next 500 years, climate change is likely to cost us around 140 trillion dollars if we do nothing about it. The higher we set a CO₂ tax, the more this amount drops. However, at the same time, the cost of this tax would increase

⁶ The Intergovernmental Panel on Climate Change, <https://www.ipcc.ch/>.

in the form of prosperity loss. A trade-off between benefits and costs shows that a tax of \$36 per tonne of CO₂ emissions would be the most efficient solution. In everyday life, this would mean that, for example, a litre of gasoline would be around a 8¢ more expensive, and the tax would increase over time. If this optimal tax could be coordinated worldwide, emissions would be reduced by 80% by 2100 and the global temperature increase could be reduced from 4.1 to 3.5°C.⁷

1.2 EU climate policy

This regulatory approach is immediately applicable to the climate policy of the European Union. Clearly it wants to be seen as the global leader on climate action.⁸ That is why it promised a larger absolute emissions reduction by 2030 than any single country at the climate negotiations in Paris in 2015.⁹

Although it would be interesting to discuss existing policies, it is perhaps most useful to discuss the upcoming decision on ramping up the EU's climate ambition. Urged on by ever-increasing climate alarm and youth climate protests, the new European Commission, spear-headed by President Ursula von der Leyen, has voluntarily proposed to further increase the EU's reduction promise.¹⁰ While campaigners are claiming this is still not enough, the promise is certainly unique in the

⁷ W. Nordhaus (2018), 'Projections and Uncertainties about Climate Change in an Era of Minimal Climate Policies', *American Economic Journal: Economic Policy*, 10(3), 333–360. See also: B. Lomborg (2020), 'Welfare in the 21st Century: Increasing Development, Reducing Inequality, the Impact of Climate Change, and the Cost of Climate Policies', *Technological Forecasting and Social Change*, 156(3), 119981.

⁸ European Commission (2020e), 'State of the Union: Commission raises climate ambition and proposes 55% cut in emissions by 2030', Press Release, Brussels, 17 September, https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1599.

⁹ Compared to 1990, the EU promised to cut from 5.4Gt CO₂e – See European Commission (2017), '7th National Communication and 3rd Biennial Report from the European Union under the UN Framework Convention on Climate Change (UNFCCC)', C(2017) 8511, December, 309 – with LULUCF to about 3.3Gt CO₂e – See E. Kriegler et al. (2018), 'Short Term Policies to Keep the Door Open for Paris Climate Goals', *Environmental Research Letters*, 13(7), <https://iopscience.iop.org/article/10.1088/1748-9326/aac4f1> – compared to the second-highest, which is the US, from 5.7Gt CO₂e – See 'Historical GHG emissions', Climate Watch, https://www.climatewatchdata.org/ghg-emissions?end_year=2016§ors=total-including-lucf&start_year=1990 – to 4.3 Gt – See Kriegler et al., 'Short Term Policies', again, table 1 – meaning a reduction of 2.1Gt for the EU and 1.4Gt for the US.

¹⁰ On school strikes for climate, see 'Fridays for Future Movement – Inspiration and Action Award', Champions of the Earth, <https://www.unep.org/championsofearth/laureates/2019/fridays-future-movement>, and 'Thundering youth call on power to act now', UN Environment Programme, 16 March 2019, https://www.unep.org/pt-br/node/24644?_ga=2.152163257.1019487570.1614012147-148456626.1614012147.

arena of international politics. What remains to be discussed is whether it is a smart way to help the world.

As stated above, we need to realise that we have to pay for both climate damages and the costs from stronger climate policies, as they may force economies to use ever more costly and less reliable energy. The UN Climate Panel's latest overview of 128 analysed climate policies shows that all of them have real costs.¹¹ These range from the very low costs associated with the least restrictive policies and most optimistic models to costs beyond 14% of global GDP over the century.¹² It also found that, across the world, the most effective climate policies for achieving the 2°C target would cost between 1 and 4% of GDP by 2030,¹³ and 3–11% of GDP by 2100.¹⁴

The EU has had little or no discussion on whether its decision to increase its 2030 promise from a 40% reduction to a 55% reduction was smart. If fulfilled, this promise will start further reducing emissions in 2021, reach a maximum additional reduction in 2030, and still reduce emissions slightly more in 2049. Across these three decades, the new EU promise will reduce emissions by a total of 12.7 billion tonnes of CO₂ or its equivalent. If put into one of the standard UN climate models, this would reduce global temperature before the end of the century by an immeasurable 0.0057°C. Since the temperature will still be increasing then, the result of the EU's upped climate policy would be equivalent to postponing global warming by 8 weeks in 2100. The temperature the world would have reached on 1st January in 2100 would now first be reached on February 26.

Moreover, much of this emission reduction is likely fictitious, since about two-thirds of CO₂ emissions will likely still take place but move out of the EU (so-called carbon leakage),¹⁵ meaning the real temperature reduction will be 0.002°C, postponing global warming by just three weeks.¹⁶

¹¹ L. Clarke et al. (2014), 'Assessing Transformation Pathways', in O. Edenhofer et al. (ed.), *Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge: Cambridge University Press), pp. 413–510, https://www.ipcc.ch/site/assets/uploads/2018/02/ipcc_wg3_ar5_chapter6.pdf.

¹² Clarke et al., 'Assessing Transformation Pathways', Figure 6.21.d., GDP loss.

¹³ 450 parts per million; see M. Fischetti (2013), 'More carbon emissions = Less global warming?', *Scientific American* (blog), 30 July, <https://blogs.scientificamerican.com/observations/more-carbon-emissions-less-global-warming>.

¹⁴ 449 parts per million.

¹⁵ 'Carbon leakage', Climate Action, https://ec.europa.eu/clima/policies/ets/allowances/leakage_en.

¹⁶ W. Yu & F. Clora (2020), 'Implications of decarbonizing the EU economy on trade flows and carbon leakages: Insights from the European Calculator', EUALC Policy Brief No. 7,

To its credit, the EU has always made cost estimates of its climate policies. Unfortunately, they have always been significant underestimates. A consultancy estimated its 2020 climate policy to cost 0.5% of GDP.¹⁷ The Stanford Energy Modeling Forum is considered the gold standard of climate economics because it is peer-reviewed and brings together many of the world's leading models instead of relying on one particularly optimistic model. Their study on the EU-2020 targets found the average optimal cost was 1.03% of GDP, but – as the EU's implementation was inefficient because it didn't include a single carbon market – the average actual cost ended up even higher, at 2.19% of GDP.¹⁸ So, the EU underestimated the cost by about four-fold.

The same thing happened with the EU's previous 40% promise for 2030. In 2015, the EU ran one respected but very optimistic model and found that the cost of this could be about 0.3% of GDP.¹⁹ They also ran a consultancy model that even showed *benefits* to the EU, apparently because it assumed an economy not running at full speed which would benefit from extra investments. Of course, this would be true for every other potential investment, from health to education, and has nothing to do with climate policy. This finding of benefits also goes entirely against the UN findings from 128 models, *none* of which showed net benefits. Indeed, in many of its descriptions, the EU also seems to ignore this implausible result.

Once again, the Stanford Energy Modeling Forum ran six international models to estimate EU climate policies, one of which coincided with a 41% reduction by 2030.²⁰ It included the EU model (the second-cheapest) and found that the average cost would be 0.91% of GDP, three times higher than the EU estimate.

For its new 55% reduction, the EU has repeated its use of this optimistic model to find an additional 0.39% GDP cost.²¹ (It has also included

February, https://european-calculator.eu/wp-content/uploads/2020/04/EUCalc_PB_no7_Trade.pdf.

¹⁷ C. Böhringer, T.F. Rutherford, and R.S.J. Tol (2009), 'The EU 20/20/2020 Targets: An Overview of the EMF22 Assessment', *Energy Economics*, 31(suppl. 2), S268–S273, <https://www.sciencedirect.com/science/article/pii/S0140988309001935>.

¹⁸ Böhringer et al., 'The EU 20/20/2020 Targets'.

¹⁹ P100, based on GEM E3, average costs -0.1 to -.45%. See European Commission (2015), 'Staff Working Document Impact Assessment', SWD(2015) 135 final, Brussels, 15 July, https://ec.europa.eu/clima/sites/clima/files/ets/revison/docs/impact_assessment_en.pdf.

²⁰ B. Knopf et al. (2013), 'Beyond 2020 – Strategies and Costs for Transforming the European Energy System', *Climate Change Economics*, 4(suppl. 1), <https://www.worldscientific.com/doi/abs/10.1142/S2010007813400010>.

²¹ European Commission (2020d), 'Staff Working Document Impact Assessment: Stepping up Europe's 2030 climate ambition Investing in a climate-neutral future for the benefit of our people', SWD(2020) 176 final, Brussels, 17 September, https://ec.europa.eu/clima/sites/clima/files/eu-climate-action/docs/impact_en.pdf.

the consultancy model, again showing a small benefit, and an internal EU model, showing a cost of 0.29%.) Although there is currently no academic estimate to set the record straight, it seems likely that the real cost will still be 3–4 times higher. The additional cost for the year 2030 will therefore probably be between the EU's optimistic €80 billion and a more realistic €200 billion.

If we assume the costs' scale with the additional reduction, the total loss over the next three decades to EU economies from additional climate protections will reach €1.2–3 trillion. For comparison, the EU estimates the economic loss of Covid-19 at 8.3%, or €1.4 trillion.²² The recovery fund for the EU is an additional €750 billion.

Thus, it is likely that the total cost of the Covid crisis and the recovery package is *smaller* than the additional cost of the EU's upped climate policy. The additional climate measures will leave each citizen between €2,300 and €6,000 poorer, while helping postpone climate change at the end of the century by one-hundredth of a second.

Calculated across nine damage profiles and the UN's five policy scenarios, the average damage from one ton of CO₂ in 2030 is €27.²³ That means the EU will deliver a climate benefit to the world worth about €342 billion in total. Spending €1.2–3 trillion makes that an obviously bad deal.

1.3 Innovation is the key

While the EU regulation promises to cut emissions, it is likely that its 55% reduction promise will entail additional costs much higher than the additional benefits.

Similarly, the general point of a worldwide, uniform CO₂ tax as discussed above would only be possible in a fairy-tale world. In practice, individual states will introduce their own taxes; some may have already done so. Some of these taxes will be too high, others too low. In reality, the costs of this measure are therefore likely to be higher. It is still correct that a moderate carbon tax can be a good idea to reduce emissions. But the global inefficiency stemming from uneven carbon taxes will mean that the optimal carbon tax should be *lower*. Moreover, any realistic carbon tax – or most policy promises – will only ever contribute a small part of the solution to climate change. Instead, the most important part is innovation.

²² J. Frater and M. Toh (2020), 'EU leaders strike "historic" \$2 trillion deal to rebuild Europe's economy', CNN Business, 21 July, <https://edition.cnn.com/2020/07/21/economy/eu-stimulus-coronavirus/index.html>.

²³ \$31 at current exchange rate, See P. Yang et al. (2018), 'Social Cost of Carbon under Shared Socioeconomic Pathways', *Global Environmental Change*, 53, 225–232, <https://www.sciencedirect.com/science/article/abs/S0959378018304424?via%3Dihub>.

From the eighteenth to the middle of the nineteenth century, the oil extracted from whales supplied the western world with light. At its peak, whaling provided a livelihood for 70,000 people in the United States alone and was the fifth largest industry in the country. But even though we slaughtered countless whales to have a good and safe source of light, we did not eradicate them. Why? We found alternative technologies. Petroleum first replaced whale oil before it was itself replaced by electricity.

We have repeatedly underestimated our ability to innovate throughout history. By creating innovations and finding cheap technological solutions, we solve great challenges and create benefits for everyone. We have to apply this knowledge to the problem of climate change. Today's fossil fuels provide cheap and reliable energy, while alternative technologies are still too immature and expensive. We should focus much more on innovating better and cheaper alternatives.

Solar and wind energy are not the answer yet. Despite political support and trillions in subsidies, they only cover a little more than 1% of global energy needs. In order to significantly reduce our fossil fuel emissions, we need innovation.

In 2009, my think-tank Copenhagen Consensus brought together 27 leading environmental economists and three Nobel Prize winners to find out which measures could be most effective in combating global warming. The experts concluded that investing in research into green technologies is by far the best way to go.²⁴ Every dollar spent on this could save about \$11 from the cost of climate change. But although we and others have since sought more investment in this area, it has hardly increased. For every 100 dollars of their economic output, industrialised countries spend less than 3 cents on research into green energies. Instead, they increase spending on subsidies for inefficient solar and wind power.

Additional investments could be used, for example, to research the storage of energy coupled with cheaper wind and solar, nuclear power or even the extraction of CO₂ from the atmosphere. These technologies already exist but are still too expensive to significantly reduce our dependence on fossil fuels. This could change if we spend more money on research. Other technologies could still be developed. Trying to predict innovation is foolish. Therefore, instead of focusing our resources on a few promising ideas, we should explore many different approaches.

²⁴ B. Lomborg (ed.) (2010), *Smart Solutions to Climate Change: Comparing Costs and Benefits* (Cambridge: Cambridge University Press), <https://www.copenhagenconsensus.com/books/smart-solutions-climate-change>.

1.4 Adaptation to climate change

Even with new, climate-friendly technologies, however, the temperature will rise. We have to adapt to that. Fortunately, mankind has an impressive track record of adapting to different climatic conditions. People live in the icy cold of Siberia as well as in the burning hot Sahel desert, in the dryness of the Atacama Desert as well as in the rainy Indian state of Meghalaya. When the temperature rises, people adapt – for example, with more households using air conditioning or turning off their heating. The economy is also adapting. For a long time, farmers have varied the plants they grow depending on the climate.

Not all necessary adjustments are possible without government support, however. In agriculture, for example, they are made easier when people are better educated, wealthier (if they can afford a tractor, for instance), and when they have better access to agricultural information.

An often-cited consequence of global warming is rising sea levels. We already know how to cope with this. In the past 150 years, the sea level has already risen by around 30 centimetres. The reason why hardly anyone has perceived this as a significant change is that we have adapted to it. Such measures are a worthwhile investment: in a 2019 overview of nineteen studies, dikes on average were shown to reduce damages by \$40 for each dollar spent, whereas artificial nourishment could avoid \$111 of damages for every dollar spent.²⁵

There are also simple but effective solutions to the increasing amount of heat waves. In cities, temperatures generally reach higher values than in rural areas, mainly because of the dark construction materials used for roads and buildings and due to the lack of green spaces. Los Angeles has reduced the temperature on sidewalks by almost 6°C by covering their dark asphalt surfaces with a cooling grey layer.

1.5 Geo-engineering as a fallback option

In addition to adaptation, there is another efficient way to limit the negative effects of greenhouse gas (GHG) emissions: geo-engineering, i.e., the conscious control of global temperature.

In June 1991, the Pinatubo volcano erupted in the Philippines. The massive eruption killed hundreds of people and displaced hundreds of thousands. In addition to its devastation, the eruption also affected the climate. It emitted so much sulphur dioxide into the stratosphere that, temporarily, 2.5% less sunlight reached the earth. This decrease led to

²⁵ A. Markanday, I. Galarraga, and A. Markandya (2019), 'A Critical Review of Cost-Benefit Analysis for Climate Change Adaptation in Cities', *Climate Change Economics*, 10(4), <https://doi.org/10.1142/S2010007819500143>.

a drop in temperature around the globe by an average of around 0.5°C over the following 18 months.

As concerns about global warming grew, researchers began to investigate whether such an effect could be mimicked without the ravages of a volcanic eruption. Indeed, this could be achieved by spraying tiny particles, such as sulphur dioxide, into the upper layer of the atmosphere. These particles would reflect some sunlight.

A very cheap and effective geo-engineering option is so-called 'marine cloud brightening'. The idea is to increase the concentration of sea salt particles in the air above the oceans, which would make the clouds whiter and allow for more sunlight to be reflected.

Many people are critical of such ideas, and most environmentalists vehemently reject them. Their scepticism is understandable. The climate is a highly complex system, much of which we still do not understand – who could tell us whether such attempts might lead to unforeseen damage?

I don't advise using geoengineering today. But it is worth researching the approaches precisely because we do not understand a lot about the climate. Proponents of drastic reductions in GHG emissions often point to the possibility of 'tipping points' which, if reached, would mean that we could no longer prevent a catastrophe. Geoengineering is the only known instrument that can reduce temperatures on earth within a short period of time.

Of course, there are risks. It is therefore all the more necessary to research the technologies now to find out if they work. Should we actually face a disaster, we will be happy to have a fall-back option.

1.6 Underestimated climate safety from development

CO₂ taxes, innovations, adaptation measures, and geo-engineering are a powerful package in the fight against climate change. There is, however, another measure that is extraordinarily effective but receives little attention in public discourse: economic development.

The importance of prosperity for climate policy becomes clear when one looks at two countries located deep down on a river delta: the Netherlands and Bangladesh. The Netherlands experienced a devastating flood in 1953. Over 1,800 people died after levees broke in several provinces. In response to the disaster, the country began building an extensive protection system of dams and barriers. The system cost a total of \$11 billion. Since 1953, the Netherlands has recorded only one death from floods. In contrast, the water in Bangladesh still regularly overflows its banks. In 2019, a flood drove 200,000 people from their homes and threatened supply security.

It is obvious that rich countries can spend more money on protections against climate change than poor ones. But that's not all: when states

become wealthier, they can also afford to abolish subsidies for fossil fuels and instead levy taxes on emissions. They have the resources to research and support lower-emission technologies.

The goal of every climate policy measure is to make the world better than it otherwise would be. It's about leaving both people and the environment better off. That is why we have decided on CO₂ taxes and the search for green alternatives to fossil fuels.

But it is inevitable that such measures will cost us resources that we could otherwise invest to make people's lives healthier, longer, and better. If we invest some of these resources into development and human capital, people will not only be better off in a number of other ways but they will also be better able to afford green energy sources and adapt to climate change. In addition, rich countries can more easily afford to care for the environment. The Netherlands is now planting forests, while Bangladesh is still cutting them down.

1.7 Getting better climate policies

When considering the current climate debate, it is filled with end-of-the-world sentiments that not only cause us to lose hope but also make us panic and divert large streams of resources to vanity projects that fail to tackle climate change effectively. The commitment to reducing carbon emissions by 55% (compared to 1990) by 2030 is one such inefficient way to spend trillions.

And the general message, scaring children and adults alike, is mostly wrong. Climate change is a problem in the sense that it will only make us 434% richer in 2100 than we are today, as opposed to 450% richer.

We should still tackle climate change while remembering that there are so many other issues, such as poverty and lack of health care, food, education, and peace, that also demand our attention.

We can do so by making smart climate policies with CO₂ taxes, green innovation, adaptation, and research into geo-engineering. By spending smartly, we will also have more resources to make sure we can increase prosperity around the world in so many other ways – helping Bangladeshis to transition into better-off Dutch people. It will make them better able to tackle climate change and institute smart climate policies themselves. And it will help immensely with all their other challenges, not only helping fix climate change but fixing the world.

Comment by Sebastian Oberthür on Section 1

Bjorn Lomborg's views on climate policy and economics have been the subject of intense controversy for at least two decades. His most recent

writings – on which his contribution here relies – has also been amply criticised.

The main criticism concerns the misrepresentation of available scientific evidence so as to arrive at particularly high costs of action on climate change and particularly low costs of inaction (i.e., the impacts of climate change, even in the case of warming levels considered dangerous by science and as assessed and synthesised by the Intergovernmental Panel on Climate Change). While Lomborg contends that others, such as the European Commission, are too optimistic in their calculation of costs and benefits of climate action, his calculations consistently arrive at overly high costs and overly low benefits, ‘cherry-picking’ his supporting evidence. In addition, I would like to point to two further shortcomings of his approach here. First, his arguments are derived from what I would like to call linear and one-dimensional thinking that (1) has an exclusive focus on economics and (2) prefers to base decisions on evidently deficient models of future development, without taking into account uncertainties and counter-effects (as an aside: the current politics of the Covid-19 pandemic illustrate the shortcomings of such an approach on a daily basis).

This approach ignores key principles of European and international environmental law that have served us very well, in particular the precautionary principle and the principle of prevention. Even where uncertainty remains in our knowledge, we should act; we should give priority to the prevention of environmental harm as opposed to trying to fix its fallout (be it through geoengineering or adaptation conceived as an alternative to mitigation). Second, the framing that pits investments in the climate transition against other priorities hides their interrelation and any potential for creating synergy. While trade-offs exist to some extent, smart investments in the climate transition simultaneously create significant benefits for economic development, employment, health, and security (among other areas). Presenting a choice between action on either climate change or poverty is misleading: rather, smart resolute climate action paves the way to fighting poverty. Overall, the protection of our natural resources and decisive action on climate change remain fundamental preconditions for being able to pursue most of the other objectives.

Section 2: Taking Stock of EU Climate Governance: Key Challenges

Sebastian Oberthür

Introduction

Is the European Union finally moving towards effective climate protection? Based on the European Green Deal (EGD) launched by the European Commission in December 2019, the European Council of heads of state and government has agreed to upgrade the GHG emission target for 2030 from 40% to 55% and to aim for full climate neutrality by 2050.²⁶ The funding for the recovery from the Covid-19 crisis promises to mobilise much of the sizeable investment this climate transition requires. EU GHG emissions have declined by about 24% below 1990 levels, with reductions expected to reach around 30% in 2020 (due to the Covid-19 crisis).²⁷ The European Commission is scheduled to table proposals for a package of implementing measures towards the 55% target in mid-2021. All these are positive signs that the EU is getting on the right track. However, I argue here that the EU still has a long way to go and the climate, energy and sustainability transition will remain a task for more than a generation. There is no room for complacency but a need to maintain and intensify efforts to push the boundaries of the feasible. In the following, I identify seven momentous challenges on the agenda of contemporary EU climate policy to this end.

1.1 Challenge 1: Implementation of the new climate targets

The effective implementation of the 55% emission reduction target for 2030 and moving to climate neutrality by 2050 (at the latest) still lies ahead and will require making important choices. The Climate Law proposed by the European Commission in March 2020 will have to not only enshrine the new targets in EU law but also establish the contours of the future governance system, possibly including a new European Climate Change Council advising on a credible and fair emissions trajectory towards climate neutrality in 2050.²⁸ Under the EGD, the Commission is furthermore scheduled to present proposals for updating and upgrading

²⁶ European Commission (2019), 'The European Green Deal', COM(2019) 640 final, Brussels, 11 December.

²⁷ European Environment Agency (2020), 'Trends and projections in Europe 2020: Tracking progress towards Europe's climate and energy targets', EEA Report No 13/2020, Copenhagen.

²⁸ European Commission (2020c), 'Proposal for a regulation establishing the framework for achieving climate (European Climate Law)', COM (2020) 80 final, Brussels, 4 March,

key legislative instruments that form part of the dense and rich mix of EU climate and energy policies created in past decades, including market-based, regulatory, and procedural elements. In 2021, the expected key legislative proposals and initiatives include:²⁹

- A strengthening of the Emissions Trading System (ETS) – including a possible extension to new sectors such as buildings and transport – and of Member States' emission targets under the Effort-Sharing Regulation for sectors other than power and industry, primarily regulated under the ETS (buildings, transport, agriculture, etc.);
- A reinforcement of the Renewable Energy, Energy Efficiency, and Energy Performance of Buildings Directives, including significantly upgraded goals for renewable energy and energy efficiency for 2030;
- A significant upgrading of the standards of CO₂ emissions for cars, vans, and heavy-duty vehicles towards the fossil fuel phase-out required;
- The introduction of a 'carbon border adjustment mechanism' to price the GHG emissions enshrined in imports so as to ensure that progress within the EU is not undercut by imports of high-carbon products not subject to similar restrictions;
- A strengthening of the rules governing forest management to preserve and enhance forests' capacity to sequester and store carbon; and
- An overhaul of EU state aid rules (including those in support of renewable energy) to effectively advance the climate transition.

A number of other ongoing policy initiatives and developments will also require follow-up, including the implementation of EU strategies for the industrial sector, (renewable) hydrogen, batteries, sustainable finance, the greening of monetary policy (including by the European Central Bank), and carbon capture and storage/utilisation (CCS/CCU).

While in need of further development (see below), this is already a long list. There can be little doubt that well organised political and economic interests will continue to resist the transition. The devil is frequently in the details, and status-quo interests will try to slow down change and dismantle the list, not least in sectors where solutions do not yet have strong advocates (transport, buildings, energy-intensive industries, etc.). A major and persistent effort will be required to ensure maximum speed in getting the climate transition on track across all sectors and policies. After all, the delay in upgrading climate action in recent decades means that even the 55% target by 2030 falls somewhat short of where the EU's

<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1588581905912&uri=CELEX:52020PC0080>.

²⁹ See European Commission, 'The European Green Deal', Annex.

fair share of limiting global temperature increase would be – to no more than 1.5/2°C, in line with the Paris Agreement.³⁰

1.2 Challenge 2: Creating a future-proof framework for climate policymaking

The climate and sustainability transition will be a long-term undertaking requiring structures for long-term policymaking. It is important to fully realise that the impending reforms indicated above will by no means be the last ones. To start with, the path towards climate neutrality (no later than 2050) necessitates determining how the trajectory can and should be shaped beyond 2030 (also to be communicated as successive 'Nationally Determined Contributions' under the Paris Agreement). Furthermore, new scientific, technological, and socio-economic developments will create new policy demands and open up new opportunities. Renewable energy and the electrification of transport, both of which have already reshaped the policy agenda, continue to create new policy demands (e.g., energy efficiency requirements for electric cars).

In addition, climate neutrality in 2050 is not the end of the road towards climate stabilisation. How and how far we can move towards net negative emissions afterwards, through enhancing nature-based sinks such as forests or in agriculture, and possibly developing negative emission technologies (such as CCS/CCU), will require our increased attention well before 2050 (including through advancing the 'circular economy'). The global nature of the climate problem will also require that the EU puts additional focus on how climate neutrality can best be exported to less resourceful countries by assisting them in adapting solutions to their conditions. Under the circumstances, what is required is a governance framework capable of identifying and flexibly responding to new developments.

Two particular demands for the development of a future-proof climate policymaking framework arise from the dynamic long-term nature and depth of the task. First, a clear and stable framework for decision-making is required to provide the needed upward flexibility and proactiveness while ensuring stability and predictability. Proposals by the European Parliament for the establishment of a science-based European Climate Change Council may form an important part of such a framework, which may need to be further complemented so as to enact a firm step-by-step approach to policy development that fosters learning and feedback loops.³¹

³⁰ See, e.g., Climate Action Tracker (EU country view), <https://climateactiontracker.org/countries/eu/>.

³¹ European Parliament (2020), 'Draft Report on the proposal for a regulation establishing the framework for achieving climate neutrality (European Climate Law)', COM(2020) 0080 –

Second, and relatedly, the depth of societal change required by the climate and sustainability transition speaks for a strong anchoring in society. Building on existing and emerging elements such as energy communities and the European Commission's Climate Pact,³² a further strengthening of participatory opportunities and elements of deliberative democracy at regional, national, and EU levels can support a proper democratic embedding and foster societal ownership of the transition – while also contributing to strengthening the EU's general input legitimacy. The convening of citizen assemblies on climate change in some Member States provides an interesting element to explore further.³³

Finally, spurring technological innovation remains a key cornerstone of any successful governance over the climate and sustainability transition. To be sure, technological solutions exist in many areas allowing us to push ahead, including in the production of renewable electricity and heat, electrification of transport, construction and heating of buildings, and more. At the same time, there are still enormous scope and opportunities for technological innovation, ranging from zero-emission technologies in energy-intensive industries (steel, chemicals, cement, etc.) to power storage and grid management, to the production of sustainable biofuels. Incentivising and promoting such innovations will have to remain a key objective of public policy to address climate change, keeping in view the full ladder of technology development, from the initial invention to its market introduction. This will require both: (1) strengthened efforts at fostering innovation, such as in the context of the EU's research and innovation 'missions',³⁴ and (2) the broader policy framework, providing a clear and stable 'direction of travel' to decarbonisation as an essential driver of research and innovation.

1.3 Challenge 3: Moving beyond the primacy of mainstream economics

Avoiding excessive economic costs is an important consideration in developing climate policy, but mainstream economics is notorious for overestimating the costs and underestimating the benefits of stringent climate policy. Why is that? First of all, innovation is so notoriously

C9-0077/2020 – 2020/0036(COD), 29 April, https://www.europarl.europa.eu/doceo/document/ENVI-PR-648563_EN.pdf.

³² European Commission (2020b), 'European Climate Pact', COM(2020) 788 final, Brussels, 9 December, <https://europa.eu/climate-pact/system/files/2020-12/20201209%20European%20Climate%20Pact%20Communication.pdf>.

³³ E.g., Bertelsmann Stiftung (2021), French Citizens' Convention on Climate 4, Gütersloh, February, https://www.bertelsmann-stiftung.de/fileadmin/files/Projekte/Demokratie_und_Partizipation_in_Europa_/Shortcut/Issue_4_French_Citizens_Convention_on_Climate/210218_Shortcut_4_French_Citizens_Convention_WEB.pdf.

³⁴ M. Mazzucato (2019), *Governing Missions: Governing Missions in the European Union* (Luxembourg: Publications Office of the European Union).

difficult to predict that mainstream economic modelling tends to underestimate related costs savings. For example, cost reductions achieved within a couple of years allowed the EU to increase its renewable-energy target for 2030 from 27% (proposed in 2016) to 32% in 2018 at no additional cost.³⁵ Furthermore, mainstream economics struggles to properly reflect that, in a world transitioning towards climate neutrality far beyond Europe, many short-term economic costs may qualify as a long-term investment in future economic benefits. For example, a more stringent, 'costly' regulation of CO₂ emissions by cars in the EU 15 years ago could arguably have helped EU car manufacturers understand much earlier (and at a time when high profits provided room for investments) that they need to catch up with Tesla and prepare for markets demanding carbon-free solutions.

Modelling the long-term economic costs of climate change itself also has to be taken with a pinch of salt. First of all, the calculation of these costs depends heavily on assumptions about (high) discount rates. As a result, future damage may appear to be low-cost at present while current investments seem expensive. Perhaps more importantly, economic costs are not the only consideration when deciding on what action to take. As debates on 'loss and damage' have brought to the fore,³⁶ climate change entails significant impacts that cannot be easily adapted to and for which it is difficult – if not cynical – to put a price. Think of the disappearance of small island states, deaths caused by climate change, or climate change as a threat multiplier to international security. Impacts extend to 'priceless' values such as identity, culture, social stability, and the protection of fundamental human rights. The climate action imperative that arises is one of responsibility rather than cost minimisation.

Policymaking should thus go beyond no- and low-cost options. To be sure, calculations of economic costs rightly are an important consideration (and figure prominently in impact assessments by the European Commission). But they are only one consideration in a broader debate. Extra efforts are required in order for the EU to prepare itself for global decarbonisation and make its fair contribution to limiting the global temperature increase to 1.5/2°C so as to avoid the worst impacts of climate change.

³⁵ See F. Simon (2018), 'Fresh EU analysis makes case for higher renewables, energy saving goals', Euractiv, 2 March, <https://www.euractiv.com/section/energy/news/leaked-eu-analysis-makes-case-for-higher-renewables-energy-saving-goals/>; S. Morgan (2018), 'Momentum builds behind higher renewables target', Euractiv, 20 February, <https://www.euractiv.com/section/energy/news/momentum-builds-behind-higher-renewables-target/>.

³⁶ E.g., Intergovernmental Panel on Climate Change (2018), 'Global warming of 1.5°C', Special Report, esp. Chapter 5, 454–456.

Related to the excessive focus on economic cost minimisation is an excessive focus on carbon pricing as the silver-bullet policy instrument. Carbon pricing – with the Emission Trading System as the instrument of choice in the EU³⁷ – is generally the key focus of economists. However, barriers to decarbonisation extend far beyond insufficient price signals. They prominently include the landlord-tenant problem in the buildings sector; the lack of zero/low-carbon technologies in important parts of industry, international transport, and agriculture; the lack of price elasticity of demand, high discount rates of investors, etc.³⁸ Carbon pricing is an important element, but effective climate action by the EU (and others) requires the right mix of policies to successfully address the barriers of different socio-technical sectoral systems – including market-based, regulatory, informational, and procedural components, as appropriate.

1.4 Challenge 4: Ensuring a socially 'just' transition

With equity forming a key dimension of sustainability, the socially just transition has increasingly moved into the political limelight but remains to be developed more fully. Since the 'yellow vests' and the 'climate justice' movement, the importance of addressing the distributive implications of both climate change and climate policies has become increasingly acknowledged (about their international dimension, see below). Different countries, regions, and sections of society are affected to varying degrees: there are (relative) winners and losers. Important progress has been made. In particular, a Just Transition Mechanism 'to leave no one behind' has been established under the EGD, including a Just Transition Fund that has been endowed with €17.5 billion.³⁹ Ensuring these funds are properly spent in support of disadvantaged regions will be an important point of attention in the coming years.

Yet the EU's current means for facilitating a just transition remain incomplete. First of all, in focusing on high-carbon regions/sectors, they do not systematically address the issue of fair *benefits* distribution in this transition (e.g., investments in rising sectors such as battery and hydrogen development and production). The discussions surrounding the review of Member States' national energy and climate plans under the Governance Regulation,⁴⁰ and spending plans under the recovery fund

³⁷ J. Delbeke and P. Vis (eds.) (2019), *Towards a Climate-Neutral Europe: Curbing the Trend* (Abingdon: Routledge).

³⁸ C. Dupont and S. Oberthür (eds.) (2015), *Decarbonization in the European Union: Internal Policies and External Strategies* (Basingstoke: Palgrave Macmillan).

³⁹ European Commission (2020a), 'Commission welcomes the political agreement on the Just Transition Fund', Press Release, Brussels, 11 December, https://ec.europa.eu/commission/presscorner/detail/en/IP_20_2354.

⁴⁰ European Parliament (2018), 'Regulation (EU) 2018/1999 on the governance of the

and EU structural funds, provide an important opening for advancing this agenda.

But beyond regional and sectoral disparities, the just transition concerns even broader distributive consequences of climate policy that may reinforce pre-existing socio-economic and societal cleavages (e.g., between rich and poor, highly and low skilled, etc.). While related actions may be considered as falling into the remit of individual Member States, there are good reasons for coordination at the European level to prevent a backlash against EU climate policy and European integration more broadly. It may also be useful to prevent the need for a socially just transition being misused to compensate for misguided investments in fossil industries, defying the polluter pays principle.

Beyond these aspects of *distributive* justice, the potential for enhancing *procedural* climate justice could still be more fully exploited. This reinforces the rationale behind advancing opportunities for public participation and deliberative democracy at national and EU level in the development of policies steering the climate and sustainability transition, as mentioned above. Ensuring adequate public participation in the preparation and review of the aforementioned plans, a systematic use of citizens' assemblies, and better access to legal review mechanisms deserve to be developed alongside any other novel ideas. This could serve to give all relevant sections of society a voice and to recognise those particularly challenged and disadvantaged by the transition.

1.5 Challenge 5: Mainstreaming climate objectives – climate policy integration

Although significant progress in integrating climate policy objectives into other policy fields (notably energy policy) has been made, fully realising climate policy integration remains a major challenge. The EGD has already broadened the agenda to include trade policy, industrial policy, agricultural policy, the aforementioned social dimension, and more. Above all, the EGD proposes a 'green oath' which implies that no EU policies or actions should do harm, but all should contribute their share in the transition. However, this green oath still needs fleshed out across the breadth of EU decision-making. In addition to the external policies discussed below, three issues deserve particular emphasis.

First, the EGD agenda for climate policy integration needs a firm and full follow-up. It is one thing for the Commission to envisage that all other policies should synergise with the climate agenda. It is an entirely different thing to actually achieve this. The EGD hence sets the stage

Energy Union and Climate Action', Strasbourg, 11 December, <http://data.europa.eu/eli/reg/2018/1999/oj>.

for a great number of debates on concrete steps for reforming – and, in some cases, revolutionising – other sectoral policies. Conflicts with and resistance by status quo interests are pre-programmed (as witnessed in the discussions on reforming the Common Agricultural Policy).⁴¹

Second, the need for stronger consideration of other environmental objectives and requirements in the climate transition has been growing. The climate transition urgently needs to be fully aligned with the imperative of protecting biological diversity – which is in danger of being crowded out by the climate issue. Also, the expansion of renewable energy cannot mean that nature protections get downgraded; rather, it reinforces the need to strengthen energy efficiency policies and minimise the impact of renewables on the natural environment. While the EGD rightly acknowledges the need for a broader transition to sustainability beyond climate and energy, progress has fallen short so far. It requires the systematic consideration of a set of key environmental objectives in EU decision-making.

Third, the need for adaptation to the impacts of climate change further broadens the climate agenda. Adaptation is no replacement or alternative to mitigating emissions, but resolute emission mitigation enables adaptation. Otherwise, there is a real danger that climate change impacts, including irreparable loss and damage (of land, species, ecosystems, etc.), will spiral out of control. Having said that, adaptation is an inescapable necessity resulting from the unfolding impacts of climate change. As a result, EU adaptation policy is in need of further development over the coming years and decades.⁴²

1.6 Challenge 6: Avoiding common fallacies/traps

There is a sheerly unlimited number of arguments brought into the discussion to distract from the need for and feasibility of strong and growing climate action in the EU and beyond. This short essay – beyond the discussion of mainstream economics and adaptation (see above) – takes issue with two prominent fallacies/traps.

First, the EU is neither the lonely and idealistic frontrunner of global climate protection, nor is its contribution too small to be relevant. About two-thirds of the world economy have, like the EU, committed to achieving climate or carbon neutrality by 2050 or 2060, including China, the US, Japan, Canada, South Korea, South Africa, and many others. Many countries have also either announced or are preparing upgrades of their

⁴¹ ENDS Europe (2021), 'Green groups hold firm on calls to withdraw CAP', 17 February, <https://www.endseurope.com/article/1707672/green-groups-hold-firm-calls-withdraw-cap>.

⁴² European Commission (2021), 'Forging a climate-resilient Europe – The new EU Strategy on Adaptation to Climate Change', COM(2021) 82 final, Brussels, 24 February.

ambitions for 2030.⁴³ The race to zero-carbon solutions is in full motion. The EU accounts for about 10% of global emissions, so its contribution is significant – and, as argued above, the decarbonisation of its economy is both economically essential and morally imperative.

Second, climate geoengineering is a similarly false solution. Solar radiation management technologies entail a far-reaching intervention in complex ecosystems with likely considerable negative consequences. These negative consequences are likely to hit different countries and regions to varying degrees, with considerable potential for feeding international conflict. They require continued and intensified intervention over the long term (to counterbalance high and even rising GHG concentrations in the atmosphere). And they do not even address all important climate change impacts, such as the acidification of the world's oceans. Therefore, there is a need for the EU to ensure that geoengineering adventures are prevented and research on relevant technologies can only proceed under firm international oversight.⁴⁴

1.7 Challenge 7: Advancing the EU's international leadership

Over the past decade, the EU has successfully adapted its international climate leadership to evolving geopolitical realities, most notably a more multipolar world and the limits of EU influence in it. In response, the EU has developed a novel mediating and coalition-building leadership; it has also diversified its focus beyond multilateral UN climate politics towards other fora and strengthened bilateral climate diplomacy. While this reorientation has had positive results (e.g., the EU's significant impact on the Paris Agreement), given the enormous international challenges, exploiting any room for further improvement remains imperative.

To start with, climate considerations need to be much further integrated into external policies. The full appreciation of the imperative climate transition is still at an early stage. The EGD rightly envisages enhanced external engagement towards promoting and advancing this transition internationally. Beyond that, however, there is a need to comprehensively review and revise the external relations of the EU

⁴³ M. Bazilian and D. Gielen (2020), '5 years after Paris: How countries' climate policies match up to their promises, and who's aiming for net zero emissions', *The Conversation*, 10 December, <https://theconversation.com/5-years-after-paris-how-countries-climate-policies-match-up-to-their-promises-and-whos-aiming-for-net-zero-emissions-151722>; 'Nationally Determined Contributions under the Paris Agreement', <https://www4.unfccc.int/sites/ndcstaging/Pages/Home.aspx>.

⁴⁴ R. Bodle, S. Oberthür, L. Donat, G. Homann, S. Sina, and E. Tedsen (2014), *Options and Proposals for the International Governance of Geoengineering* (Dessau-Roßlau: German Federal Environment Agency), <http://www.umweltbundesamt.de/publikationen/options-proposals-for-the-international-governance>.

and its Member States beyond the core area of climate diplomacy – covering the wide array of bilateral, regional, multilateral, and transnational engagement in all policy fields, including trade and investment and general foreign affairs. There can be little doubt, for example, that relations with fossil fuel exporters – much beyond the usual suspects of Russia, Norway, and the Middle East – will undergo profound changes. The suggested comprehensive review should enable the EU to proactively and fruitfully reshape and advance these and other external relations towards the climate and sustainability transition.

Furthermore, the EU and its Member States face the challenge of developing a high-politics 'grand climate strategy'. This demand emerges from the rise of climate change to the agendas of the highest levels of politics, including in China and the US. With climate and energy constituting areas of shared EU competence, this raises important issues of coordination across EU institutions and EU Member States that may require reinforcing internal mechanisms for high-level coordination (e.g., through the installation of a council of climate ambassadors or czars).

As a caveat, calling for the development of an EU grand climate strategy does not mean calling for the EU to focus on its narrow self-interest. The climate challenge requires global action and an internationally just transition 'leaving no one behind'. Broad coalition building remains a valid cornerstone of the EU's international climate leadership. Integrating climate into grand strategy can and should also mean pursuing 'enlightened self-interest' that accepts international responsibility and fully engages in assistance to others.

Concluding remarks

As the EU is embarking on the transition to climate neutrality under the EGD, one may be tempted to consider that the end of climate politics is approaching: agreement on the need for and the opportunities arising from the transition seems to be growing. However, as I have argued here, even with consensus on broadening the decarbonisation goal, climate politics is not fading but rather shape-shifting, at best: away from discussions about the need for the climate transition towards crucial and tense debates on the most effective, efficient, and equitable ways of advancing the transition at home and abroad.

Comment by Bjorn Lomborg on Section 2

Sebastian Oberthür's paper gives a good overview of the immense challenges before the EU's net-zero path. Inadvertently, it also highlights the enormous size of the implicit costs to replace within three decades the European growth engine of past centuries.

In my paper, I show how such policies can easily end up being very costly while delivering much smaller climate benefits. Oberthür suggests that such comparisons are 'difficult', 'cynical', and possibly leave out 'priceless' values such as identity, culture, and social stability. Yes, such cost-benefit analysis is difficult, but ignoring it does not make the trade-offs go away. Oberthür makes no attempt to describe the magnitude of climate benefits from these policies and offers only handwaving, it-will-be-cheaper-than-you-think descriptions of their costs.

Yet, EU growth per capita having declined over the past sixty years, the trend line moved towards zero growth in 2020 (with Covid making the real growth rate dip below -7.5% in 2020). Imposing climate policy costs of many more percentage points over the coming decades will depress this growth trend even further.

The climate issue also takes attention and focus away from policies that could actually make the EU richer. One good example is the EU's Lisbon strategy from 2000 that aimed to make the EU 'the most competitive and dynamic knowledge-based economy in the world' by 2010. It would do so by increasing EU-wide R&D from 1.67% to 3% in 2010. It only achieved an 0.16 percentage point increase. Instead, the EU decided in 2010 to reach the 3% increase by 2020 through the 'Jobs and Growth' strategy. It will likely achieve only a very small increase of about 0.16%. In 2020, EU Commissioner Gabriel set the 3% target for 2030, but Commission estimates show it is again unlikely to be met. Today, all major economies have overtaken the EU, including China.

The fact that the EU is on-target to reach very costly climate policies that will deliver few benefits in a century but is decades behind increasing growth-boosting R&D encapsulates the problem with a predominant, climate-focused approach. A long-term lack of economic growth will likely endanger the social stability Oberthür worries about.

And without robust growth, Oberthür is right to be concerned about a 'backlash against EU climate policy and European integration more broadly'.

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Policy Briefs

Policy Brief

A StratCom for Liberals in a Post-Covid Europe

By Radu Magdin¹

Amid the growing uncertainty brought about by the coronavirus pandemic, as well as the anticipated economic and social fallout, there are very few issues that can generate consensus across the political spectrum. One such issue is the sustained attack against liberalism, and the fundamental freedoms of liberal democracies more broadly, that the pandemic underlines and exacerbates. Unless liberal forces find a way to strike back, the rise of populism that Europe has witnessed in the past decade will be nothing compared to what will come in the aftermath of the Covid-19 crisis. In addition to sound policies, finding the most effective strategic communication approaches should be at the top of the liberal agenda. This policy brief will introduce a few crucial elements for a successful liberal StratCom in the post-Covid world.

Managing hopes and expectations in the 'new normal'

Populism is rooted in the politics of fear and resentment. The simplistic solutions offered by populists typically lack a positive, hope-driven twist.² Without dismissing people's fears or bitterness, liberals need to integrate them into a bigger story about how our spirited and resilient communities are going to leave the crisis behind and bounce back stronger and more interdependent than ever. For this to happen, the whole endeavour requires the clear and empathetic communication of solutions and a lot more work on the ground that delivers these magic words: 'I hear you, and I know what we have to do to get out of this together.'

The pandemic will be a catalyst for change. Despite the fact that free trade and globalisation have had an overall positive impact, disgruntled citizens will be looking for scapegoats or new enemies of the people.³ To put it quite bluntly, changes are coming whether we like it or not. The challenge

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² Andrea Kendall-Taylor and Carisa Nietzsche (2020), 'The coronavirus is exposing populists' hollow politics', *Foreign Policy*, 16 April, <https://foreignpolicy.com/2020/04/16/coronavirus-populism-extremism-europe-league-italy/>.

³ Jan-Werner Müller (2020), 'Populists are likely to benefit from the Coronavirus pandemic', Institute for Human Sciences, Vienna, 16 April, <https://www.iwm.at/closedbutactive/corona-focus/jan-werner-mullerhow-populists-will-leverage-the-coronavirus-pandemic/>.

will be to preserve what works well from the liberal order while developing and communicating the necessary – and perhaps revolutionary – changes that will take Europe forward. Instead of passively defending the old order, liberals should seek to actively lead those changes.

We need a new narrative about globalisation that should have both economic and cultural dimensions.

In Europe, this reframing necessarily involves finding an empowering narrative about the future of the EU. Requesting a bigger role for the EU in crisis-management is not the most intuitive thing to do these days in the absence of a new integration story. We will frustrate citizens if we ask the European Commission for policies which this institution lacks the power to implement, so we need an adjustment to manage expectations as well as clarify who is doing what. If the pandemic is compared to a war (neither an innocuous nor the best comparison),⁴ then a lot of footwork is necessary to bring a sense of urgency and channel it towards a smarter, swifter EU.

The challenge is how to present the post-Covid new normal as an interim solution, manage hopes and expectations, and then return as soon as possible and consistently to inclusive and meaningful growth. This requires a wider dialogue in the liberal ecosystem about economic solutions in the age of the emergency state. For liberals in power or in opposition, the lesson is the same: dare to be different and dare to make the first move. Do not be apologetic and/or defensive, but be willing to slaughter a few sacred cows to gain attention and credibility. Whoever can define the problem has the advantage of a credible solution. Rather than sweeping the problems of the old liberal order under the carpet, liberal parties should directly confront them and have the willingness to work within their civic and intellectual ecosystems to re-imagine electoral platforms and present these to voters, who will fall in love again with the values and vision of a good society for the new normal. Whoever defines and pushes first for what the new normal should look like will also shape it. Let it be liberals.

Campaigning for Europe in the post-Covid era

Most importantly, the EU should be portrayed as a source of solutions, not as an additional headache. Controversial projects should be reworked, put on hold, or reframed; the priority is addressing needs stemming from the new economic and social crisis. For example, if more belt-tightening will be asked of the working/middle-class in a Europe with millions and millions of laid off people due to the pandemic-induced recession, then

⁴ See, for example, Emmanuel Macron's speech on 16 March 2020: <https://www.elysee.fr/emmanuel-macron/2020/03/16/adresse-aux-francais-covid19>.

populists and centrifugal forces will prevail.⁵ The Commission has started to rework and reframe its priorities, but much remains to be done so that it does not appear as out-of-touch with voters or out-of-sync with the current economic and social reality.

While individual solutions need not be ground-breaking, the whole package must be. The revolution at the centre will require, first and foremost, a new type of engagement with voters, one synchronised with these turbulent times and their yearning for stability and hope. A more humane and empathetic communication style will be necessary to rebuild trust in leaders and institutions as well as help heal the fractures of the past. Even if austerity is doomed as an economic solution, more austere/responsive/responsible behaviour on the part of leaders will have to become the norm – in fact, politics will have to be more aligned with a regained sense of public (basic) morality.

Political and electoral campaigning have been and will continue to be transformed by the pandemic and by the way states respond to it. However, beyond tactics, tools, and specific policies, campaigning will continue to be about:

- aligning life stories, will, values, and visions;
- remembering that elections are an exercise of leadership and options, as well as where memorable words, appropriate tone, and proper body language are still the winning trio;
- building a liberal identity and narrative;
- setting the agenda through thought- and action-based leadership – raising the stakes to make people aware of the gravity of the situation and the need for fresh solutions coming from those with reliable characters;
- adding empathy as the magic ingredient to how messages are conceived and delivered;
- continuously reframing and adapting messages to win hearts and minds;
- owning the moral high ground and betting on values-infused positions.

The pandemic emphasises, among others, two essential points: first, people pay more attention to politics now because their livelihoods depend on political decisions more than ever; second, the tools for communicating and engaging with voters have to be not only adapted but fundamentally changed to capture this new reality. On the first point, liberals can win by elevating the debate and bringing home the idea of just how high the stakes are. On the second point, the fight against fake

⁵ 'Covid-19 has transformed the welfare state. Which changes will endure?', *The Economist*, 6 March 2021, <https://www.economist.com/briefing/2021/03/06/covid-19-has-transformed-the-welfare-state-which-changes-will-endure>.

news, disinformation, and conspiracy theories becomes essential to ensuring that a public conversation is really possible and that messages can actually get across.

The mechanics of the liberal counterattack

The mechanics of politics are as important as the substance behind political messages. To respond to the complex informational environment, liberal leaders will have to build coalitions, use the media well, and set their agendas in a way that connects with disengaged voters. Here are a few things to consider about these three topics.

Building coalitions for positive change:

- Invest in the intellectual liberal ecosystem and allow new ideas into party platforms – even more importantly, create stories about this entire process to suggest a willingness to change and openness. Changing hearts and minds will not happen overnight, but these new converts have an essential role to play.
- Educate the public: prepare the market for your values without being too pedagogical. Remember: information – and transparency – breeds confidence.
- Use the liberal ecosystem to recruit and diversify candidates for office as well as public voices defending the liberal cause.
- Try to invest in such efforts not only at the national level but also internationally, all the while leveraging the help of like-minded, non-partisan actors to fight fake news and disinformation. Liberalism is equally about domestic and international politics.

Using (global) media efficiently:

- Respect the media, invest in different channels (not just one), reply quickly, avoid hyper-exposure, and check who sees/ reads what.
- Go beyond media bubbles and engage with everyone in their own media environment.
- Use tone, body language, and pictures to convey emotion in a media environment dominated by visuals.

Setting the agenda:

- Bet on segmentation and finding the right spokespersons for every niche and public.
- Embrace legitimate and values-based controversy.
- Testing messages beyond the liberal base is fundamental in order to expand the electoral base and counter potential criticism.
- Engage with policy, not just politics, through clear communication.

One of the challenges of mainstream political leaders, liberal ones included, is the complexity of their language. The problem is evident in relations both with media and between political actors and citizens. This may be due to these leaders' high level of education or their need to act or look smart.⁶ At the same time, most mainstream parties complain that their populist competitors are oversimplifying complex realities or presenting them in black or white terms. In this context, our advice is to return to the classic concept KISS: keeping it short and simple. The audience may respect you for your vision, but they need to understand it first. A return to basics, or a combination of complexity doubled by simple summaries, is the way forward.

The liberals are under attack, but they can masterfully fight back. Our strategic and policy toolboxes should be full – because no StratCom is successful in the absence of well-considered policy solutions.

But communication needs to be part of a winning strategy in the coming war on ideas too. Let's use these complicated years to show, through strategic reframing, that the liberal order is alive and well!

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⁶ Daniel Bischof and Roman Senninger (2018), 'Simple Politics for the People? Complexity in Campaign Messages and Political Knowledge', *European Journal of Political Research*, 57(2), 473–495, <https://doi.org/10.1111/1475-6765.12235>.

Policy Brief

Europe's Party Politics: Liberal, Illiberal, or Quasi-Liberal?

Takis S. Pappas¹

For a time, post-war European politics was dominated by the liberal type of party. These broadly liberal parties were who originally envisaged the idea of a united Europe and subsequently carried the torch for the advancement of open society in a progressively integrated Europe under rule of law. Over many decades, Europe's party systems operated as liberal political cartels in which the major parties competed for power *against each other*, largely unchallenged by other party types. Fast forward to the present day, and the talk around town is about the decline of the formerly established liberal parties, the proliferation of new populist ones, and, ominously enough, the rise of various other so-called anti-system parties – leading to democratic backsliding and, potentially, the disintegration of the European Union. Which part of this narrative corresponds to empirical reality, and which is just hype and headlines? More to the point: What is the current picture of Europe's party politics? And what is the outlook for the future at EU level?

When the subject is today's political parties, it makes sense to tell their stories in retrospect. A good starting point is the year 1990, when the mood in Europe was jubilant. The Berlin Wall had already been pulled down and Francis Fukuyama declared the 'unabashed victory of economic and political liberalism'; he even dared proclaim 'the universalization of Western liberal democracy as the final form of human government'. Soon, the Soviet Union would also fall apart, and Europe's liberals seemed confident that their ideas were unassailable.

Liberal parties share three interrelated characteristics. The *first* is their acknowledgement that any open democratic society is unavoidably split along many, often crosscutting, divisions that generate conflict. Liberal parties' *second* common characteristic is their understanding of the need to behave moderately, seek consensus, and prefer positive-sum outcomes. This need is best met via liberal parties' *third* characteristic, which is their adherence to safeguards for minority rights and the rule of law, as expressed primarily in written constitutions. In addition to these three core characteristics, the vast majority of Europe's post-war liberal parties have been in favour of an 'ever closer union', which included the

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abolition of tariff barriers in Europe, the adoption of a common currency, the easing of border controls under the Schengen Agreement, and above all, the accession of several formerly communist states into the EU.

By 1990, liberal parties held sway in most of Europe. Whether in their centre-right Christian Democratic variant or the centre-left Social Democratic one, and whether singlehandedly, in coalition with smaller centrist parties, or even forming 'grand coalitions' between them, liberal parties ruled Europe nearly unchallenged. In Greece, a strong populist party had emerged and won office back in 1981, but Greece was too far removed from where the liberal heart of Europe beat and too small to cause general concern. Two other challengers of the established liberal order received more attention. The first was France's National Front (FN) which, led by Jean-Marie Le Pen in the 1988 presidential election, won an unprecedented 14.4% of the vote and thus consolidated its position in French politics. The second challenger was the Freedom Party of Austria (FPÖ) which, under the leadership of Jörg Haider, received a hefty 16.6% of the vote in the 1990 national elections. The electoral successes of the FN and FPÖ did in fact ruffle the feathers of the old liberal parties but, again, weren't those two merely isolated cases serving to simply emphasise liberal predominance?

That was a widespread but mistaken assumption. Meanwhile, three types of challenger parties were already on the rise or about to emerge across Europe in the coming years and decades: populist, nativist, and nationalist ones.

Populist parties have been a novelty for liberal Europe since they first entered the political picture only a few decades ago. They combine allegiance to electoral democracy with disregard for modern liberal institutions. Populism can be conceptualised neatly and defined minimally as *democratic illiberalism* – a kind of rebuttal to contemporary liberal democracy.² In sharp contrast to their liberal opponents, populist parties view society as being divided between only two social groups: an organic majority of ordinary people on one side and, on the opposing side, one or more elite groups. Such parties, accordingly, generate – and thrive on – political polarisation, which in turn justifies their pursuit of majoritarianism at the expense of liberal institutionalism.

As already mentioned, Europe's first populist party to develop in strength and even win landslide elections was Greece's PASOK, a party that was established in 1974, won office in 1981, and eventually led Greece into an illiberal direction. As then party leader Andreas Papandreu

² For the original definition of populism as 'democratic illiberalism', see Takis S. Pappas (2014), 'Populist Democracies: Post-Authoritarian Greece and Post-Communist Hungary', *Government and Opposition*, 49(1), 1–23, <https://www.cambridge.org/core/journals/government-and-opposition/article/populist-democracies-postauthoritarian-greece-and-postcommunist-hungary/C25A68B6B8AD01966AD8C3E6488E7BC7>.

famously proclaimed during a widely televised electoral rally, 'There exist no institutions; only the people exist.' Be that as it may, populism had been implanted in European soil and proved a winning political strategy, too. No doubt, several ambitious leaders in Europe took notice.

In the early 1990s, Italy's party system collapsed with a bang. Out went the established liberal, yet badly tarnished, Christian Democratic and Socialist parties. In came a new populist force, Forza Italy, led by media magnate Silvio Berlusconi. After first winning power in the 1994 general elections, he formed successive governments and ruled Italy for a total of nine years, thus becoming the longest serving prime minister in post-war Italy. By then, however, liberalism was not the only game in town, and populism began spreading out from the South to Europe's formerly communist nations. In 2010, right-wing populist Viktor Orbán rose to power in Hungary and, in 2015, rightist Lech Kaczyński and his populist party also emerged as the dominant force in Poland. During the same tumultuous era, populism made a new appearance in crisis-ridden southern European nations. In Greece, left populist SYRIZA won a majority of votes in the general election of 2015 and promptly formed a coalition government with the right populist party of Independent Greeks (or ANEL). Their populist tandem would enjoy a four-year-long ride in government. In Spain, too, leftist populist party Podemos rose mainly due to the economic crisis and social disenchantment of the early 2010s. Unlike its Greek counterpart, though, Podemos did not win in elections. It did, however, succeed in entering a liberal party dominated coalition government as a junior partner.

The second challenger to establishment post-war liberalism, which rose during the 1990s and with renewed vigour over the course of the 2000s, is a class of parties that, for lack of a better term, are known as **nativist parties**. They have grown strongest in Europe's wealthiest and most socially diverse but also culturally homogenous and politically liberal nations. Unlike populists, nativists do not take issue with established liberal constitutions; their core consists of strong social xenophobia and, relatedly, economic chauvinism.³ Nativist parties typically advocate policies of protecting the interests of native-born citizens against alien populations in addition to their general opposition to further

³ On the distinction between populists and nativists, see Takis S. Pappas (2016), 'The Specter Haunting Europe: Distinguishing Liberal Democracy's Challengers', *Journal of Democracy*, 27(4), 22–36, <https://www.journalofdemocracy.org/articles/the-specter-haunting-europe-distinguishing-liberal-democracys-challengers/>. For a recent policy report with a detailed analysis of Europe's nativist parties that have participated in coalition governments, see Takis S. Pappas and Dimitris Skleparis (2021), 'Populism and nativism in modern-day Europe: An assessment with policy recommendations', Populism and Civic Engagement (PaCE) website, 31 January, http://popandce.eu/wp-content/uploads/2021/01/PaCE_D1.2_Populism-and-nativism-in-modern-day-Europe.pdf.

European integration. And they are chauvinistic when it comes to protecting their nations' welfare regimes from being drained by immigrants or otherwise wasted on EU projects. In no way, however, do nativist parties oppose or aim to overthrow the liberal institutions that are firmly established in their respective societies; neither do they wish to have them replaced by illiberal ones. To put it most simply: nativist parties advocate an extra-conservative liberal democracy, *good only for their native citizens*. Their 'liberalism' is definitely a different kind than that espoused by the post-war classical liberal parties.

Another criterion that differentiates populist from nativist parties is the inability of the latter to win power by themselves. Europe's most important nativist parties currently are, in their respective countries' alphabetical order, Austria's FPÖ, the Danish People's Party (DF), the Finns (PS), France's National Rally (RN), the Alternative for Germany (AfD), the Lega in Italy, the Dutch Party of Freedom (PVV), Norway's Progress Party (FrP), and the Sweden Democrats (SD). Interestingly enough, *none* of the above parties has ever been able to win an electoral majority or win singlehandedly. Instead, nativists have so far been stuck in opposition or, at best, as junior partners in coalitions. Even when in office, their performance has been mostly hampered by bad leadership, inefficacy, and scandals. No wonder that, with the exception of the FrP, which enjoyed being part of a coalition government in Norway for over six years, no other nativist party can claim a sufficiently long term in office.

The third type of challenger party to have developed in the context of European party politics also includes liberal parties with a distinctly nationalist agenda. The ultimate aim of such single-issue **nationalist parties** is to achieve their respective nation's full sovereignty vis-à-vis other nations or supranational organisations, most notably the EU. The most prominent example of this type has been the UK Independence Party (UKIP), a vocal advocate of Britain 'taking back control from Brussels'. The nationalist pull exerted by the UKIP contributed decisively to the 2016 referendum that eventually led to the UK's withdrawal from the EU. The UKIP subsequently saw its voter share greatly decline, after which it adopted a more nativist, anti-immigration stance.

Three decades since 1990, it is time to begin making new sense of the contemporary landscape of European party politics. Based on the *infographic*, which shows at a glance the party types developed in several European countries over the last 30 years, the following question is raised: Given Europe's new landscape of party politics, what is the outlook for the future? By glancing at the infographic, the answer is: quite mixed. By looking at it closer and longer, though, one begins to see broad patterns emerging and large processes forming, as well as the likelihood of long-term outcomes becoming more conceivable. Here are four major **takeaways**:

1. Liberal parties are still predominant in most of Europe, but their liberalism is currently found wanting. Through the years, post-war liberalism has been hollowed out, as modern-day liberal parties have heaped debacles caused by inefficient leaderships and ineffective policies, not to mention their increasing need to strike deals with their (mostly unsavoury) nativist kin to patch up coalition governments. Along the way, Europe's liberal parties have adopted several of the policies originally espoused by nativist and nationalist parties, especially cutting immigration and restricting citizenship rights.
2. Populist parties have proliferated in Europe in recent decades, but it seems that, at least for the time being, their growth has reached a plateau. Three conclusions follow: Firstly, populist parties tend to flourish more in Europe's southern and eastern lands. Secondly, populist success is highly correlated to individual agency, which in this case presents itself in the form of extraordinary charismatic leadership. Thirdly, as difficult as it is for populists to gain power, removing them from it is even more difficult. Once in office, populists display significant staying power.
3. Nativist parties have grown prominently, especially in Europe's western and northern nations, whose party systems are fragmented (i.e., there are many parties, none of which approaches the absolute majority point). In such systems, nativists enjoy two great potentialities – one, rendering themselves available as coalition partners and, two, intimidating their liberal opponents into adopting anti-immigration or anti-EU policies – lest they lose votes to the nativist parties. Either way, Europe's nativist parties work on diluting classical post-war liberalism while at the same time steering liberal parties towards extra-conservative positions.
4. Finally, nationalist parties have been a relative rarity at EU level, at least in their pure anti-federalist and self-determining sovereigntist form. After Brexit, other European nationalisms came to a standstill. But there is no guarantee against a resurgence of nationalism or nationalist parties in the future under new circumstances: including, but not restricted to, Europe-wide economic or political crises, international power reshufflings, the uncertainties of a post-pandemic world or, more simply, the emergence of charismatic leaders with an alluring nationalist message.

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Policy Brief

5G for Industry 4.0: Actors, Challenges, and a New Start for Europe

Gerard Pogorel¹

5G as a transformative force for European industries

Economic recovery plans across Europe are promoting the accelerated provision of 5G wireless services. Not only a successor to 4G on consumer markets, 5G is also a transformative force towards Industry 4.0. This aspect is certainly more complex, as industry users are highly diverse, but its business potential is equal if not higher. This is a key economic issue for industries across Europe that are facing a new post-pandemic world. Large swaths of manufacturing, building, agriculture, and health industries will have to adjust to changing civic and consumer behaviours.

Therefore, the future competitiveness of European industry and the European economy in international trade is also at stake. We do not yet know what deep and swift changeovers will occur, but we do know that new trade-offs will be established between free-trade and cost optimised supply chains, on the one hand, and sovereignty and risk-mitigating requirements, on the other. In this context, the ongoing transformation of European industries and the European economy as a whole will be essential to positioning Europe in the post-pandemic world and allowing it to deal with the inevitable social transition costs of this forthcoming economic phase.

Significant competitive advantages are expected from 5G networks, whether in transforming manufacturing industries or helping reverse negative trends.² When it comes to the latter, European industries are facing a number of structural problems, including costly cable connectivity, inflexible production lines, outdated real-time data use for production control, and suboptimal wireless solutions. With the rollout of 5G across the continent, it is expected that Industry 4.0 will benefit from a

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² R. Davies (2015), 'Industry 4.0: Digitalisation for productivity and growth', EPRS Briefing, European Parliament, Brussels, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2015/568337/EPRS_BRI\(2015\)568337_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2015/568337/EPRS_BRI(2015)568337_EN.pdf).

range of transformations: reliable, low latency, and all-purpose wireless networks; wireless sensors and real-time data analytics; ultra-versatile robots; Automated Guided Vehicles; and cloud control.

In view of such a transformative process, this brief focuses on 5G for Industry 4.0 and examines the actors that are best positioned to take advantage of 5G technical and business opportunities as well as the challenges they are facing. Critical policy issues affecting Industry 4.0 issues regarding skills, investments, and competition will have to be addressed if Europe is to compete in a highly competitive digital environment running on 5G.

Industrial actors and challenges

The industrial manufacturing market is an attractive potential part of future 5G revenues. The sales market for 5G manufacturing solutions has been estimated to reach 132 billion USD in 2030, at a growth rate of 75% over the period 2020–2030.³

The complex nature of 5G for industry attracts a plurality of actors which have to compete and cooperate to provide the best possible services. World leaders in manufacturing are forging ahead. Runner-up businesses and countries see their chance to catch up and leapfrog leaders. We can, however, already identify the main actors with the potential to shape the 5G industry ecosystem. These include:

- Mobile network operators (MNOs)
- Manufacturing industries
- Industrial automation companies
- Telecom equipment vendors
- Digital services firms
- National regulatory agencies (NRAs) or spectrum regulators.

Mobile Network Operators (MNOs)

MNOs are deploying 5G networks which enable multiple virtual networks on a shared physical infrastructure ('network slicing'). They can address vertical industries through customised network slices relying on nationally assigned individual spectrum licenses. Their connectivity and slicing run like dedicated networks and are capable of critical operation, real-time automation, and secure handling of critical data.

Tight knowledge and experience-sharing as well as cooperation between MNOs and vertical industries are required; MNOs and vertical

³ P. Fortier et al. (2019), '5G for business: A 2030 market compass', Ericsson and Arthur D. Little, October, <https://www.ericsson.com/en/5g/forms/5gforbusiness-2019-report>.

industries have already engaged in some trials and experiments in 5G connectivity. MNOs have a track record of high-availability networks with a quality of service that will not be easy for newcomers to match by themselves. MNOs, however, devote important resources to expand their industry applications. Even if large verticals move to set up 'private' networks, experience shows that MNOs have some role in these private networks as manager, consultant, or spectrum access provider. This is even more true with SMEs. There is currently no consensus on the number of manufacturing industries planning to set up a network of their own; some say most industries while others claim only the biggest contenders will do so. Even in those cases, MNO expertise will presumably be required. 5G will be a differentiating factor for MNOs. Not all of them will build an extensive Industry 4.0 presence. A divide will appear between those who succeed and the rest. One major challenge facing their expected role in the Industry 4.0 ecosystem is their ability to combine recognised global competence with more local know-how.

MNOs have market scale. The challenge for them is to expand on their knowledge of industry transformation as previous generations of wireless services for industries become mainstream. MNOs work hard to demonstrate they can match the technical and commercial requirements defined by vertical industries.

Manufacturing industries

5G for Industry 4.0 presents the manufacturing sector with an opportunity to keep up with the worldwide rise of ICT and digital companies. The world leaders of manufacturing now expect further improvements of their industry productivity.⁴ Companies and countries which played a lesser role in the past decade now have the ambition to catch up by taking the upper hand.⁵

Their success in implementing 5G for industry services and equipment will depend on their ability to: emphasise 5G's added value in enhancing connectivity as part of the engineering factory design process; demonstrate the cost-efficiency contribution of 5G; work on the compatibility and inter-operability of mobile networks within existing industrial systems; provide security and data privacy-proof solutions; and work with telecommunications sectors to co-design solution-based, not just service- or equipment-based, business models.

In June 2019, a Cap Gemini study found that '[o]ne third of industrial

⁴ See, for example, Manufacturing Institute (2021), 'Connecting manufacturers with the future: how 5G is transforming the manufacturing landscape', <https://www.themanufacturinginstitute.org/wp-content/uploads/2021/03/Manufacturing-Institute-5G-study.pdf>.

⁵ See Digital Catapult (2019), 'Made in 5G: 5G for the UK manufacturing sector', July, https://assets.ctfassets.net/nubxhjw091/2gtsKJ9qmYPuXMovbIQ3zb/dc7950443e985d1802486470dc73f00f/DC_113_5G_Manufacturing_Report_Digital.pdf.

companies, and almost one half of large industrial organisations, will apply for their own 5G licenses⁶ in a timeline of 2 to 3 years. It concluded:

This research makes it clear that industrial companies are confident about the benefits of 5G before it has even come to market. That said, 5G is an emerging technology and there will be many challenges to overcome before it is ready to be deployed at scale. Co-innovation between industrial companies and the telco ecosystem, in the form of pilots and open experimentation platforms, will be essential to create win-win business, service and operating models that will foster 5G adoption.⁷

Industrial giants in European manufacturing, airports, and ports are bound to own and manage network connectivity for all of their supply chains and production lines. These industries share the same reluctance to outsource connectivity out of control and liability concerns.

Industrial automation companies

Industrial automation business propositions draw on their experience to apply system integrators to a series of vertical industries, and they claim that in comparison to singular self-deployment solutions they can achieve economies of scale. It is a tempting offer, e.g., for computer services giants employing tens or hundreds of thousands of software engineers to expand as providers of 5G connectivity services into the Industry 4.0 market. System integrators with strong competence areas of their own or a loyal customer base have the potential to succeed.

Telecom equipment vendors

Network vendors themselves are engaged in the search for revenue and economies of scale. It seems logical for them to leverage their own core VtoO (Vendor to Operator) experience, know-how in handling radio frequencies, and network equipment into a compelling VtoInd (Vendor to Industry) proposition. Vendors, however, might be reluctant in principle to engage directly with industry customers for fear of alienating their much larger MNO customer constituency. Does not a well-known management motto say 'don't compete with your customers'? Yet all vendors now have Industry 4.0 propositions for the vertical markets, including a wide range of possible cooperation arrangements and making sure to accommodate rather than antagonise their large-scale MNO customer base.

⁶ Capgemini Research Institute (2019), '5G in industrial operations. How telcos and industrial companies stand to benefit', <https://www.capgemini.com/wp-content/uploads/2019/06/5G-in-industrial-operations.pdf>.

⁷ Capgemini Research Institute, '5G in industrial operations'.

Digital service suppliers

Looking at all the trials, experiments, future visions, and strategic plans emanating from every quarter, the current evidence seems to suggest that no single actor possesses all the necessary competences to set up Industry 4.0 by itself. The perspective in the deployment of 5G connectivity services to vertical industries is definitively one of reciprocal knowledge and understanding, cooperation, joint supply, and partnership agreements.

As noted by the Dutch Radiocommunications Agency, 'providers and industry should change their game in the telecommunications sector'⁸ in order to create added value in a cooperative environment and, further: '[a] possible future of hybrid cellular networks for industry will involve all actors, co-operating in designing and operating integrated systems, but also fighting for market share and revenue.'⁹

In this sense, strategic partnerships are likely needed to achieve the necessary combination of MNO know-how and that of the actors involved in industry processes, whether they are the industries themselves or systems providers or integrators. Much has already been implemented with 4G wireless technologies and WiFi. However, in some industries, the ability to fully implement 5G will be a differentiating factor which will split the competition in the middle between winners and losers, with dire consequences at the national economic level.

The relationships between industry and telecommunications operators are of a complex nature. They imply an ability to go beyond generic fixed and mobile service provision and achieve the real co-creation of a full-fledged 5G industry ecosystem. Co-creation, or co-design, is nothing new in creative management processes.¹⁰ The ability of stakeholders to transfer and adopt co-creation/co-design methodologies will be a Key Success Factor.

NRAs and Spectrum for Industry 4.0

5G implementation requires access to radio spectrum frequencies. As different network solutions can serve Industry 4.0, different structural options revolve around its use and access, the corresponding network solutions, and the actors involved:

- Private network (self-deployed, through an MNO or third party)
- Public network (MNO);
- Hybrid private/public combination.

⁸ H. Verkerk (2021), 'CEPT workshop on new spectrum solutions for industry sector', Radiocommunications Agency NL, June, <https://www.cept.org/ecc/tools-and-services/cept-workshops/cept-workshop-on-new-spectrum-solutions-for-industry-sectors>.

⁹ Verkerk, 'CEPT workshop'.

¹⁰ See A. Gentès (2018), *The In-Discipline of Design* (Cham: Springer).

Issues of access and pricing of the radio spectrum, a limited public resource, involve regulatory monitoring. Concerns have been expressed by the Commission and the European spectrum regulators body, Radio Spectrum Policy Group (RSPG). The lack of EU-wide consistency in allocation and licensing conditions of frequencies for Industry 4.0 hinders harmonisation and standardisation, delaying and weakening European developments. This issue is monitored by regulators, for instance, AGCom in Italy.¹¹

Digital skills and investments: a new start for Europe

For Europe to succeed in this technological transition, two issues will eventually have to be addressed: digital skills and investments in ICT. Digital science and technology play an ever-growing role in manufacturing and all industrial sectors, from mechanical engineering to agriculture. As an illustration, the share of automotive electronics in the total cost of a car has risen from 10% in 1980 to 35% in 2010, and it is expected to reach 50% by 2030.¹² Accordingly, production processes will have to go through a digital transformation process. The existence of a digital skills gap in Europe, however, has been acknowledged.¹³

We can refer on that matter to the Digital Economy and Society Index (DESI), 'a composite index that summarises relevant indicators on Europe's digital performance and tracks the evolution of EU Member States in digital competitiveness'.¹⁴

Advanced and specific skills are needed to cope with the sweeping expansion of complex ICT across industries. Whether we look inside Europe or at international comparisons, too many European workers lack basic digital skills. The EU and its Member States have launched a series of initiatives to bring 70% of adults basic digital skills by 2025.¹⁵ Competencies, moreover, are scattered across production process actors. The current feeling is that comprehensive solutions from contiguous actors in the value chain is still a work in progress. Several EU programs and initiatives

¹¹ Autorità per le Garanzie nelle Comunicazioni (2021), 'Indagine conoscitiva sull'utilizzo dello spettro radio al servizio dei settori verticali', <https://www.agcom.it/indagine-conoscitiva-sull-utilizzo-dello-spettro-radio-al-servizi-settori-verticali>.

¹² Statista (2021), 'Automotive electronics costs as a percentage of total car cost worldwide from 1970 to 2030', <https://www.statista.com/statistics/277931/automotive-electronics-cost-as-a-share-of-total-car-cost-worldwide/>.

¹³ European Commission (2020a), 'Digital skills and jobs', Shaping Europe's digital future, <https://digital-strategy.ec.europa.eu/en/policies/digital-skills-and-jobs>.

¹⁴ European Commission (2020b), 'The Digital Economy and Society Index (DESI)', Shaping Europe's digital future, <https://digital-strategy.ec.europa.eu/en/policies/desi>.

¹⁵ S. Stolton (2020), 'Commission in bid to ensure '70% of EU adults' have digital skills', Euractiv, 1 July, <https://www.euractiv.com/section/digital/news/commission-in-bid-to-ensure-70-of-eu-adults-have-digital-skills>.

intend to fill these gaps, for instance, by supporting the advanced manufacturing research centres which exist at universities in Europe.

A similar picture can be painted for ICT and digital investments. The European Investment Bank Investment Survey 'shows that European firms currently lag behind in adopting digital technologies'.¹⁶ This reflects the observation that investments in ICT in Europe are significantly lower than in the USA, with negative effects on innovation as well as productivity.¹⁷ The EU and its Member States have already launched numerous initiatives in this area.¹⁸

Skills and investments go hand in hand. In its 2020 report, the European Court of Auditors found that 'the Commission strategy for supporting the digitisation of European industry was soundly based and supported by Member States, but lacked information on intended outcomes, result indicators and targets'.¹⁹

Numerous initiatives are currently being taken in the EU. The effort targeting SMEs, for instance, is centred on the European Digital Innovation Hubs in Digital Europe Programme.²⁰ Promoting the digital age is a major EU policy.²¹

At this take-off stage of 5G for Industry 4.0, the definite picture of relationships between actors and definite solutions has not yet emerged. Partnerships and close technological linkages between MNOs, industries, vendors, industry automation specialists, and third parties are the pre-conditions for a successful 5G-for-industries expansion. We are witnessing a competitive and transformative process between diverse forms of co-operations among actors. Of course, it is important to leave all options open and let diverse scenarios competitively confront reality.

¹⁶ European Investment Bank (2020), 'Who is prepared for the new digital age? – Evidence from the EIB Investment Survey', 20 April, <https://www.eib.org/en/publications-research/economics/surveys-data/eibis-digitalisation-report.htm>.

¹⁷ R.J. Gordon and H. Sayed (2020), 'Transatlantic technologies: Why did the ICT revolution fail to boost European productivity growth?', VoxEU, 21 August, <https://voxeu.org/article/why-ict-revolution-failed-boost-european-productivity-growth>.

¹⁸ European Commission (2021c), Shaping Europe's digital future, <https://digital-strategy.ec.europa.eu/en>.

¹⁹ European Court of Auditors (2020), 'Digitising European industry: An ambitious initiative whose success depends on the continued commitment of the EU, governments and businesses', Special Report, https://www.eca.europa.eu/Lists/ECADocuments/SR20_19/SR_digitising_EU_industry_EN.pdf.

²⁰ European Commission (2021b), 'European Digital Innovation Hubs in Digital Europe Programme', Draft working document, 25 January, Shaping Europe's digital future, <https://digital-strategy.ec.europa.eu/en/activities/edihs>.

²¹ European Commission (2021a), 'A Europe fit for the digital future: Empowering people with a new generation of technologies', https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age_en.

In two to three years, the European landscape will be a diverse one, with leadership positions in different Member States held by either MNOs or manufacturing industries, vendors, industry integrators, and powerful third parties, depending on the relative strengths demonstrated by all these actors. Nevertheless, the important outcome will be to achieve scalability, standardisation, and harmonisation where necessary for Europe to engage in this new start and seize this critical opportunity to compete on the world scene.

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Policy Papers

Policy Paper

Enabling Healthier Dietary Choices in the European Union

Vincent Delhomme¹

Improving the nutritional quality of Europeans' diets is a key priority for EU's public health agenda. One of the ways to achieve this is to provide consumers with clear, accessible and reliable information on the composition of foods and beverages. The current EU legal framework for food information suffers from major shortcomings in this regard. This policy paper presents two reforms that would improve EU food information requirements: the generalisation on all foodstuffs of a common EU 'front-of-pack' evaluative label and the introduction of ingredients and nutrition information on alcoholic beverages.

1. Introduction

Obesity and chronic diseases remain a leading cause of harm and premature mortality in the European Union. Between 2010 and 2016, overweight and obesity rates on the continent increased respectively from 55.9% of the population to 58.7% and from 20.8% to 23.3%.² It is estimated that in 2017 over 950,000 deaths and over 16 million lost healthy life years were attributable to unhealthy diets and the resulting non-communicable diseases, among which cancer, cardiovascular diseases and diabetes.³ The diets of the European population continue to suffer from major imbalances, including an excessive intake of energy, fat, salt and sugar. The recently published Europe's Beating Cancer Plan highlights the importance of policies focusing on prevention, given that around 40% of cancer cases are preventable.⁴

Through its internal market and public health policies, the EU allows for the free circulation of foodstuffs that carry nutrition information,

¹ Vincent Delhomme, Non-Resident Research Fellow, European Liberal Forum and PhD Candidate, UCLouvain School of Law.

² World Health Organisation (2018), 'European Health Report 2018', 24, <https://www.euro.who.int/en/data-and-evidence/european-health-report/european-health-report-2018>.

³ European Commission (2019), 'EU burden from non-communicable diseases and key risk factors', Knowledge for Policy, https://knowledge4policy.ec.europa.eu/node/11287_bg.

⁴ European Commission (2021), 'Communication from the Commission to the European Parliament and the Council: Europe's Beating Cancer Plan', COM(2021) 44 final, Brussels, 3 February.

giving access to European consumers to a large and diversified market in which they should be empowered to make healthy choices. Since the publication of the Nutrition and Obesity White Paper in 2007,⁵ fostering healthier diets has remained an important priority for the EU. The Farm to Fork Strategy, one of the flagship initiatives of the Von der Leyen Commission, aims, inter alia, at creating 'a favourable food environment that makes it easier to choose healthy and sustainable diets [which] will benefit consumers' health and quality of life, and reduce health-related costs for society'.⁶ As part of this strategy and of its Cancer Plan, the EU wants to revise the existing rules on nutrition labelling for food and alcoholic beverages.

Nutrition information is only one of the policies that can contribute to healthier diets, but it is appealing to policymakers and stakeholders for a host of reasons. In a well-functioning market, asymmetries of information must be reduced and consumers enabled to make informed choices that are best aligned with their preferences. Although entailing costs, labelling requirements are also policies that do not, comparatively, impose a substantial regulatory burden on food operators.

Despite the improvements brought by the Regulation on food information to consumers (FIC Regulation),⁷ adopted in 2011, the general legal framework applicable to nutrition and food information still suffers from major shortcomings. This policy paper explains why the EU should:

- Adopt a common and mandatory front-of-pack nutrition labelling scheme allowing consumers to understand quickly and easily the nutritional composition of food and beverages.
- Remove the exemptions from ingredients and nutrition requirements applicable to alcoholic beverages.

2. Providing better nutrition information: developing an EU front-of-pack label

A growing number of European countries are currently experimenting with front-of-pack (FoP) nutrition labels. The Nutri-Score, developed in France, has been officially endorsed by the authorities of six EU Member

⁵ European Commission (2007), 'White Paper on a strategy for Europe on nutrition, overweight, and obesity-related health issues', COM(2007) 279 final, Brussels, 30 May.

⁶ European Commission (2020), 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A farm to fork strategy. for a fair, healthy and environmentally-friendly food system', COM(2020) 381 final, Brussels, 20 May, 2.

⁷ European Parliament (2011), 'Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers', OJ L 304, 22.11.2011, 18–63.

States (along with Switzerland) and is supported by some major food business operators, such as Nestlé or Delhaize. Many other FoP labels are currently in use on the European market. Beyond their similar basic characteristic, providing consumers with information visible at first glance when shopping, FoP labels vary widely in their design and purpose. The three following examples illustrate this variety.

The Nutri-Score conveys nutrition information in the form of a colour-coded and graded indicator which synthesises various positive (e.g. fibres, proteins) and negative elements (e.g. sugar, salt). The Multiple Traffic Lights (MTL) label gives precise nutrition information, both in absolute terms and as a percentage of recommended daily intakes. It also expresses a judgement on the quality of foods but in a nutrient-specific manner, each nutrient is assigned a colour in function of the level contained in the product. The NutriInform Battery, recently introduced in Italy, is a more classic kind of label that provides neutral and nutrient-specific information without using 'traffic-light' colours.

Overall, the development of FoP labelling schemes stems from the lack of effectiveness of traditional back-of-pack, textual and numerical food information. This kind of labelling is less noticeable and more difficult to understand, especially in a busy shopping environment, and evidence shows that it has a limited effectiveness in conveying relevant information and helping consumers in their choices.⁸ Numerous studies have shown that FoP labels are better to attract consumers' attention and are easier to understand, and positive evidence starts accumulating on their ability to improve food choices.⁹

Evaluative and colour-coded labels, such as the MTL or Nutri-Score, appear especially effective if compared to other FoP labels.¹⁰ They make it easier for consumers to judge the nutritional quality of products and to make comparisons between them. This is especially important for vulnerable consumers such as lower income groups, who tend to simultaneously have lower levels of nutritional knowledge and to be at higher risk of becoming overweight or obese.

In this regard, EU law as it currently stands is defective for two reasons. The FIC Regulation only imposes the provision of textual and numerical nutrient-specific information, which can be given on the back of pack-

⁸ S. Storcksdieck genannt Bonsmann, G. Marandola, E. Ciriolo, R. van Bavel, & J. Wollgast (2020), 'Front-of-pack nutrition labelling schemes: A comprehensive review', Joint Research Centre of the European Commission; J.M. Bauer and L.A. Reisch (2019), 'Behavioural Insights and (Un)Healthy Dietary Choices: A Review of Current Evidence', *Journal of Consumer Policy*, 42(1), 17.

⁹ Storcksdieck genannt Bonsmann et al., 'Front-of-pack nutrition labelling schemes'.

¹⁰ For a general overview, see V. Delhomme (2021), 'Front-of-Pack Nutrition Labelling in the European Union: A Behavioural, Legal and Political Analysis', *European Journal of Risk Regulation*, DOI:10.1017/err.2021.5.

ages. It is this kind of information that is typically hard for consumers to notice and to decipher. Further, the FIC Regulation prevents Member States from imposing on their territory the use of more consumer-friendly FoP labels. These can only be recommended by national authorities and voluntarily adopted by food business operators. This lowers the level of consumer protection while not effectively preventing the fragmentation of the single market.

The European Commission announced its intention to put forward, by the end of 2022, a proposal for the adoption of a common and mandatory EU FoP nutrition labelling scheme. This is a welcome development. In so doing, the Commission should base itself on the best available evidence and choose the most effective label, taking into consideration the diversity of European food cultures and habits. The harmonised and mandatory nature of the EU label is of paramount importance, not only to avoid creating obstacles to the free movement of foodstuffs, but to ensure that consumers are not confronted to a variety of nutrition labels on the marketplace that would only increase their confusion and prevent useful comparison between products to be made.

The EU should also resist attempts made by certain Member States to keep to the status quo, fuelled by the unwarranted fear that an evaluative and colour-coded FoP label would specifically hurt certain kinds of traditional domestic production and be prejudiced against the Mediterranean diet.¹¹ Italy in particular strongly opposes Nutri-Score and has developed its own label in reaction, the NutriInform Battery exposed above, which it tries to promote. However, labels of this kind are exactly those that are discarded by existing behavioural evidence and should therefore not be considered for a generalisation at the EU level.

The agri-food industry, which strongly opposed the use of FoP nutrition information when the FIC Regulation was discussed ten years ago, should embrace the adoption of an EU FoP label rather than reject it. It would provide food business operators with a level playing field and offer them an incentive to reformulate their products to improve their nutritional quality. This is an occasion to accompany the change towards a healthier and more sustainable food chain.

3. Extending food information requirements to alcoholic beverages

Under the FIC Regulation, beverages containing more than 1.2% by volume of alcohol are exempted from the mandatory nutrition declaration and the obligation to provide the list of ingredients. This information can be provided on a voluntary basis by manufacturers but this

¹¹ See in that regard Council of the European Union (2020), 'Non Paper on the "Front of Pack Nutrition Labeling – FOPNL" by Cyprus, Czech Republic, Greece, Hungary, Italy, Latvia and Romania', 10846/20, Brussels, 17 September.

opportunity is rarely used. It is nearly impossible for consumers today to have access to complete and reliable information as to the composition of alcoholic beverages.

No convincing justification has ever been offered for this exemption, which goes against basic consumer rights and makes little sense from a public health point of view. Beyond the harmfulness of alcohol per se, alcoholic beverages usually have a high energy content and can contain excessive levels of certain nutrients, most often sugar but also fat. It is especially the case for 'alcopops', products sold as a mix of alcohol and sugary drinks, which are particularly attractive to young people. This exemption creates an absurd situation where any soft drink is required to disclose its nutritional composition unless it is mixed with alcohol.

Extending food labelling obligations to all alcoholic beverages would enhance the transparency of their manufacturing process, allow consumers to better understand the role played by these beverages in their overall diet and, hopefully, contribute to reducing the current levels of alcohol consumption on the continent. Europe remains the heaviest-drinking region in the world and records the highest proportion of total ill health and premature death due to alcohol.¹²

In 2017, the Commission published a report exploring the possibility to make the list of ingredients and the nutrition declaration mandatory for alcoholic beverages.¹³ The report clearly established that consumers had a knowledge deficit in the composition and nutritional value of alcoholic beverages and that this information would help a significant number of them to adjust their drinking habits. The Commission itself concluded that it 'ha[d] not identified objective grounds that would justify the absence of information on ingredients and nutrition information on alcoholic beverages', but decided nonetheless not to push for binding legislation, relying instead on voluntary commitments from the industry.

This approach is problematic for two reasons. First, access to accurate information as to the composition of products should be construed as a basic right for consumers rather than a favour to be discretionary granted. Second, a closer look to the voluntary commitments taken by the industry reveals that these are still widely insufficient. The self-regulatory proposals presented by the industry since 2018¹⁴ are patchy and far from having been properly and widely implemented. Signatories have not yet committed to a total disclosure of information regarding ingredients and nutrition, and most of them envisage to provide information

¹² For WHO, Data and statistics on alcohol use, see <https://www.euro.who.int/en/health-to-pics/disease-prevention/alcohol-use/data-and-statistics>.

¹³ European Commission (2017), 'Report from the Commission to the European Parliament and the Council regarding the mandatory labelling of the list of ingredients and the nutrition declaration of alcoholic beverages', COM(2017) 58 final, Brussels, 13 March.

¹⁴ https://ec.europa.eu/food/safety/labelling_nutrition/labelling_legislation/alcohol_en.

off-label rather than directly on the packaging. Consumers would have to use a web-link or to flash a code to have access to this information. Considering the limited time and attention that consumers have when shopping, this is a commitment which amounts to very little in practice.

While applying a common evaluative FoP nutrition label to foods and alcoholic beverages alike could give rise to scientific difficulties, these beverages should at the very least be required to fully disclose the list of their ingredients and provide calorie information. This information should be given in an intelligible manner and preferably be available front-of-pack for greater effectiveness.

A final word of caution is necessary regarding labelling for alcoholic beverages. Unlike for food, consumer research in this domain lacks in breadth and is characterised by a higher degree of uncertainty.¹⁵ Evidence also points towards possible unforeseen and negative effects of calorie labelling on alcoholic beverages leading to a higher consumption of these.¹⁶ This would result from people's apparent tendency to overestimate rather than underestimate the presence of calories in their drinks. All of this warrants for caution and for a careful exploration and evaluation of options by the European Commission.

4. Conclusion

More can be done to provide European consumers with clear and reliable information regarding the composition of their foods and drinks. The Commission's willingness to act on the matter and to put forward concrete legislative proposals is a step in the right direction. The complexity of the issue and the remaining scientific uncertainties that exist regarding nutrition and consumer behaviour are no excuses to refrain from acting.

Moving towards healthier and more sustainable diets is a laudable goal which will not be attained by labelling alone. Among others, two other initiatives should be put as priorities on the EU agenda: revising the rules for the Common Agricultural Policy so that products that are presently consumed in excess in the EU, such as meat or wine, receive a more calibrated financial support, and ensuring that children are adequately protected from harmful food and alcohol marketing.

¹⁵ H. Schebesta and K. Purnhagen (2021), 'Limits to Behavioural Consumer Law and Policy: The Case of EU Alcohol Labelling', in K. Mathis and A. Tor (eds.), *Consumer Law and Economics* (Cham: Springer International Publishing), pp. 283–298.

¹⁶ O.M. Maynard et al. (2018), 'No Impact of Calorie or Unit Information on Ad Libitum Alcohol Consumption', *Alcohol and Alcoholism*, 53(1), 12; M. Bui, S. Burton, E. Howlett, and J. Kozup (2008), 'What Am I Drinking? The Effects of Serving Facts Information on Alcohol Beverage Containers', *Journal of Consumer Affairs*, 42(1).

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- European Commission (2021). 'Communication from the Commission to the European Parliament and the Council: Europe's Beating Cancer Plan'. COM(2021) 44 final, Brussels, 3 February.
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World Health Organization (2018). 'European Health Report 2018'. <https://www.euro.who.int/en/data-and-evidence/european-health-report/european-health-report-2018>.

Policy Paper

The Next 10 Years: How Europe Can Shape and Create a 'Good Future'

Gerd Leonhard¹

While we may still be preoccupied with the Covid crisis, the coming decade has much more radical changes and momentous disruptions in store. We are racing at warp speed into the future, as the digital transformation has been vastly accelerated by the pandemic.² The future is no longer linear: it is exploding with variation thanks to several combinatory factors. Think of growing fibre-optic capacity (Keck's law)³ and a cocktail of other laws driving innovation forward, starting with Moore's law, which has computational power doubling roughly every two years,⁴ and Metcalfe's law – by which the value of a network grows exponentially with its users.⁵

We are now at the point of take-off for exponential change. In the next ten years, things once considered science fiction will become science fact, from augmented reality and artificial intelligence (AI) to quantum computing. As a result, we will undergo more change over the next decade than we have in the last century. While daunting, this also creates incredible opportunities because we have the chance to lay the foundation for what I call 'the Good Future'.

But it's not a given. We need to stop simply asking what the future will bring as if it were already predetermined by someone else. Europe – in particular its leaders, policymakers, entrepreneurs and citizens – has to embrace the idea that WE are actually in charge of our own future, not

¹ Gerd Leonhard, Futurist, CEO of The Futures Agency, fellow of the Royal Society of Arts, London.

² 'Global pandemic accelerates digital transformation according to latest study', *Security*, 4 November 2020, <https://www.securitymagazine.com/articles/93823-global-pandemic-accelerates-digital-transformation-according-to-latest-study>.

³ Jeff Hecht (2016), 'Is Keck's Law coming to an end?', *IEEE Spectrum*, 26 January, <https://spectrum.ieee.org/semiconductors/optoelectronics/is-kecks-law-coming-to-an-end>.

⁴ 'Moore's law', *Encyclopedia Britannica*, 26 December 2019, <https://www.britannica.com/technology/Moores-law>.

⁵ Rowan Trollope (2017), 'Metcalfe's Law: Not just for networks', Medium, 30 June, <https://medium.com/@rowantrollope/metcalfes-law-not-just-for-networks-7e74f117a448>.

Silicon Valley, China or anybody else. The future will be shaped by the choices we make today, by our action or inaction.

So, what do we want this future to look like? Do we want to remain the target or the hostage of algorithm-driven media offerings, wherein some data-fed AI can manipulate our thinking and our actions across Facebook, Google and the web as a whole? Do we want algorithmic radicalisation driving us into ever smaller echo chambers, or do we want to achieve the collective benefits kindled by a spirit of solidarity? Do we want actual experiences and real relationships, or do we prefer virtual likes, fake followers and the simulation that social media provides so well? My view is that we will not find real happiness (i.e., transcend hedonism) via AI, in the cloud or on a screen; these are just tools to better achieve what really matters: connecting to other humans, engagement, experiences and relationships. Let's remember what William Gibson famously set forth: 'Technology is morally neutral – until we use it' – and we are now using it everywhere.⁶

Global tech companies are taking over every single industry and dominating the stock market.⁷

Available capital, as measured in dollars and euros, is growing and productivity is rising, but human capital and compensation for human labour remain flat and our natural resources are dwindling. On top of this, the Covid crisis has significantly amplified pre-existing inequalities. Only 5% of American families own about 70% of the country's equity and 85% of directly held stock.⁸ During the crisis, the rich got richer while everybody else got poorer – and I doubt that is the kind of capitalism we want for Europe's future.⁹

We must urgently go beyond GDP and think more broadly about *purpose*. In the 1970s, American architect, designer and philosopher R. Buckminster Fuller put his finger on the problem, saying that humanity was moving toward a fork-in-the-road moment where we would have to decide where we are going. This moment has arrived,¹⁰ triggered by

⁶ Dan Josefsson (1994), 'I don't even have a modem', interview with William Gibson, 23 November, <http://www.josefsson.net/gibson/index.html>.

⁷ Lawrence Delevingne (2020), 'U.S. big tech dominates stock market after monster rally, leaving investors on edge', Reuters, 28 August, <https://www.reuters.com/article/us-usa-markets-faangs-analysis-idUSKBN2500FV>.

⁸ Robert Gebeloff (2021), 'Who owns stocks? Explaining the rise in inequality during the pandemic', *New York Times*, 26 January, <https://www.nytimes.com/2021/01/26/upshot/stocks-pandemic-inequality.html>.

⁹ Rachel Elbaum (2021), 'World's richest become wealthier during Covid pandemic as inequality grows', NBC, 25 January, <https://www.nbcnews.com/news/world/world-s-richest-become-wealthier-during-covid-pandemic-inequality-grows-n1255506>.

¹⁰ That's why some like-minded futurists and myself recently launched 'The Fork in the Road Project' – please join us! www.forkintheroadproject.com.

a virus whose emergence was long predicted by the likes of Bill Gates¹¹ and Larry Brilliant.¹²

To paraphrase one of Fuller's disciples, the late American futurist Barbara Marx-Hubbard: as we perceive our future to be, so we act; as we act, so we become. I believe that if Europeans want to become truly united in this post-Covid world, it's crucial that we develop our own vision of the future and design a new capitalism that is future-ready. This is a good time to tackle the issue, as many things that used to be considered 'normal' are up for discussion and we are entering an era of multiple 'new normals'. The systemic shock that is Covid-19 can serve as our trigger point and our reset moment because of all the suffering it has brought and the clarity that came along with it.

No question, we must embrace technology and scientific research. There should be no barriers to keep smart minds from inventing and commercialising new things; yet I believe that the more we connect, the more we must protect what makes us human: mystery, serendipity, inefficiency, mistakes, imagination and intuition, applying critical thinking and using our unique capacity for foresight. For instance, policymakers, regulators and citizens have to find the right balance between allowing innovations in artificial intelligence to flourish while setting clear boundaries that prevent dehumanisation.

That's especially true because of our track record of slow responses to new technologies' inherent risks and dangers. Humans invented and deployed the nuclear bomb – and then it took us 22 years to come up with a non-proliferation treaty. I believe we'll need similar treaties for Artificial General Intelligence (AGI) and human genome engineering – but hopefully *before* the occurrence of disastrous trigger events.

In short, we need a new operating system for Europe. In some ways, it's already booting up all around us, for example in tying stimulus packages to Green New Deal goals.

Here's a short summary of what this new OS for Europe may look like, how it could be installed and what its benefits might be.

1. Covid is a test run for climate change

Covid has been a fire drill for whether we are able to make sacrifices and tough decisions to fight climate change or not. The need for fundamental change has already triggered a global debate. Larry Fink, one of the most

¹¹ Christi Carras (2020), 'In 2015, Bill Gates predicted an epidemic would kill millions. Here's what he says now', *Los Angeles Times*, 13 April, <https://www.latimes.com/entertainment-arts/story/2020-04-13/coronavirus-bill-gates-ellen-degeneres-ted-talk>.

¹² Larry Brilliant (2006), 'My wish: Help me stop pandemics', Speech transcript, TED2006 conference, February, https://www.ted.com/talks/larry_brilliant_my_wish_help_me_stop_pandemics/transcript.

influential investors in the world as Chairman and CEO of BlackRock, put the challenge this way: 'I believe that the pandemic has presented such an existential crisis – such a stark reminder of our fragility – that it has driven us to confront the global threat of climate change more forcefully and to consider how, like the pandemic, it will alter our lives'.¹³

Indeed, I don't think we will be able to tackle global existential issues like climate change until we collectively decide *what really matters*. 'Good' capitalism can be about much more than just making more money and increasing GDP. A decade ago, Al Gore popularised the notion of 'sustainable capitalism',¹⁴ and only now are we reaching the point where we can embrace this idea.

Decarbonisation, for instance, is one of the biggest economic opportunities for Europe that will benefit us financially and culturally, not to mention bringing about dramatic change for the rest of the planet. Imagine how a concerted effort on that front could impact globalisation and the global power structure. We can expect new carbon taxes to soon be imposed on airline trips and meat products – we must start paying the real costs of our lifestyle if we want to have any chance at preserving our environment. Previously unthinkable change will usher in a new normal in the next two to three years.

2. Everything is becoming smart

Digital transformation can do amazing things to any traditional business. Connect plants, machines and other equipment, and any process can become much smarter, from farms to cities. Yet this comes with a caveat, too: everything should be as connected as necessary but no more than that. Otherwise, we risk building a new kind of meta-intelligence that could result in serious downsides for human agency (and what you might call 'free will') if it goes off the rails. You can already see this happening if you follow discussions about the detriments of algorithmic social media newsfeeds.

How will we control this meta-intelligence once it has amassed an IQ of, say, a billion – even if that 'IQ' would only encompass its processing powers? By what rules? Who will be 'Mission Control' for humanity?

Next, imagine a world in virtual reality, featuring innovations such as Oculus VR's Rift, Microsoft's Mesh or Elon Musk's Neuralink (however far-out that may seem today) connecting our brains directly to the

¹³ Simon Jack (2021), 'Blackrock chief: How Covid could help save the planet', BBC, 26 January, <https://www.bbc.com/news/business-55811332>.

¹⁴ Al Gore and David Blood (2011), 'A Manifesto for Sustainable Capitalism', *Wall Street Journal*, 14 December, <https://www.algore.com/news/a-manifesto-for-sustainable-capitalism>.

internet using ‘a few tiny electrodes’ in your head.¹⁵ If we are already worried about the authority of current digital gatekeepers, what will *this* future bring? And, for those working in the VR cloud, who will be in charge of safety and standards, what social contract will apply and what laws and regulations will govern devices, apps and services?

Although climate change is surely the biggest threat we’re facing, the externalities and unintended consequences of exponential technological progress are not far behind, followed by those presented by human genome editing. We have our work cut out for us.

3. Tidal waves of regulation are imminent

This seemingly warp-speed technological acceleration means that we will see a tidal wave of tech regulations and other measures dealing with how data should be harvested and used (just imagine your DNA in the ‘health cloud’), how our digital identities can be safeguarded and how to protect ourselves from becoming ‘content’, that is, machine-readable subjects run by algorithms. In my view, the biggest risk today is not that AI will steal our jobs or take over, let alone kill us. The greatest danger really lies in us becoming too much like them.

To quote Apple CEO Tim Cook: ‘Technology is capable of doing great things. *But it doesn’t want to do great things.* It doesn’t want anything.’¹⁶ This WANT is up to us (we call it ethics), and it’s all about balance. We have to find a careful middle path that’s a blend of precaution and pro-activity, and I think doing so will set us apart as Europeans.

4. Digital ethics councils will bloom everywhere

For several years now, I have argued that we need a Digital Ethics Council made up of wise, impartial and independent people who are tasked with thinking about the digital world’s impact on people and society.¹⁷ Is everything we invent fair game for monetisation? What should we *not* automate? Technology is indeed a precious gift, yet I would set forth that too much of a good thing can be a very bad thing.

The problem isn’t technology itself but rather how we’ve used and profited from it in the past. This is a critical distinction, as we are moving

¹⁵ Elon Musk and Neuralink (2019), ‘An integrated brain-machine interface platform with thousands of channels’, White Paper, 16 June, <https://assets.documentcloud.org/documents/6204648/Neuralink-White-Paper.pdf>.

¹⁶ Tim Cook’s Twitter account, available at: https://twitter.com/tim_cook/status/1055035552037253121.

¹⁷ See Gerd Leonhard (2019), ‘A Global Digital Ethics Council?’, Video excerpt from keynote speech, NetApp Insights, Barcelona, 20 January, <https://www.futuristgerd.com/2019/01/new-video-proposing-a-global-digital-ethics-council/>.

from a products- and services-based economy to an experience- and purpose-based one.

5. Rehumanise media

If we can agree that *the more we become connected, the more we must protect what makes us human*, then this principle could become the guiding context for our media and information policies. I see a coming renaissance of human media shaped by our active curation, decisions and choices (and so based on andrорriths, not algorithms). That means having more awesome humans on top of much smarter media-producing algorithms, which will constrain the power of reductionist AIs and thus limit their potential damage. It also means figuring out how we can best use public funds to protect what is important to us. The primary goal of *human media* is not to sell advertising – it is to sustain and feed democracy.

Our mission must be to redesign the very business model of the internet and to counter algorithmic reductionism before it results in even more harmful dehumanisation. To paraphrase a saying from the Native American Cherokee tribe: 'The wolf you feed is the wolf that wins.' If we want to have better media, not just algorithmic media, we have to feed it.

6. Towards the United States of Europe

Europe's mutually shared goals, ethics and values remain strongly influenced by what's happening across the Atlantic. Following Trump's disastrous 'valley of confusion', the United States seems to be pivoting now, and it is likely that we are heading toward a new period of increased global collaboration and a renewed multilateralism. If this is true, Europe needs to first be united at home before it can play a vital role in the world.

Everything is riding on Europe's ability to take the right actions and lead the global agenda towards 'the good future'. Take AI as an example: though having an IA (intelligent assistant) that can do the grunt work for you (scheduling, screening, translating simple texts, fact-checking, etc.) seems like a very attractive proposition, having a bot that becomes generally intelligent (AGI) is another matter altogether. As Prof. Stuart Russell points out in his book *Human Compatible*, we should strive for AI that is competent, not conscious.¹⁸ While the timeline toward AGI might be open to much discussion, Europe needs to stand united, and soon, on its position regarding super-intelligence.

This new world will remain strong on economic and monetary values, but we will move far beyond GDP as the only yardstick. British author

¹⁸ Stuart Russell (2019), *Human Compatible: Artificial Intelligence and the Problem of Control* (London: Penguin Random House).

and entrepreneur John Elkington proposed 20 years ago that we should pay attention to the three Ps of people, planet and profit (a better word is prosperity).¹⁹ I believe now is the time we extend it by one more P, for PURPOSE.

Purpose is becoming a crucial consideration because purpose beats everything else (yes, even great products). Purpose is what defines us as humans, and purpose is what our policies must focus on. Europe, no doubt, should aim to be a leader in this regard.

As this summary has illustrated, we are encountering amazing opportunities posing as crises. Yet again, take note: as we perceive our future to be, so we act; as we act, so we become.

Every crisis is a chance to rethink, relearn and make things right. Decarbonisation presents Europe with a multi-trillion-euro opportunity. We are, right here and now, defining what governance of exponential technological change, including media, should look like. Policymakers, business entrepreneurs and market leaders can work toward a broad re-humanisation of digital media and the internet itself. Finally, Europe needs to take the lead in building a renewed kind of social capitalism based on the 4Ps: People, Planet, Purpose and Prosperity.

Here are a few things that policymakers can do:

1. Promote real future thought-leadership in Europe. We need to build our own narrative on the *future we want*, not wait for the US or China to do it.
2. We need a sustainable, 4Ps-based stock market. Think of it as a sustainable NASDAQ (SUSDAQ) where – much like the new Long-Term Stock Exchange in San Francisco – performance is pegged on four objectives, rather than only one, and where companies that adhere to these principles can list their stocks.
3. Why not explore how we could share social media revenues with public (or even private) media organisations to create great content in the future?

We will have all the tools, but will we have the *telos* – the will, the purpose and the wisdom? Let's make sure Europe will answer with a resounding YES.

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¹⁹ John Elkington (2008), 'People, planet, profit', *JohnElkington* (blog), 4 June, <https://johnelkington.com/2008/06/people-planet-profit/>.

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Policy Paper

A European Audio-Visual Area for the Age of Global Entertainment

Gerard Pogorel¹

Abstract

The year 2020, tragically affected by the Covid-19 pandemic, saw a transformation not only of the way we work but also of how we entertain ourselves. As outdoor and urban entertainment opportunities were shrinking, in-house screens and audio-visual creations have come front and centre in our day-to-day lives. In this high-stakes context, pre-existing trends in the transformation of the global audio-visual landscape are being strengthened.

The pandemic crisis has accelerated the shift from linear television to streaming

Well-known free or paid television channels, mostly specific to each country, are now more and more complemented, and possibly substituted, by an increasing number of national and worldwide streaming services that provide access to nearly infinite audio-visual creations and shows. Audio-visual streaming has become a central element of the new digital economy, challenging the capabilities and strategies of all involved actors, including telecommunications network operators, at a global level. International broadcast and streaming services, either independent or associated with national television and film industries, compete aggressively with one another.² They establish complex relationships with network operators and social media platforms, putting into play financial resources unheard of at national levels. Abundant financing for creation allows for ever more abundant catalogues. Notably, the leading streaming platforms, anxious to please local clienteles in their international extensions as well as to attract talent wherever it comes from, herald their diversity and provide welcome financial means for original cultural productions in different

¹ Gerard Pogorel, Professor Emeritus of Economics, Institut Polytechnique de Paris.

² 'Streaming Services Compete' (2020), *Global Times*, 22 March, <https://www.globaltimes.cn/content/1183359.shtml>.

countries.³ As their distribution technically relies on ever stronger worldwide transborder electronic networks, and as they put in place powerful marketing channels, it is possible to establish an international footprint in a matter of months.

A 'European audio-visual area': promoting European artistic creations in Europe and globally

What do we, in the European Union, make of these transformations, proud as we are of our creative capabilities, mores, and original cultures? How do we, as consumers and citizens, and how does our political and economic leadership consider the propositions of streaming services originating from America (Netflix, Amazon, Apple, Warner Media, Disney)? What do we make of our strong continental creative focus? Our policies often refer to the need for cultural 'diversity', but shouldn't we be even more ambitious and look at how artistic films and TV shows can take advantage of the current transformation in technology and business models to play an even larger role in our shared civilisation in Europe and beyond?

This is a question for both EU institutions and EU audio-visual actors. At the EU institutional level, the issue is whether we intend to restrictively interpret the objective of cultural diversity, sticking to *Kultur* defined by local creations, or go beyond it and contribute to a *Bildung*, a construction process for Europe. At an industry level, we are dealing with artistic realities whose nature is not easily defined in simplistic terms. Local cultures, so numerous and diverse in Europe, have universal appeal; and there is no universal or European culture without them. We should also keep in mind that political or administrative intervention in artistic creation is not without risks; the challenge for the European Commission Media and Audio-visual Action Plan consultation, just launched in 2021, is maintaining a realistic path.

If we think about options for EU audio-visual industry strategies, this is the bottom line. Local cultural actors in the EU can put forward the cultural diversity objective to get public funding for the preservation of their domestic markets, maintaining geo-blocking and the existing fragmented copyright protection framework.⁴ Or they can aim to go beyond diversity, leverage the intrinsic universal appeal of artistic creation, and take the plunge from national diversity to pan-European and global

³ S. Thomson (2000), 'Ampere: Netflix and Amazon Going Local but Facing more Competition', *Digital TV Europe*, 5 May, <https://www.digitaltveurope.com/2020/05/05/ampere-netflix-and-amazon-going-local-but-facing-more-competition/>.

⁴ The EU Copyright Legislation [policy], 17 March 2021, <https://digital-strategy.ec.europa.eu/en/policies/copyright-legislation>.

objectives while simultaneously meeting the big international streaming services which are doing just that.

For decades, many countries around the world have embodied cultural diversity and created great cinema and television with stories and messages echoing beyond borders. Examples abound in Europe – from France, Italy, Germany, Great Britain, Scandinavia, and Poland – but also often feature the support of European producers themselves in Asia (India, China, South Korea, or Taiwan) or in Latin America (Argentina, Brazil, or Mexico). Those creative industries already enjoy international admiration and recognition. As powerful actors with global ambitions are now emerging on every continent, the scene becomes increasingly global. How can diverse actors extend their reach and benefit from the international communication networks supporting globalised streaming platforms over the Internet?

For a long time, 'diversity' has been embodied in a tangle of instruments created to encourage and protect local creations: quotas, conditional financial aid, various obligations concerning exclusive content, and mergers and acquisitions restrictions. These measures, though their rationale should not be lost, must be amended in light of the new realities of the digital world. The big question for audio-visual actors in Europe is how to aggressively confront and make the most of worldwide developments.

Films, shows, and sports: network operators' contribution to finances and market expansion

Although we focus here on confronting the challenges of technological and market transformation, we are aware that several complex business models are in place in this sector, all along a string of production and distribution activities. Creators in the audio-visual industry face a multi-channel reality with complementary activities as varied as theatre productions or linear TV, each one with its distinctive relationship to creative works. In this context, borderless electronic networks and the range of possible agreements between network operators and producers of films, shows, and sports programmes present a historic opportunity for market expansion and the development of cultural diversity at the international level. Network operators provide 100% consumer access, bundle services, and collect fees across Europe. However, telecommunications and broadcasting industries in Europe, have long been segregated in silos, as regulatory hurdles combined with differences in management cultures have made companies reluctant to integrate across different skill sets and assets. But as streaming services today are offered either directly to the public or as part of telecommunications operator offerings, audio-visual content is indeed the major growth factor for network operators in their promotion of converged voice and data services.

In Germany, Deutsche Telekom (DT) has chosen a content aggregator strategy rather than that of an exclusive media rights-holder.⁵ It has signed deals with other companies, including Netflix and Amazon Prime Video. As German broadcasters have been making significant investments in high-quality content, DT is possibly wary of gaps in the management cultures between engineers and content creators. Conversely in the UK, BT has pursued a content acquisition strategy.⁶ It grabbed the Champions League from Sky, spending £4.8 billion (\$6.1 billion) for the rights to the English Premier League, the Champions League, and Europa League. It currently spends more than £700 million per year on international and domestic football. The competition has increased, with e-commerce giant Amazon winning a three-year broadcasting package for the Premier League, while Sky would like to use the Champions League to boost its NOW TV streaming service. Joint broadcast venture BritBox has been pitched as a cheaper additional streaming service for consumers who already subscribe to Netflix with a focus on providing thousands of hours of archive material and classic box sets by the two broadcasters. What was launched in 2017 as a platform showcasing the best of British content in the US and Canada is now Britain's new weapon in the streaming wars.

After the 2017 Vivendi/Telecom Italia/Mediaset project for a 'Netflix of Southern Europe' was put on the back burner, the Vodafone/Liberty deal⁷ in May 2018 represented a significant catalyst for the sector in Europe, potentially paving the way for consolidation across the continent in line with this business model. Similar deals have involved all European operators: BT, DT, Orange, Altice, Free, Telefonica, etc. In September 2019, Italy-based Mediaset announced the establishment of a European-wide media Group, MFE,⁸ based in the Netherlands, including its entirely Italian- and Spanish-owned TV companies and its stake in German ProSiebenSat1. In Sweden, telecommunications operator Telia has acquired the national market leader Bonnier broadcasting.⁹

⁵ 'Deutsche Telecom Aims to Be "Content Aggregator" with New TV Platform' (2015), *Digital TV Europe*, 10 August, <https://www.digitaltveurope.com/2015/08/10/deutsche-telekom-aims-to-be-content-aggregator-with-new-tv-platform/>.

⁶ R. Gee (2016), 'Three Ways the BT Brand Is Evolving Its Strategy for Growth', *Marketing Week*, 5 May, <https://www.marketingweek.com/three-ways-the-bt-brand-is-evolving-its-strategy-for-growth/>.

⁷ T. S. Mayes & J. Mayes (2018), 'Vodafone's \$22 Billion Liberty Deal Reshapes Europe Telecom', *Bloomberg*, 9 May, <https://www.bloomberg.com/news/articles/2018-05-09/vodafone-to-buy-liberty-global-europe-units-in-23-billion-deal>.

⁸ E. Pollina (2019), 'Mediaset Gets Approval for Pan-European Plan, Vivendi to Fight Back', *Reuters*, 4 September, <https://www.reuters.com/article/us-mediaset-vivendi-meeting-board-idUSKCN1VP0TM>.

⁹ 'Mergers: Commission Clears Telia's Acquisition of Bonnier Broadcasting, Subject to Conditions' [press release], 12 November 2019, https://ec.europa.eu/commission/presscorner/detail/en/ip_19_6271.

Meanwhile, the European Public Service Broadcasters have joined forces at national and also European levels. RAI, for example, teamed up with France Télévisions and German ZDF in an alliance for the co-production of content for the three public television services of Italy, France, and Germany.¹⁰ Franco-German ARTE is asserting its European ambition by offering programs in six languages, often without copyright limitations in Europe, unlike most other offerings.

In France, the three largest French broadcasters – France TV, M6, and TF1 – operate joint online video platform Salto, which launched in 2020.¹¹ Public-service broadcaster France Télévisions plans to stop selling shows to Netflix so it can preserve exclusivity for its own home-grown equivalent, thus keeping French and European content strong. France has been a firm proponent of cultural diversity policies, with tax breaks and quotas to incentivise local players, contributing at the beginning to Netflix being a slower burn there than in the UK or the Nordics. In theory, not working with Netflix might allow French broadcasters, which back around 75% of audio-visual creation in France, to maintain a strong foothold by having more market leverage. Still, in the French TV industry, where budgets and revenues have fallen flat, Netflix has been welcomed by producers and broadcasters for bringing more money to the sector.¹²

European audio-visual markets have remained largely domestic . . . for the moment

European creative industries are already producing shows that are very popular in each country of origin, with an audience significantly higher than the American one.¹³ Thanks to the Internet and new streaming services, potential global demand is growing. The new worldwide digital platforms present a unique opportunity for Europeans to expand outside their borders. This cultural dimension will become increasingly important for Europe in the future. The European Commission has taken initiative to support these evolutions. The MEDIA programme, part of the Creative Europe programme, promotes audio-visual creation,

¹⁰ S. Thomson (2018), 'France Télévisions, Rai and ZDF Team Up to Take on Netflix', *Digital TV Europe*, 4 May, <https://www.digitaltveurope.com/2018/05/04/france-televisions-rai-and-zdf-team-up-to-take-on-netflix/>.

¹¹ R. Richford (2019), 'France's Netflix Competitor Set for 2020 Launch', *Hollywood Reporter*, 8 December, <https://www.hollywoodreporter.com/news/frances-netflix-competitor-salto-set-2020-launch-1230793>.

¹² M. Goodfellow (2020), 'Has Netflix Finally Won France Over?', *Screen Daily*, 24 January, <https://www.screendaily.com/features/has-netflix-finally-won-france-over/5146418.article>.

¹³ S. Scott (2021), "'Call My Agent!': The French Hit Series on Netflix with Amazing Guest Stars", *Forbes*, 22 January, <https://www.forbes.com/sites/sheenascott/2021/01/22/call-my-agent-the-french-hit-series-on-netflix-with-amazing-guest-stars/?sh=915a34077698>.

distribution, and cross-European projects.¹⁴ In addition, the European Commission adopted an Action Plan in December 2020 to support the recovery and transformation of the media and audio-visual sector.¹⁵ The Action Plan focuses on areas of activity and concrete actions 'to help the media sector recover from the crisis by facilitating and broadening access to finance, transform by stimulating investments to embrace the twin digital and green transitions, while ensuring the sector's future resilience, and empower European citizens and companies'. The Action Plan aims in particular to increase investment in the audio-visual industry via a new initiative, MEDIA INVEST, with investments of €400 million over a seven-year period.

However, European Union budgets – €2.4 billion for Creative Europe over 2021–2027 and €400 million for Media Invest, plus 20% of each national Recovery and Resilience Plan for digital markets and services in general – pale in comparison to what is now at stake in the audio-visual industries, as Netflix alone spent \$17.3 billion on content in 2020.¹⁶

A 'European Netflix'?

Each time a new European streaming service, however modest, is launched, there is talk about a 'European Netflix'.¹⁷ Facts must be sorted out from fantasies, however. These European versions of Netflix take on diverse shapes. There are minor (local, domestic) and less minor (multi-domestic, not really pan-European) versions. But we have to ask ourselves whether the 'major' Netflix model is replicable in Europe or even if this is a goal realistically worth pursuing. As much as we hate to say this, until now it has been up to an independent company from outside Europe to create a Europe-wide streaming platform. European audio-visual actors have not been able overcome their rivalries, iron out institutional differences, and achieve the same goal.

Is there a future way towards a European Audio-visual Area? What European audio-visual landscape would realistically fit a renewed European Civilisation perspective, vested in European values, including openness, which is the vision promoted by the European Union?

¹⁴ 'The MEDIA Sub-Programme of Creative Europe' [policy], 17 March 2021, <https://ec.europa.eu/digital-single-market/en/media-sub-programme-creative-europe>.

¹⁵ 'Digital Decade: Commission Launches Action Plan to Support Recovery and Transformation of the Media and Audiovisual Sectors' [press release], 3 December 2020, https://ec.europa.eu/commission/presscorner/detail/en/IP_20_2239.

¹⁶ T. Spangler (2020), 'Netflix Projected to Spend more than \$17 Billion on Content in 2020', *Variety*, 16 January, <https://variety.com/2020/digital/news/netflix-2020-content-spending-17-billion-1203469237/>.

¹⁷ A. Font (2020), '5 European Netflix Alternatives to Watch', *EU Startups*, 20 April, <https://www.eu-startups.com/2020/04/5-european-netflix-alternatives-to-watch/>.

A 'European audio-visual area' strategy mix in a global world of entertainment

Up until recently, Europeans had enjoyed only a few common *shared* events: the Eurovision Song Contest, European Football Championships, the Vienna Philharmonic's New Year Concert. Now a new cultural reality is emerging with 58 million Netflix subscribers and 100 original content productions underway in Europe, not to mention dubbing and subtitling in 34 languages – more than any EU public broadcaster.¹⁸ Thanks to Netflix, *Casa de Papel* and *Lupin* were projected as hits on the world scene, and in the fall of 2020, Europeans were briefly united in watching the Netflix original *Barbarians*.

There are so many opportunities now for Europeans to get a common feeling ... of being Europeans! We cannot but ask ourselves for how long the European 'bordered' release system of films will be sustainable. The challenge for 'diversity' creations is to go one step further and reach wider audiences beyond borders. The range of national film and television productions of single countries, combined with their limited marketing budgets, hobbles direct relationships between national operators and international audiences. As a consequence, what we can reasonably encourage in Europe at this time is a strategic mix of contributions to global streaming platforms, quality offerings at national levels, some multi-domestic offerings, and streaming services pooling the private and public creations of broadcasters. And we cannot rule out the fact that, from the current alphabet soup of some 400 streaming services in Europe, competition and consolidation will bring about the emergence of some streaming world leaders. But the still nagging issue for Europe is the transformation of our so admirably diverse film and TV industry into a European audio-visual area, open both within and beyond Europe. What can be done for European creative productions so that they reach European citizens across European borders and beyond, and how can they achieve the continental scale their counterparts across the Atlantic enjoy?

The European Commission, as part of its upcoming Media and Audio-visual Action Plan, is 'launching a dialogue with the audiovisual industry to agree on concrete steps to improve the access to and availability of audiovisual content across the EU'.¹⁹ Possible suggestions will certainly emanate from the industry, academics, and the EU itself, including:

- Provide incentives in national and EU support mechanisms for the pre-sale of future distribution rights across the EU;

¹⁸ 'Number of Netflix Subscribers in Europe from 2018 to 2024', *Statista*, 12 January 2021, <https://www.statista.com/statistics/713055/netflix-subscribers-in-europe/>.

¹⁹ 'European Media and Audiovisual Action Plan' [policy], 16 March 2021, <https://digital-strategy.ec.europa.eu/en/policies/media-and-audiovisual-action-plan>.

- Create a unified European digital rights framework, possibly in the form of a digital rights Clearing House, allowing pan-European access to audio-visual creations;
- Strengthen film and TV export agencies and possibly merge them;
- Promote cooperation and exchange agreements with audio-visual streaming services in other diversity countries;
- Include support for distributing audio-visual content in Europe and abroad in the 20% 'digital' expenditure from each National Recovery and Resilience Plan.
- Many more ideas are needed for the audio-visual digital transformation in Europe to fulfil its promises to its citizens. It is high time to think outside the box.

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Towards a Social EU? A Liberal Vision for Social Policy beyond the Porto Summit

Maria Alesina¹

Introduction: social policy high on the EU agenda

The pandemic and subsequent economic fallout from prolonged restrictive measures are changing the socio-economic landscape across Europe, directly affecting millions of citizens. The course of greening and digitalising at the heart of EU plans for a post-pandemic recovery are setting the tone for common European responses in other policy sectors, such as health and social policy.

Throughout 2020, the health crisis alone exposed multiple structural deficiencies and inequalities across Europe. It is no surprise that, according to a targeted 2021 Eurobarometer survey on social issues, 9 in 10 Europeans (88%) consider a social Europe as personally important to them.² At the same time, researchers from the European Studies Centre at Oxford University have discovered that the intensity of the crisis is fuelling European citizens' existential insecurity, and this is leading to the radicalisation of their positions on social issues (e.g., demanding more guarantees and social benefits).³

Social issues are currently high on the EU agenda as well: the European Commission and the Portuguese Presidency of the Council have claimed social challenges among their key concerns. The Commission's 2021 Work Programme has indicated 'an economy that works for people' as one of its priority dimensions. In particular, this implies managing the ongoing health and economic crisis with a social dimension in mind,

¹ Marina Alesina, Researcher, European Liberal Forum. *The author would like to thank the members of the ELF Social Working Group for their valuable contributions to this policy paper.*

² 'New Eurobarometer Survey Shows Social Europe Is a Top Priority for Large Majority of EU Citizens', 1 March 2021, <https://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=9940&furtherNews=yes>.

³ T. Garton Ash and A. Zimmermann (2020), 'In Crisis, Europeans Support Radical Positions: Climate Change and Social Welfare Issues Most Salient', *eupinions brief*, 6 May, <https://eupinions.eu/de/text/in-crisis-europeans-support-radical-positions>.

thus ensuring that 'no one is left behind in Europe's recovery'.⁴ The so-called 'Fair Economy package' includes a number of initiatives that will be or have already been brought forward, with issues ranging from the social economy to children's social rights.⁵

Similarly, Portugal has also claimed the strengthening of the EU social dimension among its main priorities during its Presidency of the Council.⁶ Together with the Commission, the Presidency held an EU Social Summit in Porto in early May. This major initiative's aim was discussing a common EU approach to mitigating the social implications of the Covid-19 pandemic as well as the transition towards a digital and sustainable Europe.

The Summit has also been seen as a way to advance the implementation of the European Pillar of Social Rights,⁷ approved in 2017 in Gothenburg,⁸ with the European Social Fund Plus (ESF+) as its key financial instrument.⁹ As announced by European Commissioner for employment and social rights Nicolas Schmit, particular attention at the Summit was given to the needs of young people, who are considered to be among the most hard-hit by the ongoing crisis.¹⁰

Overall, the Porto Social Summit has been publicised as a breakthrough for European social policy. In addition to active social policy streamlined through the Social Fund, the Commission is looking to venture into passive social and labour policies, such as unemployment benefits and the minimum wage. Both the Commission and the Portuguese Presidency see this as an opportunity for European institutions and policy-makers to demonstrate their added value for Europe,

⁴ Remarks by Executive Vice-President Dombrovskis at the Press Conference on the Recovery and Resilience Facility, Brussels, 28 May 2020, https://ec.europa.eu/commission/presscorner/detail/en/speech_20_961.

⁵ Among the issues: a Recommendation for a European child guarantee, a communication on a new occupational safety and health strategy framework, an Action plan for the social economy, an updated Strategy on the rights of persons with disabilities and legislation on improving the working conditions of platform workers.

⁶ J. Valero (2020), 'Portuguese Presidency Wants to Strengthen Trust in EU Social Model', *EURACTIV*, 1 December, <https://www.euractiv.com/section/economy-jobs/news/portuguese-presidency-wants-to-strengthen-trust-in-eu-social-model/>.

⁷ 'Delivering on the European Pillar of Social Rights' [video], <https://ec.europa.eu/social/main.jsp?catId=1226&langId=en>.

⁸ C. Stupp (2017), "Let's Do Our Work" on Social Policy, Juncker Tells Member States', *EURACTIV*, 17 November, <https://www.euractiv.com/section/politics/news/lets-do-our-work-on-social-policy-juncker-tells-member-states/>.

⁹ 'Commission Welcomes Political Agreement on the ESF+' [press release], 29 January 2021, https://ec.europa.eu/commission/presscorner/detail/en/IP_21_225.

¹⁰ A. Matos Neves (2021), 'Porto EU Social Summit Is Expected to Focus on Youth', *EURACTIV*, 10 February, <https://www.euractiv.com/section/politics/news/porto-eu-social-summit-expected-to-focus-on-youth/>.

and, in this regard, there is a growing determination to push for more initiatives in social and labour policies.

At such a crucial moment in the EU policy-making process, liberals cannot be absent from the negotiating table. With social issues high on the agenda and a clear drive towards more EU competences in social policy, this is a timely opportunity for the European liberal family to set out its vision.

Liberals have a responsibility to contribute to a modern, future-oriented, and citizen-driven social model that aims to protect the rights and freedoms of every European citizen while respecting the subsidiarity principle that governs the exercise of EU competences. This is the moment to reflect on our shared vision of what a social Europe should and could look like – its principles, priorities, and targets.

This paper is a contribution to liberal perspectives on the European social agenda. It first addresses current and upcoming problems and identifies the key issues that EU social and labour policies must address, then outlines a liberal vision for social Europe, and proceeds with a list of key domains and potential measures to advocate for beyond the Social Summit and beyond. In the concluding remarks, several case studies are presented to provide inspiration and potential references for further elaboration.

A problem-oriented approach to defining policy priorities

Current developments are truly unprecedented, and the main challenge consists of mitigating their negative effects while also maximising their economic and social potential. The Covid-19 pandemic has accelerated the digitalisation and greening of our economies, but it has also impacted labour markets and exacerbated existing social inequalities and divisions.

Digitalisation in Europe will potentially create new opportunities for European citizens, workers, and businesses as well as lead to jobs creation, greater inclusivity of the labour market, and increased labour mobility. At the same time, however, the digital transition urgently calls for a re-skilling agenda regarding updated, modern policies and regulatory frameworks to protect the social and labour rights of those involved. Similarly, while the transition to a sustainable circular economy has huge potential to foster jobs and economic growth, the broader distributive consequences of climate policy may also reinforce preexisting or introduce new socio-economic and societal cleavages¹¹ (between poor and rich, high- and low-skilled etc.¹²).

¹¹ H. Engel and M. Tyreman (2020), 'Why Europe Must Reskill Workers to Reach Its Climate Goals', *EURACTIV*, 4 December, <https://www.euractiv.com/section/energy-environment/opinion/why-europe-must-reskillworkers-to-reach-its-climate-goals/>.

¹² F. Simon (2020), 'Eleven Million Jobs at Risk from EU Green Deal, Trade Unions Warn', *EURACTIV*, 9 March, <https://www.euractiv.com/section/energy-environment/news/eleven-million-jobs-at-risk-from-eu-greendeal-trade-unions-warn/>.

Already in pre-pandemic times, the socio-economic polarisation between social groups and regions across the EU constituted a major challenge for European democracy. In particular, regional inequality is considered to be among the major causes of mistrust in both national and supranational institutions.¹³ Covid-19, digitalisation, and a green economy will further deepen this gap, highlighting inequalities not only in incomes but also in access to knowledge, skills, and resources. The massive transition to teleworking additionally affects poorer regions where less of the population is involved in activities that can be done remotely.¹⁴ Besides, while the pandemic presents a threat to education and the futures of children and young people across the EU, we might expect it to be particularly difficult for those living in more remote and long-deprived regions.¹⁵ Disregarding a long-term perspective will inevitably result in this inequality being transmitted from generation to generation, further widening regional disparities across Europe. The green transition will also have a drastically uneven impact across regions, entailing fundamental socio-economic changes in regional economies that are still fully reliant on carbon-intensive sectors or fossil fuel extraction and likely causing unemployment for a significant portion of the population, especially among older people.¹⁶

Furthermore, due to the disproportionate impact of Covid-19 on women, the ongoing crisis has amplified barriers to gender equality. Women constitute the majority among first responders in healthcare.¹⁷ But gender-specific burdens due to lockdowns have also ranged from the increased unequal distribution of childcare and unpaid household work to domestic violence against women. At the same time, while women still remain underrepresented in decision-making and public life, the digital transition is likely to worsen this situation. Gender-based stereotypes, discrimination, violence, and harassment prevent women from taking advantage of digital services and education or participating in the digital economy through employment

¹³ J. Lipps and D. Schraff (2020), 'Regional Inequality and Institutional Trust in Europe', *European Journal of Political Research*, 4 December, <https://ejpr.onlinelibrary.wiley.com/doi/abs/10.1111/1475-6765.12430>

¹⁴ M. Irlacher and M. Koch (2021), 'Working from Home, Wages, and Regional Inequality in the Light of COVID19', *De Gruyter*, 14 January, <https://www.degruyter.com/document/doi/10.1515/jbnst-2020-0030/html>.

¹⁵ 'COVID-19 – Break the Cycle of Inequality', *The Lancet Public Health* 6(2), 1 February 2021, [https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667\(21\)00011-6/fulltext](https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667(21)00011-6/fulltext).

¹⁶ 'The Inequalities–Environment Nexus: Towards a People-Centred Green Transition', *OECD Green Growth Papers* No. 2021/01 (Paris: OECD Publishing), 15 March 2021, <https://doi.org/10.1787/ca9d8479-en>.

¹⁷ 'Coronavirus vs. Inequality', UNDP, <https://feature.undp.org/coronavirus-vs-inequality/>.

and entrepreneurship.¹⁸ Moreover, while the renewable energy sector is expected to grow significantly, women's participation in it might remain very limited due to currently low female participation rates in STEM-related¹⁹ fields of education as well as barriers to female entrepreneurship.²⁰ At the same time, a gender-sensitive transition is also necessary to mitigate the negative impact of green policies on certain sectors with a male-dominated workforce, like extractives and heavy industries, which will leave male populations unemployed.

As becomes clear from all of this, the interplay between the pandemic and the double green and digital transition is multiplying the scope and complexity of socio-economic challenges that the EU will have to face in the future. The cross-border nature of these developments and their long-term and far-reaching implications for citizens clearly call upon a shared vision and coordinated actions. Europe and its national governments are thus presented with the task of developing a comprehensive social policy strategy that would address these – at times contradictory – tendencies without sacrificing citizens' individual well-being or strategic European objectives. The sustainable implementation of such measures will require well-coordinated labour markets, social institutions, and policies that will ensure no one is overlooked or left behind.²¹ This is a moment for the EU to demonstrate its added value to Europeans by acknowledging and addressing their immediate and long-term needs, safeguarding equal access to benefits and risk protection without sacrificing individual freedoms.

Social Europe the way we like it: a liberal vision

The current socio-economic context and policy-making agenda thus present an opportunity for the European liberal family to develop its future-oriented vision of a liberal 'social Europe': to define and refine what the social EU in which we want to live will look like. What does this notion mean to us, what are its guiding principles, and what role should be given to EU institutions in shaping and maintaining this model?

Above all, a liberal 'social Europe' is a Europe where public discourses and policies are marked by a deep belief in the individual capacities of each person and his or her potential to thrive, prosper, and contribute to society in a meaningful and unique way. Following this firm conviction, liberals are determined to help citizens nurture their abilities and realise

¹⁸ Renew Europe (2021), 'Renew Europe Rings the Alarm on Gender Inequality' [press release], Renew Europe, 21 January, <https://reneweuropengroup.eu/en/news/1779-renew-europe-rings-the-alarm-on-gender-inequality/>.

¹⁹ Science, technology, engineering, and mathematics.

²⁰ 'The Inequalities–Environment Nexus'.

²¹ 'The Inequalities–Environment Nexus'.

their own creative potential while also providing them with the necessary support in times of hardship and uncertainty. Before translating this overarching principle into concrete policy suggestions, an equilibrium first needs to be found concerning several of the most relevant dilemmas.

The ongoing crisis, coupled with the double green and digital transition, is transforming the labour market in both a short- and long-term perspective. High unemployment rates, the precarious social situation of vulnerable groups, and an inevitable sectoral restructuring of the economy all require labour market policies that effectively address both immediate urgencies and more distant yet long-lasting consequences. Therefore, on the one hand, the changing economic landscape and upcoming transformations must lead us to reconsider the existing balance – or rather disbalance – between active and passive labour market policies. Active labour market policies (ALMPs) are central to preparing European workers for the upcoming challenges through up- and re-skilling.²² In particular, in light of the announced focus on youth, designing future-proof ALMPs must be a priority for Europe.

At the same time, these current unprecedented circumstances have raised the question about maintaining an equilibrium between aspirational principles and reality like never before. As the above-discussed policies will create primarily long-term benefits, the valid question to address at this moment is whether we can focus exclusively on activating the workforce in times when the market itself is not active – with no clear sign of major improvement in sight. The direct social effects of such a devastating crisis require more immediate responses, including support and social protection for vulnerable groups, e.g., self-employed workers and youth.

Therefore, from a liberal standpoint, the question of balancing between active and passive labour market policies is closely related to balancing between individual responsibility and social protection. It is crucially important that the necessary support in times of crisis will not be downgraded into a long-lasting dependence on subsidies, generating a dangerous disincentive to labour supply activation and, even worse, promoting the spread of long-term unemployment, one of the most penalising factors in terms of employability. It is therefore important, not only from a liberal perspective, to reaffirm the conditionality between passive and active policies as a key principle in the design of new measures, recalling a fair balance between individual rights and responsibilities.

²² C. Alcidi, S. Baiocco, and M. Di Salvo (2020), 'The Skill Challenges Posed by Covid-19: Is Europe Ready to Invest in Its Labour Force?', *CEPS*, 25 November, <https://www.ceps.eu/the-skill-challenges-posed-by-covid-19/>.

At the same time, no conditionality is possible when there are no opportunities. So, the application of this mechanism is intrinsically intertwined with creating such opportunities and thus spills over into other policy areas. In particular, providing support to small and medium enterprises and ease to businesses is the pre-condition for conditionality to work – at any point and in diverse contexts. Therefore, this dimension should also be clearly reflected as a priority on the liberal social agenda.

Finally, a key question concerns the division of competences between the national and supranational levels, or a seeming collision between the subsidiarity principle and the very idea of EU social policy. Regardless of the global scope of current developments, subsidiarity must remain at the core of the European response in the domain of social policy, just as in any other. This is one of the guiding principles of European integration, according to which decisions should be taken at the lowest possible level, with a higher authority intervening only in cases of necessity or substantial added value.²³ The rationale behind subsidiarity is to guarantee the maximum amount of independence to local, regional, and national authorities in adopting measures that have a direct effect on their communities. With social policy belonging to the domains of (limited) shared competences between the EU and Member States, EU intervention in this field is only justified when common objectives could be better achieved at the EU level.

Keeping all this mind, we nevertheless cannot deny the fact that in the current unprecedented context, when social issues transcend national borders, greater coordination at the supranational level is as relevant as ever and can benefit Europeans with increased protection and greater certainty about their future. Moreover, this is a crucial opportunity for the EU to respond to antiliberal populist discourses that deny the former's added value to Europeans and fuel mistrust in the European project as such.

Given the diversity of social welfare systems and traditions in Member States, creating a European social welfare state in which the EU guarantees the social rights of all its citizens is hardly feasible, especially in light of the absence of a European *demos* that would allow for this type of pan-European solidarity. However, what could – and should – be done is sharing best practices and developing an integrated, future-oriented, citizen-centred reference point for European social standards which respects the diversity of national welfare systems and provides Member States with necessary support and room for adjustments in adopting them.

²³ 'The Principle of Subsidiarity', *Fact Sheets on the European Union*, <https://www.europarl.europa.eu/factsheets/en/sheet/7/the-principle-of-subsidiarity>.

Liberal priorities for European social policy

The EU's priorities in social policy are reflected in the already mentioned European Pillar of Social Rights, which advances twenty key principles structured around three broad categories, namely: equal opportunities and access to the labour market; fair working conditions; and social protection and inclusion. To put them into practice, on 4 March, the Commission presented its Action Plan setting out concrete targets to be achieved by 2030.²⁴ The Plan takes into account the societal challenges presented by the ongoing Covid-19 pandemic as well as the upcoming policy changes related to the European green and digital transitions. In particular, the three headline targets in the domains of employment, skills, and social protection are meant to guide Member States in reforming and modernising their social policies throughout the recovery and transition processes.

From a liberal standpoint, the focus is ensuring that European welfare systems respond to demographic and social changes as well as foster the inclusiveness of our societies, since they are becoming more complex and diverse. In this context, European social policies of the future must show solidarity with all social groups across the Union and effectively address phenomena such as poverty, social exclusion, discrimination, barriers to work, and increasing inequality in access to education. The ALDE party has thus welcomed the EU's determination to develop a European social policy framework.²⁵ Furthermore, the following issue areas in particular should be a priority for European liberals:

1 Skills, digitalisation, and the future of work

- Reduce mismatch between skills and jobs by putting a 'New Skills Agenda'²⁶ at the heart of European social policy. This aims at ensuring equal access to vocational education and training (VET)²⁷ for all citizens – regardless of their sex, age, or ethnic origin – and equipping the European workforce with the set of skills required for the

²⁴ *The European Pillar of Social Rights Action Plan*, https://ec.europa.eu/info/strategy/priorities-2019-2024/economy-works-people/jobs-growth-and-investment/european-pillar-social-rights/european-pillar-socialrights-action-plan_en#:~:text=The%20Action%20Plan%20sets%20out,for%20the%20EU%20by%202030.

²⁵ 'ALDE Welcomes Adoption of Social Rights Pillar', *NEOnline*, 17 November 2017, <https://www.neweurope.eu/article/alde-welcomes-adoption-social-rights-pillar/>.

²⁶ Renew Europe, *Position Paper on Skills at the Heart of Europe*, June 2020, <https://reneweuropengroup.app.box.com/s/9jsy961y41hap5kuw747byqv3swnag9g>.

²⁷ Renew Europe (2020), 'Renew Europe Calls for Boost to Students' and Workers' Professional Development' [press release], Renew Europe, 17 December, <https://reneweuropengroup.eu/en/news/1745-renew-europe-calls-for-boost-to-students-and-workers-professional-development/>.

twenty-first century,²⁸ while bridging the generational digital skills gap and regional disparities. This includes: modernising educational systems; developing life-long learning programmes; investing in vocational education and training; strategically focusing on enhancing digital skills and programmes; promoting entrepreneurial and soft skills and interdisciplinary thinking; and increasing accessibility to skilling and upskilling among vulnerable and marginalised groups, e.g., through supporting the Commission's Recommendation on Effective Active Support to Employment (EASE), presented on 4 March.²⁹

- Put a clear focus on digital skills. With the digital transformation raising debates³⁰ over its future impact³¹ on jobs, wages, working conditions, and inequality, European programmes must aim at helping citizens across all age groups adapt to new challenges but also benefit from new opportunities, e.g., exploring new areas of work or obtaining access to gainful employment. In this context, a clear priority is to enhance digital skills amongst the current workforce in Europe with a focus on youth, older people, deprived citizens, and rural residents.
- Make the EU a leader in digital innovation so as to ensure the EU's growth and competitiveness and harness new opportunities for workers and businesses on the labour market.
- Regulate new forms of employment linked to digital development, particularly teleworking. To promote safe and healthy work environments and flexible work arrangements, Renew Europe has already initiated a legislative framework laying down common minimum conditions and standards for the management of telework throughout the EU.³²

²⁸ L. Aziz-Rohlje for Renew Europe (2021), 'Lifelong Learning for All: Boosting Citizens' Digital Skills Will Increase Competitiveness', *Medium*, 11 February, <https://reneweurope.medium.com/lifelong-learning-for-allboosting-citizens-digital-skills-will-increase-competitiveness-76fbd5a66c0a>.

²⁹ European Commission (2021), *Commission Recommendation for Effective Active Support to Employment (EASE)*, Brussels: 4 March, https://ec.europa.eu/info/publications/commission-recommendation-effective-activesupport-employment-ease_en.

³⁰ 'Understanding the Impact of Digitalization on Society', World Economic Forum, <https://reports.weforum.org/digital-transformation/understanding-the-impact-of-digitalization-on-society/>.

³¹ E. Helldén (ed.) (2020), *Digital Education in the EU: Going from Knowledge to Competence*, ELF/Fores, March, <https://www.liberalforum.eu/wp-content/uploads/2020/03/Digital-Education-in-the-EU-main-2.1.1.pdf>.

³² S. Brunet (2021), *Draft Report on Fair Working Conditions, Rights and Social Protection for Platform Workers – New Forms of Employment Linked to Digital Development* (2019/2186 (INI)), European Parliament EMPL, 9 February, https://www.europarl.europa.eu/doceo/document/EMPL-PR-657498_EN.pdf.

- Ensure social protection for European platform workers. In view of the quickly growing digital economy, the number of platform workers is increasing while outdated social policies fail to respond to their needs, leave them excluded from social and economic protection, and furthermore are deeply contradictory among Member States. European policies must tackle the challenges faced by this growing social group and address disparities across the bloc, e.g., through a targeted 'Ecosystem Fund'. This innovative approach would couple unemployment benefits with skills development and could be possibly expanded to other segments of the working population.³³
- Furthermore, while people with disabilities are seen as beneficiaries of the digital economy, European policies must consider the dubious impact which labour market digitalisation may have on them.³⁴ Renew Europe stands for the swift implementation of measures presented by the Commission in the ten-year Strategy for Disability Rights on 3 March.³⁵

2. Next-Generation Policies

- Focus on the problem of youth unemployment, which has become even more pressing during the Covid-19 pandemic, and consider the disparities among Member States and across regions in this regard. Provide support to young people, including those without vocational education, at their point of entry on the labour market and at later stages in their careers, particularly through creating broad, pan-European apprenticeship and internship possibilities (e.g., a system similar to what Erasmus has done with educational opportunities). Review the European Framework for Quality and Effective Apprenticeships and work towards the creation of a European Apprenticeship Statute.³⁶

³³ Dr W. Spiess-Knafl (2018), *You Had One Job: Transforming Social Security Systems into the Digital Working Age*, ELF, <https://www.liberalforum.eu/wp-content/uploads/2018/11/YouHadOneJob.pdf>.

³⁴ See: *Final Report – The Impact of Digitalisation on Labour Market Inclusion of People with Disabilities* (Vienna: Federal Ministry of Labour, Social Affairs, Health and Consumer Protection), 2019, <https://www.sozialministerium.at/dam/jcr:aa76c330-38bc-47de-a4fc-c5db46e30bc7/Final%20Report%20%20The%20impact%20of%20digitalisation%20on%20labour%20market%20inclusion%20of%20people%20with%20disabilities.pdf>.

³⁵ Renew Europe (2021), 'Renew Europe Calls for Swift Implementation of the New EU Disability Rights Strategy' [press release], Renew Europe, 3 March, <https://reneweurope.group.eu/en/news/1824-renew-europe-calls-for-swiftpimplementation-of-the-new-eu-disability-rights-strategy/>.

³⁶ 'Renew Europe Calls for Boost'.

- Support national employment protection programmes through European facilities and create a European Unemployment Insurance scheme, e.g., by building upon the SURE programme.³⁷
 - Protect children. Liberals support the Commission's Recommendation for a European Child Guarantee, which should ensure that every child in Europe at risk of poverty or social exclusion has access to free healthcare, education, early childhood education and care, decent housing, and adequate nutrition.
3. SMEs, social entrepreneurship, social economy
- Expand the social impact investment (SII) market across the EU. The ongoing Covid-19 crisis presents a window of opportunity for the EU to encourage new SII market development initiatives,³⁸ particularly in Central and Eastern European countries, through promoting them as an innovative and sustainable alternative to tackling short- and long-term societal challenges as well as supporting them with EU-level policies and funding programmes. This is the domain in which liberals can take on a leading role.
 - Support small and medium enterprises (SMEs) and micro-enterprises to help them remain competitive, especially through ensuring their efficient use of national recovery and resilience plans and ESF+ funding.
 - Realise the economic potential of a social economy and social entrepreneurship, which currently remains untapped, e.g., through supporting the 2021 adoption of an Action Plan on the Social Economy.³⁹
 - Mitigate the social impact of the green transition, e.g., through strengthening the social dimension of the Just Transition Fund (activities aimed at increasing social inclusion, supporting vocational training, re-skilling, and smart local mobility, and investing

³⁷ Renew Europe (2020), 'SURE Programme Is a Welcome Signal of Solidarity with all European Workers', *Medium*, 1 April, <https://reneweurope.medium.com/sure-programme-is-a-welcome-signal-of-solidarity-with-european-workers-99ac6ac37ad>.

³⁸ R. Mackevičiūtė et al. (2020), *Social Impact Investment: Best Practices and Recommendations for the Next Generation* [study requested by the EMPL committee], European Parliament, November, [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/658185/IPOL_STU\(2020\)658185_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/658185/IPOL_STU(2020)658185_EN.pdf).

³⁹ Social Economy Europe (2018), *The Future of EU Policies for the Social Economy: Towards a European Action Plan*, <https://s3platform.jrc.ec.europa.eu/documents/20182/313344/SEEACTION+Plan+for+Social+Economy.pdf/f81115cc-527e-4e3b-bafea8b06ab4372a#:~:text=A%20European%20Action%20Plan%20for%20the%20social%20economy%2C%20with%20a,achieve%20the%20Sustainable%20Development%20Goals>.

in SMEs and microenterprise in the regions most affected by the transition⁴⁰).

4. Labour mobility

- Foster labour mobility among Member States and across regions. Among the ways to promote the free movement of workers throughout the Union is ensuring full mutual recognition of qualifications gained across the EU and portability of social rights and entitlements without administrative burdens, e.g., through agreeing on the Revision of Regulation on Social Security Coordination.⁴¹
- Modernise and strengthen public employment services to enhance their capacity, the quality of their services, their effectiveness, and their efficiency, e.g., through strengthening the European Network of Public Employment Services (PES) and cooperation among its members.⁴²

5. Social inclusion and equal opportunities

- Allow men and women to contribute to the economy and society in a gender-equal way. European liberals stand for ensuring equal pay for equal jobs, including women on the labour market, and the possibility to combine a successful career with raising children, e.g., through supporting the Proposal for a Directive to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms, adopted on 4 March.⁴³
- Address the demographic challenge of ageing and provide fiscally sustainable social insurance programmes and the required level of care.

⁴⁰ 'Just Transition Fund: The Climate Neutrality Is only Fair if It Is Shared by All' [press release], ALDE, 10 December 2020, https://www.aldeparty.eu/just_transition_fund_the_climate_neutrality_is_only_fair_if_it_is_shared_by_all.

⁴¹ European Parliament (2021), 'Revision of Regulation on Social Security Coordination – Labour Mobility Package/2016–12', Legislative Train, April, <https://www.europarl.europa.eu/legislative-train/theme-deeper-and-fairer-internal-market-with-a-strengthened-industrial-base-labour/file-jd-revision-of-regulation-on-social-security-labour-mobility-package>.

⁴² Renew Europe (2020), 'Action Taken to Continue Fighting the High Unemployment Rates Many Europeans Face', *Medium*, 11 November, <https://reneweurope.medium.com/action-taken-to-continue-fighting-the-high-unemployment-rates-many-europeans-face-5e921c86acd8>.

⁴³ Renew Europe (2021), 'Renew Europe Welcomes Measures on Pay Transparency to End Pay Gap between Men and Women' [press release], Renew Europe, 4 March, <https://reneweuropesgroup.eu/en/news/1828-renew-europewelcomes-measures-on-pay-transparency-to-end-pay-gap-between-men-and-women/>. See European Commission (2021), *Proposal for a Directive of the European Parliament and of the Council*, Brussels: 4 March, https://ec.europa.eu/info/sites/default/files/aid_development_cooperation_fundamental_rights/com-202193_en_0.pdf.

- Show solidarity with displaced workers and make it easier for citizens who have lost their jobs to get help in finding a new job, reskilling, or setting up their own business through special funds, e.g., a revised European Globalization Fund for displaced workers.⁴⁴
- Address the needs of vulnerable groups (immigrants, LGBTI individuals, single mothers, the disabled, people with health conditions, low-skilled adults, minorities, including Roma, and others); facilitate their integration into the labour market and access to social protection mechanisms (an example would be an amended Fund for European Aid to the Most Deprived, FEAD).⁴⁵
- Prevent in-work poverty, which is a pressing issue especially in Eastern Europe (e.g., Romanian workers' risk of being in poverty while working is almost double the risk of the average European).
- End homelessness,⁴⁶ e.g., through launching a European Platform on Combating Homelessness⁴⁷ in 2021 to support Member States, cities, and service providers in sharing best practices and identifying efficient and innovative approaches.

Concluding remarks: Liberal success stories from across Europe

Shaping the European social framework – flexible enough to work in varied contexts yet sufficiently consistent and precise to make a difference – is a challenging task. For encouragement and inspiration, we can rely on the experience and lessons taken from the rich and varied liberal tradition across Europe. Numerous success stories and targeted in-depth studies taken from different national contexts provide us with concrete examples and ideas for developing a future-proof European liberal social model. By way of conclusion, the following presents a brief overview of potential reference points for some of the priority areas indicated in this paper.

⁴⁴ Renew Europe (2020), 'New Agreement Will Empower Redundant Workers to Create New Opportunities', *Medium*, 16 December, <https://reneweurope.medium.com/new-agreement-will-empower-redundant-workers-tocreate-new-opportunities-7b3eabcf4cd1>.

⁴⁵ Renew Europe (2021), 'We Urge Member States to Make Use of Additional Aid to the Most Deprived Citizens', *Medium*, 21 January, <https://reneweurope.medium.com/we-urge-member-states-to-make-use-ofadditional-aid-to-the-most-deprived-citizens-68aa4eea4c42>.

⁴⁶ Renew Europe (2020), 'Renew Europe MEPs Call for an End to Homelessness by 2030' [press release], Renew Europe, 23 November, <https://reneweuropegroup.eu/en/news/1698-renew-europe-meps-call-for-an-end-to-homelessness-by2030/>.

⁴⁷ 'A European Collaboration Platform on Homelessness: A New Policy Action to Deliver on Priority 19 of the European Pillar of Social Rights' [position paper], FEANTSA (European Federation of National Organisations Working with the Homeless), https://www.feantsa.research.org/public/user/Resources/News/european_collaboration_platform_final_submission_espr.pdf.

As has been indicated above, one of the core guiding principles of liberal social policies is conditionality: allowing equilibrium to be maintained between solidarity and individual responsibility. The measures introduced following the global financial crisis of 2008 provided the first example of large-scale adoption of integrated active and passive labour policies based on the principle of conditionality. To improve the resilience of their labour markets, almost every EU Member State implemented measures in two policy areas: active labour market policy and changes in labour market regulation. Although entailing a short-term increase in the levels of public expenditure, it was consolidation of the policy approach combined with dedication to the improvement of labour market institutions and programmes that allowed them to mitigate the negative social impact of the devastating financial crisis.⁴⁸ Furthermore, the diversity of national experiences sheds light on the need to consider local peculiarities when putting this mechanism into practice.

When it comes specifically to ensuring the conditionality of a social safety net, the most recent case study is Austria's tax system reform, particularly the recommendations developed by the New Austria and Liberal Forum party. They suggest substituting both the minimum wage and *Notstandshilfe* (or emergency support) with the *Liberales Bürger innen Geld*. Based on the concept of a negative income tax, this policy recommendation aims at guaranteeing the necessary help to those with limited or no income while incentivising citizens to get or stay employed.

In light of the announced EU focus on the needs of youth, a particularly relevant reference point is an in-depth study regarding the 'double crisis generation' in Southern Europe.⁴⁹ It addresses the risk of having a 'lost generation' – young people finishing their education and entering the labour market in a time of severe crisis – and suggests policy recommendations aimed at creating targeted opportunities for youth, especially to get employed and start their families. Although the study claims to be specific to Southern Europe, these policy recommendations should certainly be of interest for developing a European response to the problem of youth unemployment today and in the future.

With regards to the liberal emphasis on re- and up-skilling the workforce, a relevant case is the French unemployment reform under Emmanuel Macron, specifically measures aimed at improving the level and accessibility of vocational training and lifelong learning. Although successful overall, France's experience in this domain and primary focus

⁴⁸ ILO (2015), *Inventory of Labour Market Policy Measures in the EU 2008–13: The Crisis and Beyond* [synthesis report], International Labour Organization, https://www.ilo.org/wcmsp5/groups/public/---dgreports/--inst/documents/publication/wcms_436119.pdf.

⁴⁹ A. Aumaitre and J. Galindo (2020), *The Double Crisis Generation: Economic Insecurity and Political Attitudes in Southern Europe*, ESADE/Friedrich Naumann Foundation for Freedom, December, <https://www.freiheit.org/publikation/double-crisis-generation>.

on reforming the administrative framework points to both the positive effect of such targeted programmes and the need to sufficiently incentivise all the involved parties to take full advantage of them.⁵⁰

Since ensuring support for older people is becoming a problem in the context of Europe's ageing population, a recent policy proposal for sustainable and future-proof reform of the highly-indebted Spanish pension system is another significant development.⁵¹ The proposal outlines the liberal priorities on this issue – among them are the need for greater flexibility and additional private pension provisions as well as adapting retirement to the realities of modern working life – and provides a list of detailed policy suggestions. Furthermore, it deems necessary promoting and favouring the creation of wealth and employment. Finally, it argues that the key to ensuring sustainable effects in short-, medium-, and long-term perspectives is developing a package of related proposals in four areas: tax reform, labour reform, liberalisations and market unity, and the educational system.

These cases provide examples of liberal social policies targeted at addressing concrete and highly relevant social issues in different national contexts. As they are practice-based, they can serve as points of reference and should be used as working material for shaping the European social framework. Even more importantly, bringing multiple cases together sheds light on one important common feature or even lesson: the need for a comprehensive design and cross-sectoral approach.

Social policy measures lead to sustainable results when designed in a consistent and mutually reinforcing manner and in close relation to other areas, from the economy to education. In this regard, the above-mentioned priority dimensions and policy areas should not be seen merely as a list of necessary or desirable measures. Instead, they need to be further refined and adjusted in order to form a coherent system, a flexible yet firm framework through which liberals can best address the practical needs of Europeans – today and in the future.

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⁵⁰ 'The President's Paradox: Emmanuel Macron's Reforms Are Working, but Not for Him', *The Economist*, 20 February 2020, <https://www.economist.com/europe/2020/02/20/emmanuel-macrons-reforms-are-working-but-not-for-him>.

⁵¹ F. Coll, D. Soriano, and J. F. López (2020), *Pensions in Spain: A Sustainable and Real Proposal of Reform*, Friedrich Naumann Foundation for Freedom/Fundación Civismo/ Instituto Juan de Mariana, November, <https://www.freiheit.org/publikation/pensions-spain>.

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Policy Paper

Conference on the Future of Europe: Towards a New Social Contract and a Europe that Works for Everyone

Radu Magdin¹

Abstract

There has been a noticeable trend of decreasing wellbeing and trust in institutions among citizens in the last couple of years. The current social contract has placed greater burdens and more risks on individuals and has contributed to increasing inequality, thus leading to a drop in the public mood, increasing support towards populist parties as well as more protectionism and nationalism. This paper analyses the problems embedded in the current social contract and gives recommendations regarding which reforms should be part of a renewal agenda, namely a heightened emphasis on social policies targeting the most vulnerable groups and focusing on re-skilling and reintegrating workers. Although long overdue, the Covid-19 pandemic represents a window of opportunity to rethink the social contract at a national and European level. The Conference on the Future of Europe is an excellent occasion for all parties involved, especially citizens, to debate major relevant themes regarding what a new social contract should enable and include.

Introduction

From an overall, macro perspective, many countries are better off than they were 10 or 20 years ago in terms of Gross Domestic Product (GDP) and job growth. Their economies are now more prosperous, in part, due to technological and scientific advancements. However, a closer assessment focused on how people are doing as individuals – the inequality between them as well as their wages, purchasing power, social rights, and general wellbeing – might tell us a different story.

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A 2020 report by McKinsey Global Institute which studied 22 advanced economies shows that, although employment has risen, labour markets are polarised and wages have stagnated.² Moreover, although goods and services are cheaper, housing and other basics are becoming more expensive. Institutional and individual savings have declined, institutions have shifted the responsibility for outcomes to individuals, and there is considerable inequality among socioeconomic groups. In other terms, the rising tide has not lifted all boats.

The 'social contract' is a term that refers to the implicit agreement about what citizens receive back from their governments after paying taxes. It will be used in this paper to refer not only to the relationship between Member States' national governments and their citizens but also to the connection between European citizens and the European Union. The social contract has experienced changes and is currently heavily contested. After the Second World War, the European welfare state transformed from a poverty relief system to a more universal one, as the war impacted not only the lower-income class but the rich as well. At the time, there was a political understanding – called embedded liberalism by some – within advanced democracies that brought together open markets, safety nets, and compensation for those who, for one reason or another, could not win the market game. However, another phase which developed after the 1980s gave way to a conditional system in Western societies in which individuals absorb most of the risks and external shocks.³

The three major crises that Europe has gone through in the last decade, namely the financial crisis, the refugee crisis, and the Covid-19 pandemic, have shaken the grounds on which social policies rely; this has fuelled people's unhappiness with the current system. A recent UN report shows what a devastating impact Covid-19 has had on labour markets that were already fragile, and it makes the case that this long-standing employment crisis will damage the social and economic fabric even more without a renewed social contract.⁴ Moreover, many social policies rely on younger generations paying for older ones, thus creating an imbalance between what younger Europeans are expected to deliver and what the current social contract is offering them. In addition,

² McKinsey Global Institute (2020), 'The Social Contract in the 21st Century', 5 February, <https://www.mckinsey.com/industries/public-and-social-sector/our-insights/the-social-contract-in-the-21st-century>.

³ 'Covid-19 Has Transformed the Welfare State. Which Changes Will Endure?', *The Economist*, 6 March 2021, <https://www.economist.com/briefing/2021/03/06/covid-19-has-transformed-the-welfare-state-which-changes-will-endure>.

⁴ United Nations Department of Economic and Social Affairs (2021), 'A Changing World of Work: Implications for the Social Contract', March, https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/PB_94.pdf.

other challenges like the 4th industrial revolution and climate change are having a drastic impact and will continue to have an effect on citizens' lives, from labour markets to their health and prosperity. Presumably, worse-off people will again be the most impacted.

Even before the novel coronavirus started infecting people around the world, some academics, policymakers, and organisations were making the case for a renewed social contract. There had been many signs (e.g., declining trust in political leaders, lower electoral participation, the rise of populist and radical political forces, more mass protests) that citizens do not feel fulfilled by what they get back from paying their taxes or being good citizens of their states. According to the Edelman Trust Barometer, in 2019 'only one in five felt that the system is working for them, with nearly half of the mass population believing that the system is failing them'.⁵ In 2020, their report showed that 'a majority of respondents in every developed market do not believe they will be better off in five years' time and 56% believe that capitalism in its current form is now doing more harm than good in the world'.⁶ The 2021 report clearly confirms a trend of decreasing trust and stands as a warning of an epidemic of misinformation and widespread mistrust of societal institutions.⁷

One of the solutions to these pressing issues, all of which have massive implications for the health of our democracies, is a renewed social contract based on public consultations. National governments and the European Union have to rethink how citizens' wellbeing could be improved before populists can destroy what was built with so much effort by prior generations. The crises that have accompanied the spread of the virus – and during which fiscal stimulus packages have been given at unprecedented levels – present us with a window of opportunity as well as the question: what will the social contract look like after the pandemic comes to an end? What can we do in this uncertain context to not only get rid of the virus but also restructure the system and develop antibodies against populist and authoritarian surges?

As I will argue, a new social contract should prominently include three issues: first, a new equilibrium between pro-growth policies and social policies; second, a focus on the most vulnerable groups (e.g., low-skilled workers, minorities) and on addressing the issues these groups are facing, particularly in the context of the pandemic; and third, more opportunities for re-skilling and reintegrating for those confronting job loss and exclusion as a result of the current health and economic crises.

⁵ The 2019 Edelman Trust Barometer, <https://www.edelman.com/trust/2019-trust-barometer>.

⁶ The 2020 Edelman Trust Barometer, <https://www.edelman.com/news-awards/2020-edelman-trust-barometer>.

⁷ The 2021 Edelman Trust Barometer, <https://www.edelman.com/trust/2021-trust-barometer>.

All in all, we should see these times as an opportunity to restore and enhance the solidarity bases of our European society.

Responsiveness and responsibility

In his work, Peter Mair has emphasised the widening gap that appears to be forming between responsive governments and responsible ones in many Western democracies.⁸ A responsive government is one which acts as the people's representative, listening to and translating citizens' opinions in policy-making processes. A responsible one governs, taking into account what is best for everybody and considering the middle- and long-term future. Ideally, what gives legitimacy in a representative democracy is that parties both act responsibly and behave responsively.

However, it could be argued that what we have seen over the last 20 or 30 years is increased tension between these two tasks, especially under the pressure of globalisation and the liberalisation of capital flows. In rebuilding the post-pandemic future, leaders need to get over the idea that governing can be kept separate from public opinion and that citizens will indefinitely understand the need to implement certain policies that do not seem to be in their (immediate) favour. Eventually, their unhappiness will translate into believing the tempting promises of populist parties and leaders, who may seem closer to them, understanding their current needs and opinions and communicating with them more directly and in a simpler, more interactive way.

In a recent study, Linde and Peters show that by being responsive, governments build a 'buffer' of support, or a reservoir of good will, which allows them to also make decisions that are more responsible rather than responsive when it is needed.⁹ This way, there does not have to be a compromise between the two tasks but rather a fine balance.

Voters' behaviour speaks for itself

That surveys have noticed decreasing trust in institutions and disapproval about the current system among citizens comes as no surprise, as what we continue to see around the world stands as proof that the public mood has dropped. The challenges facing Europe, and the West in general, are increasingly felt through the attitudes and electoral behaviour of citizens.

⁸ P. Mair (2009), 'Representative versus Responsible Government', Max Planck Institute for the Study of Societies (2009/8), <http://hdl.handle.net/10419/41673>.

⁹ J. Linde and Y. Peters (2020), 'Responsiveness, Support, and Responsibility: How Democratic Responsiveness Facilitates Responsible Government', *Party Politics*, 26(3), 291–304. DOI:10.1177/1354068818763986.

For example, Brexit has shown not only the strength of Euroscepticism and the opinion that decisions were made at too far a distance from British citizens, but it has also made clear their stances on immigration and multiculturalism as well as their anti-establishment political preferences. Some point out that one of the main drivers for Leave voters was rooted in the inequalities produced by globalisation and the current form of capitalism, which produces winners and losers, with the losers being left without a solid safety net.¹⁰ As Colantone and Stanig argue, Brexit is the consequence of economic globalisation without proper compensation for those left behind.¹¹ The vote was merely an opportunity to express frustration with a system that, objectively and subjectively, had stopped working for a significant part of the population.

Across Europe, there has been increasing support for populist parties and figures. Empirical research shows that citizens who vote for populists are not only disappointed by how politics works, but they have deep feelings of discontentment regarding societal life in general.¹² Other current trends include the restructuring of partisan space, especially in national parliaments but also in the European Parliament, the decline of major mainstream parties (especially of the Social-democrats), and increasing support from the working class towards more authoritarian, conservative cultural values.

Narratives around migration have also had considerable importance in voting behaviour. Citizens feeling unprotected in the face of economic shocks, having fewer opportunities and lower incomes, tend to fall more easily for populists' arguments about why immigrants are a main part of the problem. As research has shown, economic uncertainty triggers authoritarian and exclusionary tendencies.¹³ Therefore, there has been growing support for parties with strongly negative stances on immigration, such as those in the UK, France, and Germany. In some countries, they have actually gained formal power: e.g., Hungary, Austria, Greece, and Italy.¹⁴

¹⁰ S. B. Hobolt (2016), 'The Brexit Vote: A Divided Nation, a Divided Continent', *Journal of European Public Policy*, 23(9), 1259–1277. DOI: 10.1080/13501763.2016.1225785.

¹¹ I. Colantone and P. Stanig (2018), 'Global Competition and Brexit', *American Political Science Review*, 112(2), 201–218. DOI: 10.1017/S0003055417000685.

¹² B. Spruyt, G. Keppens, and F. Van Droogenbroeck (2016), 'Who Supports Populism and What Attracts People to It?', *Political Research Quarterly*, 69(2), 335–346. DOI: 10.1177/1065912916639138.

¹³ C. Ballard-Rosa, M. Malik, S. J. Rickard, and K. Scheve (2017), 'The Economic Origins of Authoritarian Values: Evidence from Local Trade Shocks in the United Kingdom', *Annual Meeting of the International Political Economy Society*, 17.

¹⁴ B. Greve (2019), *Welfare, Populism and Welfare Chauvinism*, 1st ed. (Bristol: Bristol University Press).

The inequality that arises from the economic crises that Europe and the rest of the world have been going through, coupled with increased international trade and globalisation, has given way to stronger support for protectionism and nationalism and the rise of charismatic populist leaders who put these into practice (or at least argue in their favour).

However, the policies promoted and implemented by the majority of populist parties and leaders do not lead to actual increased wellbeing. In *Welfare, Populism and Welfare Chauvinism*, Bent Greve explains how 'the puzzle is voters' behaviour, such as voting for parties with an agenda of welfare chauvinism that might imply less welfare state, which conflicts with what they actually need in order to have a high quality of life'.¹⁵

Therefore, national governments and the European Union have to rethink what citizens should receive as well as the social contract in place. In a recent book entitled *What We Owe Each Other*, LSE Director Minouche Shafik captures the necessity of immediate action regarding the current social contract: 'The political turmoil we observe in many countries is only a foretaste of what awaits us if we do not rethink what we owe each other'.¹⁶

European Union, beware of the risks ahead!

The aftermath of the Covid-19 pandemic will deepen the challenges we have seen so far. Against the 'we are all in the same boat' rhetoric, reality has shown us that it has not been so. True, the virus can infect anyone, rich or poor, young or old. However, the implications differ from one socioeconomic group, nationality, race, gender, or age range to another. Only some countries get to vaccinate their citizens, older people or those with comorbidities have been more at risk of developing severe symptoms, young people have experienced increased mental health problems, some workers have continued going to work, others have worked or studied from home, and some have lost their jobs. The list continues. As a consequence, inequalities will rise, societies risk fracturing even more, and social cleavages will be exacerbated.

The European Union has acted as a whole body in many respects, with Member States coordinating their responses and showing solidarity. However, there have been inconsistencies, and criticism towards its response to the pandemic has not ceased. A survey conducted by Kantar at the end of April 2020 shows that more than half of EU citizens were not satisfied with the measures taken against the coronavirus up to that

¹⁵ Greve, *Welfare, Populism*, p. 2.

¹⁶ M. Shafik (2021), *What We Owe Each Other: A New Social Contract* (Princeton, NJ: Princeton University Press), p. 26.

moment.¹⁷ More recently, the way the EU has handled the vaccination campaign has been particularly criticised.

From an international perspective, a great power competition has also been accelerating. Some states or other actors in the global arena, such as multinationals, have been caught in the middle of this rivalry and suffered the consequences. The European Union's endeavour to be a more powerful, geopolitically and strategically relevant actor or, in other words, to have strategic autonomy and sovereignty, matches the general spirit of the population.

However, securing supplies, from medical to technological, and thus being more self-reliant, must match plans based on coordination and cooperation with other partners and in the face of emerging powers. Signing trade agreements and pursuing diplomatic relationships with like-minded states must be part of a carefully and strategically thought-out plan. Rather than maximising gains, political leaders have to pay more attention to minimising losses as well.

Recommendations on the renewal of the social contract

According to Eurobarometer, at the end of 2020 the majority of people believed that the economic situation would worsen and only one in five respondents believed that the national economic situation would improve over the coming year.¹⁸ Even more importantly, half of respondents want to see the fight against poverty and social inequalities at the top of the European Parliament agenda.

One of the solutions to the problems discussed so far is a renewal of the social contract at both a European and national level. The Porto Social Summit in May 2021 represented an important chance to discuss the implementation of the European Pillar of Social Rights and its Action Plan at a political level and debate issues concerning major challenges, such as unemployment, inequalities, and the digital and green transformations.¹⁹

In addition, the Conference on the Future of Europe is an opportunity for citizens to participate in the debate regarding the EU's future and what reforms and measures should be implemented in the medium and long term. The conference is to last about two years, and it is organised

¹⁷ European Parliament, Eurobarometer – Public Opinion in the EU in Time of Coronavirus Crisis, <https://www.europarl.europa.eu/at-your-service/en/be-heard/eurobarometer/public-opinion-in-the-eu-in-time-of-coronavirus-crisis>.

¹⁸ European Parliament, Eurobarometer – Parlemeter 2020: A Glimpse of Certainty in Uncertain Times, <https://www.europarl.europa.eu/at-your-service/de/be-heard/eurobarometer/parlemeter-2020>.

¹⁹ More information on Porto Social Summit: <https://www.2021portugal.eu/en/events/porto-social-summit/>.

jointly by the European Parliament, the EU Council, and the European Commission. Though officially launched on Europe Day 2021, shortly after the Porto Social Summit, the Conference's digital multilingual platform has been online since 19 April.²⁰ It allows citizens to raise ideas, comment, and argue their views on any topic they consider important for the future of the EU. Therefore, it is an excellent opportunity for all parties involved to debate the big themes regarding how a renewed social contract should look. It will also ensure that the social contract is 'made in Europe', as the challenges encountered during the pandemic are, although similar, unique to each region. So should be the path to recovery. However, this debate should be real and not avoid contentious points. Otherwise, the Conference will only be a PR moment that will neither solve anything nor send a signal to those left behind about who among their political leaders have really started to pay attention, seeking to address their concerns.

We have already discussed some of the general issues that have to structure the agenda and the conversation around the future of Europe and new social contract, both at the national and European level. Beyond empathy and responsiveness, a new welfare state should be imagined, and this should mean more social investment, not more austerity or cuts.

In addition, here are three ideas about what a new social contract should include:

First, two fronts must be simultaneously addressed, namely ensuring economic productivity and growth while tackling the challenges individuals face. As Dani Rodrik puts it: 'a new strategy must abandon the traditional separation between pro-growth policies and social policies'.²¹ Therefore, governments and institutions will have to see public services more as investments rather than liabilities. A new type of embedded liberalism should emerge at the end of the consultation.

Second, considering that tight budgets will define the 2020s, social contract spending will have to match the real scope of social problems. Interventions must be better targeted at the groups that need them the most and are most vulnerable, such as low-skilled workers, minorities, youth, and women. Redistribution is back, and the privileges that the wealthy and elderly have seen so far will be questioned. Social investment should be preferred to old-style social consumption policies.

Third, an important focus should be on re-skilling and reintegrating those people who have lost their jobs, thus helping them to bounce back. Let's not forget that automation will have a massive impact on jobs, and people need to be trained to adapt faster and find meaningful ways

²⁰ <https://futureu.europa.eu/>.

²¹ D. Rodrik and S. Stantcheva (2020), 'The Post-Pandemic Social Contract', *Project Syndicate*, 11 June, <https://www.project-syndicate.org/commentary/new-social-contract-must-target-good-job-creation-by-dani-rodrik-and-stefanie-stantcheva-2020-06>.

to live their lives. This should also happen through a stronger dialogue and partnership between states and private firms. The transitions towards digitised and green economies should have job creation and lagging communities at their core.

The time for a new social contract has arrived, and we as a community shattered by the pandemic are now drafting the agenda for meaningful change. Let's work hard to make everyone feel included – this is our only chance to strengthen liberal democracy.

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Policy Paper

European Strategic Autonomy in Space, through Space

Piero Messina¹

Abstract

From the vantage point of Earth's orbit in outer space, over the last 60 years we have learned to observe, to understand, to connect, and to protect our planet. We're now able to monitor its environment, enforce policies, and enable our economies as well as their green and digital development while preserving the safety and security of our citizens. On Earth, investments in space industries and downstream sectors, depending on the space applications, are a recipe for creating highly-skilled jobs, high-tech, and high-added-value business and economic growth to ensure global European competitiveness. Autonomy in space applications would be a means to allow Europeans to remain masters of their data and secure Europe's role in the world. This policy paper aims at summarising the role that mastering space technologies has played and will continue to play – not only in the previous century but even more so in the twenty-first century – in the global and geo-political competition.

Europe and space

The European Union is asserting its position as one of the most relevant global actors in an economic, industrial, and strategic sense with respect to the discussion about space strategy. Eventually, it will be our very way of life that is at stake.

Programmes such as Galileo, Copernicus, and Ariane, along with their enabling technological and industrial bases, are among the most visible European space assets. They are the outcome of several decades of joint investment in space. However, the pace of international competition in space is accelerating, and Europe cannot afford to lose ground in this domain if it is serious about and committed to its strategic autonomy.

The founding legal principles of space activities were developed in the 1960s in the form of international treaties, and these have served us well

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until now. 'New space', the 'democratisation of space', and other expressions are used to try and capture the evolution in the nature and number of players active in outer space. While all space activities are carried out under the responsibility and the supervision of states, the number of private players has increased dramatically. These include, on one end, some of the richest entrepreneurs on Earth pursuing their visions and commercial interests in outer space, and, on the other end, a plethora of start-ups. Moreover, the number of nations with access to national space systems has also been on a constant increase over the years. In this context, it is worth noting that the UN Office for Outer Space Affairs (UNOOSA) numbered 18 members at the time of its inception in 1958 and 61 by the end of the twentieth century. Today, 95 countries have a seat at UNOOSA in Vienna.

Space as a geo-political frontier

Under these circumstances, space is quickly becoming (or returning as) a political and geo-political frontier. New rules will have to be drafted to ensure the continuous, sustainable, and peaceful utilisation of outer space for the benefit of humankind. For Europe, strategic autonomy will also mean the ability to speak with a strong, credible, and united voice, the voice of a prime player in international *fora* to make sure its values and interests are properly represented.

In recent months, even as public authorities are still fighting the pandemic, space activities have been making headlines almost daily. Many things are happening, which is a sign that interest in space is far from depleted: the renewal of space governance leadership in Europe; the first module of the new Chinese space station; NASA's latest decision to approve the construction of the newest human-rated moon lander since Apollo's Lunar Module (LM) Eagle in 1969 (quickly stopped by legal action from competitors); European Parliament's recent approval of the EU Space Programme regulation;² and the European Space Agency's currently ongoing selection of a new class of European astronauts (the first selection since 2009).³

Artemis, EUSPA, Cassini, Starship, Tiangong, Crew Dragon: these new names embody a new dynamic that seems to have picked up speed in

² European Commission (2021), 'EU Space Regulation ready to take off' [news article], 28 April, https://ec.europa.eu/defence-industry-space/eu-space-regulation-ready-take-2021-04-28_en.

³ The European Space Agency (2009), 'New Class of European Astronauts Report for Training', 3 September, http://www.esa.int/Science_Exploration/Human_and_Robotic_Exploration/European_Astronaut_Selection_2008/New_class_of_European_astronauts_report_for_training#:~:text=The%20new%20astronauts%20are%3A,Mogensen%2C%20from%20Copenhagen%2C%20Denmark.

the last couple of years. A number of factors are now converging, and among the most important of these is pressure from private space entrepreneurs in the USA (Elon Musk's SpaceX and Jeff Bezos's Blue Origin, above all) and the steady, regular pace of the Chinese space programme. A new race seems to be taking shape, this time between the USA and China, to 'occupy' and control space, including the Moon, but also to win allies, support their high-tech industries, inspire the world's population, and exercise soft power.⁴

One of these 'occupations' of outer space is actually already undergoing: massive constellations of small-mass satellites are being deployed by private actors (Space X) in low to medium orbit around Earth to provide the world's population with ubiquitous connectivity and prepare for the deployment of 5G/6G-supported services.

Since the beginning of the space age in 1957, only a few thousand satellites have been launched cumulatively by all space-faring nations. Some 6,000 satellites are orbiting Earth today, only half of which are still operational while the remainders are out of service. The upcoming constellations (above all, Space X's Starlink with its 13,000 planned satellites) will deploy thousands of satellites with an estimated average of approximately 1,000 satellites being launched every year for the next ten years.⁵

Space as the 'fifth dimension'

In parallel with this new dynamism in civil space activities, military space commands have been created in the last several years in a number of established space-faring nations. From the USA to France, from the UK to Italy, space has openly become the 'fifth dimension' (next to land, sea, air, and cyber space) of military operations.

On the one hand, the basic technological, mechanical, and operational concepts of space systems have not changed much (a launching base, a rocket, and a payload all submitted to a number of natural and celestial constraints). On the other hand, the miniaturisation of components, implementation of new materials, and refinement of scientific knowledge have multiplied the number of sectors in which satellites and space-enabled services are key elements. They are being increasingly taken for granted, which makes them a 'critical infrastructure' in their own right.

⁴ S. Paladini (2021), 'How Mars became the Prize for the New Space Race – and Why China is Hellbent on Winning It', *The Conversation*, 4 February, <https://theconversation.com/how-mars-became-the-prize-for-the-new-space-race-and-why-china-is-hellbent-on-winning-it-153133>.

⁵ J. Foust (2021), 'SpaceX Launches Starlink Satellites and Rideshare Payloads', *Space News*, 15 May, <https://spacenews.com/spacex-launches-starlink-satellites-and-rideshare-payloads/>.

The space race came to epitomise the West–East confrontation during the Cold War. Since the 1980s, this ‘race’ has influenced massive development in the commercial exploitation of space-based systems.⁶ Technologies derived from space applications include telecommunications, Earth observation, Global Navigation Satellite Systems (GNSS),⁷ and recent technologies to provide the ultra-fast connectivity that is so vital to our hyperconnected societies.

The ability to access, occupy, and exploit the space environment, either close to or farther away from Earth’s orbit, is an essential element for any global player today to possess. Whether in order to project soft power, to ensure the competitiveness of its economy, to preserve a technological competitive advantage, or to freely and autonomously collect information and intelligence, space is an essential tool, be it for civilian or military purposes.

One space, many resources

The green and digital transitions toward a more sustainable future can be fostered and enabled by space-based systems. Safety and security applications require space-based sensors to monitor the environment, to prevent and mitigate natural catastrophes, or to foresee possible disasters. Inspiring the younger generation and even building a European identity can also rely on positive messages coming from space activities, starting with the European astronauts who have been living and working onboard the International Space Station (ISS) uninterruptedly for over 20 years now alongside their fellow American, Russian, Japanese, and Canadian space explorers.⁸

Europe has a track record of successful, at times world-class, achievements in space: from the commercial success of the Ariane launchers to the 2014 comet landing with the Rosetta mission.⁹ Europe possibly has the most comprehensive among all the existing systems for monitoring the environment (Copernicus) as well as its own GNSS systems (Galileo).

All this has been possible thanks to pooling the resources – financial, intellectual, and industrial – of many European countries and with the

⁶ D. Sandbrook (2019), ‘The Space Race: How Cold War Tensions put a Rocket under the Quest for the Moon’, *Science Focus*, 4 July, <https://www.sciencefocus.com/space/the-space-race-how-cold-war-tensions-put-a-rocket-under-the-quest-for-the-moon/>.

⁷ European Union Agency for the Space Programme, ‘What Is GNSS?’, <https://www.euspa.europa.eu/european-space/eu-space-programme/what-gnss>.

⁸ NASA, ‘Space Station Updates’, https://www.nasa.gov/mission_pages/station/main/index.html.

⁹ The European Space Agency, ‘Rosetta’, https://www.esa.int/Enabling_Support/Operations/Rosetta.

technical and political stewardship of both the EU and the European Space Agency.

Other powers are steadily increasing their efforts, too. China is slowly but surely implementing its space plans, including a space station and mission to the Moon (including launching a human-tended Moon base by the next decade) and Mars, not to mention its development of commercial space systems.¹⁰ NASA's budget has been raised again to support its return to the surface of the Moon, while American entrepreneurs are investing their efforts and financial wealth into developing new space systems, in part to serve NASA's plans but also to position themselves as global space entrepreneurs.¹¹

European space policy/governance

Europe is endowed with a highly skilled workforce, long scientific traditions, and a robust economy. What it is missing, however, is the political resolve and financial means to keep up with this renewed acceleration in the development of space activities.

Its search for autonomy was at the inception of the decision to develop Europe's own launcher, which has led to the successful development of the Ariane rocket that would also become a commercial success later, mainly thanks to the USA's overreliance on the Shuttle.

Today, as the European Commission declares that strategic autonomy is at the heart of its vision for the future of Europe, space capabilities constitute both a key element and an enabler of this strategic autonomy.

Nowadays, space governance in Europe is articulated on three main levels: the EU and its executive agency EUSPA (formerly GSA), inter-governmental (mainly through the European Space Agency, ESA), and national (through space agencies or other governmental entities). The EU's two flagship programmes (Galileo and Copernicus), funded by the EU MFF, see the involvement of ESA as a space architect or technical implementer. In these programmes, and more generally in the development of a coherent and ambitious European space policy, the countries of Europe, which are in most cases members of both organisations, close a triangle whose efficiency and overall impact could be improved.

ESA was established in 1975 as an intergovernmental research & development organisation to carry out joint space programmes 'for exclusively peaceful purposes', but it also aimed at 'elaborating and

¹⁰ J. Amos (2021), 'China Lands Its Zhurong Rover on Mars', BBC, 15 May, <https://www.bbc.com/news/science-environment-57122914>.

¹¹ J. Cumbers (2020), 'The New Space Race: Meet the Investors Building a New Space Settlement Industry', *Forbes*, 18 February, <https://www.forbes.com/sites/johncumbers/2020/02/18/the-new-space-race-meet-the-investors-building-a-new-space-settlement-industry/?sh=73eef68d6b58>.

implementing a long-term European space policy' as well as coordinating national programmes as laid down in its Convention.¹² Today, ESA is comprised of 22 members (including 3 non-EU countries, namely the UK – whose membership was not affected by Brexit – Norway, and Switzerland). Canada, Slovenia, Latvia, and Lithuania are ESA Associated countries. Two distinct features have allowed ESA to thrive: its flexible programme definition (with optional programmes) and its more controversial '*juste retour*' principle. The former means ESA member states have the freedom to decide whether and to what extent they will participate in specific programmes. The latter is the guarantee that, ideally, the amount of each member state's contribution will be returned to that country's economy through industry procurement contracts. Some 85% of ESA's own resources are directed to optional programmes, while over 90% of member state contributions are returned to their national industries to develop, manufacture, and operate space missions.

Joining ESA as a full-fledged member requires a country to contribute to the mandatory part of the organisation's activities according to a contribution scale based on national GDP, revised every three years. Despite this 'entry ticket', ESA has doubled its members even following the establishment of the EU Space Programme. ESA's industrial policy is a constant balancing act between the imperative of best-value-for-money space procurement and the need to make room for space industries from all member states – possibly with particular regard to high-tech SMEs.

Formal involvement of the EU in space activities dates back to the Lisbon Treaty of 2007. In its Article 189, space was mentioned for the first time in a European Union Treaty as part of the 'shared competences'. Since then, Member States cannot be prevented from exercising their own competences in the field of outer space.¹³ As a matter of fact, the same article excludes 'any harmonisation of the laws and regulations of the Member States'.

Before that, the EC published a 2003 white paper titled *Space, a New European Frontier for an Expanding Union; An Action Plan for Implementing the European Space Policy*.¹⁴ This led to the signing of the

¹² The European Space Agency, 'ESA's Purpose', http://www.esa.int/About_Us/Corporate_news/ESA_s_Purpose.

¹³ European Parliament (2016), Consolidated Version of the Treaty on the Functioning of the European Union, *Official Journal* C 202, 7 June, Art. 189, pp. 131–132, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12016E189>.

¹⁴ European Commission (2004), *Space, a New European Frontier for an Expanding Union; An Action Plan for Implementing the European Space Policy* [white paper] (Luxembourg: Office for Official Publications of the European Communities, February), <https://op.europa.eu/en/publication-detail/-/publication/65011c3f-5662-4b62-8a94-364a239d12ef/language-en>.

ESA/EC Framework Agreement as the first attempt to provide a coherent and effective framework for coordination between the two European 'space institutions'.¹⁵

In these same years, Elon Musk founded Space X and began planning the first flight of his Falcon rocket, whose successors have eventually become the most competitive launchers on the global market; until then, it had been dominated by Europe's Ariane launchers. Elon Musk and other competitors are indeed pressing Europe to rethink and improve the efficiency of its launchers. Ariane 6 (whose maiden flight is now slated for 2022), with its new industrial organisation, is the first attempt to provide a commercially competitive response to Musk's Falcon rocket.

Space governance and next steps

Recent months have seen the arrival of new leaders at the European Commission (Commissioner Thierry Breton), at ESA (Director-General Josef Aschbacher), and in some key countries (for instance, the new French CNES President, Philippe Baptiste).

On 28 April 2021, the EU co-legislators adopted the Regulation for the EU Space Programme, triggering the renaming of the GSA executive agency to EUSPA.

This new governance and availability of dedicated resources for space programmes are indeed good news. Nevertheless, Europe's overall investment in space systems and technology remains far behind that of the USA and is even lower than that of China.

The newly approved EU Space Programme amounts to €14.8 billion over 7 years (less than the originally proposed €16 billion).¹⁶ Likewise, most national space agencies pass on a portion of their national endowment to ESA in order to carry out cooperative programmes.

A number of challenges lie ahead with heavy implications for our societies and geopolitics.

Space, especially its useful orbits and frequencies, is becoming more and more crowded every day. The number of debris threatens the safety of deployed satellites and the ability to place new ones in certain orbital slots. The arrival of mega-constellations can only make the situation

¹⁵ Framework Agreement between the European Community and the European Space Agency (2004), *Official Journal* L 261, 6 August, pp. 64–68, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22004A0806%2803%29>.

¹⁶ ESA's yearly budget of €6 billion already includes the EU's yearly contribution of €1.5 billion coming from the €2 billion per year of the EU Space Programme. See European Commission (2018), 'EU Budget: A €16 Billion Space Programme to Boost EU Space Leadership beyond 2020', 6 June, https://ec.europa.eu/growth/content/eu-budget-%E2%82%AC16-billion-space-programme-boost-eu-space-leadership-beyond-2020_en.

more difficult. A global consensus on a sustainable and sensible use of space is needed.

Europe must act to make its values prevail but also needs to be a credible and respected player that does not depend on any other player for its space-based capabilities.

- 1) The EU needs to be in a position to access space and deploy its space systems autonomously, without depending on any third party. Ariane launchers have enjoyed commercial success for several years. It is indeed important to develop launch systems that are also commercially competitive. However, strategic autonomy requires that access to space is free, and this is a key strategic element for Europe's autonomy and credibility, especially for security applications and commercially sensitive ones.
- 2) More and more frequently, congestion in space poses a threat to orbiting satellites. Europe must possess an autonomous situational awareness (that is, being able to detect and monitor threats in space, be it space debris or a solar storm) to protect its own space assets and be able to weigh in on the discussion of global space traffic management solutions, both regulatory and operational.
- 3) Developing its own secure connectivity for government and public use would represent another brick in Europe's strategic autonomy regarding space, not to mention maintaining Galileo's technological edge and keeping it fully operationally reliable. Despite European ambitions, the resources which have been set aside thus far may not be sufficient.

Conclusions

These are just a few examples of civilian space assets (albeit of an increasingly dual nature) that are required to achieve serious and credible strategic autonomy, a position for Europe in the world that matches its economic power and projects its values.

Among these, there are the issues of technological components (to break free from US-imposed ITAR regulations), cybersecurity of space, and the ground infrastructure of our space assets. Additionally, Europe should ensure and foster the massive development of a sizeable downstream industry that may exploit the data produced by high-quality European space systems, which are often exploited by non-European companies.

Europe has the ingenuity, the skills, and the vision necessary to regain momentum, fill the gap, and reposition itself as a truly autonomous space power and assert its overall strategic posture.

Decision-makers are increasingly aware of this potential. Let us unleash the resources of our institutions, nations, industries, and SMEs to

push forward and win this global contest. A satellite might not be visible in the sky, but the services it allows on the ground can have a huge impact on jobs, economic growth, safety, and resilience in our societies. We cannot allow others to control our communications, to decide where to send our data or which satellites to launch.

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Policy Paper

The Rise of China in the Information Domain? Measuring Chinese Influence in Europe during the Covid-19 Pandemic

Antonios Nestoras and Raluca Cirju

Abstract

The coronavirus pandemic has invited an overflow of disinformation in Europe and therefore has been an entry point for foreign influence operations from rival authoritarian countries. In this respect, the literature agrees that Chinese disinformation operations became more aggressive, and China joined Russia as a major EU rival in the information domain. A key problem in this regard is how to evaluate the influence of foreign disinformation in Europe and elsewhere. This paper argues that measuring public opinion perceptions about major state actors can help gauge the impact of foreign influence operations. Analysing the results of a 19 countries survey and approximately twenty-one thousand responders the paper attempts to measure and compare European public opinion perceptions about China and Russia during the pandemic. The results resonate with and substantiate the position of many scholars who have called the Covid-19 crisis an 'infodemic' and show that China was more successful than Russia in influencing public opinion perceptions in Europe during the pandemic.

From a pandemic to an 'infodemic' and the rise of Chinese influence operations in Europe

The coronavirus has cost dearly in lives and livelihoods and has also accelerated many technological changes in the way we work, communicate, and do politics. A digital revolution was already discussed since the end of the previous century, but the pandemic is now greatly increasing its scope and speed in a wide range of sectors.¹ Relatedly, the pandemic

¹ For examples of 'Covid-impact assessments' see P. Soto-Acosta (2020), 'COVID-19 Pandemic: Shifting Digital Transformation to a High-Speed Gear', *Information Systems Management*, 37(4): 260–266; L. Hantrais, P. Allin, M. Kritikos, M. Sogomonjan, P.B. Anand,

has also invited an overflow of disinformation, to such an extent that both the EU and the WHO stated that in corona we are not dealing only with a pandemic but also with an 'infodemic'.²

Apart from causing sub-optimal public decisions that may cause loss of life domestically, the 'infodemic' thesis suggests that the virus has also been an entry point for disinformation and foreign influence operations in the West.³ Starting with Moscow's hybrid warfare on Ukraine, the focus of attention was Russian disinformation operations across the full spectrum of social and traditional media, as well as an intricate web of relations with the fringes of the European political system.⁴ The main goal of these operations was to promote Russian strategic narratives in Europe, project Russian (soft) power, and increase Moscow's influence and ability to sway targeted European audiences.⁵

China too has been caught red-handed using disinformation to meddle in Taiwanese elections in 2019 and in 2020, but in general, Taiwan is facing a constant flow of disinformation originating in Mainland China.⁶ However,

S. Livingstone, M. Williams and M. Innes (2021), 'Covid-19 and the Digital Revolution', *Contemporary Social Science*, 16(2), 256–270; S. Barua (2020), 'Understanding Coronanomics: The Economic Implications of the Coronavirus (COVID-19) Pandemic', *Electronic Research Journal of Social Sciences and Humanities*, 2.

² World Health Organization (2020), 'Managing the COVID-19 Infodemic: Promoting Healthy Behaviours and Mitigating the Harm from Misinformation and Disinformation', 23 September; European Commission. Joint Communication to the European Parliament, The European Council, The Council, The European Economic and Social Committee and the Committee of the Regions (2020) 'Tackling Covid-19 disinformation – getting the facts right', JOIN/2020/8.

³ For the domestic effect see, A. Nguyen and D. Catalan (2020), 'Digital Mis/disinformation and Public Engagement with Health and Science Controversies: Fresh Perspectives from Covid-19', *Media and Communication*, 8(2): 323–328; for the international perspective see D. Jackson (2021) *COVID-19 and the Information Space: Boosting the Democratic Response* (Washington, DC: International Forum for Democratic Studies).

⁴ O. Friedman (2018), *Russian 'Hybrid Warfare': Resurgence and Politicization* (London: Hurst); A. Lanoszka (2016), 'Russian Hybrid Warfare and Extended Deterrence in Eastern Europe', *International Affairs*, 92(1): 175–195; A. Rácz (2015), *Russia's Hybrid War in Ukraine: Breaking the Enemy's Ability to Resist* (Helsinki: Finnish Institute of International Affairs); P. Krekó et al. (2015), *Europe's New Pro-Putin Coalition: The Parties of "No"* (Institute for Modern Russia and Political Capital Institute).

⁵ See L. Roselle, A. Miskimmon and B. O'Loughlin (2014), 'Strategic Narrative: A New Means to Understand Soft Power', *Media, War & Conflict*, 7(1): 71–74; For Russia's use of 'soft power' in Ukraine see V. Hudson (2015), '"Forced to Friendship"? Russian (Mis-)Understandings of Soft Power and the Implications for Audience Attraction in Ukraine', *Politics*, 35, 330–346; K. Geers (ed.) (2015), *Cyber War in Perspective: Russian Aggression Against Ukraine* (Tallinn: NATO CCD COE Publications). For the same in the Baltic States see M. Winnerstig (ed.) (2014), *Tools of Destabilization: Russian Soft Power and Non-Military Influence in the Baltic States* (Swedish Defence Research Agency (FOI)).

⁶ J. Blanchette, S. Livingston, B.S. Glaser and S. Kennedy (2021) *Protecting Democracy in An Age of Disinformation: Lessons from Taiwan* (Washington, DC: Center for Strategic and International Studies).

it was only during the coronavirus pandemic that Beijing's Communist regime emerged as a major player in the information domain – or, at least, it was during this time that more people in Europe realised that China may be bigger than Russia in disinformation.⁷ In late 2020, after Twitter's removal of hundreds of thousands of accounts linked to Chinese disinformation operations, a report by the Stanford Internet Observatory verified that a Chinese operation that was originally focused on the Hong Kong protests switched to pandemic disinformation in a coordinated manner.⁸

Both Russians and Chinese information operations adapted to the Covid-19 crisis.⁹ China was already active in the information domain with a rather sophisticated arsenal of computational propaganda, but during the pandemic, Beijing copied from the Russian playbook to target many western publics in an unusually aggressive manner.¹⁰ In the end, Europe and the West was left fending off both the internal production of disinformation and conspiracy theories about the virus, and the rising inflow of Russian and Chinese propaganda.¹¹

When it comes to the latter, a key problem is how to ascertain the degree of efficiency of influence operations in Europe and elsewhere. Information is key to forming opinions, taking decisions, and so public opinion matters increasingly more, both for domestic and foreign policies. If the coronavirus accelerates the digital transformation of the world, then competition for the hearts and minds of the publics in cyberspace will become an even more central element of international relations.

Measuring public opinion and especially perceptions about major state actors in the post-Covid world is an important step towards understanding the impact of foreign influence operations, as well as

⁷ M. Scheidt (2019) 'The European Union versus External Disinformation Campaigns in the Midst of Information Warfare: Ready for the Battle?', College of Europe EU Diplomacy Paper 01/2019.

⁸ C. Miller, V. Molter, I. Garcia-Camargo and R. DiResta (2020), *Sockpuppets Spin COVID Yarns: An Analysis of PRC-Attributed June 2020 Twitter Takedown* (Stanford, CA: Stanford Internet Observatory Cyber Policy Center).

⁹ E. Lucas, J. Morris and C. Rebegea (2021) *Information Bedlam: Russian and Chinese Information Operations During Covid-19* (Washington, DC: Center for European Policy Analysis); see also A. Polyakova (2020) 'The Kremlin's Plot Against Democracy: How Russia Updated Its 2016 Playbook for 2020', *Foreign Affairs*, 99: 140.

¹⁰ D. Kliman, A. Kendall-Taylor, K. Lee, J. Fitt and C. Nietzsche (2020), 'Dangerous Synergies: Countering Chinese and Russian Digital Influence Operations', Center for a New American Security; see also S. Sukhankin (2020), 'COVID-19 as a Tool of Information Confrontation: Russia's Approach', *The School of Public Policy Publications*, 13(3).

¹¹ S.L. Vériter, C. Bjola and J.A. Koops (2020), 'Tackling COVID-19 Disinformation: Internal and External Challenges for the European Union', *The Hague Journal of Diplomacy*, 15(4): 569–582.

recognising global trends. Between August 24 and September 12, 2020, a 19 European countries survey of approximately twenty-one thousand responders was fielded, which, among other political issues, also measured European public opinion perceptions about China and Russia during the pandemic.¹²

The results confirm once again the extent of misinformation and disinformation about Covid in the public, and in this respect, they resonate with and substantiate the position of many scholars who have called the Covid-19 crisis an 'infodemic'. This means that disinformation creates serious problems for policymakers. But it also means that the coronavirus crisis has been yet another entry point for foreign influence in Europe.

Measuring Chinese influence on European public perceptions about Covid-19

One of the aims of China's influence operations in Europe was to obfuscate the virus origins and its muddled attempts to contain the spread. In this respect, the initial rumour mill about Covid-19 origins was weaponised and led to an 'arms race' of narratives.¹³ The results of the survey resonate with the 'infodemic' thesis both on domestic and international levels. Apart from its geographical origins, there is little consensus about the virus, which speaks volumes of the level of confusion in the public.

A large percentage of responders believe that Covid-19 developed naturally in China without government assistance, whereas 58% of the responders believe that it was either intentionally or unintentionally developed in a Chinese lab, or they are simply not certain with regards to the origin of the virus. In addition, almost one in ten of the responders believe it appeared in a different way, indicating a lack of credible information sources or high levels of misinformation.

Misinformation and uncertainty probably exacerbate stress levels in society, with most people feeling worried about the spread of Covid-19. Overall, the 79% of the responders were very or somewhat worried, with high values in countries that were particularly hit during the first waves (Spain 93% and Italy 86%).

Another aim of Chinese influence operations was on the one hand to discredit the handling of the crisis by specific countries, leaders, and organisations, and on the other hand to exaggerate the ability of China to cope with the crisis domestically and provide assistance to others.¹⁴ The

¹² European Liberal Forum (ELF), Alliance of Liberals and Democrats Party (ALDE), and International Republican Institute (2020), *European Fringe Party Survey* (Brussels: IPSOS).

¹³ L. Bandeira, N. Aleksejeva, T. Knight and J. Le Roux (2021), *Weaponized: How Rumors About Covid-19's Origins Led to a Narrative Arms Race* (Washington, DC: Atlantic Council).

¹⁴ See for example, S. Biscop (2020), 'Coronavirus and Power: The Impact on International Politics', Security Policy Brief No. 126 (Brussels: Egmont).

overall objective was to portray the Communist regime as an effective, socially responsible system of governance and China as a conscientious global leader.¹⁵ Our results show that, China's approval ratings were quite positive, with an average of 29% across the 19 countries under examination answering that China had an important and effective role in fighting Covid-19 in their respective countries. Russia's approval ratings were in comparison much lower at 16%.

This comparison suggests that although China copied the aggressive stance of Russia, its disinformation operations were much more effective in influencing public perceptions in Europe. This might be due to the recent but also the historical tension between some EU members states and Russia, but it may also be correlated with the hypothesis that European publics are by now aware of Russian disinformation methods and tactics, whereas China has only recently entered the European information domain.

Indeed, a geographical depiction of the same data seems to substantiate this hypothesis. The Baltics and Central and Eastern European members states are apparently conscious of Russian influence operations, but less weary and more susceptible to Chinese operations. Lithuania is a case in point, where a whopping 41% of the responders said that China had an important and effective role in fighting Covid-19 in their respective countries, whereas only a 15% approved Russia's role in the pandemic, seems to be a case in point.

In contrast, responders from Italy, Slovakia, and Bulgaria maintained high approval rates for both China and Russia. The outlying results in Italy can probably be explained by its vulnerable position at the beginning of the pandemic. At the outbreak of the virus, Italy was the focus of early Chinese disinformation operations.¹⁶ The spread of disinformation supported the Chinese narrative of praising Beijing's response both domestically and internationally.¹⁷

In comparison, the EU scored higher than both China and Russia, but the margin did not leave much room for complacency. Overall, only a 38% of the responders considered the EU to have played an important and effective role in fighting Covid-19 in their members states, with a range from 21% in Czechia, to 45% in Latvia, Lithuania, and Romania. National governments scored spectacularly higher than the EU, with approval rates reaching 80% in Denmark, 72% in the Netherlands and 71%

¹⁵ J. Brandt and B. Schafer (2020), 'Five things to know about Beijing's disinformation approach', German Marshall Fund of the US, 30 March; also S. Cook (2020), 'Beijing's Global Megaphone', Freedom House.

¹⁶ C. Sciubba Caniglia (2020), 'Signs of a New World Order: Italy as the COVID-19 Disinformation Battlefield', *Harvard Kennedy School Misinformation Review*, 1(3).

¹⁷ R. Bernard, G. Bowsher, R. Sullivan and F. Gibson-Fall (2021), 'Disinformation and Epidemics: Anticipating the Next Phase of Biowarfare', *Health Security*, 19(1): 3–12.

in Germany. On the lower end, responders from Poland had the least to say about the role of their governments in fighting the pandemic, with only 36% replying that it was important and effective – still higher than the 35% of the EU.

Further analysis suggests that there is little meaningful variation of Chinese approval rates based on the political self-identification of the responder. Both the left and the right spectrum showed similar results, from 30% to 34% respectively, and even a 27% of the responders identifying with the centre answered that China had an important and effective role in fighting the pandemic in their country. This came in stark comparison to the corresponding approval rates of Russia, where different political identifications correlated with opposite view of Russia. Responders on the right and the far right of the political spectrum were more positive towards Russia (21%–27%), whereas those on the left and the far left felt that Russia not an important and effective partner in fighting Covid-19. Finally, perception based on age suggests that, although the basic trend-line of approval ratings remains the same, younger responders between 18 and 34 years old, generally held more positive views of both China and Russia. In Italy 48% of responders between 18 and 34 years old believed that China was important and effective in fighting the pandemic, whereas 42% of responders in that age bracket in Bulgaria believed the same for Russia.

The results are far from conclusive, but at the very least they offer an interesting snapshot of public perceptions in Europe during the pandemic, in which China – and to a lesser degree Russia – have found and have exploited penetration points to influence public opinion. And although the EU approval rates are generally higher, Chinese influence is comparable to the positive views that responders had of the bloc's role in fighting the pandemic. What is more, based on political developments that took place later (e.g., vaccination rollout delays in the EU, national vaccination programmes using Chinese and Russian vaccines), it is valid to assume that Chinese and Russian influences in Europe increased further after the survey was conducted.

Finally, the survey did not cover the entirety of the EU, and although it was missing data from important non-EU regions such as the Western Balkans. The latter is indeed significant and needs more attention by future research, not only in the sense that it is an EU enlargement region, but also because in the context of the pandemic Russian and Chinese disinformation in the area was more intense than usual. This, in combination with delays in European assistance with the pandemic may have instilled a public perception of 'abandonment' that could be easily manipulated in the near future. Nevertheless, the results seem to substantiate the claim that both China and Russia have used the Covid-19 pandemic as a leverage in influencing public opinion perceptions in Europe. This raises additional questions on the future impact of online

disinformation and foreign influence, the intensification of great power competition, and the devolution of the liberal international order into a more multipolar world.

Multipolarity and disinformation in Cyberspace: EU Policy Recommendations

In 1990, in a seminal article for *Foreign Affairs*, Charles Krauthammer described the end of the Cold War as the 'unipolar moment' of the United States, being as it was the unchallenged superpower of the world.¹⁸ Krauthammer was quick to point out that this was not a permanent condition of the international system and that multipolarity would return, in time. The return of multipolarity has been a much-debated hypothesis in international relations.

More recently, in the *World Order*, Henry Kissinger described systemic-wide challenges, namely, the changing nature of the sovereign state, the reaction to globalisation and the lack of effective global governance as the factors that are pulling the liberal world order apart.¹⁹ Other scholars argued that there was something inherently unbalanced in a unipolar world; or that a multipolar arrangement produces more equitable results and therefore great powers tend to prefer it.²⁰ Others still saw the relative decline of US power and the rise of emerging powers as the root cause of multipolarity.²¹ Although the literature still debates the root causes of multipolarity, the rise of China and Russia, among others, means in practice that a multitude of actors become assertive and challenge the established international order with its norms and institutions.²²

This new multipolarity is different in the way information and communication technologies have given plenty of non-military options for capable states to project their power. Foreign influence is nothing new, but information technology has increased the scope and the intensity of the tools that states have at their disposal to influence foreign publics; to such an extent that states now fight in cyberspace for the minds and the

¹⁸ C. Krauthammer (1990), 'The Unipolar Moment', *Foreign Affairs*, 70(1): 23–33.

¹⁹ H.A. Kissinger (2014), *World Order* (New York: Penguin).

²⁰ For example see, S.M. Thomas and D.H. Sacko (2007), *The Unipolar World: An Unbalanced Future* (Cham: Palgrave Macmillan); C. Chari (ed.) (2008), *War, Peace, and Hegemony in a Globalized World* (Abingdon: Routledge).

²¹ M. Jacques (2009), *When China Rules the World: The End of the Western World and the Birth of a New Global Order* (London: Penguin); J. Clegg (2010), *China's Global Strategy: Towards a Multipolar World* (London: Pluto Press); O. Stuenkel (2017), *Post-Western World: How Emerging Powers are Remaking Global Order* (Maiden, MA: John Wiley & Sons).

²² S. Ward (2017), *Status and the Challenge of Rising Powers* (Cambridge: Cambridge University Press).

hearts of the population²³. Our societies depend on networks not only to exchange money and products, fulfil bureaucratic procedures, provide healthcare, and organise energy supply, but also to form opinions that will lead to collective decisions.

Existing geopolitical conflicts, interstate rivalries and ideological confrontations have gone cyber: far from being an egalitarian 'global village', the Internet has become a 'virtual battlespace'.²⁴ Revisionist states, but also terrorist groups and other non-state actors are using cyberspace to their maximum advantage, to apply more pressure on liberal democracies²⁵. Competition in the information domain during the pandemic is proof that every crisis adds an additional pressure point on the liberal international order.²⁶

To deal with this distinct possibility now and in the future, the EU should:

- *Equip EAAS with a clear mandate and appropriate funding to monitor, research and counter Chinese disinformation.* Raising public awareness of disinformation operations and exposing strategic narratives, has proven its value against Russian influence in Europe.²⁷ The results of the survey suggest that Russian disinformation is less effective in penetrating European publics. But as it currently stands, the EU does not have adequate resources to fight disinformation from China. In this respect, the EU must build on the success of the East StratCom unit and expand its scope to include China and other disinformation actors.
- *Integrate strategic communications and countering disinformation efforts on every level of European foreign policy and external action.* Foreign influence and disinformation are not standalone foreign policy

²³ A. Nestoras (2019), 'Political Warfare: Competition in the Cyber Era', *European View*, 18(2): 258.

²⁴ M.M.E. Manjikian (2010), 'From Global Village to Virtual Battlespace: The Colonizing of the Internet and the Extension of Realpolitik', *International Studies Quarterly*, 54(2): 381–401.

²⁵ A.-M. Brady (2015), 'Authoritarianism Goes Global (II): China's Foreign Propaganda Machine', *Journal of Democracy*, 26(4): 51–59; M. Galeotti (2017), 'Controlling Chaos: How Russia Manages its Political War in Europe', European Council on Foreign Relations, 1 September; A. Kendall-Taylor and D. Shullman (2018), 'How Russia and China undermine democracy: can the West counter the threat?' *Foreign Affairs*, 2 October; R. Doshi, 'China steps up its information war in Taiwan', *Foreign Affairs*, 9 January; A. Legucka (2020), 'Russia's long-term campaign of disinformation in Europe', Carnegie Europe, 19 March.

²⁶ K.M. Campbell and R. Doshi (2020), 'The coronavirus could reshape global order', *Foreign Affairs*, 18 March; for the opposite view, see D.W. Drezner (2020), 'The Song Remains the Same: International Relations After COVID-19', *International Organization*, 74(S1), E18–E35. doi:10.1017/S0020818320000351.

²⁷ J. Pablo Villar García, C. Tarín Quirós, J. Blázquez Soria, C. Galán Pascual and C. Galán Cordero (2021), 'Strategic Communications as a Key Factor in Countering Hybrid Threats', European Parliament Research Service.

tools, but they permeate and complement all other foreign policy tools and objectives. Similarly, countering disinformation should be streamlined in EU external action and in dealing with all regions and key partners, i.e., accession countries, Eastern Partnership, Africa, and Southeast Asian nations. In addition to centralised EEAS efforts, EU delegations need also dedicated StratCom teams.

- *Consider the creation of a 'tech ambassador' or an EU delegation that deals exclusively with technological hubs and non-state actors.* Such an institutional innovation can boost EU cyber diplomacy, the representation of EU interests, standards, and values online. If public opinion is formed online, and if disinformation and foreign influence use more and more sophisticated technological tools to influence public opinion, then our efforts should focus on working with the most capable partners to coordinate efforts, align priorities and develop tools to counter disinformation.
- *Undertake European legislative initiatives to inhibit the 'political economy of disinformation'.* Beyond exposing disinformation, attention needs to be given to legal frameworks concerning traditional media and digital platforms. On the one hand, Europe could use more strict rules of ownership and control of local media outlets, by foreign state-owned enterprises. On the other hand, a new approach to the liability of platforms over the content they publish is needed.
- *Call for an international 'Cyber Treaty' that will enact and enforce ethical standards for state behaviour in cyberspace.* Modelled on its leadership in environmental governance, the EU should strive to become a leader in ethical regulation of technology, the creation of cyber-norms and the development of international frameworks for cooperation in cyberspace. Many regulatory frameworks are in place (e.g., GDPR) and others are underway or updated (AI and NIS2). The EU could use this momentum to call for a binding international agreement in collaboration with the US and other liberal democratic partners.

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Policy Paper

EU Taxonomy and Nuclear Energy: How to Fix Europe's Energy Crisis while also Achieving Climate Neutrality

Mark Lynas¹

Abstract

Never waste a good crisis. As gas prices spike and European citizens face dramatic increases in electricity bills – or even the threat of energy shortages and blackouts – there has never been a better time to ask why things have gone so wrong and how they can be put right. For too long, European energy policy has been ideological, unscientific, expensive, undemocratic, and risky. With the climate crisis and the energy crisis now converging, we have only one chance to change the game before it is too late.

What is the EU taxonomy?

The EU taxonomy is a classification system defining economic activities that are environmentally sustainable. Following in the wake of the EU Taxonomy Regulation that came into force in 2020, it aims to provide security for investors and policymakers to help them drive investment into the EU green deal, without each investment having to be considered separately.²

The EU taxonomy codifies what is considered sustainable in any future financing of energy. However, there is ongoing debate about what it should and should not include. The taxonomy necessarily includes renewables, for which there is a broad political consensus. Unabated gas is unlikely to be included since it is a fossil fuel, and even if it produces

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² European Commission, 'EU taxonomy for sustainable activities', https://ec.europa.eu/info/business-economy-euro/banking-and-finance/sustainable-finance/eu-taxonomy-sustainable-activities_en.

fewer emissions than coal it will prevent Europe from attaining its climate targets if it remains in use after the net zero date of 2050.³

Nuclear fission, on the other hand, is sustainable and must qualify if the taxonomy is to have any scientific integrity. Yet objections to nuclear abound. Often ideological rather than evidence-based, anti-nuclear arguments date back to the origin of the Green Movement in the 1970s. To explore current political disagreements about whether nuclear can be qualified as sustainable, in 2020 the Commission launched in-depth expert research to gather the latest facts. In March this year, the Joint Research Centre (JRC), the Commission's in-house science and knowledge service, issued a technical report on nuclear energy.

The JCR report detailed all the familiar objections to nuclear and provides the scientific evidence on which the taxonomy should be based.⁴ It concluded that anti-nuclear beliefs, however strongly held, should not be allowed to derail Europe's progress towards its zero-carbon targets, which are fundamentally unachievable without dramatically extended use of nuclear power. There are many reasons for this, but, first and foremost, renewables by themselves cannot provide a stable power resource because of intermittency. This means that, without nuclear, fossil fuels will always remain essential for backup.⁵

Don't follow Germany

If nuclear is outside the taxonomy, it will be too expensive and will not get built: investors will not put money into a technology that carries high political risk. In turn, Europe will miss its carbon targets, continue to drive the world into a worsening climate emergency and remain utterly dependent on Russian gas. A recent study suggests that 12 gigawatts of new gas would be needed to replace coal and nuclear in Germany by 2030,⁶ the majority of which will flow down the new Nordstream 2 pipeline, which has conveniently just been finished, as if for this very purpose.

This, for want of a better way of putting it, is the 'German option'. In Germany an ideologically blinkered *Energiewende*, i.e., Germany's plan for transition to low carbon, sustainable energy, has privileged nuclear shutdown over coal reduction, leading to a billion tonnes more CO₂

³ European Commission, 'Climate strategies & targets', https://ec.europa.eu/clima/eu-action/climate-strategies-targets_en.

⁴ European Commission, 'EU taxonomy for sustainable activities'.

⁵ T. Nordhaus (2021), 'In Global Energy Crisis, Anti-Nuclear Chickens Come Home to Roost', *Foreign Policy*, <https://foreignpolicy.com/2021/10/08/energy-crisis-nuclear-natural-gas-renewable-climate/>.

⁶ J. Starn (2021), 'Phasing out coal will require Germany to build new gas plants', *Bloomberg Green*, <https://www.bloomberg.com/news/articles/2021-06-21/phasing-out-coal-will-require-germany-to-build-new-gas-plants>.

being emitted than would have been the case had coal been shut down first.⁷ Meanwhile, a huge investment in renewables has been a figleaf for the building of Nordstream 2, without which the operation of intermittent wind and solar cannot provide reliable energy, even on a daily basis.

Meanwhile, dirty coal will remain on the German grid until 2038 following the coal phase-out agreement struck in 2019 between Angela Merkel, industry, and the Greens.⁸ Consider that Europe, which talks a good game on climate, is actually the worst kind of climate criminal: we still burn 250 million tonnes annually of coal for power.⁹ According to a recent scientific paper on the mortality cost of carbon, each 4,400 tonnes of CO₂ emitted equates to approximately one death.¹⁰ Germany's additional billion *Energiewende* carbon from coal will add up to 226,000 additional deaths, according to this metric. This is in addition to the many thousands who die from coal-related air pollution. Overall, Europe's coal consumption equates to a death toll of 57,000 per year – this is like a Chernobyl disaster every two weeks. Germany's anti-nuclear lobby talks a lot about Chernobyl but says very little about the mortality cost of carbon.

Alternative routes

A cleaner energy policy would balance intermittent renewables with another zero-carbon energy source. So what candidates are there? Hydroelectricity is fundamentally limited by geography and has damaging impacts on river ecosystems.¹¹ Biofuels are simply not scalable: running national electricity systems on woodchips means huge land-take and the destruction of forests, either in Europe itself or abroad.¹²

Batteries are orders of magnitude too small: they can balance grids for seconds or minutes, but certainly not for months, and, given the costs and

⁷ S. Evans (2019), 'Analysis: How far would Germany's 2038 coal phaseout breach Paris climate goals?', *Carbon Brief*, <https://www.carbonbrief.org/analysis-how-far-would-germanys-2038-coal-phaseout-breach-paris-climate-goals>.

⁸ M. Wacket (2019), 'Germany to phase out coal by 2038 in move away from fossil fuels', *Reuters*, <https://www.reuters.com/article/us-germany-energy-coal-idUSKCN1PK04L>.

⁹ K. Kallemets (2021), 'Viewpoint: energy crisis demands quickly-scalable SMRs', *World Nuclear News*, <https://www.world-nuclear-news.org/Articles/Viewpoint-Energy-crisis-demands-quickly-scalable-S>.

¹⁰ R. Daniel Bressler (2021), 'The mortality cost of carbon', *Nature Communications*, 12: 4467.

¹¹ E. Moran et al. (2018), 'Sustainable hydropower in the 21st century', *PNAS*, 115(47): 11891–11898.

¹² S. Elbein (2019), 'Europe's renewable energy policy is built on burning American trees', *Vox*, <https://www.vox.com/science-and-health/2019/3/4/18216045/renewable-energy-wood-pellets-biomass>.

shortages of rare earth materials, probably never will.¹³ For example, the largest grid-scale battery in the UK (planned but yet to be built), will have a capacity of 100MW/107MWh, enough to meet the needs of 100,000 homes for one hour at peak demand.¹⁴ Furthermore, the scarce minerals necessary for battery manufacture simply won't be available: they will be allocated, as a priority, to the manufacture of electric vehicles – because to get oil out of transport there is no other viable solution.

Another contender, hydrogen, can be discounted too: not only will it be essential in other sectors such as steel, cement, and aviation, but it is a long way from being able to balance electricity grids, and using it for this purpose will always be extremely inefficient due to the laws of thermodynamics.¹⁵

A reality check

Let's be brutally honest. Apart from nuclear, Europe has only three choices to balance wind and solar while keeping the lights on. That is because these three options are 'dispatchable' power, that can be ramped up and down to balance intermittent renewables as the weather and seasons change.

1. Burning imported biomass (woodchips from other countries' forests)
2. Burning Russian gas (Nordstream 2 or LNG imports exposed to volatile markets)
3. Burning European coal

None of these options should be on the table, for obvious reasons. But without nuclear on the taxonomy, these will be the only choices.

BOX: What EU scientists say about nuclear power

What is the point of asking for expert reviews if the evidence produced by the scientists is rejected for ideological or political reasons? This is what is implied if the JRC's findings about nuclear are not adopted as the basis for inclusion in the EU taxonomy. The JRC categorically rejects the myths advanced by anti-nuclear campaigners and anti-nuclear Member States.

¹³ P. Patel (2021), 'Could sucking up the seafloor solve battery shortage?', *IEEE Spectrum*, <https://spectrum.ieee.org/mine-ocean-battery-metal-shortage>.

¹⁴ S. George (2021), "UK's first" grid-scale battery storage system comes online in Oxford', *EUACTIV*, <https://www.euractiv.com/section/electricity/news/uks-first-grid-scale-battery-storage-system-comes-online-in-oxford/>.

¹⁵ G. Meyer and N. Thomas (2021), 'Hydrogen: the future of electricity storage?', *Financial Times*, <https://www.ft.com/content/c3526a2e-cdc5-444f-940c-0b3376f38069>.

Quotable key finding of the JRC:

The analyses did not reveal any science-based evidence that nuclear energy does more harm to human health or to the environment than other electricity production technologies already included in the Taxonomy as activities supporting climate change mitigation.¹⁶ (p. 7)

Some other common myths busted by JRC report:

Myth: Nuclear is not low-carbon

JRC: Average lifecycle GHG emissions determined for electricity production from nuclear energy are comparable to the values characteristic to hydropower and wind. (p. 9)

Myth: Nuclear produces other pollution

JRC: Nuclear energy has very low NO_x (nitrous oxides), SO₂ (sulphur dioxide), PM (particulate matter) and NMVOC (non-methane volatile organic compounds) emissions. With regard to acidification and eutrophication potentials, nuclear energy is also comparable to or better than solar PV and wind. (p. 9)

Myth: Nuclear uses too much land

JRC: Land occupation of nuclear energy generation is about the same as for an equivalent capacity gas-fired power plant, but significantly smaller than wind or solar PV. (p. 9)

Myth: Nuclear produces huge amounts of waste

JRC: In volumetric terms, the amount of radioactive waste produced by nuclear energy operated on the basis of PWRs [pressurised water reactors] is comparable with (slightly higher than) the amount of chemical waste from some solar PV technologies. (p. 52)

Myth: Nuclear releases dangerous radiation which puts the public in danger

JRC: The average annual exposure to a member of the public, due to effects attributable to nuclear energy-based electricity production is about 0.2 microsievert, which is ten thousand times

¹⁶ European Commission Joint Research Centre, Petten, 2021, 'Technical assessment of nuclear energy with respect to the "do no significant harm" criteria of Regulation (EU) 2020/852 ("Taxonomy Regulation")', JRC124193', https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/210329-jrc-report-nuclear-energy-assessment_en.pdf.

less than the average annual dose due to the natural background radiation. (p. 9)

Myth: Nuclear stations often cause cancer in people living nearby
The probability of dying from long-term cancer for a member of the public living within 10 miles of the [nuclear] plant is in all cases less than 1 in 1 billion per reactor-year. (p. 178)

Myth: Nuclear is a uniquely dangerous technology
JRC: The total impact on human health of both the radiological and non-radiological emissions from the nuclear energy chain are comparable with the human health impact from offshore wind energy (p. 9)

Myth: Nuclear is far more dangerous than renewables or fossil fuels
JRC: The current Western Gen II NPPs [nuclear power plants] have a very low fatality rate ($\approx 5 \times 10^{-7}$ fatalities/GWh). This value is much smaller than that characterizing any form of fossil fuel-based hydropower in OECD countries and wind power (only solar power has significantly lower fatality rate). (pp. 9–10)

Myth: No one knows what to do with the waste
JRC: For high-level radioactive waste and spent fuel, there is a broad consensus amongst the scientific, technological and regulatory communities that final disposal in deep geological repositories is the most effective and safest feasible solution which can ensure that no significant harm is caused to human life and the environment for the required timespan. (p. 11)

When the wind stops blowing

Europe has plenty of climate targets. What it lacks is a realistic energy policy that includes a deliverable plan for abandoning fossil fuels. This failure was fully exposed during the lull period of September 2021, when the winds stopped blowing for weeks across virtually the entire continent and the UK due to slack pressure systems and an inactive jet stream – possibly exacerbated by climate change.¹⁷ Europe's renewables are mostly wind power (excluding hydro, wind makes up 35% of renewables, solar 13%, and biofuels 8%),¹⁸ and there is no large-scale backup other than coal and gas. Coal was brought back, while gas prices increased

¹⁷ S. Bernard (2021), 'Europe's electricity generation from wind blown off course', *Financial Times*, <https://www.ft.com/content/d53b5843-dbe0-4724-8adf-75c66127ea80>.

¹⁸ Eurostat (2020), 'Renewable energy statistics'. https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Renewable_energy_statistics.

dramatically, along with prices for electricity (much of which is fired by gas). Industry had to shut down, while the public faced soaring bills.

This was also a perfect time for Putin to turn down the gas taps, refusing to let Gazprom pump more gas via Ukraine in order to force the expedited approval for the startup of Nordstream 2. Nordstream 2 fully exposes the hypocrisy and short-termism of European renewables policy: it claims to be about 100% renewable, but in reality it means dependence on Russian gas, and not just now or next year but indefinitely.¹⁹ Without significant investment in new nuclear, whenever the wind stops blowing EU Member States will need to go cap in hand to Mr Putin to beg for more gas. With coal out of the picture, there is simply no alternative.

Fission in the future

Nuclear is finally beginning to see a resurgence, even in Europe. The Czech Republic is seeking to use nuclear to attain its climate goals, while Poland is looking to nuclear as a way to repower its coal facilities in a zero-carbon way. For this reason, ministers from both countries wrote last year to the EU Commission supporting the inclusion of nuclear in the EU taxonomy.²⁰ Finland is building new plants, as is the UK.

BOX: New nuclear

Most existing nuclear power plants are referred to as second generation, or Gen II. The EPR plants under construction in Finland, France, and the UK are considered Gen III, due to more advanced safety systems and streamlined operation. Gen IV includes newer designs that do not use water in the reactor core, even in gas-cooled and liquid metal reactors. Most small modular reactors (SMRs) are considered Gen IV: these are designed to be modular and scalable, being built in factories and shipped to sites rather than laboriously put together in situ. Gen IV reactor designs include high-temperature reactors that can produce clean hydrogen for transportation fuels (probably via conversion to ammonia) and the decarbonisation of steel. Advanced reactors now include full passive safety and can even recycle used spent fuel. There is no realistic prospect of fuel limitations: there are tens of thousands of years' worth of nuclear fuel available if breeder and thorium options are utilised.

¹⁹ A. Sabadus (2021), 'Europe's energy crisis highlights dangers of reliance on Russia', *Atlantic Council*, <https://www.atlanticcouncil.org/blogs/ukrainealert/europes-energy-crisis-highlights-dangers-of-reliance-on-russia/>.

²⁰ World Nuclear News (2021), 'Help coal-dependent countries switch to nuclear, ministers tell EU', *World Nuclear News*, <https://www.world-nuclear-news.org/Articles/Help-coal-dependent-countries-switch-to-nuclear-mi>.

Advanced reactors include molten salt storage options that allow electricity production to be quickly ramped up and down to support and complement intermittent renewables, much as gas currently does. Gigafactories of SMRs could be employed to produce hydrogen, with the reactors acting as a reserve option that can be diverted to serve the electrical grid during extended periods of low wind. Nuclear fuel can easily be stored, thus addressing energy security concerns. Zero-carbon targets can be achieved economically and on time, protecting jobs and keeping heavy industry alive in Europe.

Conclusion

To protect the integrity of the taxonomy, the criteria for inclusion must be based on scientific evidence. Carbon capture and storage is included in the taxonomy, despite this being an unproven technology at scale. Gas is being considered for inclusion, despite its being a fossil fuel. *The facts are clear: nuclear is the only large-scale dispatchable source of zero-carbon electricity available without geographical restriction across Europe.* If nuclear fission is excluded, Europe will be less sustainable and we will miss our climate targets, while sending a signal that evidence-based policymaking no longer exists in Brussels. If we are to face the climate emergency squarely, everything must change, including some nations' long-standing cultural aversion to nuclear power. There really is no alternative.

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Research Papers

Research Paper

Clean Hydrogen and the Future of Energy: Investing in a Sustainable Growth for the EU

Ricardo Silvestre¹

Introduction

The European Union is inexorably moving towards transformative transitions: societal, economical, digital, and ecological, among others. One of these transitions, the shift to non-polluting fuels for energy needs, is transversal to several sectors. This will play a crucial role in the development of new solutions for end users, the creation of market opportunities, and environmental protection. As in other significant moments of change, there is a need for bold vision, adjusted and sustainable objectives, smart investments, and the involvement of multiple stakeholders. For that, the best technical solutions and policies need to be implemented. Liberal concepts of economic systems – capital markets, competition, entrepreneurship, and free markets – can play an important role in assisting lawmakers and politicians to find the most successful way to navigate these challenges.

The International Energy Agency predicted at the end of 2019 that global energy demand would continue to increase by possibly 25% to 30% by 2040.² If these needs continue to be supported by the utilisation of coal and oil, there will be a continuous release of greenhouse gases into the atmosphere. The European Commission has proposed, alongside a provisional agreement with the European Parliament and Member States,³ a reduction in the emissions of these gases by at least 55% by 2030.⁴ This aim would have the Union reach a climate neutral economy

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² International Energy Agency (2019), 'World Energy Outlook 2019', <https://www.iea.org/reports/world-energy-outlook-2019>.

³ Council of the European Union (2021), 'European climate law: Council and Parliament reach provisional agreement', 5 May, <https://www.consilium.europa.eu/en/press/press-releases/2021/05/05/european-climate-law-council-and-parliament-reach-provisional-agreement/>.

⁴ European Commission, '2030 Climate Target Plan', https://ec.europa.eu/clima/policies/eu-climate-action/2030_ctp_en.

by 2050, fulfilling its commitments derived from the Paris Agreement.⁵ To make this happen, there is a need to integrate energy networks for smarter, more cohesive, and optimised systems, aiming for the full decarbonisation of industries and economies.⁶ To achieve this, hydrogen production will play a key role. Therefore, the Commission has adopted a hydrogen strategy for climate-neutral Europe⁷ that includes investment plans, roadmaps, policy frameworks, guidelines for research, innovation, and operational needs, and the know-how to develop an international dimension. The development of comprehensive, smart, and economically viable hydrogen strategies, both at the central level and in Member States, will be crucial to keeping European economies competitive and sustainable. In addition, these initiatives will allow the European Union to assume a trans-European, and trans-continental, leadership role in a new global market while guaranteeing energy security and environmental protection.

Among the solutions receiving attention in search of 'the best of both worlds' is having sources of energy that are useful for multiple needs, and in different fields, without causing harmful emissions to the environment. Renewable electricity is one answer but is not fit for all purposes. It needs to be complemented by investments in clean hydrogen value chains. For the moment, hydrogen production is not yet a fully clean option for energy needs. More than 95% of supply is based on natural gas steam reforming or coal gasification, leading to the production of what is labelled as 'grey' hydrogen,⁸ produced from natural gas, and 'black' hydrogen, derived from coal.⁹ However, this causes the release of carbon dioxide (CO₂). Most of these emissions, up to 95%, can be captured for storage or use: a solution called Carbon Capture and Storage (CCS).¹⁰ Hydrogen production from natural gas through methane steam or autothermal reforming with CCS is known as 'blue' hydrogen. Another

⁵ European Commission, '2050 long-term strategy', https://ec.europa.eu/clima/policies/strategies/2050_en.

⁶ European Commission, 'EU strategy on energy system integration', 8 January, https://ec.europa.eu/energy/topics/energy-system-integration/eu-strategy-energy-system-integration_en.

⁷ European Commission (2020), 'Communication from the Commission to the Parliament, the Council, the European Economic and Social Committee and the Committee of Regions. A hydrogen strategy for a climate-neutral Europe', 8 July, https://ec.europa.eu/energy/sites/ener/files/hydrogen_strategy.pdf.

⁸ International Renewable Energy Agency (2020), 'Green Hydrogen. A Guide to Policy Making', https://www.irena.org/-/media/Files/IRENA/Agency/Publication/2020/Nov/IRENA_Green_hydrogen_policy_2020.pdf.

⁹ U.S. Department of Energy Hydrogen Program, 'DOE H2A analysis', https://www.hydrogen.energy.gov/h2a_analysis.html.

¹⁰ European Commission (2021), 'Carbon capture and geological storage', https://ec.europa.eu/clima/policies/innovation-fund/ccs_en.

approach is methane pyrolysis, splitting methane into two parts: a solid, carbon, and a gas, hydrogen. This technique, labelled 'turquoise' hydrogen production, is still in the pilot stage.¹¹ As both pyrolysis and gas reforming can be performed using renewable sources, they are therefore solutions for avoiding the release of CO₂ or reaching negative emissions. Finally, there is 'green' hydrogen, produced via water electrolysis using electricity generated by renewable sources. While still an uncompetitive option due to the associated costs and only making up a small share of the global supply, green hydrogen is widely seen to be on the cusp of a virtuous circle of policy-assisted growth, economies of scale, learning, and cost declines. It furthermore enjoys favoured status as an option for a sustainable, environmentally friendly energy transition.

Naturally, there are considerable costs associated with developing this technology and making it 'scale to fit'. Presently, the production of hydrogen from low- or zero-CO₂ emissions is an expensive endeavour. However, positive signs abound: those costs in the production of electricity from renewable sources are decreasing, and they will continue to do so in the future.¹² Still, investments in the European Union to create a sustainable hydrogen market by 2030 are between €24 and €48 billion for electrolyzers, with €220 to €340 billion to be invested to scale up and connect 80–120 GW of solar and wind energy for conversion into electricity for electrolyzers. There is also the need to adapt end-use sectors. Around €160 to €200 million are required to convert a steel factory in the European Union to be hydrogen compliant. Some €850 million to €1 billion would be needed to create 400 small-scale refuelling stations for land transport.¹³ Adding to that, €65 billion in investments are anticipated for developing hydrogen transport, distribution, storage, and refuelling stations.¹⁴ This projection should be thought of, naturally, as a 'best case scenario'. In recent years, investments have been stable – in the vicinity of around €505 billion – but total energy investments are set to increase.¹⁵

¹¹ C. Philibert (2020), 'Methane splitting and turquoise ammonia', Ammonia Energy Association, 14 May, www.ammoniaenergy.org/articles/methane-splitting-and-turquoise-ammonia.

¹² M. Roser (2020), 'Why did renewables become so cheap so fast? And what can we do to use this global opportunity for green growth?', Our World in Data, 1 December, <https://ourworldindata.org/cheap-renewables-growth>.

¹³ European Commission, 'A hydrogen strategy for a climate-neutral Europe'.

¹⁴ European Commission (2019), 'Hydrogen Roadmap Europe. A Sustainable Pathway for the European Energy Transition', Fuel Cells and Hydrogen Joint Undertaking, January, https://www.fch.europa.eu/sites/default/files/Hydrogen%20Roadmap%20Europe_Report.pdf.

¹⁵ International Energy Association (2021), 'World Energy Investment 2020. Key findings', <https://www.iea.org/reports/world-energy-investment-2020/key-findings>.

The path towards a European hydrogen economy

Policy decisions regarding the mass production of environmentally friendly hydrogen, as well as strategies for the development and implementation of clean hydrogen value chains, will influence the pace of the energy transition. Tasks ahead include identifying high-value applications to create immediate benefits and to assist the scaling up of markets. It will also be important to replace hydrogen that causes carbon emissions with renewable hydrogen in industrial settings, for example, in the refining and production of methanol and ammonia. To account for these needs, the European Commission has launched the European Clean Hydrogen Alliance,¹⁶ which is to play a decisive role in facilitating and implementing the actions proposed in the New Industrial Strategy¹⁷ as well as generate investments to scale up production and develop the conditions for increased demand. Until 2030, around €430 billion are estimated to be applied in these projects.¹⁸ Equally vital are the recommendations of the Strategic Forum for Important Projects of Common Interest regarding joint actions and investments within Member States, as well as the development of a transnational hydrogen supply chain.¹⁹ This is particularly important when some EU countries (like the Netherlands, Poland, and France) have put hydrogen production at the heart of their strategy for dealing with climate, energy, and economic growth,²⁰ while others have presented 'vision documents' (Portugal)²¹ or are developing national hydrogen plans (Austria, Denmark, Italy).²² The desired synergies (some exist already)²³ between Member States will result in a hub,

¹⁶ European Commission, 'European Clean Hydrogen Alliance', https://ec.europa.eu/growth/industry/policy/european-clean-hydrogen-alliance_en.

¹⁷ European Parliament (2020), 'New EU industrial strategy: the challenges to tackle', 17 December, <https://www.europarl.europa.eu/news/en/headlines/economy/20201112STO91445/new-eu-industrial-strategy-the-challenges-to-tackle>.

¹⁸ European Commission, 'European Clean Hydrogen Alliance'.

¹⁹ European Commission, 'Strengthening Strategic Value Chains for a future-ready EU Industry', <https://ec.europa.eu/docsroom/documents/37824/attachments/2/translations/en/renditions/native>.

²⁰ S. Frédéric (2020), 'EU countries agree to "rapidly upscale" hydrogen market', *Euroactiv*, 15 December, <https://www.euractiv.com/section/energy-environment/news/eu-countries-agree-to-rapidly-upscale-hydrogen-market>.

²¹ Portuguese Presidency of Council of Ministers (2020), 'Resolução de Ministros n.º63/2020. Aprova o Plano Nacional de Hidrogénio', Lisbon, 4 August, <https://dre.pt/aplicacao/conteudo/140346286>.

²² International Renewable Energy Agency, 'Green Hydrogen. A Guide to Policy Making'.

²³ Government of the Netherlands (2020), 'Portugal and the Netherlands strengthen bilateral cooperation on green hydrogen', 23 September, <https://www.government.nl/latest/news/2020/09/23/portugal-and-the-netherlands-strengthen-bilateral-cooperation-on-green-hydrogen>.

the Hydrogen Energy Network.²⁴ Finally, it is also important to mention the European Regional Development Fund²⁵ and the Cohesion Fund²⁶ in the context of the REACT-EU initiative for the green transition.²⁷

The path on which carbon-free hydrogen will become the best option for a more sustainable EU industry and economy, as suggested by the Commission,²⁸ is composed of three phases. The first one spans the years 2020 to 2024. In this period, the objectives are installing a minimum of 6 GW of renewable hydrogen electrolyzers and producing one million tons of clean, green hydrogen. It will also include creating regulatory frameworks for a hydrogen market, developing conditions to generate supply and demand, and prioritising the production of renewable energy and low-carbon hydrogen. Investments will be evaluated by the European Clean Hydrogen Alliance, with an Important Project of Common European interest (IPCEI) providing potential national subsidy schemes based on special exemptions attributed by the Directorate General for Competition. However, other funding instruments will also support these kinds of investments, e.g., funds like Next Generation EU,²⁹ InvestEU,³⁰ Strategic European Investment,³¹ and the Energy Trading System.³²

A second phase is set in the window from 2025 to 2030, during which hydrogen 'needs to become part of an integrated energy system',³³ installing a minimum of 40 GW of electrolyzers and ramping up production to six million tons per year. By the end of this period, carbon-free hydrogen is expected to become cost-competitive. Still, demand-side stimuli – such as carbon contracts for difference (CCfD) – will be the ultimate driver of industrial sectors' decarbonisation (e.g., clean steel). Another expected result from this period is the emergence of 'hydrogen valleys', regions with local green hydrogen production with the help

²⁴ European Commission (2020), 'Hydrogen', 11 December, https://ec.europa.eu/energy/topics/energy-system-integration/hydrogen_en.

²⁵ European Commission, 'European Regional Development Fund', https://ec.europa.eu/regional_policy/en/funding/erdf/.

²⁶ European Commission, 'Cohesion Fund', https://ec.europa.eu/regional_policy/en/funding/cohesion-fund/.

²⁷ European Commission, 'REACT-EU', https://ec.europa.eu/regional_policy/en/newsroom/coronavirus-response/react-eu.

²⁸ European Commission, 'A hydrogen strategy for a climate-neutral Europe'.

²⁹ European Commission, 'Recovery plan for Europe. NextGenerationEU', https://ec.europa.eu/info/strategy/recovery-plan-europe_en#nextgenerationeu.

³⁰ European Union, 'InvestEU', https://europa.eu/investeu/home_en.

³¹ European Commission (2020), 'An enhanced INVEST EU programme and New Strategic Investment Facility to help kick-start the economy', <https://ec.europa.eu/info/sites/info/files/economy-finance/investeu-factsheet.pdf>.

³² European Commission, Innovation and Networks Executive Agency (2021), 'Innovation Fund', 4 April, <https://ec.europa.eu/inea/en/innovation-fund>.

³³ European Commission, 'A hydrogen strategy for a climate-neutral Europe'.

of decentralised renewable energy systems. Apart from distribution to satisfy local demand, there should be investment in regional transportation within the European Union.³⁴ That will eventually lead to larger scale transportation, including between Member States, facilitating the transfer of hydrogen from countries which have optimal conditions and use renewable sources for its production to others. The plan is to develop a pan-European energy grid for hydrogen and to have a complete, open, and competitive hydrogen market by 2030. This target of the Commission seems, however, overly optimistic. As a reference point, established energy markets like natural gas have taken considerably more time to mature. There will also be the need to develop partnerships to overcome trade barriers and distortions and to assure equal access even among countries with different plans and approaches.³⁵ Apart from maritime and long-distance land transport, there is also the option of utilising existing gas pipelines with even better transport capabilities after retrofitting.³⁶ Furthermore, adjusting the gas distribution grid and heating equipment could be done in a way to accept higher shares of hydrogen, up to a 50% distribution in 2050 and 70% in 2070.³⁷ Although heating appliances may be technically able to handle such blends, it has been proposed that the investment tipping point is at 20% of the TSO/DSO level. This means that it makes more sense financially for the required investments to be moved towards dedicated hydrogen transport.³⁸

By the third phase, until the year 2050, it is expected that the technology to produce hydrogen with electrolyzers, using electricity from renewable energies, will reach maturity. Along with that, an easier transition to environmentally friendly energy would be able to take place in hard-to-decarbonise economic sectors, or ones that must pay a high cost to achieve this. This will happen thanks to the progressive decarbonisation of Europe's electricity mix and the increasing availability of 100% clean-hydrogen, neutral electricity on the grid. On the other hand, fossil-based hydrogen will face increasing pressure from stringent CO₂ limits and pricing that will impact the (limited) carbon emissions associ-

³⁴ Ibid.

³⁵ Ibid.

³⁶ Kira Taylor (2021), 'MEPs back natural gas as a "bridge" to 100% renewable hydrogen', *Euractiv*, 27 January, <https://www.euractiv.com/section/energy-environment/news/meps-back-natural-gas-as-a-bridge-to-100-renewable-hydrogen>.

³⁷ European Commission (2018), 'In-depth Analysis in Support of the Commission Communication COM(2018) 773', 28 November, https://ec.europa.eu/clima/sites/clima/files/docs/pages/com_2018_733_analysis_in_support_en_0.pdf.

³⁸ Marcogaz (2019), 'Overview of available test results and regulatory limits for hydrogen admission into existing natural gas infrastructure and end use', https://ec.europa.eu/info/sites/default/files/energy_climate_change_environment/events/documents/02.c.03_mf33_background_-_marcogaz_-_infographic_hydrogen_admission_-_j_dehaeseleer_g_linke.pdf.

ated with blue hydrogen. However, a note of caution is needed here. Regardless of all the plans and roadmaps, it is important to keep in mind that until the European Union can reliably depend on the production of carbon-free hydrogen, low-carbon emissions hydrogen will continue to be part of the energy mix.³⁹ Natural gas is expected to serve as a 'bridge' to zero-carbon hydrogen resulting from renewable sources.⁴⁰ However, hydrogen in the broader, systemic decarbonisation context must be seen as a helpful tool rather than a goal. Direct electrification via clean power sources and digital solutions remains – by far – the most effective driver of systemic efficiency. It is equally necessary to account for the kick-start effect of a hydrogen economy supported by a blue/green blend on the market. This will also have the benefit of letting renewable electricity contribute to direct electrification, where this makes the most sense.

Points of concern

Two points are necessary to consider: one is technical, and the other is related to policy choices, namely when observed through a liberal lens, which we will tackle later. In the third phase mentioned above, it is expected that a significant share of renewable electricity will be used for hydrogen production. Some estimations point to an increase of 25%.⁴¹ This means a need for massive energy production from renewable sources. The principle of 'energy additionality'⁴² applies in this case. In situations where there are more productive uses for electricity generated by renewables, this energy should not be diverted to produce hydrogen. As electrification rates rise, this will incentivise natural gas-based electricity production to provide for the growing gap in electricity supply. Here again, blue hydrogen can work as a solution, since it is cheaper to produce than green hydrogen. Clean hydrogen should only be produced from additional renewable energy when supply exceeds the volume commissioned for direct electricity consumption. This includes industry, light transportation, and the electrification of energy grids. This is critical to a successful energy transition and effectively removing carbon-based fuels⁴³ from the energy mix. The source of this additional energy needs to be documented, and this can be performed via power purchase agreements (PPAs) or certifications of origin.

The European Commission is aware of this need, as presented in a 2018 Directive addressing the use of energy from renewable sources: 'The Commission should develop, by means of delegated acts, a reliable

³⁹ K. Taylor, 'MEPs back natural gas as a "bridge" to 100% renewable hydrogen'.

⁴⁰ Ibid.

⁴¹ European Commission, 'A hydrogen strategy for a climate-neutral Europe'.

⁴² International Renewable Energy Agency, 'Green Hydrogen. A Guide to Policy Making'.

⁴³ Ibid.

Union methodology to be applied where such electricity is taken from the grid. That methodology should ensure that there is a temporal and geographical correlation between the electricity production unit with which the producer has a bilateral renewables power purchase agreement and the fuel production'.⁴⁴ The 'temporal correlation' refers to the timing of hydrogen production via electrolysis with the utilisation of low carbon electricity – or, in the case of green hydrogen, zero carbon emissions – and the 'geographical' is the grid connection to hydrogen production, for example, via a shared electricity network. It is good to remember that hydrogen operations should not come at the expense of direct electrification.⁴⁵

Sectors where hydrogen adds maximum value should be given priority. This will prevent competition with other, more immediate solutions for decarbonisation. Once clean hydrogen becomes a more viable and accessible energy vector, these priorities can shift. By then, the renewable electricity-generating capacity will have to have scaled up to the point of enabling both increased direct electricity consumption and increased green hydrogen production. The market will also be a force for change as businesses and enterprises lead the way in emissions reductions. Plans are already being introduced by private companies, including in the power and industrial sectors, to increase the role of renewable energy.⁴⁶ Evidence suggests that companies are increasingly aware of the growing concern about environmental protection and thus adapting their decisions to consumer requests for a sustainable transition in Europe⁴⁷ and elsewhere.⁴⁸

In many sectors, electricity from renewable energy will be a more expedient and cost-effective replacement for unabated fossil fuels than clean hydrogen.⁴⁹ This especially applies to road passenger transportation: with a decline in electric vehicle costs, battery technology

⁴⁴ The European Parliament and the Council of the European Union (2018), 'Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources', *Official Journal*, L328/95, 12 December, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L2001&from=fr>.

⁴⁵ Bellona Europa (2020), 'Hydrogen from Electricity – Setting Sustainability Standards to Meet Innovation, Deployment and Climate Action', <https://network.bellona.org/content/uploads/sites/3/2020/07/Hydrogen-From-Electricity-Setting-Sustainability-Standards.pdf>.

⁴⁶ European Commission, 'In-depth Analysis in Support of the Commission Communication COM(2018) 773'.

⁴⁷ European Commission (2012), 'Study on Incentives Driving Improvement of Environmental Performance of Companies', Ecorys, 8 May, https://ec.europa.eu/environment/pubs/pdf/Incentives_Ecorys.pdf.

⁴⁸ A. Butler (2018), 'Do customers really care about your environmental impact?', *Forbes*, 21 November, <https://www.forbes.com/sites/forbesnycouncil/2018/11/21/do-customers-really-care-about-your-environmental-impact/?sh=10dcbf03240d>.

⁴⁹ International Renewable Energy Agency, 'Green Hydrogen. A Guide to Policy Making'.

developments would allow for longer driving ranges and improved charging capability, making this kind of vehicle a preferred option. It applies to the trucking segment, as well, because hydrogen is widely seen as having a future in this important road transport sub-sector. Because electrification is not an option for large marine vessels or aircrafts over longer distances, these sectors are therefore strong candidates for hydrogenisation. The more wind and solar power generation capacity being built, the more challenging it will become to match electricity supply and demand. There may be periods of considerable excess generation capacity, thus calling for curtailment if there are no means to store the electricity and/or causing severe electricity price volatility. This could be one of the main functions of green hydrogen: to serve as a storage medium for electricity.

The need for investments

To make the contribution of clean hydrogen to a carbon-free economy a reality, investments are needed and will call for the use of European Union funds, contributions from the European Investment Bank, and private financing. The involvement of investors from the private sector should start as soon as possible in order to create a clear picture of these projects and their targets, technologies, and strategic decisions. Private-public partnerships can work as a primary engine for the development of solutions to obstacles regarding the implementation of clean hydrogen plans and roadmaps. This should also include investments in research and development, which will eventually contribute to a decrease in the costs associated with production and utilisation. This joint work will generate know-how and sharing of information between stakeholders, which is advantageous for technological development, consensus creation, the definition of strategies and market priorities, activity coordination, integrated growth, the development of good practices, and organisational success. This will also contribute to risk reduction in the early phases, facilitating the transition from demonstration to commercialisation and allowing companies to build experience while reaping the benefits of participating in initial market developments.⁵⁰ Optimally, the main goal of these partnerships, as well as general plans and roadmaps, is to reach a point where public financing can be discontinued. There are precedents for this kind of model being successful. In 2002, the European Union developed the High-Level Working Group on Hydrogen,⁵¹ which led

⁵⁰ International Renewable Energy Agency, 'Green Hydrogen. A Guide to Policy Making'.

⁵¹ European Commission (2003), 'Hydrogen Energy and Fuel Cells: A Vision of Our Future', Fuel Cells and Hydrogen Joint Undertaking, https://www.fch.europa.eu/sites/default/files/documents/hlg_vision_report_en.pdf.

to the 2004 establishment of the Fuel Cell Technology Platform⁵² that created the Fuel Cells and Hydrogen Joint Undertaking.⁵³

The revision of the 'State aid Framework' in 2021⁵⁴ will allow for the creation of a comprehensive model of support systems for the implementation of the European Green Deal while limiting competitive advantages and adverse effects within Member States. On the demand side, the European Commission is set to apply minimum shares, or quotas, for clean hydrogen or derivatives in certain end-use sectors, like the chemical and transport industries. These should be based on the performance of green hydrogen as a market solution and should also include the contribution of blue and turquoise hydrogen. Since there is still a high level of uncertainty around demand for clean hydrogen, support should target hard-to-abate sectors such as marine and air transportation and high-temperature industrial processes by addressing the cost gap between renewable hydrogen and its fossil-fuel alternatives.⁵⁵ The creation of tendering systems for 'carbon contracts for difference' (CCfD) or contracts with public counterparts will help to incentivise investment by paying the difference between the carbon 'strike price' (a set price for negotiations of derivative contracts) and the real one. Equally, a fixed amount per avoided ton of greenhouse gases emissions could be set, thus bridging the cost gap with conventionally produced products.⁵⁶ CCfDs should also be made available for blue hydrogen production, at a different strike price, covering the relative funding gaps for each technology. Blue hydrogen will be able to deliver similar environmental protection at 95% decarbonisation rate compared to green hydrogen projects. It is expected that the grid mix will only reach 32% renewable electricity by 2030. In such an event, the average decarbonisation rate of green hydrogen will be well below the blue hydrogen potential, putting the 2030 greenhouse gases reduction target at risk.

The creation of a so-called 'liquid market', based on green hydrogen supply and demand, would increase the number of producers and the size of markets, facilitating integration with other energy markets. This will increase investments and help develop smarter strategies for hydrogen production via electrolysis with renewable energies, considering technological developments, geographical solutions, storage, and

⁵² European Commission (2005), 'Deployment Strategy', European Hydrogen & Fuel Cell Technology Platform, https://www.fch.europa.eu/sites/default/files/documents/hfp_ds_report_aug2005.pdf.

⁵³ European Commission (2005), 'Deployment Strategy'.

⁵⁴ European Commission, 'A hydrogen strategy for a climate-neutral Europe', p. 10.

⁵⁵ International Renewable Energy Agency (2018), 'Hydrogen from Renewable Power: Technology Outlook for the Energy Transition', https://www.irena.org/-/media/Files/IRENA/Agency/Publication/2018/Sep/IRENA_Hydrogen_from_renewable_power_2018.pdf.

⁵⁶ European Commission, 'A hydrogen strategy for a climate-neutral Europe', p. 13.

distribution means.⁵⁷ However, a fully functional liquid market should not be expected to emerge until 2045; even then, it may not be only green hydrogen dependent. If, for example, potential blue hydrogen producers do not receive positive investment/acceptance signals from legislators, then these projects will not emerge. There are policy frameworks within the Renewable Energy Directive and the Emissions Trading System,⁵⁸ as with the Next Generation EU fund and the 2030 Climate Target Plan,⁵⁹ for the creation of financial support towards initiatives aiming at the sustainable recovery of the European economy. Emissions trading systems have been a point of interest among academics and policymakers alike.⁶⁰ In addition, the European Union is set to implement measures to protect industries against carbon leakage with a Carbon Border Adjustment Mechanism (CBAM).⁶¹

Liberal view of (new) market growth

Adding to the work done by the European Commission, the European Parliament is also leading the way in creating frameworks for change to happen. This includes the 'phasing-out of hydrogen' production based on the utilisation of fossil fuels, the certification of hydrogen imports, and the avoidance of carbon leakage that is associated with the production and transportation of hydrogen. Notably, the Parliament will closely follow the implementation of incentives to generate demand for this new source of energy, as well as to 'create a European hydrogen market and fast deployment of hydrogen infrastructure'.⁶² However, it is interesting to note that, according to the position of the Committee on Industry, Research and Energy, and also in the European Parliament, low-carbon hydrogen will be recognised to serve as a bridging technology in the short and medium term.⁶³

⁵⁷ European Commission, 'A hydrogen strategy for a climate-neutral Europe'.

⁵⁸ European Commission (2021), 'EU Emissions Trading System. EU ETS', 20 April, https://ec.europa.eu/clima/policies/ets_en.

⁵⁹ European Commission, '2030 Climate Target Plan'.

⁶⁰ R. Forslid (2020), *Carbon Adjustments and Climate Clubs in the EU Context* (Brussels: European Liberal Forum), <https://www.liberalforum.eu/publications/border-carbon-adjustments-and-climate-clubs-in-the-eu-context/>.

⁶¹ K. Mathiesen and P. Tamma (2021) 'Europe's plan to tax the world into climate ambition', 21 April, https://www.politico.eu/article/europes-plan-to-tax-the-world-into-climate-ambition-joe-biden-frans-timmermans/?utm_medium=Social&utm_source=Twitter#Echobox=1619115166.

⁶² European Parliament (2021), 'Renewable hydrogen: what are the benefits for the EU?', 17 May, <https://www.europarl.europa.eu/news/en/headlines/society/20210512STO04004/renewable-hydrogen-what-are-the-benefits-for-the-eu>.

⁶³ European Parliament (2021), 'Report on a European Strategy for Hydrogen', Committee on Industry, Research and Energy, https://www.europarl.europa.eu/doceo/document/A-9-2021-0116_EN.pdf, p. 12.

Regardless of what funding mechanisms are made available, including European funds, it is important that financial or fiscal supports are direct and transparent. This applies to hydrogen markets and the generation of electricity from renewable sources, including flexibility of services, increased renewable energy production, and more incentives for exploring renewable sources as carbon-free hydrogen production moves on to the third phase of implementation. During that period, there should be competitive market growth, both on the supply and demand sides. Direct financial incentives, either central (European Union) or local (Member States), should be discontinued, privileging private capital for hydrogen production and delivery to end-point users.

From the outset of this new ambitious EU undertaking to preserve the environment for future generations – while still maintaining European economies' competitiveness and sustainability by leading the way in producing a (new) market for carbon-free hydrogen – liberal values are essential to ensure that this market is free, open, and with strong participation of the private sector. European Union and Member States' initial investments and regulations are vital. However, as the phases progress towards the massification of production, distribution, and utilisation of clean hydrogen, the market should have the opportunity to regulate itself to the benefit of not only end users but also industry. This is particularly important because some EU Member States that already have optimal conditions to garner energy from renewable sources will have to break from the tradition of excessive governmental intervention combined with poor planning and execution. However, the conditions are set for an auspicious start and, I hope, a more sustainable and prosperous future.

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Research Paper

Unlocking EU Roads: The Importance of Policy for Automated Driving

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Abstract

The concept of self-driving vehicles has grown beyond a sci-fi fantasy and could be the next step in vehicle mobility. EU regulators are being approached by the automotive industry, which is already calling out for the necessary preconditions, yet uncertainty remains a key issue. This paper aims to present a clear and synthesised overview of self-driving regulations in the EU. It argues that certain regulations such as those regarding type approval, need to be either updated or reinvented, thus allowing the UNECE and its subsidiary bodies to refer to appropriate legislation in technical decision-making and hopefully meet more frequently in order to keep up with technological developments. Aligning the EU's ambitious vision of CAM with a proper policy framework calls for establishing a European identity in the development of automated driving.

Introduction

The automatisisation of vehicles can be understood as a response to an increasingly values-driven society. By reducing the human factor, the automotive industry can make a substantial attempt at making transportation safer, more sustainable, and more inclusive. This aspiration can be realised if different areas of technical expertise work together with the automotive industry in order to make automatisisation safe and reliable, e.g., with the technological developments of intelligent software systems (AI) and 5G networks. But the industry alone cannot push for change all by itself.

Legislation plays a key role in allowing this new technology to be both tested and deployed, which in turn reflects the geographical disparity in the deployment of automated driving. One commonly addressed issue is how a Palo Alto-based car company's autopilot functions are generally allowed across the US, while to a large extent they are restricted or

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prohibited within the EU. Thus, questions have been raised over why EU regulators are hindering the introduction of automated vehicles in Europe.² In order to understand this discrepancy in deployment, one has to understand how EU regulations and policy on issues such as liability and type approval are set out, as well as how the relevant decision-making bodies work with approving automated driving systems. Whether the vehicle is equipped with driver assist functions, such as speed monitoring and lane-keeping assistance, or fully adopts the human task of driving from point A to point B, this is inevitably the direction the automotive industry is heading towards.

Automated vehicles explained and contextualised

How can an automated vehicle be understood today and/or in the future? What possibilities and challenges arise with the deployment of automated driving? To answer these questions, it has to be understood that the automatisisation of vehicles not only relates to developing certain technical standards of the vehicle but also places considerable demands on the whole transportation infrastructure. Automatisisation is not a task for the automotive industry alone but instead stretches across multiple industries.

Connected infrastructure

The communication needs of an automated vehicle are a convincing argument for the rollout of the 5G network on roads. A future 5G infrastructure would not only enable automated driving but is also crucial for connected driving, with its reliance on sound and fast connections.³ Here, there seems to be a consensus, as the EU's digital strategy supports 5G cross-border corridors; one reason for this is the deployment of Connected and Automated Mobility (CAM).⁴ Germany has already implemented 5G coverage requirements in spectrum allocations, with the target of covering all federal highways, national, and state roads by 2024.⁵ Another context in which automated driving should be considered in the

² A. Voigt (2020), 'Safety as the #1 priority for semi-autonomous vehicles requires a reform of European regulations', Clean Technica, 5 December, <https://cleantechnica.com/2020/12/05/safety-as-the-1-priority-for-automatic-driving-vehicles-requires-a-reform-of-european-regulations/>.

³ P. Dialani (2021), '5G is pivotal for autonomous cars and auto industry', Analytics Insight, 2 January, <https://www.analyticsinsight.net/5g-is-pivotal-for-autonomous-cars-and-auto-industry/>.

⁴ European Commission (2021), '5G cross-border corridors', 9 March, <https://digital-strategy.ec.europa.eu/en/policies/cross-border-corridors>.

⁵ Bundesnetzagentur, 'MobileProject-2018', https://www.bundesnetzagentur.de/EN/Areas/Telecommunications/Companies/FrequencyManagement/ElectronicCommunicationsServices/MobileBroadbandProject2018/project2018_node.html.

future is in connection with electric road systems (ERS). Experts argue that automatisisation and electrification go hand in hand, while electric vehicle batteries could be heavily reduced when vehicles can be charged on the road instead of carrying onboard energy storage. With automated vehicles requiring a lot of energy to power different components and systems, ERS could make them more reliable.⁶

Cross-competence collaborations

As automated driving technologies develop, the number of stakeholders is rapidly increasing. Both software and hardware equipment are becoming more complex in order to functionalise with autonomous solutions; hence, skills in AI, computing, and cloud services are demanded, which in turn has led to different cross-competence collaborations.

For several years, a large telecommunications company has been performing cybersecurity tests related to 5G, featuring IoT devices and in collaboration with automakers developing automated and connected vehicles.⁷ This is a crucial aspect, due to these devices' vulnerabilities related to potential AI shortcomings, and their access to personal data could act as an incentive for hijacking.

Most automated vehicles require over-the-air services such as software updates. Still, of course, it is likely that large entertainment systems will also be part of them as the driver's task is transferred to the vehicle. Some even compare the development of automated vehicles to smart phones: these computerised functions could run on the same wireless network.⁸ Consequently, it did not come as a surprise when Microsoft and the Volkswagen Group announced their new collaboration on a new digital platform where over-the-air driving functions could be made available rapidly and on a large scale.⁹ What we can see is that highly automated vehicles require different fields of expertise to complement each other; furthermore, issues commonly foreign to traditional automakers, whether these be cybersecurity threats or software engineering, can be solved in a competent manner through these kinds of collaborations.

⁶ Rise Research Institute of Sweden, 'The connection autonomous driving and electrification', <https://www.ri.se/en/what-we-do/expertises/electrified-autonomous-vehicles>.

⁷ Ericsson, 'Cybersecurity testing and certification', <https://www.ericsson.com/en/portfolio/digital-services/transform-business/device-and-network-testing/device-and-application-verification/cybersecurity-testing-and-certification>.

⁸ J. Lanhee Lee and S. Nellis (2020), 'How Big Tech is helping transform cars into smartphones', Reuters, 9 January, <https://www.reuters.com/article/us-tech-ces-autos-idUSKBN1Z81AG>.

⁹ Microsoft News Center (2021), 'Volkswagen Group teams up with Microsoft to accelerate the development of automated driving', 10 February, <https://news.microsoft.com/2021/02/10/volkswagen-group-teams-up-with-microsoft-to-accelerate-the-development-of-automated-driving/>.

Cybersecurity

Data sharing between objects over the cloud, also known as the Internet of Things (IoT), relates to both automated driving technology and 5G. However, data flow imposes great risks.

A report from JRC and ENISA shows how AI weaknesses in autonomous vehicles pose cybersecurity risks and that vehicle malfunctions can have either intentional or unintentional causes. The traffic environment could be manipulated, or the automated vehicle's computing system could simply make a misinterpretation. The report was published just as vehicle manufacturers are preparing for the upcoming WP.29 cybersecurity regulation, which is to be implemented for all new vehicle types from July 2022. For all newly produced vehicles, it will be mandatory from July 2024. The report is an important step in creating future AI legislation, which is crucial for enabling AI in automated vehicles. The recommendations that follow in order to prepare decision-makers are, for example, that the driving system must undergo systematic security validations throughout the AI lifecycle, which extends the responsibility of the manufacturer further. The report also claims that cybersecurity policies should be developed along the supply chain so that resilience is not affected by security breaches in supply chain management.¹⁰ The latter recommendation is worth being considered, as it could prove challenging for automakers to keep cybersecurity risks at a minimum when different components of the vehicle, such as software systems, are developed by third-party suppliers. How information can move freely but safely is also relevant when discussing automated vehicles and their communications needs as part of the digital infrastructure – be it with other vehicles, the cloud, or other parts of the future infrastructure.

Guidelines and strategies on automated driving in Europe

The European Commission's views on CAM

The European Commission uses the concept of Connected and Automated Mobility (CAM) when referring to automated vehicles. The terminology implies a vision, similar to what has been mentioned above, of automated vehicles as part of a digital and connected infrastructure. 5G corridors are part of this vision, where vehicles should be able to move smoothly across borders without risking connection breaches. The Commission has two initiatives in order to support the deployment of CAM: The Cooperative Intelligent Transport Systems (C-ITS) and the

¹⁰ European Union Agency for Cybersecurity & Joint Research Centre (2021), 'Cybersecurity challenges in the uptake of artificial intelligence in automated driving', ENISA, 11 February, <https://www.enisa.europa.eu/publications/enisa-jrc-cybersecurity-challenges-in-the-uptake-of-artificial-intelligence-in-autonomous-driving/>.

High Level Group GEAR 2030.¹¹ C-ITS is part of the Commission's strategy for the horizontal deployment of intelligent transport systems. This means that both vehicles and infrastructure would be equipped with ITS, in other words digital technologies, and the C-ITS would enable communication between each unit and ITS.¹² Through this high performance infrastructure on roads and for road users, warnings of harmful traffic situations or congestion could be communicated.¹³ The Commission, together with road authorities on the C-ROADS platform, brings this initiative in order to harmonise the deployment of C-ITS across Europe.¹⁴ The working group GEAR 2030 was launched in 2016 in order to work towards a coherent and appropriate policy framework for CAM to be put into place by 2030. In 2018, this resulted in a strategy for automated mobility within the EU, including policy recommendations, which are discussed further ahead in this paper under 'The EU's view on liability'.¹⁵ Another initiative is the innovation project Horizon 2020, co-funded by the Commission. This sprung the L3Pilot project, a large-scale pilot project on automated driving in Europe that launched September 2017 and is still underway.¹⁶ More about the L3Pilot can be found under the 'Testing on open roads' section of this paper.

UNECE's framework

In 2019, a framework was set by the World Forum for Harmonization of Vehicle Regulations to guide the regulatory work of the United Nations Economic Commission for Europe (UNECE) in autonomous/automated vehicle levels 3–5. The framework puts safety as the number one cornerstone of the development and deployment of automated vehicles, stating that 'The level of safety to be ensured by automated/autonomous vehicles implies that an automated/autonomous vehicle shall not cause

¹¹ European Commission, 'Shaping Europe's digital future', <https://digital-strategy.ec.europa.eu/en/policies/connected-and-automated-mobility>.

¹² European Commission (2016), 'A European strategy on Cooperative Intelligent Transport Systems, a milestone towards cooperative, connected and automated mobility', 30 November, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016DC0766&from=EN>.

¹³ European Transport Safety Council (2017), 'Cooperative Intelligent Transport Systems (C-ITS)', <https://etsc.eu/wp-content/uploads/ETSC-Briefing-on-Cooperative-Intelligent-Transport-Systems-C-ITS.pdf>.

¹⁴ C-roads, 'Harmonisation of C-ITS related deployments throughout Europe', <https://www.c-roads.eu/platform/about/about.html>.

¹⁵ European Commission (2018), 'On the road to automated mobility: An EU strategy for mobility of the future', 17 May, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1527002536861&uri=CELEX:52018DC0283>.

¹⁶ European Commission (2019), 'Extensive tests to steer the future of self-driving cars', 5 June, <https://ec.europa.eu/research-and-innovation/en/projects/success-stories/all/extensive-tests-steer-future-self-driving-cars>.

any non-tolerable risk, meaning that automated/autonomous vehicle systems, under their automated mode (ODD/OD), shall not cause any traffic accidents resulting in injury or death that are reasonably foreseeable and preventable.¹⁷ This also means that the automated driving functions must comply with all road traffic regulations in order to ensure road users' safety.

The framework outlines a priority list of topics regarding the work of automated vehicles, stretching from System Safety to the Data Storage System for Automated Driving (DSSAD) and Event Data Recorder (EDR). Draft proposals covering these thematic safety priorities have been drafted by the Working Party on Automated/Autonomous and Connected Vehicles (GRVA), which since 2018 consists of four technical expert groups, in order to accelerate the harmonisation of regulations in the development of automated vehicles.¹⁸ These expert groups are important decision-making bodies, as they have the role of setting the technical standards and requirements for automated vehicles, and their work is highly influenced by the safety priority of the framework. More about how the GRVA works will be further discussed in the section 'The work of WP.29' of this paper.

Current international regulations

International conventions

For a long time, the most significant regulation regarding road traffic has been the Vienna Convention on Road Traffic. The main legal limitation on the development of automated vehicles has been Article 8 of the Convention, which states that all moving vehicles must have a physical driver in control of the vehicle, something that restricts the possibility of highly automated driving functions.

In 2016, an amendment entered into force that further defined the meaning of being in control of the vehicle. This can be found in Article 34, which states that the above requirement in Article 8 is deemed satisfied if the vehicle is equipped with an automated driving system that complies with domestic and other international regulations.¹⁹ This removed the main obstacle regarding the development of automated driving amongst

¹⁷ UNECE (2019), 'Revised Framework document on automated/autonomous vehicles', 3 September, <https://unece.org/DAM/trans/doc/2019/wp29/ECE-TRANS-WP29-2019-34-rev.1e.pdf>.

¹⁸ UNECE (2019), 'Safety at core of new Framework to guide UN regulatory work on autonomous vehicles', 3 September, <https://unece.org/transport/press/safety-core-new-framework-guide-un-regulatory-work-autonomous-vehicles>.

¹⁹ UNECE (2020), 'Report of the Global Forum for Road Traffic Safety on its eighty-first session', 14 December, <https://unece.org/sites/default/files/2021-01/ECE-TRANS-WP.1-173-Add1e.pdf>.

the states that have ratified the Vienna Convention. However, as the convention still specifies drivers, fully autonomous driving is not yet possible.

UN regulations

With this obstacle removed, we can focus on the regulations. The most prominent regulation is the UN Regulation on Automated Lane Keeping Systems (ALKS), which was the first binding regulation regarding level 3 in automated driving when it entered into force in January 2021.²⁰ In short, level 3 means that the driver is not driving when the automated driving system is engaged but must be able to intervene when the driving system requests it.²¹ The Regulation defines safety requirements for various actions that an automated vehicle has to be able to manage. This includes actions such as emergency manoeuvres, assessing the risks of different optional manoeuvres, and the transition between driver and system control of the vehicle. While ALKS enables higher automated driving functions, it is important to note that the current ALKS Regulation limits the operational speed to 60 km/h.

UN Regulation No. 79 has a substantial impact on the vehicle's steering equipment. The technical requirements in this Regulation have to be met according to the vehicle's type approval, therefore making this a major obstacle regarding which automated vehicles can be put on the roads. In September 2020, a series of amendments proposed by the GRVA were put into force.²² The Regulation now specifies requirements regarding automatic steering functions, as in a lane change procedure, for example. In the case of an automatically initiated manoeuvre, the lane change has to be completed in no less than 3 seconds and no more than 5 seconds. If the lane change is initiated manually by the driver, it shall commence within 3 and 7 seconds. If the automated system fails to operate the lane change within these time spans, the manoeuvre shall be aborted automatically by the system.²³ This regulates automated driving functions on a very detailed level, down to the exact second, regardless of the situation, raising the question of whether this really is the safest manner every manoeuvre should be carried out in.

²⁰ UNECE (2020), 'UN Regulation on Automated Lane Keeping Systems is milestone for safe introduction of Automated vehicles in traffic' [press release], 24 June, <https://unece.org/transport/press/un-regulation-automated-lane-keeping-systems-milestone-safe-introduction-automated>.

²¹ UNECE, 'The 5 levels of driving automation', https://unece.org/DAM/Corrected_5_Levels_of_Driving_Automation.pdf.

²² UNECE (2020), 'Agreement of Supplement 2 of the 03 series of amendments to UN Regulation No. 79', 2 November, <https://unece.org/fileadmin/DAM/trans/main/wp29/wp29regs/2020/R079r4am2e.pdf>.

²³ UNECE (2020), 'Proposal for Supplement 2 to the 03 series of amendments to UN Regulation No. 79 (Steering equipment)', 6 January, <https://undocs.org/ECE/TRANS/WP.29/2020/11>.

The work of WP.29

As mentioned earlier, the UNECE is the leading body regarding policy development of automated vehicles. The main body under the UNECE is the World Forum for Harmonization of Vehicle Regulations (WP.29). WP.29 functions as a global forum for discussions regarding motor vehicle regulations, and its participants are mainly UN member countries. Important regulations, such as the ALKS and Regulation 79, are the product of work carried out by WP.29.

There is, however, a problem. With the rapid development of new technology in automated vehicles, there is a need for equally rapid development of regulations and harmonisation. The WP.29 group convenes only three times per year, and its subsidiary bodies only meet twice a year for important technical decision-making, such as approvals of software updates. The subsidiary bodies consist of experts from each department, and the subsidiary body responsible for automated vehicles is the GRVA.²⁴ In November 2020, the calendar meeting frequency for 2021 of the subsidiary bodies was brought up for discussion by the Commission, whereby it suggested an additional GRVA session in order to keep up with necessary regulatory changes.²⁵ Even though it is unclear if this increased meeting frequency will be recurring annually, it is still doubtful that one additional session will be adequate for the task of accelerated decision-making. The consequence of having such a low meeting frequency is that it may act as a bottleneck, hindering the fast development of international harmonisation regarding the regulation of automated vehicles. This may in turn hamper developments, as the developers risk designing automated driving functions that may not be compatible with future regulations. Investments in R&D resources could thus suffer as a consequence of this uncertainty.

These regulations will soon be accompanied by the WP.29 cybersecurity regulation²⁶ mentioned earlier. This new regulation takes a huge leap, since there has not yet been any previous need for cybersecurity regulations to be as detailed. With all the new advanced technologies that enable vehicles to operate autonomously, it is necessary to have strict regulations regarding the security and integrity of such systems.

²⁴ UNECE, 'General questions related to WP.29 and its subsidiary bodies', <https://unece.org/faq>.

²⁵ European Commission (2020), 'Meeting of the World Forum Advisers Group (E01293)', 19 November, <https://circabc.europa.eu/sd/a/873acd81-9545-44f6-be80-15863285f2cd/WFAG%20minutes%2004.11.2020.pdf>.

²⁶ UNECE (2020), 'Proposal for a new UN Regulation on uniform provisions concerning the approval of vehicles with regards to cyber security and cyber security management system', 23 June, <https://unece.org/DAM/trans/doc/2020/wp29grva/ECE-TRANS-WP29-2020-079-Revised.pdf>.

Current EU regulations

Since practically every EU Member State has ratified the Vienna Convention on Road Traffic, it also has a significant impact on current and future regulations within the EU. As there is no current regulation within the EU regarding road traffic, the Vienna Convention on Road Traffic is deemed to be the leading regulation within the EU, even though it originates from the UNECE.

In April 2021, the European Commission published the long-awaited Proposal for a Regulation on a European approach for Artificial Intelligence (AI Act), which introduces harmonised rules for the development, placement on the market, and use of AI systems in the EU. This regulation based on the risk-based approach, classifies AI systems as a product as well as a safety component of a product in a motor vehicle (which is already subject to EU safety legislation) as high-risk.²⁷ The Regulation was a step in the right direction because the rules for high-risk AI systems deployed in motor vehicles will be laid down within the sector-specific framework, in a manner consistent with AI Regulation, and avoid duplication of governance mechanisms.

Consequently, the draft Regulation doesn't apply directly to motor vehicles. Therefore, the legal requirements for high-risk AI systems used in motor vehicles will be laid down only later when the existing regulatory framework for these products is amended (the Commission will, over time, bring specific rules on AI into the Type Approval legislation/General Safety Regulation), and after which they will need to reflect the main requirements in the Regulation. When the sectorial legislation is amended, the implementation of new AI requirements should also take into account the development cycle length of automotive products.

The EU's view on liability

As the definition of a driver and vehicle control changes, it is natural that questions surrounding liability arise. Who should be held liable in case of an accident? Should it depend on who is in control of the vehicle at the time of the accident, and, if so, how is it determined whether it was the driver or the driving system that caused the accident?

All of these questions were addressed in the communication from the European Commission to the European Parliament regarding the EU strategy for automated vehicles.²⁸ Liability for motor vehicles is

²⁷ European Commission (2021), 'Laying down harmonized rules on artificial intelligence (Artificial Intelligence Act) and amending certain union legislative acts', 2021/0106(COD), 21 April, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52021PC0206>.

²⁸ European Commission (2018), 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, The Committee of the Regions', 17 May, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018DC0283&from=sv>.

primarily addressed through the Motor Insurance Directive²⁹ as well as the Product Liability Directive.³⁰ With regard to the next generation of automated vehicles, the current liability regime seems generally sufficient and balanced.

In broad terms, it can be said that it is the actual circumstances leading up to an accident that are decisive for the attribution of who should be held liable. The driver who is regarded as the cause of an accident is also held liable for the damage through their car insurance.

In light of this, the European Commission recommends that every vehicle equipped with automated driving aids should be equipped with a Data Storage System in order to clarify whether it was the driver or the vehicle's automated system that was in control of the vehicle. If the vehicle's automated system malfunctions in a way that means it can be deemed responsible, the insurer can take legal action against the manufacturer in accordance with the Product Liability Directive. This procedure ensures swift compensation for the victims as well as the possibility for the insurer to be reimbursed by the vehicle manufacturer for its expenditures due to the autonomous system's malfunction.³¹ The Motor Insurance Directive recently underwent an evaluation, and the directive was deemed satisfactory with regards to autonomous vehicles. In line with the current standards, these will be required to have third-party liability insurance.³²

Potential issues with the current regulations

Automated and connected vehicles can significantly improve road safety by reducing fatality rates and accidents. Safety systems (some of which are already deployed in cars) can intervene automatically, faster, and more reliably than a human being.

In some sorts of accidents, it is possible that the driver is the victim. Since the current insurance requirements in the EU only require that

²⁹ Motor Insurance Directive, the European Parliament and of the Council (2009), 'Relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability', 16 September, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0103&from=EN>.

³⁰ Product Liability Directive, the Council of the European Union (1985), 'On the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products', 25 July, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31985L0374&from=EN>.

³¹ European Commission (2018), 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, The Committee of the Regions', 17 May, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018DC0283&from=sv>.

³² European Commission (2017), 'Public consultation on REFIT review of Directive 2009/103/EC on motor insurance', 28 July, https://ec.europa.eu/info/consultations/finance-2017-motor-insurance_en.

insurance covers damages that the accident causes to others, a problem may arise in situations where the automated system was driving and caused an accident with no one except the driver harmed or the car damaged. In these situations, if the car owner does not have a more extensive insurance policy, the only possibility for compensation will be through the regulations in the Product Liability Directive, and the consumer will have to prove that the system was faulty. This burden may be partially lifted if every autonomous vehicle were equipped with a Data Storage System that can at least show that the automated system was driving when the accident occurred. But the consumer will still have to prove that the automated driving system was faulty.

Type approval

The regulation regarding vehicle approval was overhauled in 2018. In order to create more coherence within the EU, the old framework directive was replaced by a new regulation. This was an important step towards harmonisation, since every EU Member State now abides by the same exact regulation. The current regulation entered into force as of 1 September 2020. The legal framework for the approval of motor vehicles is now provided by Regulation (EU) 2018/858, which enables new automation technology to be validated under the EU approval framework. This is done through Article 39, wherein manufacturers may be granted exemptions for new technology that may not yet be compliant with current regulatory acts. Vehicle manufacturers could therefore be granted type approval for new driver systems that EU regulators might not have foreseen when establishing current and new regulations.³³ The duration of the exemption is limited – under it, the manufacturer has to address questions about why the particular vehicle is incompatible with the requirements and describe the testing results which then prove an equivalent safety standard. Every exemption then needs to undergo individual national safety assessments in order to reach the EU market, as with any other type approved vehicle.³⁴

Even though this type of exemption paves the way for new technology to enter the market within the EU, it is mainly meant for small-scale production and is not designed for replication across the industry. It will also be quite a resource-heavy tool. As more and more manufacturers develop countless different driving aids and systems, the need for a new type approval procedure will increase. In designing a new type approval

³³ The European Parliament and the Council of the European Union (2018) 'Regulation (EU) 2018/858 of the European Parliament and of the Council', Official Journal, 30 May, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R0858&from=SV>.

³⁴ Connected and Automated Driving, 'FAQ', <https://www.connectedautomateddriving.eu/faq/>.

procedure, harmonisation should be a central consideration, and this could be helped by making an EU-wide type approval standard.

The introduction of automated vehicles in Europe

Testing on open roads

Access to data is key in the development of automated vehicles, and for data to be gathered, automated vehicles have to travel in live traffic. But the process is slowed down because regulations decide what type of vehicle is allowed on EU roads. The testing of vehicles and prototypes is therefore important in this process.

As earlier mentioned, type approval is regulated partly on a national level, as are testing procedures. Prototypes can be tested on open roads in EU Member States, according to each State's own procedure. This means that testing is regulated by the UNECE as well as by every Member State's own national legislation.³⁵ Testing preconditions vary from country to country, where some have more developed testing procedures for automated vehicles (such as Germany) than others.³⁶ The possibility of large-scale testing across Europe is therefore difficult, since testing licenses are issued by each Member State on its own. Member States do not necessarily highlight the need for the harmonisation of cross-border testing, since each wants its own industry to be in the lead of automation.³⁷

Despite these difficulties, testing in Europe is already underway. The above-mentioned L3Pilot, which is co-funded by the Commission, has been testing automated vehicles on levels 3 and 4 in ten different Member States where special permits for open-road testing have been received since 2017. These tests are pursued in different scenarios, such as on uncongested motorways up to 130 km/h, in urban environments at 25–50 km/h, and in car parks.³⁸

³⁵ Connected and Automated Driving, 'Regulations and policies – National Level', <https://www.connectedautomateddriving.eu/regulation-and-policies/national-level/>.

³⁶ Connected and Automated Driving, 'Regulations and policies – EU-level', <https://www.connectedautomateddriving.eu/regulation-and-policies/national-level/eu/>.

³⁷ R. Kulmala, J. Jääskeläinen and S. Pakarinen (2019), 'The Impact of Automated Transport on the Role, Operations and Costs of Road Operators and Authorities in Finland', Traficom, 12 March, https://www.traficom.fi/sites/default/files/media/publication/EU_EIP_Impact_of_Automated_Transport_Finland_Traficom_6_2019.pdf.

³⁸ T. Louw, N. Merat, B. Metz, J. Wörle, G. Torrao and S. Innamaa (2020), 'Assessing user behaviour and acceptance in real-world automated driving: the L3Pilot project approach', Conference paper, 8th Transport Research Arena TRA 2020, 27–30 April, Helsinki, Finland, https://www.researchgate.net/publication/337032759_Assessing_user_behaviour_and_acceptance_in_real-world_automated_driving_the_L3Pilot_project_approach.

A US autopilot on EU roads?

Going back to the issue of the Palo Alto-based automotive company whose autopilot functions are to a large extent prohibited on EU roads, testing is not possible for the most part. Since October of last year, the company has rolled out a beta version of its Full Self-Driving (FSD) program to a range of customers' cars; many of these functions are not allowed to be activated on EU roads.³⁹ Even though no harmonised regulatory framework for testing automated vehicles is in place in the US, there are still several states that have issued executive orders in relation to automated vehicles.⁴⁰ In California, a bill has been issued that promotes the testing of automated vehicles on public roads.⁴¹ But how could this autopilot function be deployed in Europe?

There are several challenges in this case. Firstly, if the car company wishes to test widely in Europe, they would have to apply for individual test permits from each Member State, though it is uncertain how each permit would be laid out. For a company that already has mass-testing underway in the US, it is uncertain how valuable the data that is derived from Europe would be before testing schemes have been harmonised. Secondly, the autopilot function does not comply with certain regulations, which explains why it has not been activated in Europe. For example, the autopilot function can activate automatic lane-changes, which does not comply with UN Regulation No 79, which requires manual manoeuvring under certain conditions. Even with a restricted, EU-approved version of the autopilot, every software update that has an impact on driving functions, which can appear frequently, could possibly need to be type approved. It is clear that today's regulatory framework in Europe does not benefit higher automated driving functions.

EU Member State initiatives

Germany's existing regulations

Germany is one of the forerunners in enabling autonomous driving. In 2017, Germany passed its first law on autonomous driving. This can be seen as a direct response to the possibilities that opened up with the 2016 amendment of the Vienna Convention. The 2017 law sets up rules

³⁹ J. Hyunjoon (2021), 'Tesla tells regulator that full self-driving cars may not be achieved by year-end', Reuters, 7 May, <https://www.reuters.com/business/autos-transportation/tesla-tells-regulator-that-full-self-driving-cars-may-not-be-achieved-by-year-2021-05-07/>.

⁴⁰ Connected and Automated Driving, 'Testing infrastructure and procedure description', <https://www.connectedautomateddriving.eu/regulation-and-policies/national-level/non-eu/us/>.

⁴¹ Senate Bill No. 1298 (2012), 'Vehicles: autonomous vehicles: safety and performance requirements', 25 September, http://leginfo.ca.gov/pub/11-12/bill/sen/sb_1251-1300/sb_1298_bill_20120925_chaptered.pdf.

for automation up to level 3. Under this regulation, the vehicle's driving systems must comply with all traffic rules in the same manner as a physical person would. The driver may do other things when the system is activated but must be able to intervene at all times when the system requires it. Thus, there must still be a driver who is ultimately responsible, and therefore the driving systems may only relieve the driver of their driving duties in certain situations.

Germany's new draft law

In February 2021, the German Federal Ministry of Transport and Digital Infrastructure published a proposal for the approval of a new law regarding fully autonomous vehicles: the Autonomous Driving Act. The draft proposal was passed by the Federal Cabinet on 10 February 2021 – an important step in the legislative process. If the law enters into force as planned, it would make Germany one of the first countries in the world to grant fully autonomous (level 4+) vehicles in regular operation in certain predefined operational areas. Even though this draft law no longer requires a driver, some human interaction is still inevitable in order to comply with international regulations. This requirement would be fulfilled through a technical supervisor: a person who has to be able to control the vehicle at least remotely. The technical supervisor is ultimately responsible for the operation of the vehicle and for ensuring that all road traffic laws are followed. As was mentioned earlier, Germany is one of the leading countries regarding autonomous vehicles. In the draft law, the German legislature argued that there is a lack of international harmonisation regarding regulations surrounding autonomous vehicles. To wait for such harmonisation was not an option, since doing so would risk Germany's leading position in this area. Without regulations that are in step with developments, a huge opportunity would be lost for Germany to strengthen its position at the top even further.⁴²

The EU's involvement in Germany's legislative process

It is important to keep in mind that this draft law is still subject to several investigations in the legislative process. Since the draft law contains technical regulations, Germany is obliged to undergo a notification procedure, in which the country has to inform the EU Commission prior to the law entering into force, in accordance with Directive (EU) 2015/1535. During this time, the draft enters a three-month standstill period during which it may not be adopted. This means that the EU Commission or other EU Member States may submit a detailed opinion if they consider that the

⁴² For the German draft law, see: Federal Ministry of Transport and Digital Infrastructure (28 February 2021), https://www.bmvi.de/SharedDocs/DE/Anlage/Gesetze/Gesetze-19/gesetz-aenderung-strassenverkehrsgesetz-pflichtversicherungsgesetz-autonomes-fahren.pdf?__blob=publicationFile.

draft creates barriers to the free movement of goods or free information of services or violates EU secondary legislation. If a detailed opinion is submitted, the standstill period is extended by another three months.⁴³ Germany submitted the draft in question and the three-month period ended on 10 May 2021, and it has not been subjected to any detailed opinion provided by neither the Commission nor any EU Member.⁴⁴ This means that the draft law can be adopted on a national level.

Since of 20 May and 28 May, the Bundestag as well as the Bundesrat have passed and approved the draft law. This means that the law will be put into force in a near future, and will make out the first legal framework suited for automated, and even autonomous, driving.⁴⁵

Conclusions

Today, there is a discrepancy between the accelerating pace of technology and the legislative landscape, revealing contradictions that not only are harmful to all invested stakeholders but could also put the legitimacy of the EU as an institution at risk. The EU stands for an open and thriving market that enhances technological developments and social progress. Yet the AV industry is failing to expand here, leaving Europe behind as a market. After reviewing the legal, societal and technical outlines of automated and connected vehicles in the EU, this paper suggests the following measures.

Policy recommendations

- Increased meeting frequency for the subsidiary body GRVA of WP.29
The UNECE and its subsidiary bodies must increase their meeting frequency in order to match the pace of development. With meetings mostly occurring only twice a year, development in the area of the regulation will not be able to match developments in technology, thus acting as a bottleneck. GRVA sessions should be held at least quarterly.
- Strive for global harmonisation
The EU and the UNECE must further work towards harmonisation, globally and in the EU, in order to streamline development. If this is not done, more countries will do what Germany is in the process of doing

⁴³ European Commission, 'The notifications procedure', <https://ec.europa.eu/growth/tools-databases/tris/en/about-the-20151535/the-notification-procedure-in-brief1/>.

⁴⁴ European Commission (2021), 'Draft Act amending the Road Traffic Act and the Compulsory Insurance Act – Act on autonomous driving', 9 February, <https://ec.europa.eu/growth/tools-databases/tris/en/search/?trisaction=search.detail&year=2021&num=81>.

⁴⁵ G.S.K. Stockmann (2021), 'Autonomous driving: From vision to reality – German Autonomous Driving Act comes into force', 8 June, <https://www.gsk.de/en/autonomous-driving-from-vision-to-reality-german-autonomous-driving-act-comes-into-force/#gref>.

now: establishing their own regulations without waiting for global harmonisation. While this is positive in the sense that it forces global bodies like the EU and UNECE to act faster, it may also hamper the work of international harmonisation if every country establishes different regulations. Either the EU embraces Germany's draft law or works fast to develop a regulation that can be applied by all Union Members.

- A type approval system suited for new technology
The EU must adapt its type approval process to be better suited for autonomous vehicles and new technology. The current system does enable new technologies to be type approved, but, since more and more will be released, we may end up with a system that only works through Article 39 in Regulation (EU) 2018/858, which requires every exemption to undergo individual national safety assessments. Instead, the system should be revised to be more compliant with the fast pace of technological development. Since the EU cannot foresee what technology may be developed, it cannot have a type approval system that mainly focuses on existing technology.

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Book Reviews

Book Review

In Defence of the Humanities

Mara Pepine

Battle of the Classics: How a Nineteenth-Century Debate Can Save the Humanities Today by Eric Adler (Oxford University Press, 2020)

Introduction: The humanities past and present

It is already become clichéd to say that the humanities are quickly losing in popularity around the world. For Eric Adler, steeped in the American academic environment, this discussion hits particularly close to home. He recounts a short anecdote that is symptomatic of the way the humanities are treated today: an economics professor disparages them whilst a humanities professor flounders in finding an appropriate apology. In this domain, Adler concludes, the consensus seems to be that the humanities are not doing very well, to say the least. He laments, however, that various apologists of the humanities have been particularly short-sighted. Those wishing to cement the role of the humanities have rarely paid any attention in hindsight to the period before the 1960s. In contrast, Adler's suggestion is to go further back in history and draw upon a highly relevant event of the late nineteenth century: the so-called Battle of the Classics.

The term 'Battle of the Classics' refers to an intellectual dispute that took place in the US between the end of the nineteenth and the beginning of the twentieth centuries. It concerned the role that Ancient Greek and Latin played in American higher education at the time. While the traditionalists were trying to preserve the curriculum based mainly on the classics, their opponents were striving to enrich it with different subjects, from sciences to modern languages. Adler points out that the socio-economic and political circumstances at the end of the nineteenth century parallel those at the beginning of the twenty-first enough to warrant a thorough inspection into what worked and what failed during the Battle of the Classics. Namely, both periods are times of intense social change, large-scale globalisation, and technological advancements. Additionally, these eras are marked by doubts about the usefulness and relevance of the humanities in comparison to other domains of knowledge. Adler intends this book not only as an apology for the humanities themselves but also as a guide for other apologists, as well as a comprehensive picture of the history of the humanities and, consequently, their importance and role in

society. Regardless of which of these facets may interest the reader most, Adler's book certainly provides a detailed account of the position held by the humanities now and throughout history, with a specific focus on the American intellectual landscape.

Defending the humanities: Key weaknesses of the argument

Adler's first order of business is to analyse the arguments – and the reasons for their failure – of those who aimed to defend the humanities in the aftermath of the 2008 financial crisis. Adler laments that many prominent figures in the humanities, despite their laudable efforts to defend their subjects, never seem to agree on what exactly should be studied: which philosophers, which literary works, or if these particular things even constitute the actual key subject of study. It seems to Adler that liberal arts colleges have an ever-growing penchant to eliminate the very idea of a defined curriculum. Adler points out that the roots of shying away from discussing particular content go as far back in history as the Battle of the Classics debates. Adler believes that therein lies the weakness of contemporary arguments in favour of the humanities: when one does not prescribe a particular curriculum, the only thing left to vouch for their value are the skills adjacent to humanities studies. Indeed, there seems to be an entire school of thought that sees their usefulness as depending entirely on the skills they impart to students. Thus, such a focus on skills acquisition undermines the independent value of humanities content.

Adler identifies that the most appreciated skill associated with the humanities is critical thinking. In the Western academic environment, countless professors and universities boast their courses' ability to inculcate critical thinking skills into students, not to mention countless students and career orientation offices parroting and repeating this idea. This is by no means to say that critical thinking is not of paramount importance. In fact, Adler cites a statistic showing that the overwhelming majority of college faculty consider it a priority. But then he points out that giving an exact definition of critical thinking, as opposed to other types of thinking, proves more elusive than one might expect.

That is, however, not the only weakness he finds in this particular argument. In fact, its entire line of argumentation relies on the idea that only the humanities can offer the type of instruction that fosters the development of critical thinking. Yet none of the major proponents of such an argument have been able to deny other subjects their claim to providing critical thinking skills, too. Adler's third point concerns all the skills-related arguments made in defending the humanities, leading to humanistic disciplines' dependency on arguments based in the social sciences. Many contemporary apologists would eagerly turn to studies and statistics of psychology and sociology to prove the value of the

humanities. This poses a double problem. First, it shows that humanists are incapable of demonstrating the value of their subject on their own, thus achieving the undesired effect of casting even more doubt on the value of the humanities. Second, it gives the social sciences the power to end the humanities with any simple study that might find the humanities infinitely less useful than STEM subjects, for example.

Adler concludes that these contemporary apologies lack the requisite weight to confer much-needed stability onto the humanities right now – mainly because they are reliant on skills-based arguments, but also because many are still quite uncertain about what exactly constitutes the essence and corpus of the humanities. Their ties with similar historical concepts are mostly disregarded, while adjacent terms such as *liberal arts* are taken to be synonyms.

Brief history of the humanities: From antiquity to the U.S. education system

In contrast, the concept of the humanities for Adler is inextricably intertwined with its long history. He thus devotes a lengthy chapter to the different attitudes and conceptions that have both formed the history of the humanities and been instrumental in the creation and consolidation of contemporary (Western) society. The modern humanities as a set of academic subjects being a rather recent development, many scholars consider their point of origin to be not so very distant in time. However, and this is of paramount importance to Adler's entire argument, this view divorces the humanities from their Renaissance and ancient counterparts. A short foray into the etymology of the word *humanities* serves to link the contemporary American academic environment to the world of Ancient Roman patricians. Thus, '*humanities*' stems from the French *humanités*, which, in turn, is a translation of the Latin *studia humanitatis*. Although today we tend to regard classical antiquity as a unified whole, it is important to distinguish between Greek and Roman influences. Adler points out that many scholars mistakenly believe that the point of origin of the humanities comes from Ancient Greek culture. However, while its ideals must have had a strong influence, the first mention of the term appears in the first century BC in one of Cicero's speeches, *Pro Archia*. In it, the famous Roman orator defends a wrongfully-accused Greek poet, Archaias, and refers to the value that the *studia humanitates* (he also calls them *artes liberales*) can provide to society.

Cicero championed and popularised the *studia humanitates* or *artes liberales* as an educational ideal, bringing forth intellectual and moral virtue and thus being suitable for any free-born person. While Cicero and other authors did not necessarily agree on which specific subjects to include on the list, this is not so important. Much more relevant is the fact that the Romans specifically considered the *studia humanitatis* to

be non-vocational and non-utilitarian. Its primary purpose was instilling moral virtue into free-born people. Another essential quality of the *studia humanitatis* was the importance given to particular content – Homer’s epic poems and the *Aeneid* were staples that were optionally supplemented by works of other celebrated authors.

Late antiquity and the early Middle Ages saw the consolidation of two avenues of education deriving from the *studia humanitatis*: the *trivium* (grammar, rhetoric, dialectic) and the *quadrivium* (arithmetic, geometry, music, and astronomy). The *studia humanitatis* also saw one of its core tenets disrespected by medieval European society, since institutions of higher instruction focused primarily on vocational training. The European world at the time had lost a lot of its knowledge of antiquity; the intellectual environment began to recover only in the eleventh century with the rediscovery of Aristotle and the advent of the scholastic movement. Logic was praised as the most important part of philosophical dialectics and its formalised study was launched. The Renaissance arose from the austere landscape of scholastics. Some scholars and intellectuals were turning towards the works of classical antiquity as early as the thirteenth century. They would later be called *umanisti*, humanists; Italian poet Petrarch was among the most important of them. Only at the beginning of the fifteenth century did humanists formalise their educational programme, with the *trivium* as its key subject. As opposed to the scholastic appreciation of the *quadrivium*, Leonardo Bruni defined the new *studia humanitatis* as based on studying the literary works of classical authors. He saw it as best suited to impart the most fundamental contemporary subjects: moral philosophy and divinity. This helped to bring up both the classical works themselves and the idea that *studia humanitatis* served to instil virtues.

What united the Renaissance-era *studia humanitatis* with their ancient counterparts was not only this moral emphasis but also their advocacy for non-vocational education. However, in establishing the *studia humanitatis* as the study of grammar, rhetoric, poetry, history, and moral philosophy, Bruni departed from the ancient ideals that viewed it as a comprehensive education and openly opposed subjects like the natural sciences or mathematics. This distinction and opposition between the *trivium* and *quadrivium* as educational ideals gave birth to the chasm that separates the modern humanities and STEM subjects today. Also stemming from this same time period is the distinction between the humanities and the liberal arts, which encompassed both the *trivium* and the *quadrivium*. The differences in the way the *studia humanitatis* was viewed in these different periods might be explained by a change in societal attitudes. While the Romans had a more global and expansive outlook, focused on contemplating the universe’s perfection, Renaissance humanists were more individualistic and introspective, preferring the pursuit of their own perfection.

A reactionary school of thought at first, humanistic ideals slowly began to make their way into higher education. By the time Harvard, the first American higher education institution, was founded in the early seventeenth century, the curricula of Oxford and Cambridge had already been sufficiently influenced to the point where these same ideals were being propagated in the New World. The colonial colleges demonstrated their heavy influence by Renaissance thinkers with an emphasis on moral improvement and the study of classical languages. These colleges drew upon Oxbridge curricula and thus also absorbed a heavy dose of scholasticism, still quite present at European universities. The Protestant Reformation was another factor that strongly influenced the evolution of American higher education in general and the humanities in particular. By the end of the colonial period, almost all US colleges required students to take moral philosophy courses. Their purpose was to impart the necessary virtues on a new and highly religious colonial American society. These colleges were, however, eager to keep up with the times, and they had incorporated influences of the Enlightenment, e.g., establishing a chair of mathematics or including algebra in the curriculum, by the end of the seventeenth century.

Battle of the Classics: The core of the issue

All of this ultimately led to the Battle of the Classics at the end of the nineteenth century, an event in the history of ideas that Adler feels was largely misunderstood until the later decades of the twentieth century. He argues that a possible explanation for this was that, ever since antiquity, the study of classical authors has carried with it strong aristocratic associations that would have been negatively perceived in the newly industrialising U.S., with its egalitarian sentiments and rising populism. After the American Civil War and the rise of Darwinism, the intellectual faction known as the *scientific-democrats* sought to dethrone the classical curriculum in favour of a more science-based one. Its goal was to foster the creation of new knowledge as opposed to traditionalists' focus on past wisdom. During the late nineteenth century, the focus on knowledge for the sake of knowledge itself began to gain popularity, which, Adler argues, became a harbinger of the decline of the humanities. By that time, American colleges no longer looked to Oxbridge for inspiration, instead being influenced by German research universities, with their scientific approach and academic professionalisation. Indeed, the Germans pioneered a new discipline, a scientific take on classical studies, *Altertumswissenschaft* (the science of antiquity). This novel approach was brought to the US by Americans pursuing doctoral studies in Germany.

Faced since the beginning of the eighteenth century with an ever-growing number of detractors, the 'classical colleges' experimented with

alternative tracks that would allow undergraduates to bypass a classical education. Such programmes were becoming so popular in the mid-nineteenth century that tradition-oriented Yale felt threatened enough to publish *The Yale Reports*, which argued that its curriculum was superior to vocational training because it inculcated *mental discipline*. Adler deplores the sudden focus on a skills-based argumentation in favour of the classical curriculum. Whereas the Renaissance humanist might have said that reading specific authors would instil moral values, traditionalists of the American collegiate system seemed content to reduce the classics problem to a matter of psychology. The passing of the Morrill Act precipitated the move away from classically-focused higher education by providing more and more avenues of vocational training. The scene was completed by the emergence of American research universities at the end of the nineteenth century. As freer and more science-based curricula spread across the U.S., mandatory study of the classics quickly faded away. Faced with such hostility, classical scholars sought to enlarge their scope of work by including other subjects, thus creating the modern humanities. This proved, however, to pose great taxonomical problems: history, for example, was at the time considered to be a social science rather than falling under the scope of the humanities.

Charles E. Norton is the one who took it upon himself to confer the modern humanities the kind of gravitas enjoyed by the *studia humanitatis* in order to gain the legitimacy they desperately needed. He transformed the humanities into research about Western civilisation. Full of fallacies and inconsistencies, his argumentation and reframing of the humanities worked only because American colleges at the time were interested exclusively in European cultures. However, the open curriculum started to gain detractors even from the ranks of *scientific democrats*, who raised their concerns about the lowering of scientific standards resulting from the free elective system. To counteract this regrettable situation, Johns Hopkins adopted a system that would later spread throughout American higher education institutions: the major and minor system that is still in practice today. Choosing another solution, a distributive system like the one implemented by Lowell at Harvard only served to side-line the humanities even more. Columbia preferred to take over some Nortonian ideas and introduced a subject into their core curricula that would satisfy the humanists. Eventually, the Great Books programme was created in order to familiarise students with some canonical Western authors. In the last decades of the twentieth century, when social progress brought to light the fact that the Great Books programme and similar subjects were exclusively concentrated on men, especially white men, many universities facing such criticism preferred to scrap those programmes entirely instead of reforming them. Afterwards, since the distribution system has continued to proliferate even today, the humanities suffered more and more until they were faced with the same problems as the classics in the

nineteenth century, being considered elitist and not particularly important to those envisioning a vocational education.

Battle of the Classics: Three key controversies

Adler goes on to analyse three debates that took place in the context of the Battle of the Classics. The first controversy arose around Charles Francis Adams, Jr.'s speech, 'A College Fetish'. In it, he criticises the practice of Ancient Greek as a mandatory requirement for admission to college, especially at Harvard. He belonged to the nineteenth-century American elite, so his education naturally featured a great deal of classical study. It is mainly due to his failure to measure up to the standards of the time in the domain of classical studies that he harboured such resentment towards the classics, although he made some valuable points when criticising the rote memorisation that was ubiquitous in the classroom. His detractors, the traditionalists, however, made the mistake of appealing to skills-based arguments, namely falling back on *mental discipline*. This weak argumentation and lack of a coherent defence resulted ultimately in Charles William Eliot, the president of Harvard, removing the mandatory status of Ancient Greek as an admission requirement, which was a clear sign that the classics were losing the battle.

The second debate, involving the same President Eliot along with President James McCosh of Princeton, concerned the curriculum and whether it should be open or fixed. McCosh, a defender of the fixed curriculum, had a quite religious upbringing and was educated in the colleges of Scotland, whereas Eliot was what Adler calls 'a consummate Spencerian' and a passionate scientist who found it hard to pursue his career at an academic level in a country whose collegiate system didn't put much faith into such an education. This debate was intensely reported on, and it inflamed the American intellectual world, but ultimately Eliot took the victory and reformed the Harvard curriculum.

The third debate was centred in the numerous controversies surrounding the intellectual movement called New Humanism and one of its most vocal proponents, Irving Babbitt. New Humanism gained attention with the publication of *Humanism and America*, also serving as its manifesto. New Humanism has its roots both in the Roman concept of the *studia humanitatis* and Renaissance humanism. In Babbitt's writings, however, it is at times difficult to differentiate between his philosophical understanding of humanism and the historical movement of humanism. His philosophy rests on the belief that human nature shows proof of a duality, that people have impulsive desires as well as the ability to restrain these desires. The study of certain works of particular value could help people keep such impulsive desires more easily in check. The Romantic movement showed itself to be a strong opponent to Babbitt's New Humanism, arguing against the duality of human nature and for

the embracing of natural compulsions. Surprisingly, at the time, Babbitt didn't consider the works of antiquity or Western civilisation in general to be the most suited to help curb these impulsive desires. Instead, he looked both globally, for example, into the vast Buddhist tradition, as well as outside of the academic and intellectual environments for inspiration.

Conclusions

Adler concludes this foray into the history of the humanities and what brought about the unfortunate situation in which the discipline finds itself today by repeating the need to draw upon the mistakes of our forefathers. Adler is no nostalgic, griping about the glories of the past, though. He is aware of the shortcomings the traditionalists of the Battle of the Classics (counter-parts to the humanities' apologists today) and pointedly admits that the wide-spread views of the time were particularly narrow-minded and that their arguments might actually have gained more weight if they had taken into account more than just Western culture and wisdom. There is no need to see the humanities relegated to a dusty corner of academia – the way the classics were after losing the Battle of the Classics – if one can avoid the argumentation pitfalls which the traditionalists of the nineteenth century fell into.

Adler argues that one of the most important lessons the contemporary humanities can draw from such contentions of days past is that their apologetics should focus far more on the specific content the humanities impart, rather than the skills they may also provide to their students. Adler once again stresses how indefensible skills-based argumentations can be and warns of the dangers of relegating the responsibility of proving the value of the humanities to social scientists. Most of all, he urges students of the humanities to turn towards the Renaissance ideals of humanism, as only such a return to these origins might return the humanities to their once-privileged position. He argues that studying the humanities with the sole purpose of bettering one's character would improve not only the academic world that today finds itself quite in disarray but also society as a whole. Most importantly, when it comes to the humanities, it is essential that the curriculum focus on content and on specific works (he lists a few) that prove most valuable.

Book Review

Bastiat and the Minimal Law

Mara Pepine

***The Law: The Classic Blueprint for a Just Society* by Frédéric Bastiat (The Foundation for Economic Education, 1998)**

Lately, all around us there is talk of tariffs, subsidies, and embargoes. The markets grow less and less free each day and those who would see our economic life freed from the influence of government grow more and more worried. About 300 years ago in France, in the midst of an emerging socialist and communist doctrine, one French political philosopher took it upon himself to make his contemporaries look around and realise that the circular thinking in which they were trapped was preventing them from achieving true freedom. This philosopher was Frédéric Bastiat. In his short essay, *The Law*, published in 1850, he presents simply and elegantly some of the most important concepts of classical liberal thinking. His work is considered a very valuable resource and has served as important inspiration to many similarly inclined authors. Exploring Bastiat's ideas today might prove to be the needed impulse to make the radical changes he so wished for.

The minimal state as a protector of natural rights

Bastiat's political philosophy begins by postulating a natural state characterised by three natural rights – meaning that they are God-given, not granted by society. These are the right to life, to liberty, and to property. It is important to mention that any person also has the right to defend their life, liberty, and property – by force if necessary. Initially, in the natural state, everyone must constantly defend their rights; this is a tedious process that impedes progress of any nature. Thus, people decide to come together to create a common force that can protect the rights of all the people involved. The law is this 'organisation of force', with the express and sole purpose of defending these natural rights. The law in this understanding represents the extent of the responsibilities of a governing body in Bastiat's ideal state. Such a state, whose only duty is safeguarding a handful of pre-existing rights, is called a minimal state or a minarchy. The consequences of a minimal, non-interventionist state are that every individual becomes exclusively responsible for their own successes or failures. However, it would suffice to look at any government from Bastiat's days to our

contemporary ones and see that no society has ever heeded his advice. The law has been 'perverted': more often than not, it far exceeds the limits on its power and is burdened by too many responsibilities. At the root of this incredibly pervasive mistake are, alternatively, two causes, two very human flaws.

Greed as a threat to the rule of law

The first threat to the integrity of the law is greed. That comes as no surprise to Bastiat. In fact, he finds it to be the logical economic objective of maximising profits: everyone wants to gain as much as possible with the least possible effort, cost, and sacrifice. This unfortunately leads some to disrespect the natural rights of others. Basing one's livelihood on the labour of others instead of one's own toil constitutes plunder. The defensive purpose of the law is to make plunder less appealing than labour. Unfortunately, the law is vulnerable to those in charge of legislation. As such, historically, only one person or a small group of people have been responsible for legislation. Since the law is organised force, then those who are in charge of the law are those in whose hands power rests. The profit-maximising tendency completes this unfortunate picture. Legislators have the motive, the opportunity, and the means to resort to plundering and perverting the law from a means of protecting all citizens to a means of securing their unjust income. When the victims of lawful plunder rise up against abusive legislators, they do so with one of two purposes in mind: either to put an end to lawful plunder or to partake in it. It is obvious that the first objective is preferable. However, universal suffrage leads to the second.

The perils of democracy

Bastiat explains universal suffrage as the wrong response on the part of victims of plunder towards those responsible. Instead of abolishing lawful plunder, they want to take part in it. Even more, they want retribution for their suffering. What they are doing is creating far more suffering by completely blurring the line between justice and injustice. Bastiat argues that universal suffrage as it was understood by the followers of Jean-Jacques Rousseau (an earlier French political philosopher) imposes these unfair restrictions on the rest of the population for one reason: in a system of universal suffrage, the vote of each person affects everybody else. Bastiat recognises the concerns that led to this idea, but since it is practically impossible to only grant the right to vote to those who have everyone's best interest at heart, he proposes a solution that does away with this right altogether. That would be a shocking proposal today, but what he had in mind was the furthest thing from a dictatorship. He simply reiterates his point that the law

should be restricted to its original scope – that is, safeguarding the rights to life, liberty, and property.

The road to socialism

When plunder becomes lawful, everyone will demand to take part in the legislative process, either to protect themselves or to profit from it. This in turn causes enormous political strife, since every individual or group is desperate to push their own interests. A law that legalises plunder would be a law that takes the property of some and redistributes it to others. Many practices fall under this concept – from a minimum wage to subsidies, from progressive taxation to public education. All of these practices forming a system of political organisation are also known as socialism. It becomes obvious that Bastiat was a staunch opponent of socialism.

Socialism and mistaken philanthropy

We've already seen that the perversion of the law can have two possible causes. The first is greed. The second is mistaken philanthropy. He understands the appeal of granting citizens more than the three natural rights; he actually refers to the 'seductive lure of socialism'. It is indeed a grand idea, not only to ensure freedom but to guarantee welfare, education, and more for everyone. However, Bastiat argues that this is an unattainable goal, and as such preserving freedom should take priority. But why is it an unattainable goal? Let's go back to the definition of law. We defined it as the organised collective force of individuals whose main and sole purpose is to defend the rights to life, liberty, and property. Force is the basis for the existence of law. It follows that creating a law with a different scope, such as education, would imply the use of force to guarantee that it is respected. However, just as an individual cannot use force to coerce another individual in any way, shape, or form, so should it be forbidden for the collective force to coerce individuals. That is, the law cannot coerce individuals and still be just. Socialism by definition opposes freedom, as all the measures that rest at its foundation – these being redistributive practices – can only be implemented through the use of force. Bastiat recalls his correspondence with fellow political philosopher Alphonse de Lamartine, who had told him that his political program included freedom as well as fraternity. (The reader should think back to the French national motto: *Liberté, égalité, fraternité* – liberty, equality, fraternity.) Bastiat retorted that including fraternity in one's political program would be a sure-fire way to destroy any ideal of liberty. For him, fraternity is essentially voluntary, and striving to make it something guaranteed through legislative processes would also imply the use of force, thus destroying not only the freedom of citizens but also fraternity in its actual sense.

Bastiat insists that the term he has chosen, plunder (*spoliation* in French), is used in a scientific way, as it has a specific and concrete definition. Plunder represents the transference of a portion of wealth, no matter its shape or form, without consent, from the rightful owner to somebody who does not have any right over said property. However, it should be remarked that the Frenchman never intended to offend the sensibilities of his readers by claiming they may be guilty of barbaric acts that violate fundamental rights. He reserves judgment for the ideas behind the systems that allow such acts to take place and distinctively underlines that, since these systems are so wide-spread that everyone is affected by them, both positively and negatively, no blame should be put on the participating individuals. Indeed, he considers that the three types of redistributive political views prominent at the time – namely protectionism, socialism, and communism – are founded on a sincere wish to better society and rid it of injustice.

The law has a strictly defensive purpose. But how come it only protects the three aforementioned rights? What makes these particular rights so special that only they deserve the involvement of the law?

Positive and negative rights

The answer to these questions is simple. It is because the rights to life, liberty, and property are negative rights. Negative rights are essentially the right to be left in peace, the right to *not* have someone interfere in matters of your life, liberty, or property. You have a right to *not* have injustice thrust upon you. As such, the role of the law is not to bring about a reign of justice but rather to impede injustice. Rights such as those to a 40-hour work-week or to a comprehensive public education curriculum are positive rights. These rights mean there is something that is offered, given, guaranteed to citizens. But when the law gains a positive character, all citizens see their own wills being overridden by those who compose the legislation. It is Bastiat's belief that when such a situation occurs, citizens lose their ability to plan ahead and discuss even their own personhoods, let alone their property. In short, they also lose their life and liberty. The wish to transform the law into an instrument of equality is a noble one but will ultimately prove unsuccessful, since every redistributive act amounts to the same thing: plunder and injustice.

Bastiat and his socialist counterparts

It is Bastiat's belief that the discord between the upholders of liberty, such as himself and the socialists, may be somewhat tempered if one clarifies an important misunderstanding. An important difference between the two ideologies rests on the conflation of two terms: *government* and

society. When a socialist says *government*, they also understand it to mean *society* and vice versa. Meanwhile, a supporter of Bastiat's theories draws a clear, even crucial, distinction between these two terms. For such thinkers, *government* refers to the organisation wielding the law, which is the only permissible use of force. When faced with the reproach that he and his supporters reject education, charity, and morality, Bastiat answers simply that it is the involvement of *government* that he rejects; *society* may do as it pleases.

However, whilst socialism conflates terms that should be understood separately, it also errs on the other side by making unnecessary and harmful distinctions. It is Bastiat's firm belief that the majority of socialist writings follow the same pattern. This pattern involves dividing the population into two categories: the *masses*, the general population, and the special, gifted writers themselves. The French philosopher considers this to be proof of incredible conceitedness, as it implies that such authors are the only ones in possession of both the truth and moral superiority. Some such authors might accept that every individual has agency, but they consider it the linchpin of society that, if left unchecked, would lead to moral corruption and the collapse of civilisation. In these socialists' view, all people are profoundly evil and selfish or, at best, bestial – all people, that is, except for themselves. Bastiat laments that, for these thinkers, the *legislator* acquires legendary dimensions. The legislator goes from being a mere person to embodying a messianic figure of irreproachable morality.

By pointing out how atrocious he finds the writings of all these revered authors, Bastiat was already quite unpopular among contemporary scholars of political thought. But he goes even further, attacking Rousseau next. Considered one of the most influential characters in political philosophy, the Swiss thinker played a major role in the French Revolution of 1789. Bastiat's first point of contention is that although the *general will* of the people plays a central role in Rousseau's philosophy, he still subscribes to what Bastiat calls the 'classical' idea of a borderline-superhuman legislator who alone has the capabilities and power to put society on the right track by treating citizens as a means to an end instead as an end in and of themselves (borrowing from the Kantian principle of the categorical imperative). An even more damning idea in Bastiat's eyes is that not only does Rousseau place the leader categorically above the general population and the legislator above the ruler, but he then places himself *above* the legislators, he alone having to teach them the 'right' way to manipulate the masses. To Bastiat's dismay, Rousseau explicitly refers to the inhabitants of a land as a natural resource and proposes that, ideally, not everyone should participate in the arts, agriculture, commerce, or religion. When faced with Rousseau's conclusion that, in the case of the failure of a ruler, such a society would return to its natural state (the natural state as postulated by Rousseau,

not to be confused with Bastiat's views on pre-societal humanity), Bastiat naturally raises the question: what use does the legislator even have then? It is apparent to him that Rousseau's legislators are useless, even dangerous, since they are expected to reform and transform the very nature of humans. Ultimately, he also finds them pitiable, since they are burdened with such a terrible responsibility, one which they have no hope of shouldering.

Bastiat finds that these authors' flaw of considering themselves better than the average person is the main obstacle in the way of achieving total liberty, understood as the sum of all freedoms. He points to the French Revolution of 1789 as an example. After the French ridded themselves of the shackles of absolute monarchy, they sought freedom. However, the ideological leaders suffered from inaccuracies, which Bastiat attacks, resulting from their classical education; rather than allowing the people the liberty they so craved, they merely invented new ways to subdue and control the population. Even worse, revolutionaries at the time explicitly called for a dictatorship, showing that they didn't want to rid themselves of the harmful practice of legalised plunder; instead, they wanted to be the ones profiting from it under the guise of reforming society. Napoleon also succumbed to this way of thinking.

Bastiat returns to his critique of socialism by depicting it as a vicious circle. He shares Louis Blanc's view on liberty, explaining that since socialists do not consider freedom as merely a collection of negative rights but also the opportunity and power to fully engage one's faculties, then in order to ensure freedom for all, everything should be provided by the state though education and the means of production. Bastiat simply asks, 'Whom do this education and means of production come from? Who provides them?'. He continues by explaining that those who call themselves social-democrats (as the term was understood in the nineteenth century) rest their doctrine on three premises – that the law is omnipotent, that legislators can make no mistakes, and that the masses are completely devoid of thinking, feeling, or agency. He also points out their outmost hypocrisy when they claim that every citizen is in full control of their faculties and thus capable and expected to express their opinion on how society should be governed during the process of electing officials – but, once the elections are over, they revert to the inert matter to be moulded by legislators into a respectable society. Even more hypocritical, in Bastiat's opinion, is any claim a socialist could make that they want freedom. No, he says, socialism is fundamentally opposed to freedom, and they cannot coexist. The only way to ensure freedom, equality, progress, and dignity in society is to do away with the demands of socialists and to embrace the rule of law as it was previously defined: a collection of negative rights enforced by mutual agreement. This is the only way to achieve just and rightful

governance. Bastiat ends his essay with an ardent call to forget about socialist propaganda and embrace liberty once and for all. His contemporaries didn't heed his advice, but maybe we can do better and bring his ideal to fruition today.

Book Review

The Limits of the State for a Vision of Self-Development

Nayeli L. Riano

The Limits of State Action by Wilhelm von Humboldt
(Cambridge University Press, 1969)

Introduction

Here is a book with which not many liberals may be familiar. It is a work that articulates a distinct shift in the history of liberalism and merits revival. When we consider liberalism as a political philosophy that theorises about the ends of the state and the nature of political society, proto-liberal philosophers such as Thomas Hobbes, John Locke, Charles de Montesquieu, and Jean Jacques Rousseau¹ are brought to mind. These thinkers mark an early liberalism that focused on the rights that men in a state of nature would choose as a result of their decision to live in a political society. These thinkers are from whom we have borrowed fundamental ideas for liberal societies such as free will, the government's protection of individual freedom, the right to personal property, and political rule by consent of the governed. Wilhelm von Humboldt's *The Limits of State Action* imparts a different central human value to the ones mentioned above – we may call it *self-development*.

Background, title, subject matter

Written in 1791, *The Limits of State Action* was published by the author's younger brother, Alexander von Humboldt, the famous naturalist, in 1852. Wilhelm wrote and lived among great intellectual company, earning the praise of Friedrich Schiller, Germaine de Stael, Friedrich von Gentz, and Johann Wolfgang von Goethe. After his death, the contents of *The Limits of State Action* were exalted by F.A. Hayek, and John Stuart Mill solidified Humboldt's role by quoting him in the epigraph of *On Liberty*. *The Limits of State Action* is an emblematic piece of the German Enlightenment, taking its rightful place within the wider *Aufklärung* of the eighteenth

¹ Proto- because they certainly never called themselves liberal, though we generally tend to ascribe these thinkers with certain features of liberal thought following their important contributions.

century. At the same time, it is also a work that conveys central ideas about human potential and the limits of state efficiency which has influenced future liberal thinkers.

A brief remark on the title is in order. *The Spheres and Duties of Government*, also called *The Limits of State Action*, are the English titles of *Ideen zu einem Versuch, die Grenzen der Wirksamkeit des Staats zu bestimmen*. All these titles indicate the idea of 'limits' of the state and imply that governments should be restricted in their scope, but what is unique about this book in particular? Both English titles admittedly fall short of providing us with a good explanation. The German title, however, gets us closer to understanding what Humboldt means by the word 'limit'. Humboldt sets out to determine 'the limits of the *effectiveness* (*Wirksamkeit*) of the state', not the limits of the state for its own sake. The difference is significant: limits on the state are the conclusion *after* inquiry. Once something has led a thinker to conclude that the state should be limited in its scope, the question arises: what *subject matter* determines the limits of the state's effectiveness?

Human nature itself would be Humboldt's response. His inquiry, moreover, is as much about the limits of the state as it is about human nature and its place within individual development. Indeed, much of the book constantly reaffirms Humboldt's view of human nature as one of unlimited capability that needs only self-will and dedication to be maximised through action. Humboldt's idea of personal growth stems from a view of human nature that takes action, the need for didactic learning, and the importance of personal choice as the necessary means through which the individual obtains the ideal of self-development. Action, Humboldt affirms, is more valuable to the individual than possessions. For this reason, the state should be less concerned with providing material goods to people and more concerned with granting them the space necessary for individual action. Here is where the importance of liberty comes in – for Humboldt, it is the necessary condition that facilitates man's autonomous action and direction towards self-development.

Humboldt's work in its contemporary context

The Limits of State Action is a departure from the natural rights and social contract tradition. It turns our attention away from what governments ought or ought not to do based on the rights – natural or otherwise – which individuals possess within a political society. Instead, it considers what a government can and cannot do in its capacity to help individuals reach their full potential as individual persons. As Humboldt shows us, there is little that the state can do to help everyone accomplish a task that is personal and therefore different for every individual. For Humboldt, understanding what it means to be a person and what

nature people possess are two components that reveal the fundamental *un*-political ends of human action. Because human action is inherently apolitical, the state must ensure that its role in political society remain as minimal as possible.

Three general criticisms against the state throughout this work stand out. The first is that the state's inclination towards ensuring the positive welfare of citizens denies individuals essential features of their humanity, including the possibility to develop oneself by choosing freely, experiencing the surrounding environment, cultivating relationships, and learning from the consequences of one's actions. The second is that the state diminishes the individual's ability to self-develop because it has a tendency to impose uniformity on its citizens rather than welcome diversity; and the third is that state interference can debilitate the individual's initiative for self-development. Together, these criticisms indicate to Humboldt that the state's scope of interference must be limited from its inception.

Structure and contents of the book

With these criticisms in mind, we can begin to unpack the contents of this work. *The Limits of State Action* is divided into sixteen chapters. It will be more helpful to highlight some of the most important ones that demonstrate the ordering of Humboldt's thoughts and the principles underlying his view on the limits of the state. For starters, it is important to bear in mind that the sequence of the book follows the lead of the opening two chapters, both of which establish the primacy of the person as the source for the type of self-development that eventually allows each and every individual to lead a virtuous and fulfilling life. The introduction, Chapter I, captures Humboldt's view on the problem of contemporary political philosophy. Humboldt writes that the political theorists of his age ceased asking about the *scope* of government as it affects the private spheres of citizens and focused, instead, on the question of who shall govern and who shall be governed. Answering who governs over whom is an incomplete assessment of the ends of the state, however. In Humboldt's view, knowing who governs whom only establishes the 'necessary means' through which to answer the more important question that is the state's limits.

Chapter I goes further still. Humboldt's statement that self-development comes from the 'self' may sound obvious, but it is a view that carries not just individual autonomy but also a moral weight and responsibility which no government can assume for a person. Otherwise, to assume responsibility for the moral development of another person is to remove an integral feature from all individuals, which is their own capacity to develop themselves to the best of their abilities. Indeed, Humboldt affirms this centrality of human development by mentioning

its former status in 'the states of antiquity' which, in contrast to modern ones, raised it to the highest level:

... antiquity captivates us above all by that inherent greatness which is comprised in the life of the individual, and perishes with him – the bloom of fancy, the depth of spirit, the strength of will, the perfect oneness of the entire being, which alone confer true worth on human nature.²

Humboldt's use of the Ancients is meant to remind readers that the purpose of man is to find 'happiness in virtue' as opposed to inverting the process and finding virtue in happiness, which he accuses his contemporaries of doing. Part of what Humboldt sets out to do in *The Limits of State Action* is to correct the prevalent vision that liberty is mere license to do whatever one wants. Self-development is a journey that can allow individuals to achieve the highest ends of their own particular faculties, but doing so requires the acknowledgment of two things: that this task is wholly individual; and that the state, therefore, can take no part in its facilitation.

The need for state limits, after all, stems from a philosophical foundation regarding the nature of man, which Humboldt offers in Chapter II. Its title, emphasising the 'highest ends' of man's existence, indicates that Humboldt's concern with human nature is connected to a vision of the individual that is set on a path of self-discovery and self-development. As noted by the editor of *The Limits of State Action*, J.W. Burrow, Humboldt is focused on the centrality of human needs – as opposed to free will and consent – as the means to propel human progress forward. For this reason, Humboldt aims to demonstrate, in Burrow's words, 'the prerequisites of a *process*, which he regards as desirable' for the German concept of *Bildung*.

Some intellectual background is necessary here to clarify the importance of the concept of *Bildung*. Humboldt's conception of *Bildung* guides his view of self-development and underpins many of the theories presented in his work. Historian David Sorkin writes that Humboldt 'made a crucial contribution to the development and canonisation of the German conception of self-formation or self-cultivation' (*Bildung*).³ *Bildung* is a vision of self-development in which individuals, through their own faculties and the help of their natural surroundings, set out to actualise themselves.

² W. von Humboldt and H. Burrow (1969), *The Limits of State Action* (London: Cambridge University Press), p. 13.

³ D. Sorkin (1983), 'Wilhelm Von Humboldt: The Theory and Practice of Self-Formation (*Bildung*), 1791–1810', *Journal of the History of Ideas*, 44(1), 55, <https://doi.org/10.2307/2709304>.

Thus, we can view Humboldt as a political theorist whose views on the ends of the state stem from the primacy of self-development and are, thus, wholly aimed towards achieving this vision of *Bildung*. For this reason, Chapter III, which enquires about the 'solicitude of the state for the positive welfare of the citizen', concludes that the state should not be involved with the citizen's positive welfare. Chapter IV, instead, highlights Humboldt's view that the state should only be involved with the 'negative welfare of the citizen', meaning the citizen's security from threat. These can be outside threats, such as foreign invasions (Chapter V), or internal threats, such as violence or harm to another citizen. We must understand Humboldt's vision of the state, therefore, as a largely negative enterprise in which the state simply ensures that citizens have basic security.

The four opening chapters provide us with the most important sequence of Humboldt's thought: the inadequacies of current understandings of human nature and its effects on contemporary political theory; his correction by way of another view of human nature and its highest ends; the subsequent need for state limits on the *positive* welfare of citizens; and the concluding point that the state need only make negative interventions to preserve its citizens' security. The outline of these initial four chapters of the book should not imply that Humboldt leaves self-development solely to the individual's discretion, however. Within the book's sixteen chapters, Humboldt not only gives ample reasons corroborating his belief that negative state intervention provides the necessary environment for self-development, but he also describes the various ways in which self-development takes place.

The gist of Humboldt's view on the matter of negative state intervention is that every individual has different needs and ways to meet their different ends. Self-development, to be sure, is such a formidable task that it is naturally susceptible to collective organisation. One final chapter to highlight is Chapter VI, which discusses the question of national education and answers directly to this point about different human needs. Humboldt explains how education was traditionally understood as a collective enterprise in classical antiquity. The moment in history in which Humboldt found himself – at the height of the Enlightenment – signalled to him, however, that mankind had reached a 'pitch of civilisation' in which people's collective efforts could no longer advance the individual's moral and intellectual growth. People 'cannot ascend except through the development of individuals',⁴ he argues, and national education has a tendency towards 'artificial equilibrium' that 'leads to sterility or lack of energy'.⁵ It is for this reason that education ought to be primarily a private endeavour, which is not to say that national education should

⁴ Sorkin, 'Wilhelm Von Humboldt', 51.

⁵ Sorkin, 'Wilhelm Von Humboldt', 52.

not exist in some capacity, but rather that it can never take the place of real, personal education.

On this point of education, it is necessary to emphasise the philosophical tradition within which Humboldt is writing. Norberto Bobbio mentions that Humboldt was influenced by Immanuel Kant, who also focused on the importance of the individual's moral development as a necessary next step from his liberty. Man's liberty, Kant believed, is a source of power that aids self-development. This view consequently led German idealists like Kant to reject governmental paternalism for its antagonistic effects on man's moral development.

Humboldt aimed to present a vision in which people could develop their moral faculties to the maximum, requiring as little outside interference as possible. Humboldt's view of the state is therefore circumscribed; he sees the state for its bureaucratic tendencies, which – if unchecked – would interfere with *Bildung*.

The problem of national education for Humboldt, then, is its tendency to homogenise an otherwise heterogeneous society. This chapter is important, moreover, because it includes the following line, quoted by John Stuart Mill in the epigraph for *On Liberty*:

The grand, leading principle towards which every argument hitherto unfolded in these pages directly converges, is the absolute and essential importance of human development in its richest diversity.⁶

The text surrounding this statement reveals that Humboldt is not only interested in arguing that the state should have a limited scope because self-development is a personal task. While this is surely a pithy summary of the book's argument, there is a lot more going on in the book. One topic entails his criticism of the predominant view of man as a political animal whose ends are naturally aimed at contributing and fully developing within political society. Such a claim was problematic for Humboldt because it necessarily implied that, if man was *naturally* political, then the state itself was a natural organism. Humboldt felt the need, instead, to 'deny so emphatically that the state is an organism' and view it as 'a mere piece of machinery', 'a kind of public convenience with strictly limited functions'.⁷

This question of whether or not the state is organic comes up again in Chapter VI, regarding the relationship between the citizen and the individual. Humboldt tells us that education is a personal task because self-development is a process that cannot be reversed by the state in its aim to produce citizens. Humboldt, then, marks an essential distinction

⁶ Sorkin, 'Wilhelm Von Humboldt', 51.

⁷ Humboldt and Burrow, *The Limits of State Action*, pp. xvi–xvii.

between what it means to be a human being and what it means to be a citizen. We should remember, furthermore, how Humboldt's focus from the outset of his work is to explain the nature of man, not the nature of the state. Throughout this book we must notice, moreover, the distinctions that Humboldt makes between one's *inward* (personal) sphere and one's *outward* (public) sphere. The state belongs to the latter, and Humboldt regards this distinction as a rigid line that protects the individual's private sphere.

The 'political sovereignty' of inward development does not detract from the importance of political society, however. As members of a state, humans serve as citizens in a meaningful capacity, and, as such, there is a 'fruitful relationship' between man and citizen, according to Humboldt. Still, our calling to be fully developed persons precedes our duty to be citizens. This relationship, moreover, would 'wholly cease if the man were sacrificed to the citizen', Humboldt avers. To conclude Humboldt's thought, we might say that he believes there is a logical sequence, or hierarchy to human development, and man's role as a citizen cannot come before his role as a full person.

Humboldt's conclusion is that true self-development can lie only in the private sphere. The vision of the state offered in *The Limits of State Action* is one of limited scope that creates an environment in which men can live 'reflectively and sensitively', thereby increasing their 'moral and intellectual powers'.⁸ Indeed, the two chapters that follow Humboldt's treatment of national education are dedicated to this question of morality from two facets: religion (Chapter VII) and moral development (Chapter VIII). The second half of the book takes a more practical turn; there, Humboldt describes how his theory extends to different aspects of security (Chapter IX), such as police laws (Chapter X), civil laws (Chapter XI), judicial proceedings (XII), criminal laws (XIII), and the treatment of people with disabilities (Chapter XIV), before concluding his work with a wider analysis of justice (Chapter XV) and more practical applications for his theory (XVI).

Conclusion

In closing, *The Limits of State Action* is an integral work on holistic liberalism that places questions about government and politics around the centrality of the human person. Although liberal theorists differ over how far liberalism is fundamentally a social theory or a substantive ethical and political philosophy, both positions acknowledge that it raises the individual as the central figure of concern. Liberalism, after all, regards individuals as real, having fundamental value, and, consequently, having

⁸ Humboldt and Burrow, *The Limits of State Action*, 27.

a claim to moral and political self-determination. Humboldt ascribes to all of these values with his vision of self-development presented in *The Limits of State Action*. On this point, he can be viewed as a turning-point figure who marked the shift that would take place in nineteenth-century liberal thought from a political philosophy that considered the rights of men in political societies to a philosophy that raised as its highest priority the personal development of each individual.

One element, however, has been peculiarly omitted from this work that might strike liberal thinkers as incomplete: commentary on economic affairs. To be sure, Humboldt takes no official position with regards to *laissez-faire* or interventionist economic policies, nor should he be read with the aim of deducing his economic views. That is not to say that Humboldt is not interested in economic affairs; rather, economic affairs are themselves indicative of something more primary for Humboldt, which is personal development. So long as the basis of understanding of human nature sees mankind in all its inherent diversity, then everything else must follow in accordance with this assumption. Liberty and self-development in *The Limits of State Action* uphold this view of human nature.

As a final point of conclusion, it cannot be emphasised enough that Humboldt's view of *Bildung* and self-development as presented in *The Limits of State Action* is not a philosophy of self-interest. While he argues that self-development is a task best left up to each individual to accomplish for him or herself, this task is by no means in competition with the more altruistic aim of improving society. To develop society as a whole, Humboldt believes, people must first develop themselves without state interference. Because human individuality and diversity is an immutable feature of existence, development is a *personal* task that, once achieved, renders the individual a better member of society.

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Book Review

Mill on Individualism, Originality, and Progress

Nayeli L. Riano

On Liberty, Utilitarianism, and Other Essays by
John Stuart Mill (Oxford University Press, 2015)

Introduction

How does one introduce a classic? The renown of a work such as *On Liberty* leaves plenty of room for commentary from everyone familiar with John Stuart Mill, a fact that is itself indicative of the sheer popularity of this relatively short work and Mill's intellectual impact. English philosopher Maurice Cranston wrote of Mill that he 'held the attention of the reading public of the Western world longer than any other nineteenth-century philosopher, with the notable exception of Karl Marx'.¹ Perhaps it is not by coincidence that these two spots are held by such contrasting thinkers. Like any classic thinker, Mill's work needs to be revisited and revitalised every so often to prevent his important thoughts from being reduced to simple platitudes about liberty.

Originally completed in 1857 but first published in 1859, *On Liberty* has been the subject of myriad studies as an iconic work of political philosophy. It is representative of a classical liberalism that upholds individual liberty to the highest degree, not out of desire for radical individualism but rather for the improvement of society at large through the cultivation of individuality and originality. Indeed, Mill is known as a defender of liberty. That said, as with any thinker whose thought reaches the heights of immortality, there is much more to Mill than his love of liberty.

Mill's philosophical thought

Mill was a man of many interests. Apart from his views on liberty, he is also known to readers for his utilitarian philosophy, being the son of utilitarian philosopher James Mill, who educated his son at home with an intensive curriculum. His father was certainly a strong influence, but Mill was also a student of Jeremy Bentham. Yet utilitarianism was not his

¹ M. Cranston (1987), 'John Stuart Mill and Liberty', *The Wilson Quarterly*, 11(5), 82.

only influence. Mill took interest in other philosophical frameworks, such as English and German romanticism, French positivism (scientism), and German historicism – all of which are palpable throughout *On Liberty*. Then there was his colleague and companion Harriet Taylor, whom Mill not only praises in the dedication to *On Liberty* but also inspired him to pen his famous essay *On the Subjection of Women* in 1869, with many of her own thoughts incorporated into the text.

Apart from Mill's intellectual influences, moreover, we can also consider key historic moments that likely shaped Mill in his formative years. He grew up in Britain when the country was still recovering from its wars with Napoleonic France and confronting 'rising popular discontent against an exclusive and elitist political system and an emerging industrial system in which men's and women's lives appeared dramatically exposed to the uncertainties of trade and manufacturers'.² These two events indicate that Britain during Mill's time was undergoing a period of change, and Mill viewed himself as living through a transition from a 'highly unequal society' to 'a more egalitarian order'.³ As with any crucial moment in history, such as a nation's recovery from war or the growth of an industrial society – resulting from an unprecedented technological event – people's responses were varied and contrasting with regards to the proper course of action that would respond to these two events.

One element that Mill brings out clearly in his writings, however, is the need to understand the distinction between purported 'correct' or 'right' solutions to social problems and their historic tendency to become sources of coercion. In other words, Mill reminds us that there is a fine line between taking our belief in the social good and turning it into the very restrictive force that prevents our fellow citizens from forming their own thoughts and pursuing their own ends. This problem is what Mill sets out to prevent in *On Liberty*.

The above description of *On Liberty* may sound like an echo of a similar argument from the seventeenth century. Indeed, Mill wrote during the period of Victorian England; this was a relatively free society in the sense that the state did not interfere nearly as much as it had two centuries earlier, or even one century before, when Wilhelm von Humboldt wrote *The Limits of State Action*, which Mill cites in the epigraph to *On Liberty*. Mill's society was not the same as Locke's or Humboldt's. As Cranston put it, 'Mill's Victorian contemporaries were seldom oppressed by government, which was minimal . . . But nearly all individuals were constantly pressured by neighbors, employers, husbands, and fathers, who were dominated in turn by taboos and

² J. S. Mill (2015), *On Liberty, Utilitarianism, and Other Essays* [new edition] (Oxford: Oxford University Press), p. ix.

³ Mill, *On Liberty*, p. ix.

conventions governing a host of matters – courtship, dress, recreation, use of the Sabbath, and much else.’⁴

From Cranston’s observation, we may conclude that *On Liberty* is not a response to government as much as it is a response to society and the ways in which society unconsciously adopts moral frameworks that constrain the liberty of others. In Mill’s writings, then, we see a transition in the history of liberalism from a political philosophy aimed primarily, even solely, at government intervention in the lives of citizens to a social movement in which liberty becomes a broader social principle that is the responsibility of individuals to uphold and preserve against each other. Although Mill is certainly interested in responding to government intervention and allocates some space in *On Liberty* to discuss this topic, the work is primarily a philosophical discourse about the effects and problems of resolute social propriety on liberty and individuality.

For Mill, the social context of liberty matters more than its political and philosophical contexts. In the very introduction to his work, he tells us he is *not* interested in discussing liberty as a philosophical question about the freedom of will as opposed to determinism, which holds that every human action is restrained and predetermined. Nor is he interested in discussing the relationship between personal liberty and governmental authority. The former question was a popular philosophical and theological argument in the seventeenth century, famously taken up by Thomas Hobbes and Anglican bishop John Bramhall, for example. The latter was also a common topic in political philosophy when debating the proper political order. Neither, however, answers the question that concerns Mill most. Mill’s focus on the social context of liberty incorporates both philosophical and political understandings of liberty because analysing the social context of liberty requires both philosophy and politics: understanding the ways in which society may work against the individual requires a level of introspection about the ways we understand our own liberty as well as extrospection about the ways in which others, even political rulers, shape and limit our liberty.

We must remember, after all, that Mill was living in a comparatively more democratic society, where economic and social equality was spreading widely, than in previous years. Not only was society more democratic, but the political organisation in Mill’s time was characterised by nations and rulers who had concern for their citizens.⁵ As a result, what the editors to this edition call ‘social opinion’ became the new form of domination that proved pernicious for the flourishing of a liberal society. Mill implies that, in this new democratic society, culture shapes politics such that whatever a given society deems culturally acceptable

⁴ Mill, *On Liberty*, p. ix.

⁵ Mill, *On Liberty*, p. 6.

is likely to become the political status quo. To prevent this form of social domination from oppressing individuals, Mill attempts to establish the principles that will preserve individual liberty against social pressure in *On Liberty*.

‘On Liberty’: A glimpse inside

Mill’s work opens with a discussion of that perennial tension between liberty and authority. This problem, Mill argues, is a historical feature that has burdened ancient and modern societies alike. But Mill marks a difference between past and present: in old times, he tells us, ‘this contest was between subjects, or some classes of subjects, and the Government’.⁶ He continues: ‘[b]y liberty, was meant protection against the tyranny of the political rulers. Rulers are viewed as antagonistic to the people because of the place or entity from where they derived their power and authority’.⁷ Notice the past tense. That form of liberty as protection against political rulers is no longer the type of liberty that is in most need of protection. With tyrannical rulers gone, a new threat to liberty emerges in the form of social convention. For this reason, Mill tells us that he defines liberty in a *civil* and *social* sense, which he describes as ‘the nature and limits of the power which can be legitimately exercised by society over the individual’.⁸ From this definition, Mill is able to assert the central principle of his work:

That principle is, that the sole end for which mankind are warranted, individually or collectively, interfering with the liberty of action of any of their number, is self-protection. The only purpose for such power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant.⁹

This affirmation is now known as the ‘harm principle’, which sustains that intervention is only permissible when it prevents harm. Mill identifies one sole reason to justify interference with individual liberty – the harm principle – which is to avoid harm to others. Moreover, Mill immediately adds an additional warning to readers: man’s ‘own good’, however we define it, cannot be considered a satisfactory reason to interfere with anyone’s personal liberty. This second statement bears the more problematic questions that Mill treats throughout the rest of his work. What are the implications of a social and political system in which man’s ‘good’

⁶ Mill, *On Liberty*, p. 5.

⁷ Mill, *On Liberty*, p. 5.

⁸ Mill, *On Liberty*, p. 5.

⁹ Mill, *On Liberty*, pp. 12–13.

does not justify intervention? Is this statement a critique of paternalism of all sorts?

Now, Mill does not go so far as to say intervention is never justified. In fact, he provides certain qualifications to his harm principle. Two exceptions are people whose faculties have not yet matured, such as children, and societies where people are not yet 'capable of being improved by free and equal discussion'.¹⁰ Recall Mill's own upbringing: He had a very didactic education with his father, and his self-development was certainly a result of his father's intervention in his education. As a result, Mill does agree that society and parents can interfere in the lives of children, since they are not yet fully developed. The same goes for societies where liberty is not yet an established and cherished value. Mill adopts a progressive view of history, meaning that he believes that societies need to develop in stages before reaching certain standards of civilisation that establish and preserve liberty as a keystone principle.

Apart from these exceptions, however, individual liberty must be upheld. Mill identifies three cases in which liberty is especially vital. The first is what might be called one's inner or personal domain of consciousness. This domain includes our thoughts, feelings, and beliefs – freedom of conscience. The second regards our plans for our lives, which involves our personal preferences, values, and desires – freedom to pursue the lives we wish to lead. The third is about the groups that we might want to join – freedom to associate with whomever we wish. Mill's decision to establish these three cases in which liberty is most precious indicate what we might describe as Mill's concern for the 'tyranny of the majority' in Part I of the work. Mill wishes to detract from the power of those he calls 'political functionaries' and focus, instead, on the dangers of a society that works 'collectively, over the separate individuals who compose it', whose 'means of tyrannizing' can become 'more formidable than many kinds of political oppression'.¹¹ Mill argues that social tyranny 'leaves fewer means of escape, penetrating much more deeply into the details of life, and enslaving the soul itself'.¹² For this reason, protection against the government is not enough. The focus needs to shift to 'the tyranny of the prevailing opinion and feeling; against the tendency of society to impose . . . its own ideas and practices as rules of conduct on those who dissent from them . . .'.¹³ The practical issue that grows from these dangers, Mill concludes, is determining the limit between the individual and society.

Mill does provide us with some affirmative statements from which to derive his ensuing thoughts. For example, he writes that man is always

¹⁰ Mill, *On Liberty*, p. 13.

¹¹ Mill, *On Liberty*, p. 8.

¹² Mill, *On Liberty*, p. 8.

¹³ Mill, *On Liberty*, p. 8.

sovereign 'over himself, over his body and mind . . .',¹⁴ and, a couple of paragraphs later, that each man 'is the proper guardian of his own health, whether bodily, or mental and spiritual'.¹⁵ We arrive at Part II of the work with sufficient information to infer Mill's views on what he titles the 'liberty of thought and discussion'. That said, his defence of the liberty of thought and discussion is centred around an argument that is worth parsing out. From the outset of the section, Mill discusses the problem of doctrines and their 'assumption of infallibility'.¹⁶ The problem with this assumption is that it tends to lead people who adopt a given doctrine to decide that this doctrine is correct for others without granting them the possibility to disagree or decide for themselves. Mill is strongly concerned with dogmas as examples of ingrained social beliefs that are not vigorously debated. He has reason to encourage people to debate their beliefs – for without debate, beliefs become 'dead dogma', not 'living truth'.¹⁷ Mill argues, moreover, that beliefs may be partially true, but in order to gradually get closer to the truth of something, society requires 'the collision of adverse opinions'.¹⁸ The relationship between thought and discussion, then, is one of mutual contingency: open debate and public discussion cannot take place without the liberty of thought that allows different men and women to develop their unique ideas; likewise, the development of unique ideas can hardly arise in a society where discussion is not free.

Part III of *On Liberty* combines the previous chapter's two central qualities, liberty of thought and discussion, to explain what becomes of a person who lives in a society where these qualities are valued: a person's individuality is developed to its fullest. This third part of the work explains why individuality is 'one of the elements of well-being' that cannot be dismissed in any political society that values the good of its members. Individuality, then, becomes a central theme of *On Liberty* that requires thorough study. What is individuality? Is it something with which everyone is naturally endowed? Is it something built? Both? Mill describes individuality in the following way, worth quoting in its entirety to fully appreciate the depth of his thought:

But it is the privilege and proper condition of a human being, arrived at the maturity of his faculties, to use and interpret experience in his own way. It is for him to find out what part of recorded experience is properly applicable to his own circumstances and character. The traditions and customs of other people are, to a certain extent,

¹⁴ Mill, *On Liberty*, p. 13.

¹⁵ Mill, *On Liberty*, p. 15.

¹⁶ Mill, *On Liberty*, p. 25.

¹⁷ Mill, *On Liberty*, p. 35.

¹⁸ Mill, *On Liberty*, p. 52.

evidence of what their experience has taught them; presumptive evidence, and as such, have a claim to his deference; but, in the first place, their experience may be too narrow; or they may not have interpreted it rightly. Secondly, their interpretation of experience may be correct, but unsuitable to him. Customs are made for customary circumstances, and customary characters; and his circumstances or his character may be uncustomary. Thirdly, though the customs be both good as customs and suitable to him, yet to conform to custom merely as custom does not educate or develop in him any of the qualities which are the distinctive endowment of a human being . . .¹⁹

There are many elements to point out in the above statement. First is the fact that Mill describes individuality as both a privilege and a proper condition for being a human being. For something to be a 'privilege', it cannot be something that automatically happens. That said, it is also a proper condition, which means that all human beings should strive towards individuality. Mill's emphasis on the privilege of individuality is key, since it imparts the message that individuality is something which a society must establish *and* preserve; it must not be taken for granted. Another important element in Mill's description of individuality is this idea of self-formation after maturity. Man is able to interpret experience in his or her own way. Customs, helpful as they may be, do not replace our personal experience. Most importantly, customs prevent people from developing into individuals, which requires active engagement with the world that is free from any preconceptions.

Another element that merits appreciation in Mill's understanding of individuality is how he expresses the connection between individuality and originality. Mill astutely notices how originality is only valued when we encounter a 'genius', someone who can 'write an exciting poem' or can 'paint a picture', but not when we meet someone who demonstrates 'originality in thought and action'.²⁰ In reality, the originality of thought and action is the true mark of genius, but we do not view these qualities with admiration. Mill remarks how 'originality is the one thing which unoriginal minds cannot feel the use of'.²¹ What he calls the 'despotism of custom' is the reason why human advancement is hindered when originality and individuality are hindered, since custom exists in 'antagonism to the spirit of liberty or that of progress or improvement'.²²

From Mill's writings, we might gather that he is fairly sceptical of the significance of truths, customs, or tradition. After all, Mill's understanding of human nature *is* progressive, but organically so. In other words,

¹⁹ Mill, *On Liberty*, p. 57.

²⁰ Mill, *On Liberty*, p. 64.

²¹ Mill, *On Liberty*, p. 64.

²² Mill, *On Liberty*, p. 69.

progress or improvement of an individual's skills or mind is a task that cannot be artificially imposed. As Mill writes, 'human nature is not a machine to be built after a model, and set to do exactly the work prescribed for it, but a tree, which requires to grow and develop itself on all sides, according to the tendency of the inward forces which make it a living thing'.²³ Notice Mill's naturalist language that reiterates man's vivacity as a *natural* fact; that is, as something that always takes place, so long as the proper conditions are set for his or her flourishing. In this sense, Mill's philosophical position that views man as a progressive being does have its limit in the individual's natural inclination towards what is good for him or herself.

The final section of the work, Part IV, concludes Mill's thoughts by revisiting our original question about the line between society and the individual. To be sure, Mill does not argue that we as individuals owe nothing to our respective societies; this would be a great misunderstanding of Mill, for he recognises that people who receive protection from living in society owe 'a return for the benefit' and cannot live in 'selfish indifference' to others.²⁴ Mill at no point argues for self-interest, but he is arguing that in a society where it is important and good to care for one another, we must not confuse this benevolence with telling someone 'that he shall not do with his life for his own benefit what he chooses to do with it'.²⁵ Indeed, the line that Mill treads between individualism and society in *On Liberty* is so delicate that we can even say that we have not yet found a definitive solution for it, even though Mill provides us with one of the clearest accounts focused on this question.

Conclusions

On Liberty remains a prescient account of some of the most pressing questions that arise in a democratic society grappling with individualism and liberty, on the one hand, and progress and expediency, on the other. After all, the modern state often views progress as a social project, and our liberal tradition is filled with thinkers like T.H. Green and John Dewey who have helped ingrain this idea into public opinion. That said, thinkers like John Stuart Mill remind us that liberty and progress are never opposed; indeed, they work together, but only when individual liberty is not sacrificed in the name of progress. The conclusion to *On Liberty*, which serves as an admonition, summarises it best:

The worth of a State, in the long run, is the worth of the individuals composing it; and a State which postpones the interest of their mental

²³ Mill, *On Liberty*, p. 58.

²⁴ Mill, *On Liberty*, pp. 73–74.

²⁵ Mill, *On Liberty*, p. 74.

expansion and elevation, to a little more administrative skill, or of that semblance of it which practice gives, in the details of business; a State which dwarfs its men, in order that they may be more docile instruments in its hands even for beneficial purposes – will find that with small men no great thing can really be accomplished; and that the perfection of machinery to which it has sacrificed everything, will in the end veil it nothing, for want of the vital power which, in order that the machine might work more smoothly, it has preferred to banish.²⁶

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²⁶ Mill, *On Liberty*, p. 111.

Book Review

Totalitarian Harbingers of Democratic Decline: EU Pandemic Response

Francesco Cappelletti

Corona Economics: The Five Horsemen of the Apocalypse
by Velimir Šonje and Kristijan Kotarski (European Liberal
Forum, 2021)

Introduction: Liberal values vs. authoritarian measures

When the pandemic was first confirmed, self-preservation instincts kicked in. In a global communication environment defined by the real-time free flow of information, fear spreads faster than any virus ever could. Combined with the fact that scientific knowledge of the virus was limited, the fear of infection eclipsed every other argument in the public debate. Naturally, the call to protect ourselves and others from infection was prioritised.

It may be argued that the combination of fear, lack of information, and shallow moralising did nothing to help our societies deliberate or develop adequate public health policies. On the contrary, downgrading dissenting voices *prima facie* suppressed public discussion and encouraged a continuous sense of panic in society.

In this context, the authors – economist Velimir Šonje and political scientist Kristijan Kotarski – examine the external and internal factors placing pressure on the decision-making process and the very fundamental values that underlie liberal democracy in Europe.

Content and scope of the book

In the first and second parts of the book, the discussion focuses on the roles of fear, ideology, and China during the pandemic. Although it may not be apparent at first glance, these issues are actually intertwined: the initial Chinese response to the outbreak of the virus in Wuhan influenced public policies in Europe. Here, the uncomfortable truth is that European liberal democracies copied from the playbook of a totalitarian, dictatorial government that required complete subservience to the state. The second part of the book provides a detailed account on how this state works, presenting its internal paradoxes and external perceptions of its power. It is about the general view that modern China is much stronger

and better organised than it really is. The same false perception plays a role in contemplating China as the global engine of growth in the post-pandemic period, due to its relatively fast economic recovery in 2020 and 2021. Therefore, depicting China's internal socio-economic imbalances is important both for understanding the rapid spread of the radical lockdown idea and for overestimating China's role in the global recovery after the pandemic.

In the third part – which lends itself to the somewhat sarcastic title of the book – the authors then identify and highlight five risks associated with the adoption of public policies modelled on the Chinese totalitarian approach. By observing the links between the pandemic, on the one hand, and economic and political changes, on the other, one could notice the rise of five bad ideas that have been catapulted to the social surface by fear of the coronavirus.

These bad ideas are: first, 'helicopter money' – the idea that the economic problems during the pandemic and periods of radical lockdowns can be solved with the distribution of fresh money; second, the 'discredited European Union' – the idea that we are witnessing the end of the multinational framework of international cooperation and exchange, which particularly refers to the European Union, allegedly discredited for failing to offer a common response to the crisis and help the most threatened Member States; third, 'self-sufficiency' – the idea that the economic paradigm of global capitalism is now giving way to the reestablishment of national development frameworks, which allegedly represents a new opportunity, particularly for agriculture; fourth, the 'nanny state' – the idea that re-establishing the nation state as a political framework to contain the virus will reincarnate socialism or create even more robust state or political capitalism as an institutional framework for future economic and social development; and, last but not least, the 'suspension of democracy' – the idea that China's 'success' in the fight against the virus shows that too much individualism and excessive reliance on the liberal model of civil control over government can threaten survival during the pandemic, which is why new models of social organisation should be considered, ensuring firm control and coordination from a single centre and including the collection and processing of large quantities of citizens' personal data.

These five ideas are closely connected. They constitute an entire worldview towards humankind and the future of Europe and Western civilisation. This spirit – described with the metaphor of 'the five horsemen of the apocalypse' – skyrocketed like a genie from a bottle during this crisis and has sent many Western liberal democracies precariously close to the edge of autarchy.

The authors write about various ethical dilemmas and the inadequacy of models and ideas developed within the social sciences in an effort to embrace the economic, emotional, and philosophical nuances that

are so important for determining right and wrong policies during the pandemic. Although title of the book contains the word economics, it is much more than an economic analysis of the pandemic's consequences.

The authors draw on real-life examples from their own national context (Croatia). However, albeit not similar in every detail, the same basic argumentation has underlain public debates about the pandemic everywhere in Europe. Hence, readers in Greece, Belgium, and elsewhere will be able to recognise both the timeline and examples put forth.

Coping with the challenges: Social trade-offs

Corona Economics is an attempt to provide a social cost-benefit analysis of the pandemic period. Some of the key variables in this social calculus still cannot be quantified because measuring many consequences will only be possible in the long run. However, Šonje and Kotarski offer a taxonomy of the short-term and long-term consequences of both the pandemic and reactions to it, including the unknowns that may confront each other as social trade-offs, such as: consequences of Covid-19 vs. consequences of poorer prevention and treatment of other diseases, fewer expected opportunities for children from poor families who could not ensure quality online schooling from home, consequences of economic recession, exploding public debt, psychological problems such as domestic violence, depression, and suicidal tendencies, and the influence on our beliefs and institutions. Taking the final account of these complex trade-offs will take years of thorough research, but decisions about fighting the pandemic had to be made more quickly.

The authors' approach to assessing anti-Covid social measures is a pragmatic one, based on an attempt to avoid ideological traps and search for facts that might inspire evidence-based policies. Copying best practice has limited potential, as there is no set recipe of measures that could be used effectively in all countries at all times. Despite the importance of imitation in policy design, no country could reliably resort to the conclusion: 'Do whatever Germany or Iceland have done, and you'll have the same infection and mortality dynamics as Germany and Iceland.' Local dynamics are always notably different and can be confusing. While there is enough evidence that a narrow set of measures involving, for example, hygiene, masks, distancing, and the banning of mass gatherings have been effective and have not produced great social losses, the social cost-benefit balance of more restrictive measures such as closing down schools and institutions has not been so clear.

There are countries like Belgium and some Eastern European countries where very restrictive measures did not produce the expected outcomes, but there are also countries in Northern Europe where the infection and mortality rates were successfully contained without extreme restrictions. There is much we still do not know about the fundamental causes of

spread and mortality, but one of the explanatory factors may be hidden in cultural traits and individual behaviours related to our trust in institutions. Although extreme forms of lockdown inspired by China's Wuhan experience may be efficient by definition (where social atomisation is implemented by the brutal force of the state), their unintended results may destroy the social fabric of the West as we know it, with many unforeseen consequences, including loss of life perspectives or even lives as such. Society is fragile, and the social fabric is woven from the threads of our cultural norms and institutions, which is why no policymaker should focus on one problem only and disregard the entire social network.

In this pandemic, one could occasionally get the impression that these principles have been forgotten about and that intrinsic uncertainty and fear are what nurtured early measures that were hasty and unverified. Even when it turned out that some restrictive measures did not work, many of them were retained or even strengthened, thus deepening social gaps without visible benefits in terms of eliminating or mitigating the consequences of this objectively grave disease. Responsibility has often been passed onto citizens, who are allegedly undisciplined and irresponsible. But the truth is that political decisions can be like a wheel falling into a rut: its driver not having the strength to change course, afraid of losing any remaining credibility.

Democracy and freedom are the only corrective factors that can institute change under such conditions. And without change, no best solutions can be found. This is why preserving democracy and freedom is essential: not just because democratic societies are more pleasant to live in but also because it is very likely that such societies will turn out to be more capable of facing the challenges of this century.

Further research and concluding remarks

From the point of view of economic analysis and the political economy, the authors pose three main concluding questions for further consideration. First, whether it be by coincidence or some new pattern, the first two crises of the twenty-first century have caused much more intensive fluctuations in economic activity than the economic crises that followed World War II. The question is twofold: are our institutions and knowledge adapted enough to respond to these increasing economic fluctuations if they will persist throughout the twenty-first century? And what will the implications be for the relationship between the state and society at large?

Croatia is not the only European economy where the following simple calculation can be applied: general government budget expenditure before the crisis accounted for 47% of GDP; if state-owned enterprises and agencies outside the general government were added to it, the public sector share would have accounted for 55–60% of GDP. After

the Covid-19 crisis, this share could reach nearly 70%. Can we just shrug off the question about the future of such an economic and political structure? Does this not pave the way to the private sector's serious dependence on the public sector – something that will hinder the development of European economies' competitiveness, weaken impulses for innovation and growth, and possibly endanger the future fiscal capacities we will need for future crises? Finally, is it not true that the sharp shock of 2020 and the recovery of the European economy expected in 2021 (slower than the recovery of the American economy) is partially a consequence of the structural weaknesses of the European economy, which could be linked to the suppressed dynamics of the private sector?

Another question relates to the heightened volatility that may become the main feature of this century, together with an ageing EU population. What, then, should we do to mitigate its impact? It is well known that ageing leads to greater demand for public healthcare services because the number of people in the age group 60+ is constantly growing. However, besides long-term growth of demand for health services, short-term fluctuations around other growing trends may also occur. So, our social problem does not boil down to mitigating one long-term rising trend alone; it is also about mitigating wider short-term fluctuations by increasing the supply elasticity of health services and adapting institutions in such a way that the elderly will be protected and that closing down our whole society can be avoided. It is not clear if this solution will require a larger or smaller public sector, but it will by all means require a better organised and more efficient public sector. But is this achievable, irrespective of the size and scope? Can the private sector and a truly independent civil society effectively control the overwhelming leviathan?

It is also possible that this brave new world will win support among the general public and drag Europe all the way to political capitalism. It would be a historical triumph of the 'Chinese approach'. In this scenario, Europe and China would become more similar in this century – not identical, because they have very different histories and political systems, but the swelling of the public sector to proportions beyond democratic control would have to mean the convergence of these two systems.

Second, all external shocks fit into the existing geopolitical and political-economic framework. They disturb it, challenge it, and change it. When it comes to the pandemic, on the global level, this framework has been defined by the relations between China and the West (in other words, between totalitarianism and liberal democracy). On the European level, it has been defined by the growing differences between EU Member States as well as attempts to find a delicate European balance that may somehow reconcile these differences with various interests. The question is whether the pandemic has increased or decreased the probability that political conflicts will escalate, especially those between authoritarian and liberal ideas, on both the global and European levels.

This is related to the third idea: the pandemic has brought to mind the latent presence of authoritarian economic and political ‘sleepers’ in democracies – the five horsemen of the apocalypse. Sleeper ideas are not imported exclusively; they are constantly with us, and they wake up when the context, usually stirred up by an external shock, makes space for their establishment. Helicopter money, a discredited EU, self-sufficiency, the nanny-state, and the alleged superiority of undemocratic societies in dealing with sudden crises have all crawled out of Pandora’s box. It is as a warning that this is neither the first nor the last time for the horsemen of the apocalypse to be offered as solutions to social problems; the question is what can be done to convince citizens that these solutions are based on dangerous misconceptions.

Looking back on the events from 2020 brings up a good lesson that bears repeating: authoritarian ideas conquer the world slowly, growing gradually and moving from the zone of the unacceptable to the zone of the acceptable under the cover of panic and fear. When such things start happening, it is useful to remember what Austrian writer Stefan Zweig said in his masterpiece, *The World of Yesterday*: ‘It is an iron law of history that those who will be caught up in the great movements determining the course of their own times always fail to recognize them in their early stages.’ The pages of this book are a testimony to the early stages of the development of these bad ideas that awakened in the time of the pandemic.

Book Review

The Mirage of Social Justice

Adam Mazik

Law, Legislation, and Liberty, Vol. 2: The Mirage of Social Justice by Friedrich August von Hayek (University of Chicago Press, 2012)

Introduction

To the modern person, the term social justice almost seems self-explanatory. From the moment one gets interested in politics, ‘social justice’ seems to have always been part of the argumentation of politicians from both the left and the right. But what does ‘social justice’ mean? And is it always used in the same way? What is the relationship between ‘justice’ and ‘social justice’? Can ‘social justice’ actually be achieved?

These and other questions are answered in ‘The Mirage of Social Justice’, the second part of one of Friedrich August von Hayek’s most important books, *Law, Legislation and Liberty*. Its three parts are perhaps the essence of Hayek’s socio-philosophical thought. The great Austrian economist and social philosopher published a variety of articles and books, some of which deservedly became classics of modern twentieth-century liberalism.

Here we will mainly focus on the second part of Hayek’s magnum opus. In ‘The Mirage of Social Justice’ Hayek tries to prove that not only is the term ‘social justice’ empty and meaningless, but the ideas behind the term as well as the execution of policies aimed at reaching ‘social justice’ are a grave danger to the ‘Great Society’ and our liberal civilisation. According to Hayek, ‘social justice’ and its proponents have the potential to destroy the very institutions and concepts that make a free society and civilisation possible.

Spontaneous orders and organisations

The central point of Hayek’s argumentation is his understanding of different kinds of orders and rules. Hayek differentiates between spontaneous orders, which he calls ‘cosmos’, and organisations, which he calls ‘taxis’. Spontaneous orders are orders ‘of human creation, but not human design’.

A designed order (an organisation) has been deliberately planned and has some clear and formulated goals. Organisations are associations, corporations, governments, and other types of orders which exist to reach a certain individual end. The main aim of a government is to protect and enforce the rights of its citizens (and others in the geographical reach of the government). Other organisations are, for example, corporations and companies. The goal of Ford, BMW, or Kia is to produce and sell cars.

Spontaneous orders, on the other hand, do not have any differentiated aims or ends. They are not created to reach a certain goal but are the results of a complex interplay of different agents who act according to a set of rules. The market is such an order: through the price mechanism, it coordinates the voluntary actions of self-interested agents who buy and sell products and services and use all of society's dispersed knowledge to reach their respective individual goals.

What markets do make possible is the use of combined information and knowledge that no individual and no organisation possesses or even can possess. The market and its outcomes do not emerge either because someone has planned them or because someone has aimed to create them. They are the visible result of many different individual actions of agents working within a framework of rules. The best example of this is the mechanism of supply and demand on the market.

Society is a spontaneous order. Society, according to Hayek, consists of the individuals and organisations in it, as well as their actions. These happen in accordance with different kinds of rules. But what exactly are those rules, and what is their nature?

What is the law? What is legislation?

If someone were to ask a modern person on the street what 'the law' is, they most likely would receive the answer that it is the text written in the statutes that are produced by the legislatures of all countries. 'The law is what the parliament produces, with the legitimate power which it derives from the democratic choice of the people, who it represents.' While not wrong in its twenty-first-century terminology, this vision of the law is very modern.

In the first part of *Law, Legislation, and Liberty*, 'Rules and Order', Hayek defines two kinds of 'laws'. Most people nowadays are familiar with the first one, which Hayek calls legislation, or 'thesis'. 'Thesis' includes the rules of the organisation. They are deliberately designed and created by either parliaments or other legislative bodies and aim at certain ends. Legislation is a 'public' law, created in the 'top-down' fashion, and it serves as the functioning of the government as an organisation. The second, 'nomos' or 'the law' is a set of rules that has not been designed by anyone in pursuit of his aims but which has 'evolved' and

'grown' through the repeated actions of individual agents who didn't intend to create a legal system.

The law, in Hayek's understanding, is therefore a set of rules, or regularities, that doesn't aim at a certain end. The basic rules of conduct, like most of the norms of civil or criminal law, are the results of thousands of years of actions, traditions, and adaptations. Such rules of conduct have not been set by a 'ruler' in order to reach an aim, like public peace, but are rules which have enabled certain societies to survive in competition with other societies. These rules and regularities don't have to be stated or formulated – the decisive factor is obedience of the rules by coexisting agents. In fact, according to Hayek, the fact that we obey most of the rules every day is not due to knowledge of the verbal formulation of a certain rule but because we implicitly know how to act, owing to the experiences that we and our ancestors have had and the fact that we can deduce the adequate kind of behaviour from the context of situations we find ourselves in, as part of an ongoing learning process.

Those rules of conduct have continuously been formulated and improved by independent judges and other decision-makers throughout history.

The role of rules

Why do those rules emerge? Why do we need them?

Hayek starts his argument by asking about the meaning of terms like 'general welfare' or 'public good'.¹ Criticising their unclear definitions, he points out that both terms can be used to plead for any policy which works for the interests of the ruling group. He sees the reason behind this tendency in the wrong assumption that the public interest is the sum of all private interests. However, this cannot be the case, as neither the government nor anybody else could aim at the satisfaction of all individual goals, since no one knows what those aims are.²

In a modern society in which agents use their own knowledge to reach their individual goals, most of the needs of individuals are satisfied as a result of processes that the government and no one else is aware of.³

Hayek concludes from this that the main aim and main public good that the government can and should provide in a society is not the satisfaction of any particular needs. The government's chief aim should be to defend and secure the foundations that make citizens' reaching their individual plans possible: it should secure the basic conditions that

¹ Friedrich von Hayek, *Law, Legislation and Liberty*, vol. 2: *The Mirage of Social Justice* (Chicago: The University of Chicago Press, 2012).

² Hayek, *Law, Legislation, and Liberty*, p. 170.

³ Hayek, *Law, Legislation, and Liberty*, p. 170.

individuals in a society can use so they can pursue their individual and personal goals.

It is therefore of the greatest importance to preserve the spontaneous order of society and of the market, as it is precisely that spontaneous order that makes possible striving and reaching for individual goals and needs.

The tools that we use to preserve this spontaneous order are generalised, universal rules of conduct. We need them because of the sheer amount of dispersed knowledge in what Hayek calls the 'Great Society'. The economist explains that nobody is able to know all the particular facts that constitute the basis of the order of activities in a complex society. In order to use all of that information, individuals have to be able to use their own knowledge for their own aims. This is only possible in the spontaneous order upheld by the rules and regularities of conduct.

A modern and complex society differs significantly from the old tribal society that still influences many of our moral feelings and instincts. The greater and therefore more complex the society, the more difficult it is to come to an agreement on common ends.

Therefore, according to Hayek, we need a different kind of mechanism to ensure peace and the functioning of the system. The agents in the Great Society don't need to agree about particular goals; they do not need to share a hierarchy of ends. What is needed instead is similarity in opinions and values – views on the desirability or undesirability of different forms of actions and a certain kind of lasting attitude towards particular events. Unlike the end-oriented will of tribal societies or organisations, opinions and values do not determine a certain particular action that needs to be done. They rather create a kind of disposition towards certain actions and tell agents which rules to observe in a particular situation.

Rules emerge from an ongoing and continuous process of learning and adaptation to the environment. Through trial and error, agents learn the importance of observing certain rules in certain kinds of situations. The rules that get adopted and passed on are ultimately the rules of more efficient societies, and thus of societies with more efficient rules. The law does not serve any particular ends in the way commands do; instead, their function is to maintain the abstract order of actions in a society, making the pursuit of many individual goals possible.

It is impossible to start a new system of law from scratch. Observable rules operate within a framework of given values and can only be criticised or improved upon by taking into consideration other rules guiding conduct in that society, as well as its values and opinions. Rules are not completely separable from the entire system of the law but are a part of a complex structure of regularities of conduct created by the experience of generations.

Hayek notes that rules and values vary between different societies. For that reason, he finds it impossible to formulate an absolute system of morals applicable to all humans and societies. Both rules of conduct, like the law, and morals always depend quite a lot on the kind of society in which an agent lives.

But what is the relation of the law (nomos) to justice, in that case?

Does the fact that there can be no absolute system of morals lead to the conclusion that an objective test of justice is impossible, as legal positivists hold? Maybe justice only depends on the will of legislative organs?

According to Hayek, justice is an attribute of human conduct, meaning that descriptions of something being 'just' or 'unjust' can only refer to the deliberate actions of agents and organisations. It would be a mistake by this logic to call the result of something just or unjust when no person is responsible.

It certainly can appear to be unfair that some people have better opportunities than others. It can appear unfair that certain idle individuals have more than their industrious and hardworking counterparts.

The spontaneous order of society, however, is not a process in which someone actually decides about the outcome. The outcome depends upon millions of actions and a colossal amount of dispersed knowledge that nobody can ever possess, and it is not the result of any decision made by a ruler, an entity, or an organisation. Even if someone wanted to influence the market in order to produce a certain result for a certain person, they would not have the power to do so. Hayek concludes that in such a spontaneous order there can never be a rule which would determine any person's end position. The results of the market in their details are not intended by anybody and therefore are not the result of a single person's or an organisation's deliberate action. To call such results just or unjust would therefore be a categorical mistake.

The liberal understanding of justice, according to Hayek, is to treat all members of society under the same rules.

He asserts that these rules of just conduct, in the overwhelming majority of cases, are negative and abstract. They developed after the time when old tribal societies had evolved into more complex ones. In a more complex society in which members cannot know all the individual ends and needs of others, rules necessarily have to become general and negative. Rules which may work in a family or a small organisation cannot apply to complex societies.

By abstract Hayek means that they are applicable to an unknown number of future instances. Instead of determining the particular action that ought to be done, they forbid certain kinds of conduct. Their function is to protect the personal domains within which individuals can use their knowledge for their own purposes, allowing them to choose certain actions within these domains, for example, private property belonging to individuals and others in a given society.

Hayek once again emphasises that the results of conduct under these rules do not only depend on the observance of said rules but also on a variety of situations over which agents do not have influence. From that, Hayek once again concludes that these results cannot be called just or unjust. It's not the result that matters but the way in which this result has been reached.

There is therefore no positive test for justice. We do not have positive criteria. What we do have, in Hayek's view, are negative criteria. Interpreting and applying a rule within a system of rules and values cannot tell us which kind of action is just; however, it might demonstrate unjust conduct. Through this gradual implementation and improvement of rules, through this ongoing process, we can never reach a perfectly consistent system of just rules, as it has to continuously adapt to the changing particular circumstances of a complex modern society. It is through these negative tests of consistency, generalisation, and universalisation that we can adapt and come closer to the ideal of a just system.

Hayek and legal positivism

It is important at this point to emphasise that Hayek's understanding of law and justice has never been the dominating opinion among jurists and philosophers of law, neither at the time of the publication of his book nor today.

Throughout the twentieth century and up to the present, the dominating idea in the understanding of jurisprudence has been legal positivism.

Legal positivists do not have Hayek's empiric understanding of the law or rules of conduct.

According to legal positivists, the only kind of real law is the law deliberately made by the legislative branch, essentially what Hayek calls legislation or public law. Just like Hayek, positivists understand that there are no positive criteria for justice. They do, however, draw a very different conclusion: there is no objective test of justice at all. In that understanding, the law is purely the subject of the will of the legislator. It doesn't matter to consistent positivists, either, whether the statute has been implemented democratically or not.

Many positivists, e.g., Hans Kelsen, have thus concluded that even the unjust laws and statutes of the national-socialist regime in Germany from 1933 to 1945 were in fact laws, in their understanding of the word, even if they disagreed with it on a moral level.

With his negative test of justice, Hayek demonstrates that their conclusion is false. Just because there is no positive test of justice, it doesn't follow that therefore no objective statements about justice can be made. What can be done is to consistently apply the negative test of justice to improve the inner consistency of the system. Such adaptations, changes,

and improvements should not be the result of lawmakers' arbitrary will but should evolve from the inner necessity of the system.

According to Hayek, the reason for the positivists' misconception is ultimately their ahistorical understanding of the law. Hayek argues the opinion that the entire content of all rules of law is deliberately determined by the arbitrary will of the legislative body making the law is factually false and the result of a constructivist fallacy.

The law (civil and criminal law), in Hayek's view, evolved before the modern understanding of the state or government was known. It does not make any sense to say that all of its content has been determined by deliberate acts on the part of the legislature when, in fact, the kind of law that Hayek mainly analyses is older than the concept of legislation itself.

The abuse of justice

Hayek argues that the whole concept of social justice is based on naive anthropomorphism and the fundamental misunderstanding of spontaneous orders. It is true that some distributions which happen in a market economy would be unjust if they were deliberately created. However, society is not an agent which can aim for particular ends. Society is not an organisation like a corporation, or even a government, but a spontaneous order, one which isn't directed by any deliberate acting or thinking. The results of the market order are the result of the actions of many agents, each of them striving for their own individual goals. These results depend on many factors and circumstances which cannot be known or understood entirely by any individual or government.

Social justice for Hayek is the logical conclusion of socialist thought. After discovering that the socialisation of the means of production is politically hard to achieve, socialists quickly changed their focus and realised that their egalitarian goals could easily be reached via other types of controls, like taxation and redistribution. Hayek sees great danger in this kind of thinking. While the ideal liberal society was to be governed by the principles of justice, he sees modern society as moving away from those ideals and therefore inevitably in the direction of more control, more organisational thinking, and less freedom, as he demonstrated in one of his books, *Road to Serfdom* – and all of that in the name of social justice.

Conclusion

'The Mirage of Social Justice' represents the complex work of a great mind. What seems to be a simple critique of 'social justice' is in fact so much more.

It is a thorough study of the law, legislation, and society. Hayek offers deep insights about the functioning of markets and the spontaneous

order of society, as well as a solid critique of contemporary legal philosophy. Together with the first part of *Law, Legislation and Liberty*, in 'Rules and Order' Hayek develops an empirical, realistic theory of the law and its development.

He dives into basic concepts like the understanding of different kinds of orders and the rules that govern them and shows that the law as it was understood for thousands of years is not the result of deliberate design. Rather, it comes from the interplay between freely acting agents observing abstract rules of conduct. Hayek explains the importance of values and concepts such as justice and attacks the organisational thinking of legal positivists.

His work teaches humility and demonstrates how much of our actions are determined by traditions and regularities of conduct that were developed over thousands of years among our ancestors.

Book Review

In Search of an Ideal State

Adam Mazik

Anarchy, State, and Utopia by Robert Nozick
(Blackwell Publishing, 1974)

Introduction

What is the ideal state? Is it the ‘soziale Marktwirtschaft’ of Ludwig Erhard? Is it perhaps the Scandinavian model? Maybe it is the ‘night-watchman’ state . . . Or is the ideal system having no state at all?

Anarchy, State, and Utopia (1974) by Robert Nozick is an intellectually engaging work by a bright libertarian radical. To this day, Nozick’s magnum opus is one of the most important – and the most respected – works in the intellectual history of libertarianism and classical liberalism.

Nozick’s book consists of three parts, hence the title *Anarchy, State, and Utopia*. The uniqueness of his argumentation lies in his method of reasoning. Following Adam Smith, he calls it ‘invisible-hand explanations’. His theory does not contain an imagined or hypothetical social contract and doesn’t assume the existence of a creator or any deliberate design.

Instead, the author argues that a minimal state would emerge spontaneously through individual decisions taken by the people and organisations in the state of nature. This state would emerge from self-interested actions, those which do not aim specifically at the creation thereof and without violating anyone’s rights.

No state is more extensive than can be justified.

State-of-nature theory, or how to back into a state without really trying

Should there be any state at all? ‘Why not anarchy?’, thus asks the philosopher. The first part of the book is a theoretical analysis of the ‘state of nature’, a state which many philosophers use as the basis for their argumentation. According to Nozick, it has explanatory value. The state of nature is a theoretical creation which can be imagined as a situation wherein humans coexist without having a government as we know it.

In order to find out whether a state can be justified, we first need to have a basis for comparison. For this, Nozick creates his state-of-nature theory. He decides to choose a realistic state of nature, ‘in which people

generally satisfy moral constraints and generally act as they ought'. According to Nozick, this view is not too optimistic, since some people would still choose not to abide by the rules. He thus believes that it is still the best an anarchist could hope for.

Nozick borrows the concept from John Locke's understanding of individual rights and the idea of a 'state of nature', where individuals live in a 'state of perfect freedom to order their actions and dispose of their possessions and persons as they think fit, within the bounds of the law of nature'. However, while problems of security and rights enforcement in the Lockean state of nature are delegated to a certain 'civil government', Nozick claims that first we need to analyse all the private solutions in which people may solve issues through voluntary cooperation.

Protective associations and markets

In order to protect and enforce their rights in the absence of the government and police, people in Nozick's state of nature would cooperate in private and voluntary organisations, which he calls protective associations. Through the division of labour, a group of people specialising in protection services, or specialised private associations, would emerge to sell different classes of protective services to a variety of clients.

Protective services, however, are not the same as other goods or services sold in markets. Due to their specific nature, a virtual monopoly on protective services would likely emerge on the market. In a situation of conflict between protective associations, the dominant one would most likely win. A protection agency without the best product would fall into a negative spiral, making competition impossible.

Side constraints vs. utilitarianism of rights

Nozick continues his argument with the concept of a hybrid between anarchy and the state, which he calls the 'ultraminimal state'. It is an organisation that maintains the monopoly of force in a given geographic area without providing universal protection. If you want these services, you need to pay. Nozick finds an apparent paradox in the views of proponents of this model. If the role of the state is to protect and enforce its citizens' rights, why then doesn't the ultraminimal state protect everyone's rights or bring the number of rights violations to a minimum?

Nozick explains the difference between two perspectives on the violation of rights. One is the 'utilitarianism of rights', according to which certain violations of rights are permissible, as long as they lead to minimising the overall scope of rights violations.

In contrast to such a goal-oriented understanding, Nozick pleads to see individual rights as 'side-constraints'. Side constraints are not goals

but abstract rules which regulate people's behaviour. Nozick's views here are strongly influenced by Immanuel Kant and his formulation of a categorical imperative. According to it, a human being is not a means or a tool that can be used to achieve certain goals. With that explanation, Nozick solves the apparent inconsistency of the ultraminimal state: it is only inconsistent if we assume that its proponents have a utilitarian view on individual rights.

The experience machine

In an effort to argue against utilitarianism, Nozick constructs one of the most brilliant thought experiments of all time. He asks the reader to imagine an 'experience machine' which allows the user to experience the greatest version of their life, where all their dreams come true. There is just one downside – those experiences aren't real. What the user sees and feels is nothing more than an illusion.

Would you use the experience machine, would you experience happiness, if you knew that it was nothing more than a fantasy? Robert Nozick gives us three arguments against using the machine. First, we as humans want to do certain things, not only experience them. Second, we want to exist in a particular way. We want to be a person, not just an indeterminate blob, as Nozick calls someone in the experience machine. Third, since the experience machine only lets us live through a man-made reality, we as users would not be able to experience anything deeper than what people can imagine. He concludes that we as humans want more from life than fantasies and passive experiences.

The 'experience machine' is an important argument in Nozick's critique of utilitarianism. In *Anarchy, State, and Utopia*, he uses it to explain his views on human conduct and rights. The experience machine argument in that sense is a celebration of the diversity of life and the underlying values guiding us through the uncertainty and uniqueness of true human experiences.

From protective agencies to the minimal state

But let us get back to the main line of argumentation. Nozick's dominant agency is neither a minimal nor even an ultraminimal state. While a minimal state in the classical liberal tradition has the monopoly of force in a given area and protects all the people living on its territory, Nozick intends to show that the dominant protective agency turns into the ultraminimal state through an invisible-hand process, without the violation of anyone's rights. As based on natural law, he argues, the 'redistribution' of protective services is not a violation of rights but actually a moral obligation of the members of the ultraminimal state to

transform it into a minimal state in which everyone's rights are enforced and protected.

But isn't the prohibition of the enforcement of rights for an independent individual (or the monopoly of force) a violation of their rights? To continue his argument, Nozick uses the problem of independents, or people who decide not to buy any kind of protective services. They want to enforce their rights outside of the procedure of protective association. To provide such people with the means to protect themselves, Nozick maintains that every individual 'has the right to be shown that he is being handled by some reliable and fair system'. If an individual is in danger of being submitted to an unclear and possibly unfair procedure, they have the right to resist and use self defence against the application of that procedure.

This, of course, is a service which the protective association most likely will fulfil for them.

Nozick concludes that the dominant protective association will effectively prohibit any kind of procedure which it deems unreliable or unfair. The association will publish a list of procedures that can be used and will proceed to punish any person who tries to use a different one. It will not allow anyone to defend themselves against its own procedures, and – due to its dominant market position – it will have a 'de facto monopoly'. This is not a 'de jure' monopoly, as Nozick says, for other agencies will still be allowed to compete, but its dominant market position effectively gives the dominant association the possibility to dictate the rules of the game.

But what about the rights of independents who turn out to have no opportunity to pursue justice in their own procedures or, rather, to enforce their rights at all? Nozick solves this problem with his principle of compensation. According to that, certain things can be prohibited if the lack of prohibition would cause a lot of fear and apprehension, as long as those disadvantaged by the prohibition get reimbursed. Nozick uses the example of a narcoleptic driving a car. It is permissible for others to prohibit them from using the car, due to the higher risk of damage and accidents. However, through this prohibition, that person suffers a disadvantage, e.g., discomfort and additional costs. Those profiting from this prohibition will need to compensate them for the inconvenience and bear any related costs.

Similarly, in cases of conflict among members of the association, independents are not allowed to pursue justice outside of the procedures of the agency. Without any affiliation with a protective agency, they effectively are not allowed to enforce their rights. This causes them a great disadvantage. Because the members of the association are the profiteers of their disadvantage, they are morally obligated to compensate for it. This effectively gives independents the protective services that the other members pay for.

Not only does the dominant protective agency have the effective monopoly of force in a given area, but its clients bear the costs of the protective services which the association provides for independents that cannot pay for them. Its influence is therefore comparable to that of a minimal state. The redistribution of protective services is thus rather compensation for imposing the effective monopoly of force on non-paying clients. The dominant protective association has reached a de facto monopoly of force, without breaking anyone's rights. In this way, it becomes an ultraminimal state whose protection is made universal, due to the prohibition of alternative procedures and compensation paid to disadvantaged independents.

So, nobody aimed for the state . . . but it emerged by itself.

Beyond the minimal state? Entitlement theory of justice

In the second part of the book, Nozick seeks to prove that his minimal state is the biggest state that can be justified from the position of natural rights. He criticises what he calls patterned theories of (distributive) justice and offers his own 'entitlement theory of justice'.

Anarchy, State, and Utopia was published in opposition to John Rawls' *A Theory of Justice*. Rawls understands distributive justice as a certain pattern which should be achieved through the state. According to him, the best and most just distribution follows the 'difference principle', in which the worst of the group of people is the most well off.

In contrast, Robert Nozick's theory of justice does not aim at a certain pattern. According to him, distribution is just if the wealth accumulated comes into someone's possession without any violations of others' rights.

As long something has been acquired without violating the rights of others, the resulting distribution, as unequal as it might be, is just. If the end result is the outcome of the voluntary actions of free and self-interested people – without coercion, fraud, or theft – then the end result is just. Nozick thus shifts the focus of attention away from the end result of wealth distribution towards the way in which wealth is appropriated. Theoretically, if there was a distribution in which every single person in a given society would be richer, Nozick could still reject such a theory, provided that the result were achieved through the violation of a certain agent's rights.

Here, once again, we see a strong Kantian influence and rejection of utilitarianism. What Nozick looks at are the individual rights and the resulting rules of conduct that dictate human actions. Nobody can be used as a means or as a tool to better the situation of someone else, for any person is an end in itself.

Wilt Chamberlain example

Arguing against any 'patterned theories of justice', Nozick claims that in order to achieve a certain pattern of distribution, the state would have to endlessly intervene and redistribute the property of its citizens through coercive means, thus violating their rights.

As an example, Nozick refers to Wilt Chamberlain, one of the most talented basketball players of all time. Nozick asks us to imagine a society in which a certain distribution has been reached, for example, completely equal distribution. Wilt Chamberlain has the same amount of wealth as everyone else.

He signs a contract with a team, which gives him 25 cents for each ticket sold during the season. With people from the entire United States coming to watch Chamberlain play, by the end of the season he has accumulated \$250,000, a sum much bigger than what anyone else in society possesses. Nozick asks: 'Is he entitled to that money?' After all, each fan bought a ticket using their property voluntarily. Nobody was coerced so that Wilt Chamberlain got more money. Why would it be unjust to give Wilt Chamberlain the money that people voluntarily transferred to him?

If a state wanted to prevent such distributions from happening, the government either would have to severely limit the freedom of contract to prevent people from transferring money to others in the first place, or it would have to continuously infringe on the rights of the 'Wilt Chamberlains' of our world, through coercively taking away their belongings and wealth. Therefore, no pattern can be upheld if we want people to have the right to use their property as they wish. Human liberty and the spontaneous order of a market, as Hayek would describe it, will inevitably upset any pattern. This cannot be changed without limiting human liberty.

Demoktesis and the tale of the slave

So far, Nozick has been able to show that the minimal state can emerge from a spontaneous invisible-hand process without the violation of anyone's rights. He has also shown that patterned distributive theories of justice can only come true through the violation of the individual rights of citizens in the minimal state.

Nevertheless, acknowledging that there are a number of proponents for a bigger state, Nozick tries to imagine a more extensive state emerging through such an invisible-hand process, which relies on the voluntary actions of self-interested people.

A person in Nozick's minimal state could divide different rights owned outright into smaller ones, which people could buy from them on the free market. A person therefore could sell their right to select their clothing, occupation, medication, or diet. Nozick names many rights and regulations which we know from everyday life, for example, 'the right to

decide from which persons one can buy certain services (occupational licensure), or the right to decide what countries they would buy from (import control)'.

Nobody, or at best a very small number of people, would sell all of their rights and essentially become a slave. However, some would sell shares of their rights to a small number of people. To prevent the emergence of strong shareholders with great power over other people, Nozick suggests that sellers should write into the terms of each stock a provision preventing the sale of shares to anyone who already possesses a certain amount of that stock.

The longer the game goes on, the more dispersed these shares become throughout society. Everyone sells and buys shares of rights. Eventually, everyone owns the shares of everyone else; everyone has to bear the decisions of other people while simultaneously making such decisions about the shares of others.

The system is very chaotic and inefficient, so people decide to organise a meeting so that everyone in the end will own exactly one share of each right belonging to any person. Now only one shareholder meeting is needed, as everyone can make decisions about everyone else. Later, it is decided that only people able to cast more than 100,000 votes have the right to attend such a meeting. In this way, through an invisible-hand process, Nozick drafts a version of a modern state. People have the right to decide on matters of the rights of others; they can choose political representatives with different programs.

What about independents in that system? Could they choose not to be a part of the group? Could they choose to buy land and secede? The members of the state-corporation would be against such actions, as they may undermine the stability of the state-like corporation.

Nozick continues to use the known arguments for a democratic state (here, *Demoktesis* is the state-like corporation) and then chooses to tell a very different kind of story. The philosopher tells his famous 'tale of the slave', which we will quote directly:

1. There is a slave completely at the mercy of his brutal master's whims. He often is cruelly beaten, called out in the middle of the night, and so on.
2. The master is kindlier and beats the slave only for stated infractions of his rules (not fulfilling the work quota, and so on). He gives the slave some free time.
3. The master has a group of slaves and he decides how things are to be allocated among them on nice grounds, taking into account their needs, merit and so on.
4. The master allows his slaves four days on their own and requires them to work only three days a week on his land. The rest of the time is their own.

5. The master allows his slaves to go off and work in the city (or anywhere they wish) for wages. He requires only that they send back to him three-sevenths of their wages. He also retains to call them back to the plantation, if some emergency threatens his land; and to raise or lower the three-sevenths amount required to be turned over to him. He further retains the right to restrict the slaves from participating in certain dangerous activities that threaten his financial return, for example, mountain climbing, cigarette smoking.
6. The master allows all of his 10,000 slaves, except you, to vote and the joint decision is made by all of them. There is open discussion, and they have the power to determine what uses to put whatever percentage of your (and their) earnings they decide to take; what activities legitimately may be forbidden to you, and so on.

Nozick at this point mentions that provided the master cannot take away this right of the other slaves, you now effectively have 10,000 masters instead of one.

7. Though still not having the vote, you are at liberty (and are given the right) to enter into the discussions of the 10,000 to try to persuade them to adopt various policies and to treat you and themselves in a certain way. They then go off to vote to decide upon policies covering the vast range of their powers.
8. In appreciation of your useful contribution to discussion, the 10,000 allow you to vote if they are deadlocked; they commit themselves to this procedure. After the discussion you mark your vote on a slip of paper and they go off and vote. In the eventuality that they divide evenly on some issue 5000 for and 5000 against, they look at your ballot and count it in. This has never yet happened; they have never yet had occasion to open your ballot. (A single master also might commit himself to letting his slave decide any issue concerning him about which he, the master, was absolutely indifferent.)
9. They throw your vote in with theirs. If they are exactly tied, your vote carries the issue. Otherwise, it makes no difference to the electoral outcome.

In the end, Nozick asks: 'Which transition from 1–9 made it no longer the tale of the slave?'

A framework for utopia: Conclusion

Nozick's book is timeless, his argumentation engaging and stimulating. His intellectual experiments have never lost the interest of academics all around the world; together with the philosopher's clear and analytic reasoning, they have earned his work international recognition and respect.

Nozick does not believe that what he has created or deduced is the perfect system, which is, in itself, a utopian idea. However, according to him, the strength of his concept lies in systems such as this is one being the place where everyone can aim for their very own, personal utopia.

Book Review

Friedman's Vision of a Modern State

Adam Mazik

Capitalism and Freedom by Milton Friedman (University of Chicago Press, 2020)

What is the proper role of the government? What economic system should we follow in order to prosper and progress in freedom and order? What are the key services a government needs to provide for a society? What is the best way to create a fair and innovative system of education? What is the government's role in monetary matters? And should we determine who is allowed to enter into a certain profession through the means of government? Shouldn't at least medical doctors be licensed?

Those and many other questions are answered in Milton Friedman's *Capitalism and Freedom* from 1962. In this important book, the great American economist delivers a crisp and engaging series of essays on the fundamental roles of government. He offers a solid and constructive critique of the flaws of the modern democratic welfare state and demonstrates concrete solutions to the problems of the system.

The book is aimed at an interested audience, not at professional economists or philosophers. It is an overview of Milton Friedman's economic and philosophical beliefs packed into a short book of 243 pages.

Friedman is a firm believer in individual liberty and responsibility, as well as the powers of the market and its invisible hand. He sketches the importance of voluntary exchange and a competitive economic system which allows individuals to trade and cooperate with each other in pursuit of their individual goals.

The government and freedom

In public discussions, we often hear terms like 'political freedom' and 'economic freedom'. Not many people stand in opposition to the first value: it is a broad societal consensus that political freedom is desirable. We understand the need for democratic institutions, like parliaments and representative governments acting under the rule of law, and universally criticise despots and authoritarians like Alexander Lukashenko in Belarus, Vladimir Putin in Russia, or Recep Tayyip Erdoğan in Turkey. We mourn the journalists jailed in Turkey and opposition politicians in Russia, and we all have stood with the brave protesters in Belarus, brutally attacked by the powers of their own government.

Economic freedom, however, is a very different story: for some reason, it is not as beloved as the other dimensions of freedom. While the need for political and personal freedom is widely understood and supported, many people, particularly those nearing leftism and neo-Marxist ideology, are sceptical about freedom in economic matters. Capitalism has a bad reputation. The connotations that many of us associate with the word are 'inequality', 'exploitation', 'neoliberalism', and even 'colonialism'. It is the essence of everything that is evil, shallow, and materialistic, supposedly the reflection of the worst traits of our society.

But . . . is that the truth? Does capitalism really bring out the worst in humanity? Is economic freedom a necessary evil which we need in order to live? Or is it possible to have political freedom without economic freedom?

Friedman would answer both questions with a decisive 'No'. According to the economist, the system of 'competitive capitalism', as he calls it, is the reason for the greatest inventions in the history of humanity and the reason for an unprecedented explosion of wealth. It is also a necessary condition for political freedom.

Friedman doesn't maintain that it is the only and therefore a sufficient condition. While he does see the possibility of a dictatorship in which the dominant economic system is capitalist, he also maintains that without economic freedom – a system in which individuals trade with each other voluntarily, a system in which people are allowed to accumulate wealth and property – political freedom simply would not be possible. According to Friedman, there is no freedom of speech, and there is no democracy in our modern understanding without competitive capitalism.

Why does Friedman believe that? One of the features of a free society in his view is 'the freedom to advocate and propagandise openly for a radical change in the structure of the society'. The economist offers the example of an individual openly advocating and working to impose socialism in a capitalist society. As long as the activist only uses the means of peaceful argumentation and protest and doesn't use violence or coercion, in a capitalist society they are allowed to advocate for whatever they want. The only resources the activist needs are the support of others, especially financial support. If a socialist can gather funds from a group of wealthy individuals, the patrons who happen to share their beliefs can provide the needed resources for the propagation of the socialist system: they can buy the paper to print policy proposals and political messages; they can rent a restaurant to gather comrades; and, in more modern terms, they can pay for the promotion of their activities on social networks and through online advertising to reach their target audience.

Now let us imagine a liberal trying to advocate for capitalism in a socialist society. Friedman notes that a person needs to be able to earn a living in order to advocate for something. However, in a system in which

all jobs, factories, and production are facilitated through the direction of political authorities, allowing a worker to argue against socialism would be an 'act of self-denial'. But Friedman continues his argument: even if this act of self-denial could be achieved, the activist wouldn't be able to raise the sufficient funds for their activism. While Friedman believes that in a socialist society there would also be individuals with high levels of wealth, he notes that they would most likely be high public officials, and it is unlikely that they would be able to support any anti-socialist activism.

But Friedman even goes a step further and imagines a socialist government both committed to political freedom and aware of the funding problem; he concludes that there is no way this socialist government could facilitate political activism. If the government were to create a bureau supporting anti-socialist activism, there still would be the problem of selecting which organisations to subsidise. Not everyone, after all, could receive funding; otherwise, the supply of activists would be unlimited, Friedman notes.

The conclusion is that even in a hypothetical socialist system, with a benevolent and freedom respecting government, political freedom simply is not possible to the same extent as it is under capitalism.

The reason for this facilitation of political freedom is an innate feature of capitalism: its competitiveness and limitation of government powers. Milton Friedman does not believe that competitive capitalism is a utopian system. He doesn't believe that all corporations and individuals inherit their wealth because they 'deserve it' or owing to some kind of 'merit'. He is very far from the Calvinist ideas so often still reflected in many conservative political speeches. He believes that the government and the state have a set of limited functions, the combination of which makes our civilisation possible and facilitates political freedom. We can see this in the example of socialist activists in a free society: the fact that people in the capitalist system can accumulate wealth, and therefore can attain some kind of influence and power, makes their economic strength a check on the coercive powers of government.

Capitalism and discrimination

We have seen why Friedman believes that economic freedom is a necessary condition for political freedom, but we still have to explain why he also contends that the other arguments against capitalism are wrong.

After all, a lot of people in the 1960s were highly sceptical towards capitalism; many in our modern society still are too. Capitalism is supposedly an inhumane and exploitative system which leads to discrimination against minorities or those holding certain political views.

Wrong! According to Friedman, it is precisely capitalism and its competitive nature that have acted as tools against discrimination in the past.

The first time we encounter this kind of argumentation is when Friedman brings up the Hollywood blacklist in the first chapter of his book. From 1947 on, many artists and writers in the film industry were blacklisted for allegedly being communists. In today's language, they were effectively 'cancelled' for their political beliefs, often even without sufficient proof. Friedman brings up a *Time* article about a scriptwriter who used a pseudonym to escape the stigma of the wrong political beliefs and to be able to make money from his craft. When he was announced as the winner of an Oscar and the story came out to the media, the blacklist effectively ended. However, that article goes on to say that even prior to that, about 15% of Hollywood movies were written by writers from the blacklist.

But what does capitalism have to do with that? The incentive for Hollywood's studios and producers was always financial: ultimately, they did not care where the scripts came from. They did not care whether the writer was a Republican, a Democrat, an independent, or a communist. What matters in capitalism is the profit incentive. Enterprises aim to make as much money as possible, and features like political beliefs don't matter quite as much.

Friedman furthers his explanation through the era of McCarthyism. The market and system of private enterprises was ultimately the chance for many individuals who had been accused of communist or socialist sympathies. Many of them landed jobs in trade, in small businesses, or in farming, Friedman notes.

This illustrates how an impersonal market separates economic activities from political views and protects men from being discriminated against in their economic activities for reasons that are irrelevant to their productivity – whether these reasons are associated with their views or not.

The conclusion, therefore, is that capitalism is in no way a facilitator of discrimination. The market and its profit incentives, as well as its impersonal nature and competitiveness, are features that render the free economy anti-discriminatory and inherently progressive.

The role(s) of government in Friedman's system

We have learned about the role of economic freedom in the facilitation of political freedom and freedom of opinion. We now know why Friedman believes that competitive capitalism is the system which, empirically speaking, gives people the most freedom and opportunities to live their lives as they wish. What we still haven't defined is what the government has to do in order to facilitate this system.

Milton Friedman was not an anarchist: he believed in individual freedom. However, he also believed that we need certain public

institutions to preserve that freedom. While government remains a great danger for our liberty, Friedman maintains that it is needed, nevertheless.

Friedman believed in a limited and decentralised government. Its basic functions are: to maintain law and order (to protect its citizens from violence and fraud from within and from outside); to define property rights, which are an innate part of the capitalist system (as well as to provide a means to modify property rights and other rules of the economic game); to provide a system of courts to solve disputes and conflicts in a peaceful manner; to enforce contracts and property rights among members of society; to promote competition; to provide a monetary framework; to counter technical monopolies; and to overcome significant neighbourhood effects, as well as ensuring some basic social provisions, which we will talk about in a couple of minutes.

The main difference between Friedman and classical liberals, along with some of the more radical liberals of his time, is his opinion about how monopolies and neighbourhood effects should be handled.

Friedman is by no means a modern social liberal, or even an ordoliberal in the German tradition. He notes that monopolies are most often the result of government policies fostering special interests among certain groups through different kinds of regulations, quotas, and tariffs. He also notes that most collusive contracts between companies that try to rig the game and dictate prices through the regulation of output and other strategies are quite insatiable yet rare. In those cases, Friedman would enforce antitrust laws that exist in the US.

However, he still sees that monopolies can arise. This is because in some cases it is technically efficient to have just one producer. He sees three possible alternatives that may arise from this: a private monopoly, a public monopoly, or public regulation. All these outcomes are bad, as no single solution can satisfy Friedman fully. He concludes, albeit without very strong conviction, that of the three a 'private monopoly' seems to be the best bad solution. The reason why he prefers the private monopoly to the other alternatives is his experience with the handling of such situations in the USA. The free market is a dynamic system in which changes happen in a comparatively fast manner. Through innovation and new products and services, as well as through other changes in the market, there is a high chance that a technical monopoly would not be able to survive for long. Regulation and a public monopoly, however, are a lot harder to dissolve and to change. Friedman brings up the example of the Interstate Commerce Commission that was created to prevent a monopoly in the sector of railroads. Yet much has changed since the nineteenth century: automobiles became more widely available, and so did trucks and methods for transporting goods. People can now choose to travel by car, by bus, or perhaps on an airplane. It would be absurd to fear any monopoly in the sector of transportation of goods and people today: there is plenty of competition.

The ICC did, however, still exist at the time of Friedman's book, ironically becoming a tool used by the railroads to stifle competition from trucking companies and other means of transport.

Friedman doesn't actually think that a private monopoly is the best solution in every situation – in some, a public monopoly can be justified. The reason for this is Friedman's philosophy as a liberal. He is not a deontological liberal who believes that certain principles have to prevail, no matter the consequences. His philosophy is consequentialist, meaning that while he believes in freedom as a principle, he does so because the system of free enterprise brings us the best results. Friedman does, however, believe that freedom needs to be restricted in some situations in order to bring about some desirable result. Therefore, we need to weigh up the costs and the benefits of each solution, freedom being an important part of the equation.

Money

One of the roles of the government, according to Friedman, is the provision of a stable monetary framework, part of its role as a rule maker and enforcer.

Monetary policies are some of the most controversial topics among economists and politicians. There is no doubt that the monetary system has substantial influence on the whole economic system of a country, as well as on its trade relations with other nations.

Money should therefore be stable – we should have a system in which individual planning for consumption and investment is possible. There are many opinions for achieving that. Friedman picks two extremes: a fully automatic commodity standard (e.g., a gold standard) and a discretionary monetary authority (e.g., a central bank). Neither alternative is Friedman's preferred solution: he notes that although the full and automatic commodity standard is theoretically compatible with the free-market economy and liberal philosophy, it is neither feasible nor desirable. Commodities are never the only kind of money in circulation; besides, the costs of the production of money would be very high.

Friedman shows with multiple examples that although the commodity standard has been repeatedly tried, its ideal version could never be achieved – not in the USA, and not in other countries like Great Britain.

As a result of multiple financial crises in the late nineteenth and early twentieth centuries, and following a bipartisan agreement, the Federal Reserve Bank was created in 1913. At that time, most important currencies in the world relied on a mixed gold standard. Therefore, the widespread belief in 1913 was that it would continue to limit the powers of the Reserve.

As a result of WWI, however, the gold standard was abandoned, thus leaving the Federal Reserve with a lot of power, effectively giving it the competencies of a technocratic and discretionary monetary authority, which from then on was able to determine the quantity of money in the US.

The goal of the Federal Reserve was to provide stability. Friedman, however, notes that this goal has never been achieved. On the contrary:

The stock of money, prices, and output was decidedly more unstable after the establishment of the Reserve System than before. The most dramatic period of instability was of course the period between the two World Wars which includes the severe contractions of 1920–21, 1929–33 and 1937–38.

Friedman's views about the reasons for the Great Depression in the '30s are particularly interesting. It is widely believed that the reason for the Depression was the inherently unstable capitalist free market economy. The economist rejects this premise and attributes its causes to government mismanagement – more precisely, the mismanagement of the Federal Reserve.

All told, from July 1929 to March 1933, the money stock in the United States fell by one-third, and over two-thirds of the decline came after England's departure from the gold standard. Had the money stock been kept from declining, as it clearly could and should have been, the contraction would have been both shorter and far milder.

Friedman therefore argues that the reason for the Great Depression wasn't the private enterprise system but the tight money management of a few men with great power.

Friedman therefore rejects the system of the Federal Reserve:

It is a bad system to believers in freedom just because it gives a few men such power without any effective check by the body politic – this is the key political argument against an 'independent' central bank. But it is a bad system even to those who set security higher than freedom.

Instead of broad discretion and powers being given to a central bank, Milton Friedman proposes the legislation of rules for conducting monetary policy. Friedman notes that the usual answer to this proposal is 'that it makes little sense to tie the monetary authority's hands in this way because the authority, if it wants to, can do of its own volition what the rule would require it to do, and in addition has other alternatives, hence 'surely', it is said, it can do better than the rule', and that the same can

be said about the legislature. Shouldn't we decide about correct policies on a case-by-case basis?

The economist compares this situation to the case of free speech. The general American concept of free speech covers a variety of cases and different kinds of expression. But wouldn't it be more rational to decide on a case-by-case basis? Friedman notes that, given the opportunity, the vast majority would deny the right to free speech in most cases. However, if we combine all those different expressions into a bundle, the majority would more likely vote in favour of free speech. People wouldn't want to restrict their own rights, after all. The second reason Friedman names is the fact that when a policy is enacted for a bundle of cases, the legislation's cumulative effects have to be taken into consideration, effects which cannot be easily foreseen in the application of singular cases.

A case-by-case examination is therefore the wrong approach, as it would most likely lead to the ignorance of cumulative consequences of each decision.

Friedman proposes a rule which would instruct the monetary authority to achieve a specified rate of growth in the stock of money.

For this purpose, I would define the stock of money as including currency outside commercial banks plus all deposits of commercial banks. I would specify that the Reserve system shall see to it that the total stock of money so defined rises month by month, and indeed, so far as possible, day by day, at an annual rate of X percent, where X is some number between 3 and 5.

Friedman, however, doesn't believe that this rule is the ultimate solution for the monetary politics of the US, either – he believes that better rules could potentially develop through experience.

Nor does he believe that it is enough to render the monetary system more stable and rational. Additional reforms would have to be performed in order to further restrict the discretionary powers of the Federal Reserve.

Concerning the international context of interchangeable currencies and prices thereof, Friedman proposes a system of freely floating exchange rates, determined by private transactions without governmental intervention.

Although Friedman's views on monetary policy have never been adopted fully by the US government, his advocacy for floating interest rates was quite successful. The US in 1971 and later other countries like Great Britain switched to a floating exchange rate system.

Social policy

But what does Friedman believe should be done in order to help the poor and disadvantaged? After all, not everyone has the luck of being born into a middle-class family. Not everyone has the abilities and talents to make a living. Not everyone has the means to provide for themselves or their families. People encounter grave difficulties like accidents or disease – surely the government needs to do something in order to help such individuals?

Friedman is not a radical libertarian and does see the necessity for a certain governmental social net that helps those who need it most. He is, however, critical about many measures taken by modern governments and sees them as not only inadequate but, in some cases, even counter-productive and harmful.

In *Capitalism and Freedom*, Friedman delivers a harsh critique of some of the measures undertaken by the American government, namely: the redistribution of income through a complex and ineffective tax system, public housing, minimum wage laws, farm price supports, and old-age and survivors' insurance.

Taxation

Friedman maintains that the progressive income tax system is the wrong measure to deal with wealth inequalities. Corporate taxation in particular facilitates the accumulation of wealth and capital gains in corporate hands. This system creates a set of incentives to use different kinds of legal loopholes in order to maximise corporations' profits.

Friedman therefore advocates for the abolishment of corporate taxation and a simplification of income taxes. In order to stop the redistribution of income into the hands of corporations, he argues, a variety of legal loopholes should be abolished. He explicitly names the percentage reduction on oil and other raw materials, the tax exemption for interest gained from state and local securities, the special treatment of capital gains, the coordination of income, estate, and gift taxes, and numerous other deductions. Corporations should be required to attribute their income to stockholders, who would be responsible for including that income on their tax returns.

Instead of a graduated and highly progressive income tax, Friedman proposes a flat rate, arguing that a rate as low as 23.5% on taxable income would yield the same revenue as the progressive rate (at the time of the book's publication). Due to a lower incentive to engage in tax optimisation, or even avoidance, Friedman suggests that the revenue most likely would be higher than under the progressive tax system.

Public housing

Friedman criticises public housing programmes for worsening the situation of the poor in the sphere of housing. According to him, more dwelling units have been destroyed in order to facilitate the building of public housing than new ones have been constructed. As a result of that, the number of persons per unit has increased. Besides, contrary to the intention of the project, a high concentration of 'broken' families in subsidised public housing units has led to a higher concentration of young delinquents. Had these families instead been subsidised by cash payments, the families would be spread more proportionally across cities.

Minimum wage laws

Friedman argues that minimum wage laws harm the poorest and weakest parts of society. Individuals whose work on the market is worth less than the minimum wage more often become unemployed. In fact, because of that effect, the problem of poverty becomes greater: it is precisely those individuals who effectively are forbidden from working, who are the poorest and most disadvantaged in our society. The economist also notes that the pressure for minimum wages quite often reflects the lobbying of unions and special interest groups, for example, 'northern trade unions and northern firms threatened by southern competition favor minimum wage laws to reduce the competition from the South'.

Old-age and survivors' insurance

Friedman argues that the coercive imposition of governmental social security schemes not only imposes an unfair redistribution of wealth from the relatively young to the already retired, but it also creates significant costs which cannot be justified in any other way.

For Friedman, there is no need to nationalise social security and insurance schemes. The compulsory programme has a negative impact on competition and innovation in the insurance industry and has additionally created a complex and growing bureaucratic system.

What shall we do instead?

Instead of the hundreds and thousands of complex and ineffective measures, Friedman proposes a system of negative income taxes.

Any person earning less than a certain threshold in such a system would pay a negative income tax – they would receive a certain cash subsidy.

This system should function outside of the market system and be constructed in such a way that its recipients are not disincentivised from reaching higher levels of income.

The system is aimed directly at the alleviation of poverty. It could replace hundreds and thousands of costly and ineffective programmes.

Because the system would operate within the income tax system, the administrative costs and associated problems would be manageable. The entire cost, according to Friedman, would very likely be lower than the contemporary welfare measures in place.

Education

In most modern democracies, education and schooling is financed and administered by the central government. While private schools are allowed to operate, the majority of children generally attend public schools. A private school imposes additional costs on parents: they still need to pay the taxes required for financing public schools and their administration, even if they decide to send their children to private schools.

What are Milton Friedman's views on education? Does the state have to administer schooling? Do we need government-run schools? And should we subsidise education at all?

Friedman argues that a stable and democratic society would not be possible without a minimum degree of literacy and knowledge as well as a certain common set of values. The education of children doesn't only contribute to the welfare of the child and the interests of parents. The positive effects of education are experienced by every single person in society. This neighbourhood effect of education, according to Friedman, justifies the imposition of a minimum required level of schooling, as well as the financing of schooling by the state. It does not, however, justify the administration and nationalisation of educational institutions.

Friedman proposes a voucher system. Parents would be given a redeemable voucher which could be used in any approved private school. In this system, they could use those funds and any additional funds they wish to pay out of their own pockets in an approved institution of their choice. This would drastically widen the supply of schools and models among which parents and children could choose according to their needs. The result would be more than just a variety of different models and therefore the possibility for innovation. Schools would depend on market forces to a higher degree, giving parents more say in their children's education. In that sense, the market becomes a democratic device – parents would be able to vote for and against certain models by choosing the ones that fit both them and their child.

Conclusion

With his book *Capitalism and Freedom*, Milton Friedman provides a great introduction for anyone interested in politics and economics. His clear

and simple argumentation leads the reader through topics ranging from political philosophy, monetary theory, and education to problems such as the effective alleviation of poverty.

This book is much more than the gateway drug for libertarians. Friedman provides a practicable, moderate, and rational vision of a modern state, far away from the utopian dreams of some philosophers. He demonstrates the importance of freedom and markets in the system of competitive capitalism and formulates a variety of policy recommendations for democratic governments around the world.

Book Review

The Revolutionary Liberal Idea

Adam Mazik

***Why Liberalism Works: How True Liberal Values Produce a Freer, More Equal, Prosperous World for All* by Deirdre McCloskey (Yale University Press, 2019)**

Liberalism is in danger, and liberal values and democracy are facing many challenges in today's world. McCloskey's book is the antidote to the ideology of populisms, which are trying to make illiberal solutions for today's challenges, and against the 'big state' that is so loudly proclaimed in today's public spheres and fora of exchange. McCloskey paints a picture of our history and free markets very differently from what we are almost coerced into seeing on a daily basis. It is a picture of optimism and progress, a story not filled with greed and corruption but rather human dignity and ingenuity. Not a story of war, coercion, and hierarchy – but of international cooperation, sweet talk, and *égalité*.

According to McCloskey, the modern world as we know it evolved because of a specific ideology, a specific 'idea'. This idea, born in the seventeenth and eighteenth centuries in great minds such as John Locke, Adam Smith, or Mary Wollstonecraft, continued with Bastiat in the nineteenth century and Hayek and Milton Friedman in the twentieth century.

And it is liberalism, as McCloskey emphasises, not libertarianism, the name the philosophy acquired after its original name was stolen by the American left. It is not conservatism, as it allows for creative destruction and change both in the marketplace and in the sphere of culture and ideas. It is not neoclassical liberalism, neoliberalism, or classical liberalism: it is just 'liberalism'.

McCloskey's book is not aimed mainly at academics but at the mature and open minds of modern citizens, particularly those who are sceptical about true liberalism.

Why Liberalism Works is divided into four sections. In the first, McCloskey explains why you, the reader, should become a true humane liberal. The economist continues in the second section with a positive explanation about how the idea of liberalism makes everyone more prosperous, freer, more dignified, healthier, and richer.

The longer, second part of the book is a defence of liberalism against the common arguments brought forward by its opponents. Section

three deals with issues of equality and mainly engages with left-wing market scepticism. In the fourth section, McCloskey both dismantles other arguments against a society of spontaneous orders and gives additional positive reasons, especially for the left, to let go of their coercive ideology and embrace true humane liberalism.

The book is charmingly written and highly approachable, and the author takes the reader by the hand, explaining through the art of storytelling and rhetoric complex issues in ways that make the underlying problems and theory understandable.

What McCloskey wants the reader to know and understand

The centre of McCloskey's argumentation is the statement that the revolutionary eighteenth-century liberal idea is what caused the most significant change in the history of modern man (and woman!). Liberalism and its embrace of bourgeois values, through 'commercially tested betterment', caused the 'Great Enrichment' of the nineteenth century.

Throughout the long history of humanity, McCloskey notes, prosperity and economic progress could be measured in waves: from one dollar per person to three or maybe five dollars per person. This long-term stagnation ended in the nineteenth century, when the GDP of the world exploded into dimensions not comparable to anything before then. The 1800s started a period of drastic and dynamic progress which continues until today.

But what caused it? Was it the exploitation of colonies or imperialism? Was it perhaps slavery? More sophisticated individuals like economists suspect the accumulation of capital or the growth of formal institutions, such as the rule of law, property rights, and the enforcement thereof. Max Weber, as McCloskey notes, sees cultural reasons: the ethics of protestant Christians in north-western Europe.

All of those explanations, however, are wrong. According to Deirdre McCloskey, the cause and initiative force for the 'Great Enrichment' were ideas – more precisely, the ideas of liberalism.

What does McCloskey mean by 'liberalism'?

The description of someone as a 'liberal' can cause problems with precision. Especially in the United States, the word 'liberal' means something different than the earliest meaning of the term or the one that still holds true in Europe. The American liberal, just like the European one, to a large extent respects individuals' right to privacy and basic democratic freedoms, but they are generally quite sceptical towards markets. The author sees them as dangerous and abstract creations, with a lot of imperfections that should be corrected by the government. Therefore, the American liberal supports wide and strong market interventions (such

as a high minimum wage, a vast and intrusive tax system, and high rates of redistribution from the highest earners to the poor).

Deirdre McCloskey does not argue in favour of that kind of liberalism. She advocates for the kind of liberal idea formulated by Adam Smith. McCloskey wants to retake the 'L word'. Social democrats in the USA nowadays prefer the term 'progressive', after all – let them have it.

She does, however, add something else: true humane liberalism. It is 'Liberalism 2.0', as she calls it in the book, a warm and welcoming kind of liberalism. It is a liberal idea that concerns itself with the lives of the poor, minorities, and the marginalised, a liberalism for everyone in society. McCloskey argues that liberalism is very much compatible with charity, equality (of rights and dignity), and empathy. She isn't a liberal in spite of caring about the poor. She is a liberal because she cares about the poor.

How the liberal idea caused the Great Enrichment

Today, the great majority of humanity lives in a state of incredible wealth, comfort, and prosperity when compared to other times in history. From the nineteenth century onwards, humanity has experienced what McCloskey calls 'The Great Enrichment'. The last two hundred years were an unprecedented explosion of economic growth. As McCloskey writes, economic growth throughout the Great Enrichment was about 3,000%.

The modern poor in countries like the USA, Germany, or France experience greater comfort and wealth than the richest individuals did just one or two hundred years ago. They have modern medicine, like antibiotics and vaccines. They can buy food grown and produced all around the world for a very low price, and they can store this food in their freezer. We can cook and experience culinary expeditions directly from the stoves of our own apartments, not worrying about dying of hunger in our lifetimes. If you feel a sharp and debilitating pain in your chest, instead of dying, you'll go to the hospital where a surgeon can build a bypass in your heart, effectively leaving you with almost the same life quality as before the heart attack.

This amazing jump, according to McCloskey, was initiated by the idea of liberalism. For the majority of our history, humanity was a highly hierarchical society, with barely any movement in between different groups. The idea that people were equal before the eighteenth century and the Enlightenment borders on absurdity. Indeed, a king, duke, or a different kind of aristocrat had a wholly different standing than a peasant did. And the possibilities for moving from one social class to another were limited; peasants could not simply work for themselves and their families. Their place was fixed, and so was the place of their children and grandchildren.

So, what happened? Liberalism.

For the first time in history, as McCloskey writes, people started to get treated with a basic level of dignity and respect. The radical idea of equality before the law started a great creative fire in the minds of the common people. Innovations and inventions began to be seen not as something dangerous but as something overwhelmingly positive. These 'commercially tested betterments', as McCloskey defines innovations, were the reason behind newly acquired riches. Innovators and the emergent middle class, the 'bourgeoisie', took over the course of the world's future. A person's name or birthplace no longer determined their material standards; rather, what the individual could offer to their equals became more important. People grew bold and used their minds; they cooperated and competed. They sold and bought, learned and specialised, and then exchanged. Inventions revolutionised the daily lives of people and made their inventors rich, but not forever: competitors arose, making these products more available to the general population. The creative destruction of innovations became something positive.

McCloskey names a variety of inventions that resulted from this explosion of creativity, both in the commercial and in the cultural sphere: 'Give the middle class [...] dignity and liberty for the first time in human history and here's what you get: the steam engine, the automatic textile loom, the assembly line, the symphony orchestra, the railway, the corporation, abolitionism, the steam printing press, cheap paper, wide literacy [...]' and many other examples.

McCloskey claims that this radical change could not have been caused by investment, the accumulation of capital, formal institutions, and property rights. These and other admittedly necessary phenomena have also existed at numerous times in human history. Therefore, according to McCloskey, the idea that the term 'capitalism', used by both proponents and opponents of the economic system, resulted from liberalism is scientifically false. The Great Enrichment did not have anything to do with the accumulation of capital. It was caused by ideas.

The broad idea of liberalism gave workers and the middle class the rights, agency, and dignity needed to release their own creative forces, as well as their specific ideas, innovations, and inventions resulting from this newly acquired freedom. Capitalism, in McCloskey's view, is a misnomer: it should be 'innovism', a system of innovation.

Enrichment, not equality, should be our ethical goal

But what about inequalities of wealth? Isn't it unfair that some have so much and others so little? Shouldn't we all therefore aim for a more equal society? Shouldn't we favour the progressive taxation of income? Shouldn't we call on governments to redistribute wealth from the rich to the poor? Why can't we just confiscate the money of the billionaires who

spend their money on private jets, cars, and travelling the world when so many people have to struggle every day?

Contrary to popular opinion, the answers to those questions are not that simple. In fact, even claims of rising inequality aren't necessarily very accurate. According to the evidence presented by McCloskey, such statements are a vast oversimplification of what is happening: 'The rich became richer, true. But the poor have gas heating, cars, smallpox vaccinations, indoor plumbing, cheap travel, rights for women, low child mortality, adequate nutrition, taller bodies, doubled life expectancy, schooling for their kids, newspapers, a vote, a shot at university, and respect.' The poor are therefore the biggest beneficiaries of McCloskey's 'innovism'. Yes, the rich are getting richer, but the poor are getting richer too!

So, does equality matter?

According to McCloskey, the whole problem of relative poverty is related to a fundamental misunderstanding. The ethical goal should not be a society more equal in outcomes, but a society in which the poorest also live according to high material standards. The aim should not be to make everyone more equal, but to make everyone richer. It is simply irrelevant from an ethical point of view whether inequalities occur in a free economy. In fact, the liberal market economy does have significant equalising properties in the aspect where it matters, which is consumption.

McCloskey argues that the great enrichment resulting from commercially tested betterment leads to the vastly more equal consumption of basic capabilities and necessities. She underlines the findings of Donald Boudreaux and Mark Perry, who in 2013 argued that relative household spending on basic necessities has continuously decreased in relation to disposable income. In 1950, families spent 53% on basic utilities ('food at home, automobiles, clothing and footwear, household furnishings and equipment, and housing and utilities'). 20 years later, it dropped to 44%. It was just 32% in 2013.

But the argument gets even stronger. McCloskey quotes great liberal economist Steve Horwitz, pointing out that the quality of goods and services have also been increasing. According to Horwitz's analysis, the notion that the poor in the US are becoming poorer is not only wrong – the opposite is true! McCloskey quotes Horwitz: 'looking at various data on consumption, from Census Bureau surveys of what the poor have in their homes to the labor time required to purchase a variety of consumer goods, makes clear that poor Americans are living better now than ever before. In fact, poor Americans today live better, by these measures, than did their middle-class counterparts in the 1970s.'

But wait! Even if the material levels of the poor are rising, widening inequality might still be a problem. McCloskey quotes Robert Reich, declaring that this widening inequality prevents social mobility, i.e., the

possibility to advance into a wealthier class in society. That argument, however, is also dismissed with the help of Horwitz, summarising a study by Julia Isaacs on individual mobility between 1969 and 2005: '82 percent of children of the bottom 20 percent in 1969 had [real] incomes in 2000 that were higher than what their parents had in 1969. The median [real] income of those children of the poor of 1969 was double that of their parents.'

But shouldn't we still aim for more redistribution?

Thus, McCloskey supports the absolute enrichment of the poor instead of the goal of more equality. Material levels among the poor should be rising and, contrary to popular opinion, substantial social mobility still exists. Provided that the goal is to make the poor richer, though, is it also good to aim for redistribution? Can more instruments be applied in addition to the equalising power of the markets, such as subsidies, minimum wage regulations, and other social welfare measures?

McCloskey argues that most of these proposed measures don't decrease poverty; on the contrary, they increase it. Even though a programme might be designed to help the poor, that doesn't mean it objectively does so. After all, competent governments are a rarity. And even the policies of competent governments fail relatively often.

Wages and profits in a large society cannot be as easily redistributed as in a small community like a family. The market is a Hayekian spontaneous order, in which prices communicate important information about the supply of and demand for goods and services in the economy. The information supplied by prices is an important incentive in the decision-making process of all market agents. An occupation which requires an extensive amount of education and training, the services or products of which are in high demand, must therefore be compensated accordingly. High wages are an important incentive on the job market: in a freely functioning market economy, the supply curve adjusts; consequently, more people enter the business.

In this respect, McCloskey argues that these price signals are crucial for the functioning of the market. Without the incentive of prices, there are fewer reasons for specific specialisations, thus decreasing the productivity of the whole economy and therefore making the pie smaller.

Additionally, the redistribution of wealth via taxation cannot continue endlessly. Even if we assume that we can redistribute a portion of the wealth of the rich to the poor, we cannot expect the wealthy to continue to deliver. The effects will be dampened; and the results, while significant in the short term, will not at all reach heights comparable to the 3,000% growth of the great enrichment in the long term.

An especially harmful social welfare measure which McCloskey spends a whole chapter on is the minimum wage. The economist points out that

the minimum wage was initially designed to damage people of colour and women. According to the author, the minimum wage is historically a chauvinist and racist invention, designed to keep blacks, women, and minorities out of the markets. McCloskey explains further: '[r]ace suicide theory, adopted with rare exceptions by most social scientists before National Socialism shamed it, held that the inferior races with low wage standards would drive down wages of Saxons, thus reducing their fertility – unlike the wretched Blacks and immigrants, who would always have large families'.

McCloskey provides multiple quotes from leftist and progressive economists at the beginning of the twentieth century to demonstrate the complete moral depravity of social engineering back then, for instance, economist Thomas Leonard says: '[the minimum wage] was the holy grail of American progressive labor reform and a Who's Who of progressive economists and their reform allies championed it', and '[...] removing the inferior from work benefited society by protecting American wages and Anglo-Saxon racial purity'.

And again, a quote from British socialist Sidney Webb: 'Of all ways of dealing with these unfortunate parasites, the most ruinous to the community is to allow them to unrestrainedly compete as wage earners.'

As McCloskey points out, they unmistakably show the racist goals and sentiments surrounding minimum wages. Unfortunately, unlike many other governmental measures, this one was actually highly effective. According to Sowell, whom McCloskey quotes, the minimum wage has had a drastic negative effect on the unemployment rate among young black males. Unemployment among that group from 1971 to 1994 never fell under 30%, frequently oscillating around 40% or even 50%. As Sowell points out, the damage is not merely short term, as low wage jobs are usually entry-level jobs which enable young people to gather experience and references to get higher paid jobs in the future. The lives of those especially poor individuals were and are damaged by regulations effectively prohibiting them from working.

What should be done?

In order to facilitate the enrichment of the poor and the flourishing of our entire market-based society, McCloskey proposes a set of measures. Some of them are listed here.

Most importantly, the government should not worsen the situation of unqualified workers with regulations such as minimum wages. It should not push young men into criminality by taking away their ability to provide for themselves through wage protections and harmful zoning, while simultaneously creating incentives to become criminals through policies like the war on drugs. It shouldn't engage in counterproductive social programmes like public housing.

The government should not interfere with markets through the prevention of competition. There is no reason for most occupational licensure measures to prevent entry into the occupation and therefore raise wages for privileged cronies. There is no reason to protect and restrict corporations from competition originating abroad.

While basic education should, according to McCloskey, be paid for by taxation, the service of education does not have to be administered by the government. Give families vouchers that they can use in private institutions, thereby allowing different models and innovation. Instead of a minimum wage, argue for a minimum income, like the negative income tax of Friedman, providing the poor with the most effective help they can get without taking away their ability to work.

Most importantly, allow the magic of commercially tested betterment to work. Treat people like grown-ups. Let them make decisions and mistakes. Let them cooperate locally and globally. Allow them to pursue their individual goals through aspiration; lead the invisible hand of the free market to the enrichment of the entire world. Do not disturb! Let them be.

Why we have to protect the liberal idea from illiberal forces

McCloskey's book shows the great benefits we have derived from the liberal idea since its acceptance in the eighteenth century. Yet liberalism and freedom are always in danger. Tribalist, authoritarian instincts can easily cloud the judgement of individuals and whole nations. And the devil is in the rhetoric: it starts with words.

McCloskey strongly criticises the quasi-mercantilist rhetoric of many experts, portraying markets as a competition between nations and countries. War metaphors, as well as a focus on the relative economic power of countries, are based on a faulty understanding of economics. The pessimistic visions of illiberal actors diagnosing and predicting the economic decline of the West are a real threat for the liberal order that has ensured the prosperity of the developed world.

Contrary to self-proclaimed experts' statements, Great Britain hasn't declined. There has been no degradation but, just like in other European countries, a steady continuation of economic progress. Neither is the US in decline: markets and trade are not zero-sum games. The relative position of a country is not even a secondary concern. Absolute growth and progress are more important.

McCloskey argues that we shouldn't be worried about China, India, or South America catching up. We aren't harmed by their progress. Their enrichment isn't achieved at our expense. Contrary to the violent and economically illiterate rhetoric, we should be happy about global enrichment. The enrichment of our partners not only enables them to buy more from us; it also lets us profit from new inventions, new innovations, and a sea of brilliant and concentrated minds.

Trade isn't war; it is peace and cooperation.

Why Liberalism Works shows how the idea of liberalism has materially, ethically, and spiritually enriched the world. Markets are more than the great egalitarian mechanism providing people in the modern world with a level of wealth unprecedented in human history. They've led to great cultural flourishing and progress. They've enabled the common man to innovate and raise himself up from the past hopelessness of his poverty.

Liberalism and markets have also contributed to the dissolution of old antiliberal hierarchies. The liberal idea and markets empowered women to emancipate themselves from the patriarchal orders of society which had been the standard throughout most of human history. This radical idea started a chain reaction. It gave people hope and dignity. It gave them boldness and aspirations. It gave them the room to dream about a society in which everyone, no matter what race, no matter what gender, no matter what background, could achieve their aspirations. Liberalism liberated and keeps liberating marginalised groups such as women, immigrants, and the LGBTQI+ community. Governments and their coercive actions do not protect the weak. In fact, through discriminatory legislation like punishments against homosexuality or the enactment of the minimum wage, governments have often been a force emboldening the vilest elements of human nature.

It was the liberal idea that started to transform the world – step by step, not with immediate results. And it is the liberal idea that keeps moving us into the right direction: a more tolerant, more equal, and richer world in which humans can live in respect and dignity.