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Edited by
Antonios Nestoras



EU Policy Review, Volume 2 (2022)

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Introduction

The *EU Policy Review* is an anthology of publications curated by the European Liberal Forum (ELF) throughout the previous year. This analysis brings together a diverse array of insights from scholars, policymakers, and industry professionals who rigorously examine crucial matters pertinent to contemporary EU strategies and governance. Topics explored range from international relations to technological advancements, from environmental concerns to cultural developments, and from combating misinformation to promoting the liberal policy agenda.

The variety of subjects mirrors the multifaceted EU policy landscape of 2022. During the year, political discourse was dominated by the ongoing pandemic, the invasion of Ukraine, external challenges, internal turmoil, how to involve Europeans in shaping the continent's future, and laying the legislative groundwork for the EU's long-term transformation towards a digital, sustainable, and more equitable tomorrow. Each of these issues incites discussions and opposing viewpoints, both within the liberal family and in relation to its ideological rivals. In this environment, ELF, as a think tank, seeks to offer liberal policymakers, specialists, and the general public a dependable source of innovative expertise. Our mission encompasses two key objectives: to deliver essential knowledge for addressing pressing concerns and to identify and highlight emerging issues and trends. Consequently, this analysis offers a glimpse into both current and forthcoming debates.

Our publications share the common threads of relevance, evidence-based evaluation, and a liberal perspective. Our core principle in shaping our policy and research activities, and our editorial endeavours, is to blend top-notch content and long-term foresight with pragmatic solutions. By collaborating with academics and practitioners from all over Europe, we compile the most innovative ideas and meticulous research, presenting them in a manner that resonates with the real-world context to which they pertain. Advanced research and forward-thinking insights are reinterpreted and conveyed in ways that align with policy requirements and can be easily adopted by decision-makers. In doing so, we offer researchers a platform to disseminate their findings, equip policymakers with a solid foundation for informed decision-making, and provide others with thought-provoking insights and elucidation of complex and contentious issues.

ELF PUBLICATION FORMATS

The varied formats featured in the *EU Policy Review* cater to diverse objectives, from initiating debates, to offering contextual information, to proposing tangible solutions for addressing challenges. Each format strives to present the subject matter in a unique, succinct, comprehensible, and actionable manner for policymakers to implement effectively.

Policy papers, our most numerous and practical publications, offer an in-depth view on specific topics or concerns. These papers supply relevant context, identify problem areas, analyse them through a liberal lens, and conclude with targeted policy recommendations for policymakers and experts.

Policy briefs are concise documents that deliver expert insights on particular subjects or policy measures. They are designed for those seeking dependable background information and a liberal interpretation of the issue at hand.

Book reviews serve to complement topical discussions and supply foundational information. ELF's reviews introduce readers to classic liberal works, with expert authors summarising content and emphasising the books' relevance to contemporary European affairs.

In addition to these formats already introduced in the previous edition of the *EU Policy Review*, a new format was unveiled in 2022: the *ELF Study Series*. These Studies maintain high academic rigour and focus on examining the interplay between technology and political practice. The 'Techno-Politics' series engaged scholars from premier universities to evaluate the current state of affairs, both in Europe and globally, concerning strategic autonomy, cyber security, 5G and 6G networks, and the integration of technology into our democratic processes.

In this volume of *EU Policy Review* you will find 'Recommended Readings from Our Network'. These are selected publications curated by ELF's member organisations and the outcomes of scrupulously executed research projects within the liberal family, providing liberal policies and solutions across Europe and beyond.

EMBARKING ON A NEW YEAR OF ELF POLICY, RESEARCH, AND PROJECTS

In summary, the *EU Policy Review* offers an overview of ELF's endeavours as a liberal think tank and illustrates the present state of liberal discussions and tactics for melding the European initiative and liberalism as a whole. By continuously broadening our network of scholars and specialists, we strive to enable the liberal community to proactively introduce new subjects to the agenda and guide their development in line with

our values and research-based expertise. In doing so, we fulfil our liberal aspiration to actively shape the future, rather than simply adapting to it as it unfolds.

2022 proved to be a remarkable and pivotal year, characterised by bold initiatives, daring endeavours, and the hurdles arising from the war in Ukraine, which put EU resilience and cohesion to the test.

As we forge ahead into 2023, we remain steadfast in realising our vision for the future – a future that encompasses not only our projects and intellectual collaborations but also, most importantly, the future of Europe itself.

Dr Antonios Nestoras
Deputy Executive Director
European Liberal Forum

ELF Papers

The ‘Brussels Effect’ in Digitalisation and the Future of Transatlantic Relations

Antonios Nestoras

ABSTRACT

Ever since its conception, the EU has been a worldwide leader in setting international norms and standards across markets. With the release of the new DSA-DMA legislative package, the EU wants to echo its ‘normative power’, or the so-called ‘Brussels effect’, into the realm of digitalisation. However, the new regulations should not lead to EU’s self-isolation, nor should they stifle innovation in a heavily inter-linked market that thrives on open internet and open borders. In 2022, the EU’s digital agenda will feature many inter-institutional negotiations on the DSA-DMA package that can lead to a European digital autonomy. As far as this autonomy needs to be open and strategic at the same time, the Trade and Technology Council (TTC) as a forum for dialogue between close allies can also be an important factor in shaping a liberal democratic governance for the world’s digital economy.

LEADING THE WAY IS IN EUROPE’S DNA

Ever since its conception, the EU has been a worldwide leader in setting international norms and standards across markets. Think of the Single Market – for many, the crowning jewel of European integration – that now comprises of 27 member states. The vision was to create a rules-based economic order that can potentially be joined by, and be beneficial for, every European country. And the task at hand was to create regulations that could be exported, to set standards for products and services that could be widely adopted, and to align policies and legal frameworks across a diverse continent.

With the Trade and Technology Council (TTC), launched in June 2021 (European Commission, 2021a), the EU is embarking on a dialogue to reduce trade friction between the EU and the US and agree on a common way forward. A successful TTC could become a global blueprint. The General Data Protection Regulation (GDPR) is perhaps the best-known example of a regulation that is now a worldwide benchmark in the

protection of personal data privacy online.¹ As an essential component of EU privacy law and human rights law, the GDPR establishes a rigorous regulatory framework (Center for Information Policy Leadership, 2021). But although it applies only in the EU, companies with an international presence tend to comply with GDPR in their global dealings.

In this sense, the term 'Brussels Effect' – coined in 2012 by the Columbia law professor Anu Bradford – aptly captures one of the most important dimensions of EU power, that of a de facto worldwide regulator (Bradford, 2020). In a wide range of policy sectors, from competition and antitrust laws to the protection of data privacy,² the EU is setting standards and rules that the rest of the world follows. And leading the way in ideas about international organisation is in Europe's DNA.

However, for the world to follow, new rules will have to meet high standards in terms of principles and effects. The EU has formulated some of these in respect of the WTO reform (European Commission, 2021b), underlining the value of global rules-based trade, non-discrimination, strong due process, and respect for fundamental rights. Meeting these criteria will be key to the success of the EU's digital package.

SETTING THE RULES FOR THE EUROPEAN DIGITAL MARKET

The Digital Markets Act (DMA)³ and the Digital Services Act (DSA)⁴ form the biggest legislative package to attempt to co-ordinate EU rules for digital markets and services since the e-Commerce Directive in 2000.⁵ With DSA the Commission aims to consolidate a Digital Single Market across the EU, which will be the cornerstone of European recovery, innovation, and growth in a post-Covid world. The DMA was voted in a plenary session of the European Parliament in December 2021. A period of intense negotiations among the principal EU institutions will follow. A plenary vote for the DSA is envisioned for January 2022, to be followed by more negotiations between the co-legislators of the EU.

¹ Regulation (EU) 2016/679 (General Data Protection Regulation).

² As is the case with the GDPR.

³ Proposal for a regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act) (COM/2020/842 final), <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=COM%3A2020%3A842%3AFIN>.

⁴ Proposal for a regulation of the European Parliament and of the Council on a single market for digital services (Digital Services Act) and amending Directive 2000/31/EC (COM/2020/825 final), <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=COM%3A2020%3A825%3AFIN>.

⁵ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32000L0031>.

An 11th-hour debate in the DSA provisions will necessarily touch upon various points of balance and proportionality in the regulation. Although data-sharing obligations for service providers can establish transparency and a clear accountability framework for online platforms, it may also infringe the privacy of consumers, their fundamental rights, and even public security.⁶ The same transparency obligations may also compromise commercially sensitive information and disrupt free and fair competition in the online environment. Finally, disproportionate obligations for online service providers may also impair the ability of SMEs and start-ups to comply and compete with major players, thus stifling innovation and growth within the digital single market.

Nevertheless, beyond the legal specifics, the main concern with the DMA–DSA package is a strategic one. In setting digital standards, EU Leadership can tip the scales of digitalisation towards rules-based trade, competition, innovation, and international cooperation; but it also runs the risk of isolating the EU and stifling innovation in a market that is naturally interlinked and thrives on an open internet and open borders. In this respect, the state of transatlantic relations and the level of alignment between the EU and the US will be the litmus test of successful European digitalisation. On the one hand, most of the digital service providers on which the Europeans rely on are based in the United States. On the other hand, the EU exports chemicals, pharmaceuticals, manufactured goods, and cars to the US.⁷ Such interdependencies, represented by trade and foreign direct investment, overall maintain nearly 50 million jobs in the EU (DG Trade, 2018).

DIGITAL STRATEGIC AUTONOMY AND ITS DISCONTENTS

Regrettably, and in part due to Brussels' new favourite buzzword, 'strategic autonomy', the debate on digital sovereignty in the EU seems to focus more on being autonomous and less on being strategic (Pohl, 2021). However, while significant success on the regulatory frameworks – as in the case of the GDPR, NIS Directive, and the proposed regulation on AI – demonstrate the importance of the EU as a *de facto* digital champion in regulation worldwide, the rules and standards of the digital economy cannot be only a European choice.

Strategic autonomy in digitalisation means to promote the European digital internal market and ensure that the economic, regulatory,

⁶ Proposal for a regulation of the European Parliament and of the Council on a single market for digital services (Digital Services Act) and amending Directive 2000/31/EC (COM/2020/825 final).

⁷ See EUROSTAT international trade goods database: <https://ec.europa.eu/eurostat/web/international-trade-in-goods/data/database>; see also EU27 (from 2020) trade by SITC product group.

and political framework harnesses the power of new technologies while strengthening independence, resilience, and security (European Parliamentary Research Service, 2020). Nevertheless, strategic autonomy is not protectionism (Pohl, 2021), and it cannot work without a strong consensus with EU partners and allies, which will also achieve a delicate power balance with China. Helpfully, the debate is complemented by a strong commitment to openness to trade and investment for the EU economy to recover from the crisis and remain competitive and connected to the world.⁸

No doubt the ‘normative power Europe’ is more than a theory (Whitman, 2011). It has been proven in practice, for example, in EU environmental leadership against climate change. But even there, the EU is always careful to achieve cooperation not only with traditional allies, like the US, but also with systemic rivals such as China. Similarly, the ‘regulatory power Europe’ in the digital economy will need a mighty transatlantic partnership that will be able to promote common rules and principles in the technological and geopolitical sphere.

TTC SHOWS THE WAY INTO THE FUTURE OF TRANSATLANTIC RELATIONS

Setting digital standards requires international collaboration and endorsement by a coalition of technologically advanced countries that, in addition, share a common democratic vision for the governance of the world’s digital economy. The Trade and Technology Council between the EU and the US shows exactly how this collaboration can be forged in a forum for dialogue between friends and allies that need each other.⁹

The EU’s digital agenda for 2022 will be driven by negotiating the DMA–DSA package, as well as many more legislative and non-legislative initiatives, such as the Proposal for the Digital Decade, the Data Act, the European Health Data Space, specific legislation on short-term rental and sharing platforms, and the European Chips Act – all of which can contribute to European (digital) open strategic autonomy if they succeed in strengthening transatlantic and multilateral ties rather than disrupting them.

ABOUT THE AUTHOR

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⁸ https://trade.ec.europa.eu/doclib/docs/2021/february/tradoc_159434.pdf.

⁹ EU–US Trade and Technology Council Inaugural Joint Statement, https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_21_4951.

geopolitics and international relations. Over more than 12 years in the academic, think-tank and European public administration fields, his work has been published in peer-reviewed journals, think-tank reports, and EU media. Antonios has previously worked as a policy advisor in the European Parliament and served as the Academic Coordinator of the EUIA academic conference. He holds a double PhD in Social and Political Science from VUB and the University of Antwerp and was awarded the Huygens Scholarship for International Talent for his graduate studies in the University of Leiden.

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ELF Papers

Enhancing the Commission's AI Act Proposal: Ensuring the Procedural Dimension of the Rule of Law with *Ex Post* Safeguards in the Public Sector

Benjamin Jan

ABSTRACT

The Commission's AI Act Proposal aims at deploying safer AI systems in the Internal Market. Although many welcome aspects in the Proposal contribute to it, the Proposal as it is currently drafted does not go far enough to protect fundamental rights. A procedural framework to ensure fundamental rights' protection is required, particularly rights essential in the light of the rule of law that are the right to good administration and the right to an effective remedy. Overall, policymakers need to pay more attention to protecting the procedural dimension of the rule of law.

The EU stands on the brink of the Fourth Industrial Revolution, where emerging technological breakthroughs in the field of artificial intelligence (AI) will generate new opportunities that can enhance the way public administrations operate. The recent wave of digitisation and datafication in the public sector has created momentum for the use of algorithms that take advantage of vast public datasets to improve governance. At the same time, the impact algorithms could have on fundamental rights is a concern for lawmakers at the highest levels of the EU.

The European Council has highlighted the importance of ensuring that European citizens' rights are fully respected (European Council, 2019), emphasising the need to ensure that AI systems are compatible with fundamental rights and that the proper enforcement of legal rules is facilitated (European Council, 2020). Further, the European Parliament has requested that measures be taken to prevent practices that would undoubtedly undermine fundamental rights (European Parliament, 2020). Responding to these requests, in April 2021 the Commission published a proposal for a regulation laying down harmonised rules on

artificial intelligence (hereafter referred to as the Proposal) (European Commission, 2021).

While the proposed improvements for a safer application of AI systems in the EU are welcome, the Commission should aim higher when it comes to establishing safeguards to ensure that natural and legal persons' fundamental rights are effectively protected through a procedural framework. To illustrate the importance of such a framework, it is worth considering how automated decision-making systems are being increasingly deployed in the public sector in individual administrative cases (Misuraca and Noordt, 2020).

THE PROMISES AND PITFALLS OF AUTOMATED DECISION-MAKING SYSTEMS (ADS)

The challenges algorithms pose to public administrations are as significant as the benefits they could bring. More particularly, the deployment of ADS using machine-learning technology is a promising method to enhance administrative decision-making with regard to both businesses and citizens. Machine learning stands out for its accuracy and adaptivity. Predictions generated through machine-learning techniques offer public officials new efficiencies that tap the power of their administrative data (Engstrom et al., 2020). By analysing vast amounts of data – far beyond the capacity of a single public servant – machine-learning algorithms could help public actors make more accurate decisions and prioritise needed policies or enforcement.

Yet, while administrative decisions can be automated (or improved in the case of recommender systems) by algorithms, governments are constrained by constitutional and administrative principles. The deployment of AI systems within public administrations may in fact clash with some of the very principles on which liberal democracies are based. While this paper cannot address the objections to ADS exhaustively, it is critical to highlight some major concerns.

Firstly, the black-box nature of ADS renders some algorithms inscrutable and non-intuitive, making it difficult to detect flaws or even explain their output (ibid.: 11–12). In general, algorithms are opaque to most people because understanding them requires a high level of technical literacy.

Secondly, the uneven way that democratic legal safeguards are embedded in ADS is another challenge for public administrations. Although the use of ADS promises efficiency in administrative decision-making, public servants' involvement in the decision-making process typically decreases with rising levels of automation. The diminishing decision-making role of humans raises questions about whether democratic controls over the procedural application of the law are coming under threat or even disappearing completely when ADS are used. In this

sense, code-as-law 'might create a situation where important decisions are taken at the software level' (Asscher, 2006: 71).

Finally, in cases when ADS could supplement traditional law as a regulatory instrument, norms embedded in the technology must allow the same level of democratic scrutiny as there would be if these norms were written as laws. After all, '[i]f code is a lawmaker, then it should embrace the values of a particular kind of lawmaking' (Lessig, 1999: 224). The same reasoning should apply in the context of administrative decision-making. In principle, to reach a valid legal decision, public administrations must follow constitutional and administrative principles that restrain them from acting as they please. Administrative procedures were made to avoid the arbitrary use of power. Therefore, the use of ADS should not bypass the constraints on these procedures in a way that affects fundamental rights.

GOOD ADMINISTRATION AND THE RIGHT TO AN EFFECTIVE REMEDY FOR ADMINISTRATIVE JUSTICE

In comparison to the private sector, the public sector in a liberal democracy has strong legal requirements to justify its decision-making; subjects of ADS must therefore know or understand the reasoning behind an automated decision. If they do not, it raises a major problem since subjects cannot scrutinise whether a decision about them complies with the legal protections offered by law. Without detailed and reasoned accounting of administrative decisions, natural or legal persons cannot adequately contest automated decisions before the courts. In such cases, judicial review becomes impossible, and decision-makers fail in their duty to ensure accountability. The difficulty in understanding ADS in the context of administrative decision-making stems from this confounding situation. In the end, deploying ADS could jeopardise the ability of public agents to fulfil their administrative duties and lead to lesser accountability, undermining citizens' right to an effective remedy.

At stake in the deployment of ADS within the public sector is the public sector's compliance with the rule of law, which guarantees to natural and legal persons, among other rights, a clear understanding of the reasons behind an administrative decision and the right to an effective remedy if a decision infringes on their individual guarantees. These individual guarantees stem from both the principle of good administration and the right to an effective remedy as enshrined in the European Charter of Fundamental Rights (hereafter referred to as the Charter).¹

¹ C-222/84, *Marguerite Johnston v Chief Constable of the Royal Ulster Constabulary* (1986) ECLI:EU:C:1986:206; Case C-97/91, *Borelli* (1992) ECLI:EU:C:1992:491; see also Article 47 of the Charter. The right to good administration is protected both as a general principle of EU law and in Article 41 of the Charter. As a general principle in EU law, the

Lastly, a related question arising from the use of ADS in public administration concerns how these essential guarantees stemming from the procedural dimension of the rule of law can be protected, as well as what procedural framework the Commission could set up to ensure the protection of fundamental rights.

GOING FURTHER: ESTABLISHING A PROCEDURAL FRAMEWORK TO ENSURE FUNDAMENTAL RIGHTS

It should be first noted that the Proposal takes into account many welcome aspects of the deployment of safer AI systems, such as the prohibition of certain AI practices, specific obligations regarding ‘high-risk AI systems’, and transparency obligations. Moreover, the protection of fundamental rights is central to the Proposal. It is admitted that certain AI systems may significantly impact the rule of law and adversely affect several fundamental rights enshrined in the Charter, such as the right to an effective remedy and the right to good administration.² However, as it is currently drafted, the Proposal does not go far enough in its aims as far as protecting fundamental rights is concerned. Therefore, policymakers need to pay more attention to protecting the procedural dimension of the rule of law.

Before specifying how the Commission should better ensure the protection of fundamental rights, it is useful to first briefly outline the classifications made in the Proposal. The AI Act distinguishes between prohibited AI practices (Title II), high-risk AI systems (Title III), AI systems that have transparency obligations (Title IV), and all other AI systems not falling within the scope of the other three categories. Taking into account this classification of AI systems and the specific requirements attached to each category, policymakers should pay heed to two important ways to effectively respect natural and legal persons’ fundamental rights when AI systems are deployed in the public sector: (1) expanding the definition of high-risk AI systems, and (2) creating *ex post* procedural safeguards.

Broaden the definition of ‘high-risk AI systems’ in the public sector

The mandatory *ex ante* requirement for high-risk AI systems in the Proposal aims at ensuring that these systems do not pose unacceptable risks to fundamental rights.³ Although still inadequate to guarantee rights

right to good administration applies to both EU institutions and Member States’ administrations when they enforce EU law. On the contrary, the principle to good administration in the context of Article 41 of the Charter has a limited personal scope and applies only to EU institutions, bodies, offices, and agencies.

² For impact on the rule of law, see Recital 40 of the Proposal. For the right to an effective remedy and the right to good administration, see Recital 28 of the Proposal.

³ See Title III of the Proposal.

protections, these updated requirements could at least limit the risks of bias and help build more transparent systems, ultimately decreasing some of the threats to fundamental rights. More importantly, new requirements pertaining to high-risk AI systems likely contribute to delivering on procedural guarantees. For example, if a high-risk AI system has to comply with record-keeping requirements and transparency obligations,⁴ affected subjects would be able to build a better defence against unlawful AI systems.

In the context of the use of ADS in the public sector, the Proposal has only partially addressed the issue. ADS are only considered high-risk AI systems in the context of AI systems that 'evaluate the eligibility of natural persons for public assistance benefits and services'.⁵ So while particular welfare-provision decisions made by AI systems have to comply with a set of mandatory *ex ante* requirements and a conformity assessment, such requirements do not apply to all other AI systems, which are not considered high-risk in the Proposal. Thus, the current classification potentially undermines the effect mandatory requirements could have from a procedural perspective.

Recommendations

The very narrow definition of which AI systems are considered high-risk in the public sector will likely undermine the smooth functioning of a procedural framework in the future. Firstly, other AI systems deployed in the public sector might also impact natural persons' fundamental rights and should therefore be considered high-risk. To address this issue, policymakers should broaden the definition of high-risk AI systems to go beyond just those concerning public assistance benefits and include, for instance, AI systems related to taxation, due to their impact on an individuals' lives. *Policymakers should extend the mandatory ex ante requirements set out under Title III to other non-welfare contexts where citizens engage with public authorities via AI systems.* The current power asymmetries between citizens and the AI-wielding public administration could lead to unchecked abuses of power (Smuha et al., 2021), a matter not to be taken lightly. Wrongful automated decisions have the potential to erode citizens' trust in their administration and to increase overall political distrust.

Secondly, the Proposal remains silent on the fundamental rights of businesses. These rights should also interest policymakers, especially the rights of small and medium-sized enterprises (SMEs). First off, businesses are granted fundamental rights by the Charter (much like natural persons) and therefore mandatory *ex ante* requirements should also

⁴ For record-keeping requirements, see Article 12 of the Proposal. For transparency obligations, see Article 13 of the Proposal.

⁵ Article 6 (2) and Annex III 5 (a) of the Proposal.

apply to avoid unacceptable risks to their rights. Further, other fundamental rights, such as the right to free movement of goods, should be taken into account.⁶ Consider as an example ADS deployed in the administration of a Member State that grant market access to a product made by a small enterprise in another Member State. If the ADS wrongfully deny market access, power asymmetries between SMEs and public authorities become an issue; since it has been shown that SMEs do not have enough time and resources to challenge administrative decisions. In the context of the free movement of goods for non-harmonised goods, see European Commission (2017). Not offering *ex ante* guarantees when the subjects of AI systems are SMEs is risky, as the latter does not have the opportunity to contest unlawful automated decisions. Taking this example further, if AI systems raise non-tariff barriers, it could harm not only SMEs' fundamental rights, but also the EU economy as a whole. Non-tariffs barriers cost the EU economy billions (RAND Europe, 2014).

Additionally, policymakers should pay attention to other risks inherent in the Proposal's classification of AI systems. The list-based approach of high-risk AI systems is likely to lead to situations where other AI systems affecting fundamental rights pass under the radar of the Proposal, as they are not required to comply with the mandatory *ex ante* requirements and conformity assessments (Smuha et al., 2021: 13). Although the Commission is empowered to adopt delegated acts to update the list of high-risk AI systems,⁷ the process is far too slow given that ADS would continue to affect fundamental rights while the list is updated. Instead, *a fast-track emergency procedure should be put in place to ensure procedural guarantees at the request of any natural or legal persons.*

Create ex post procedural safeguards

Although mandatory *ex ante* requirements are established in the Proposal to serve as a protection of fundamental rights, these technical requirements are not sufficient to ensure that procedural rights are effectively protected. For an analysis, see Smuha et al. (2021: 11–12). *Ex post safeguards* (i.e., those acting after decisions are made based on an AI system) *should be put in place to comply with the procedural dimension of the rule of law.* In addition to the technical requirements imposed on providers and users of AI systems, the Proposal should go further than it does at present to *include procedural guarantees allowing natural and legal persons to protect themselves against unlawful decisions by AI systems.*

A brief overview outlining two components of the procedural dimension of the rule of law is needed to understand their importance better.

⁶ The European Court of Justice has recognised free movement of goods as a fundamental right. See Case C-320/03 *Commission v Austria* (2005) ECLI:EU:C:2005:684, para. 63.

⁷ Article 7 of the Proposal.

On the one hand, the right to good administration includes, but is not limited to:

- offering all information that might be useful and necessary for the defence of the adversely concerned person⁸
- a guarantee of the ability of persons to put forward their points of view on the reality and the relevance of the alleged facts and the documents used,⁹ as well as a right to access any relevant case file (fair hearing)¹⁰
- the obligation to state the reasons for a decision that are specific and concrete enough to allow the person concerned to understand why their application was rejected (duty to give reasons)¹¹

On the other hand, anyone whose legally guaranteed rights and freedoms are violated has the right to an effective remedy, a right that is 'inherent in the existence of the rule of law'.¹²

Recommendations

Given the utmost importance of these procedural rights, policymakers should build procedural safeguards to address the duties to provide good administration and to give proper enforcement mechanisms for natural and legal persons seeking to challenge an administrative decision based on AI systems. Today, there is no specific provision related to either component (excluding the particular case of data protection). Additional provisions are required to ensure that duties related to good administration are respected, and that EU citizens and SMEs subject to high-risk AI systems have all the relevant information to properly assess whether the system is compliant with the Proposal's requirements. More particularly, *policymakers should focus on provisions that (1) give flesh to the duty to give reasons and fair hearing, and (2) set up legal instruments empowering natural and legal persons to challenge AI systems affecting their rights under EU law. This could be achieved through specific*

⁸ See, for example, T-36/91 *Imperial Chemical Industries plc v Commission of the European Communities* (1995), paras. 111 and 117; C-41/69 *ACF Chemiefarma NV v Commission of the European Communities* (1970) ECLI:EU:C:1970:71, para. 27.

⁹ See, for example, C-328/05 P *SGL Carbon v Commission* (2007) ECLI:EU:C:2007:277, para. 71.

¹⁰ Article 41(2) (a) and (b) of the Charter. The right to access relevant case files is limited for the legitimate interests of confidentiality, and of professional and business secrecy. See Article 41(2)(b) of the Charter.

¹¹ C-166/13 *Sophie Mukarubega v Préfet de police and Préfet de la Seine-Saint-Denis* (2014) ECLI:EU:C:2014:2336, para. 48; Article 41(2)(c) of the Charter.

¹² C-362/14 *Maximilian Schrems v Data Protection Commissioner* (2015) ECLI:EU:C:2015:650, para. 95.

information requirements with regard to natural and legal persons and effective redress provisions.

In this regard, the literature also suggests additional recommendations, such as:

- 'An explicit right of redress for individuals who are subjected to non-compliant AI systems, similar to the rights of data subjects under data protection law' (Smuha et al. 2021: 59).
- 'A provision which mandates a complaints mechanism before the national supervisory authority for individuals who suspect that an AI system they are subjected to does not meet the requirements' (Ibid.: 58).
- A rule-of-law impact assessment prior to the deployment of certain AI systems (Smuha, 2021). This *ex ante* requirement could ensure that *ex post* procedural safeguards have been correctly put in place.

CONCLUDING REMARKS

Efficiency within public administrations is desirable, so turning away out of fear from the analytical capabilities that algorithms offer would deprive the EU of important opportunities. At the same time, the challenges AI systems pose in terms of the procedural dimension of the rule of law must be further studied and tackled at the legislative level. Otherwise, there is a risk that a wave of pleas against administrative decisions will overwhelm courts, undercutting the belief that AI in the public sector can render public services more efficiently. Allowing the spread of AI systems that do not comply with constitutional and administrative principles could later lead to the administration having to bear the cost of abandoning (high-risk) AI systems after purchasing them.

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Flexible Transnational Electoral Constituencies: A Proposal to Europeanise EU Elections

Francesco Grillo and Raffaella Nanetti

ABSTRACT

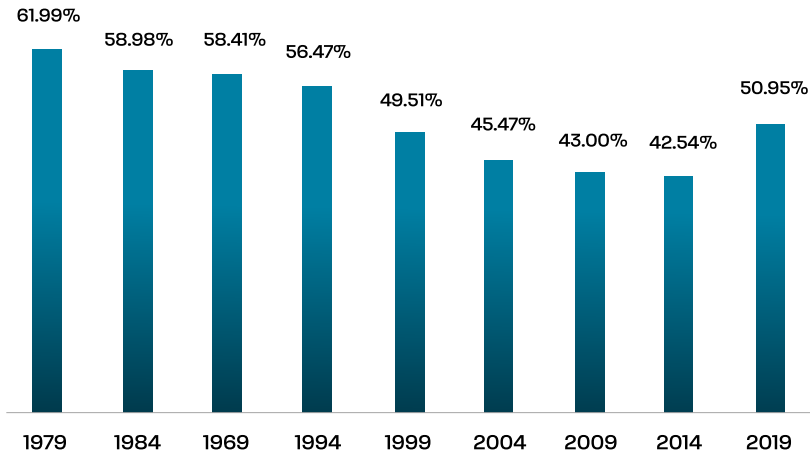
The dual health and economic emergency generated by the COVID-19 pandemic and the first EU response have created unprecedented possibilities for reinvigorating European democracy. On the one hand, there is the opportunity to address the EU's longstanding problem of 'democratic deficit', which is no longer compatible with the quantum leap in the EU integration process that the emergency has made clear is urgently needed. On the other hand, the response is the premise for the EU to become a laboratory addressing the diffused crisis of representative liberal democracy that is also affecting Member States. This paper advances a proposal to reform the system used to elect the European Parliament, so that all European voters can join an EU-wide constituency, rewarding the parties and candidates whose votes are more evenly distributed across Member States. Temporary adjustments to facilitate the transition to the new system are also discussed.

THE PROBLEM: A EUROPEAN PARLIAMENT WITH ONLY NATIONAL IDENTITIES

The debate on the European democratic deficit is one of the oldest among the many longstanding discussions that, in recent decades, have addressed the question of how to institutionally reform the European Union (Huber, 2009).

Within the architecture of the EU, the European Parliament (EP) is the institution that should guarantee direct accountability to European citizens (Priestley, 2010; Hix, 2008). It is also the only supranational assembly elected with universal suffrage (direct election), and its power has progressively increased since the first election in 1979 (Héritier, 2017; Hix, Noury, and Roland, 2007). However, this positive evolution contradicts the fact that people's interest into the EP, as measured by the turnout at the polls to elect its members, has actually decreased, as Figure 1 reveals.

Figure 1: European Parliament election turnout (percentage of electorate, 1979–2019)



Source: European Parliamentary Research Service

Turnout has progressively gone down, with the only exception being the 2019 election. And yet that was the election in which the vote for Eurosceptical parties reached its highest (31% of the total votes), while the combined vote share of the two mass European political parties (European People's Party and the Progressive Alliance of Socialists and Democrats) which has been the cornerstone of European politics for decades, fell for the first time to less than half (44%) (European Parliamentary Research Services, 2019).

Scholars and politicians have identified the EP's electoral law as an important cause of citizen disaffection. Regarding the election of the EP – regulated by the Act of 20 September 1976 instituting the election of the representatives of the Assembly by direct universal suffrage and last amended by Council Decision 2018/994 of 13 July 2018¹ – the European Council never even managed to arrive at basic common principles.² The EP elections are, de facto, the sum of 27 national

¹ The law finds its legitimacy in the 1976 Electoral Act ('Act concerning the election of the members of the European Parliament by direct universal suffrage', [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:01976X1008\(01\)-20020923](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:01976X1008(01)-20020923)); Article 14 of the 2012 Treaty on European Union; Articles 20, 22, and 223 of the Treaty on the Functioning of the European Union (https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF); and Article 39 of the Charter of Fundamental Rights.

² In 1992, the Maastricht Treaty (1.1.3) declared that elections should be held in accordance with a uniform procedure and that the European Parliament was to draw up a proposal to

contests, taking place according to different time schedules (in 2019, they ran from 23 to 26 May). The fact that election polls happen in some countries when the results from others are public, may also contradict the rule introduced by some Member States according to which exit polls and other information on electoral trends are banned in the days leading up to the elections and on election day.

In addition, transnationality is explicitly excluded. Under Article 22(2) of the Treaty on the Functioning of the European Union, 'every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides'³. This means that an EP candidate can neither be voted for by citizens outside the candidate's country of residence or citizenship, nor contest in more than one country⁴.

It is, therefore, this current structure that works as an almost explicit contradiction to the European value of democratic voting.

The ongoing debate about EP electoral reform dwells on a mix of different objectives which we would classify as for the following taxonomy:

1. Create an EU-wide electoral procedure: This is to avoid the EP elections being the sum of 27 national elections. The idea is that the elections should at least be based on the 'common principles' recommended by the Maastricht and Amsterdam treaties but never fully adopted by the Member States (Pukelsheim and Oelbermann, 2011, 2014; Farrell and Scully, 2005). Here, more recently, Leinen and Pukelsheim (2021) reiterated the proposal of a tandem system that would ensure that the EP's seats are allocated such that it can be roughly proportional on two dimensions – the electorate's geographical division by Member State, and the electorate's political division by partisan vote – so that the principle of the 'equality of all votes' is respected.

According to this proposal, European Parties would compete on a transnational basis whereas EP seats would continue to be distributed

this effect for unanimous adoption by the Council. Since the Council never agreed on any of the proposals, the Treaty of Amsterdam introduced the possibility – but not the provision – of adopting common principles.

³ Article 22 of the above-mentioned Treaty on the Functioning of the European Union (https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF).

⁴ A further paradox is that Belgium – home to Brussels, the 'capital' of the EU – even requires candidates to be able to speak French, Dutch, or German (La candidature pour les différentes élections – Elections européennes et régionales 2009. lbz.rrn.fgov.be. 18 December 2008).

proportionally, based on how much of the vote each party gets, but each party's seats would also subsequently be allocated to each country according to the predetermined number of seats allotted to that country.

1. Ensure that all votes are counted similarly: This was formally achieved by the 2002 amendment to the electoral law, where proportionality became one of the few principles accepted by all Member States.⁵
2. Achieve a fair distribution of the number of MEPs among Member States: The distribution should be approximately proportional to each Member State's share of the EU population. This allocation is to be done at the next elections through an 'apportionment' process which – according to the Lisbon Treaty, Treaty on the Functioning of the European Union (TFEU)- establishes a distribution of seat which "degressively proportional" to the population of the various Member States⁶.
3. Leverage electoral mechanisms to create a Europe-wide debate: This would mean European political parties would propose cross-national policies, and European citizens would vote based on these proposals (Wouters, 2020; Hrbek, 2019). Reference is made in this article to, among others, MEP Andrew Duff's 2011 proposals, probably the most ambitious attempt to reform EP electoral law thus far (for an interesting analysis of the reasons why Duff's attempt was not successful, see Donatelli, 2015), the more recent proposals by Sandro Gozi (Gozi, 2021), and those of the European Parliamentary Service (Crego, 2021), which proposed mechanisms to correct the bias that the transnational list may produce in favour of larger Member States (Bol, 2021). Significantly, reference is also made to the *Spitzenkandidat* process, which involves the nomination by European political parties of candidates for the role of Commission President.⁷

⁵ Council Decision 2002/772/EC, Euratom of 25 June and 23 September 2002 modified the 1976 Electoral Act introducing the 'common principle' of proportional representation (together with a number of incompatibilities between national and European mandates).

⁶ The method is comparable to the composition of the electoral college to elect the US President, in that, pro rata, the smaller states receive relatively more places in the electoral college than the more populous one.

⁷ Under the *Spitzenkandidat* process, the party winning the most seats in the EP receives the first opportunity to attempt to form a majority to back their candidate (akin to how heads of government are elected in national parliamentary democracies). On 23 January 2018, the Constitutional Affairs Committee adopted a text stating that the *Spitzenkandidat* process could not be overturned, and that the EP 'will be ready to reject any candidate in the investiture procedure of the Commission President who was not appointed as a *Spitzenkandidat* in the run-up to the European elections "Spitzenkandidaten" process cannot be overturned, say MEPs', European Parliament, Press Room (2 February 2018).

However, again the final outcome of the 2019 election was the choice of a president (Ursula Von Der Leyen) who was not the *Spitzenkandidat* of any of the European parties.

4. Facilitate innovative voting procedures: The range of innovations includes postal and electronic voting.⁸

Joining the debate, this article focuses on the fourth objective, purported to be the priority in the current context. The adoption of innovative procedures (fifth objective) will be demonstrated to be a technical enabler that may result in a uniform electoral procedure (first objective).

However, the authors recognise that the full application of proportional representation of citizens (second objective) and of Member States (third objective) may be part of a trade-off with the idea of incentives for transnational political representation (as in the fourth point). Specifically:

- a) the creation of an EU-wide political arena is seen as a political objective that is necessary for further integration and, thus, worthwhile 'positive actions' that are already frequently used to achieve certain targets (examples range from the wide deviations from proportional representation that exist almost in all democracies so that political stability is guaranteed, to 'quotas' introduced to improve the gender balance in elected assemblies); and
- b) the principle by which each Member State should have a certain number of MEPs (as per the 'appropriation' mechanism), contradicts the very institutional principle that MEPs represent all European citizens – including those who did not vote for them – regardless of nationality.

It follows that the objective that this article pursues is, more specifically, how to 'use' the EP's electoral law as a lever to:

- a) create – at the political party level – an incentive to compete in the European elections with lists encouraging campaigns that are as transnational and EU-wide as possible; and

This is unfortunate, given that the May 2018 Eurobarometer poll showed that 60% of the EU voters think that the *Spitzenkandidat* process would make the European Commission more legitimate and 70% think that the process would promote a real debate on European issues Democracy on the MOVE, May 2018, Barometer (https://www.europarl.europa.eu/pdf/eurobarometre/2018/oneyearbefore2019/eb89_one_year_before_2019_eurobarometer_en_opt.pdf).

⁸ The last amendments to the 1976 Electoral Act were adopted by Council Decision (EU, Euratom) 2018/994 of 13 July 2018, which includes provisions regarding the possibility of different voting methods (advance voting, and electronic, internet and postal voting); the possibilities of different electoral thresholds – the minimum share of the primary vote which a candidate or political party requires to achieve before they become entitled to any representation – in different Member States; the protection of personal data; penalties for 'double voting' by national legislation; voting in third countries; and the possibility of the visibility of European political parties on ballot papers.

- b) reward – at the individual candidate level – the capability to garner support from voters of different nationalities, as a proxy for the important ‘competence’ or experience that a European representative should have.⁹

The aim of our proposal is therefore similar to the proposal that the EP rapporteur Domenec Ruiz Devesa has recently presented as a draft (Devesa, 2021a). The incipit of the draft proposal is quite explicit: ‘The European Parliament has for long pleaded to enhance the European dimension of European elections, frequently criticised for focusing too much on national politics and internal candidates. Aiming to foster a true pan-European political debate ahead of European elections, stress the link between those elections and the European project, and increase citizens’ interest in European affairs, the European Parliament is currently working on a legislative initiative that seeks to repeal the current Act concerning the election of the Members of the European Parliament and adopt a new Regulation governing European elections’ (Devesa, 2021b). However, as we will see, the EP’s proposal appears to probably be less bold than our times demand, and accepts a number of compromises that do not necessarily make it more likely to overcome vetoes from specific countries or political parties (ratifications from all Member States will be necessary).¹⁰

Our contention is that the entire debate should start by acknowledging that more European democracy is absolutely essential to proceed with a quantum leap forwards on the process of European integration, and that time has come for more radically clear choices, even if they may require the modification of treaties or enhanced cooperation. While the longstanding debate on the democratic deficit has to date not yielded significant results, this article argues that the pandemic has created a new scenario, exposing with unprecedented clarity the urgent need to address the many contradictions of an EU made of a number of half-integrations, including, for example, persisting obstacles to the free movement of people, a common market without tax harmonisation, and a monetary union without a common fiscal policy. All of this makes the entire structure of the EU unstable and subject to challenges by dissenting Member States.

The article underscores the belief that the time has come to reframe the entire debate on the European democratic deficit. As has been

⁹ There is a wide literature that explores the legitimacy of using electoral law as an instrument to reach certain political objectives (Heurtaux and Harwood, 2013; Russell and O’Cinneide, 2003).

¹⁰ As a matter of fact, it is not even granted that vetoes may come from smaller member States or from the ones beyond the founding core. The last attempt to adopt a common electoral mechanism (in that case, a minimum threshold below which a party would not be represented in the EP) was rejected by the German Constitutional Court.

discussed, it is true that democracy at the EU level needs to be significantly strengthened, but that is also true of the Member States that are experiencing a deterioration of the effectiveness of their institutions, which were built for a different time (Grillo and Nanetti, 2021).

The strengthening of European democracy becomes part of the challenge of reorganising political representation for a society that is being radically transformed by a technology-enabled mutation. The Internet, for instance, is impacting the dimension of the spatial organisation of the lives of the great majority of individuals, and this also changes the shape and definition of the territorial communities to which they belong. Up to the last decade of the twentieth century, the pyramidal structure of nation-states and of their territorial levels was the dominant modality of political and policy-making power. While the Internet revolution has accelerated both the globalisation of markets and the immigration/mobility trends transforming the composition of the EU territorial communities, electoral constituencies have remained the same. The result is the existence of distortions in social and economic conditions not properly addressed, and of inefficiencies and injustices in the way European society is politically represented in elected assemblies.

In this sense, a supranational organisation like the EU becomes a textbook example of what needs to be changed. An individual living, working and travelling across different cities and Member States, as is common today, has fewer chances of being elected than one who has spent their entire life in the same province or region. The potential voters of the former are dispersed among different geographies and so tend to be electorally irrelevant; while the constituency of the latter is concentrated in one territory so they may be elected as an MEP considering that votes are still counted by region/nation, with a proportional mechanism. The end result is paradoxical: there is a global class that has knowledge but is politically insignificant (aside from the few who are advisers and experts) and a locally based political class largely making up the elected assemblies (including the EP), but with much less personal experience about the cross-border and transnational problems upon which that the parliament of a supranational organisation like the European Union is called to deliberate.

THE IDEA: THE ELECTORAL SYSTEM PROPOSAL

Against this context, the article presents a proposal for change. First, steps through which the new EP would be elected are illustrated, then the advantages of this proposal are discussed in relation to other methods that have recently been attempted. Finally, the concluding remarks dwell on adjustments that could be considered to make the proposal more readily acceptable to all Member States and political parties.

The proposed allocation of EP seats would occur in four steps:

Step 1: The establishment of the EU transnational constituency

Within a certain time limit before the day of the EP elections, voters choose whether they want to continue to vote within a local/national constituency (default option) or to join the EU-wide constituencies. We also envisage that the choice should be expressed through electronic voting.¹¹

As will be seen in the next steps of the election mechanism, the entire procedure would have been expensive in the pre-Internet era, but now Internet voting seems to have reached maturity (Trechsel, Kucherenko, and Silva, 2016). It has been successfully tried and has been regularly adopted in Estonia, for instance. Evidence shows that the percentage of voters using the electronic option has stabilised to around one third and that, more importantly, the uptake is not significantly different across age, income, or gender groups (Vassil et al., 2016). Transnational lists would be drafted by European parties in a period that starts some time (perhaps one month) before and ends (perhaps one month) after the day when voters have to express their choice of constituency.

Step 2: Distribution of the EP seats between local/national and EU-wide electoral constituencies

Seats would first be allocated to national and European constituencies on the basis of the number of voters who choose to vote within each mode. For example, if 30% of the voters choose to vote in the transnational constituency, 30% of the seats would be allocated to the transnational lists, while the rest would be allocated to the national lists.¹²

This step creates a degree of fair competition among the two modalities, allowing information to be gathered regarding whether European voters perceive themselves as belonging to a national citizenry or to a more transnational community.¹³

¹¹ Electoral law (as amended in 2018) already provides for a transnational constituency (citizens residing abroad) and the 2018 amendment to the electoral law also requires states to allow electronic voting.

¹² In fact, there are two possibilities here: one is to consider potential voters (this will create a strong bias towards the national lists, because that is the default choice); the other is to only count those who actually vote. The first is simpler, but the second is fairer.

¹³ One possibility would also be to allow citizens to vote in both constituencies: this would promote a new understanding of identity and citizenship as not being exclusive (as is already recognised by the EU treaties).

Step 3: Allocation of EU transnational constituency seats among different political parties

The votes resulting from Step 2 would be distributed among European parties in proportion to the votes received by each party. However, they would be weighed by their 'transnationality'.

The principle is that the more the distribution of the votes obtained by a party in different Member States resembles the distribution of the EU population across the Member States, the more that party is rewarded with a vote multiplier factor. This provides an incentive to the parties to really campaign in all countries (in the last election, none of them had MEPs from all Member States), and to advance proposals that are not captured by national interests. It would also be a corrective factor for a system that otherwise tends to favour the larger Member States (Bol, 2021; Pukelsheim and Oelbermann, 2014).

The proposed algorithm is such that parties gaining votes from all Member States and in proportion to their population – thus proving to be truly transnational – would have their votes multiplied by two, while those obtaining all their votes in one Member State would not gain any such reward.¹⁴ The formula also allows for most situations that would fall in between these two extreme cases.

The current structure of the European parties (most of their votes are concentrated in certain countries) suggests that the correction or deviation from a system of pure proportional representation would be relatively small in the first election when the system is adopted.

Step 4: Allocation of seats to individual candidates

The seats gained by each party should be allocated to the candidates according to their vote share, weighted by their transnationality (using the same mechanism as in Step 3).

A pure transnational candidate (very unlikely case) would double their vote tally, while a purely national one would have no extra rewards from the weighting mechanism. It is fair to expect that the vast majority of candidates would get almost all of their votes from no more than one

¹⁴ The proposal is to calculate the multiplier using a formula based on absolute deviations:

Multiplier = $2 - \frac{\sum |x_{pc} - y_c|}{\max(\sum |x_{pc} - y_c|)}$ where x_{pc} is the percentage of the total votes in Member

State C for a party P, and y_c is the number of voters in C as a percentage of the total number of voters within the EU transnational constituency. In the case of a party (or a candidate) whose votes are distributed among the Member States in the same proportion as EU voters are, $\sum |x_{pc} - y_c|$ would be zero, and thus the multiplier would be two (its votes would be doubled).

When the party or candidate gets votes in only one Member State, $\frac{\sum |x_{pc} - y_c|}{\max(\sum |x_{pc} - y_c|)}$ would be 1, so the multiplier would also be 1 (which means that there is no reward).

or two Member States. This would result, as with the allocation of seats among parties, in a relatively small deviation from proportionality that will, again, increase in time as the system starts to generate a proper EU-wide political arena.

The proposed system has several strengths and it also addresses some of the obstacles that the introduction of transnational lists is said to encounter.

- a) It does not entail the abolition of current electoral laws. It would only provide an option for the electorate, the candidates, and the European parties willing to try competing in a different context, which is rather cogent for a European election.
- b) It provides an instrument not only to measure the consensus about different European parties and candidates, but also to accurately track how strongly European the EU citizenry feels. We expect younger generations to adapt to the innovation more quickly.
- c) It opens up, again on a voluntary basis, the opportunity for citizens and candidates to experiment and come to trust new, electronic means of expressing themselves politically and institutionally.
- d) It would be an example of how technologies can enable solutions to new needs that they themselves generate, when they promote different forms of citizenship. As such, the EU would really become a laboratory in which to experiment on the innovations needed to address the crisis facing the instruments of representative democracy.
- e) It encourages representation of all Member States and carries a good probability that even the transnational constituency would produce candidates whose nationalities are a good representation of all 27 Member States.
- f) It represents a relatively small deviation from pure proportional representation (for the reasons outlined above) and it may also present a bias towards national constituencies. This would result in an initially small innovation that may flexibly increase over time, as the political debate becomes more European and the vote share of millennials grows.
- g) It provides a weighting mechanism that is simple enough to be explained to ordinary voters but also flexible enough to mirror a progressive Europeanisation of European democracy.
- h) It requires a counting procedure that is complicated and time-consuming if implemented manually, but which would be instantaneous when done electronically and relatively quick even via postal ballots that are fed into a few central nodes using scanners.

Overall, the proposal has the advantage of flexibility, which may be the real key to approaching the 'reform' of the EU (Stubb, 2002). It is also different from the EP proposal in the following ways:

- a) It is democratic: The number of seats allocated to the transnational list is not fixed (the EP proposal sets the number at 46 seats) and it leaves the choice to every single citizen who freely chooses how they want to be represented and the electoral forum that suits them best.
- b) It is flexible: It allows the system to be informed by the evolution in time of the preferences of the electorate. Younger citizens, especially, may gradually shift to a more European political arena to which European political parties will need to adapt.
- c) It is clear: It indicates a clear action that will make it the MEPs' function to represent all European citizens, and it rewards parties and candidates who are capable (irrespective of nationality or residence) of better representing the distribution of the electors among different countries.
- d) It is simple and open: It would avoid the allocation in slots of five candidates coming from the Member States of different sizes and would not adopt the closed list system (at least it would not do so in the form we have just proposed). Fair representation would be guaranteed by shifting the attention from the nationality of the MEP elected to the capability of the system to better represent individual preferences (in line with the constitutional 'one person, one vote' principle).
- e) It is neutral: It does not create any bias in favour of any specific party (we will elaborate below on how it does not put at disadvantage even those who are the most critical of the Union) or any country, regardless of size.

The proposal, therefore, has the merit of more clearly indicating a pattern towards the creation of a modern, transnational democracy, which is something we need in order to tackle complex global problems that cannot wait for unanimity among the Member States. Its political strength is that it puts forward strong arguments that can appeal to a broad audience and make it harder, as we have tried to demonstrate, for any Member State or political party to resist.

The EP can and should be the place where such experimentation takes place, if the EU aspires to overcome the current dual emergency by reviving its original purpose of being a socially inclusive community, a thriving innovation-driven economy, and a strong liberal democracy.

ALTERNATIVE OPTIONS AND PROPOSED SUB-OPTIMAL ADJUSTMENTS

The system we have proposed could face a number of potential criticisms. We anticipate that they will come from both extremes of the political spectrum with regard to the future of the EU integration process.

The main ones are likely to be about the speed of the innovation, which is suggested for an EU political system that may not be ready for it.

Conversely, the most fervent supporters of a federal EU may argue that a mechanism such as the one proposed here should be completed with additional innovative features, such as, for example, that the president of the Commission be a *Spitzenkandidat* from the transnational lists.

As far as the latter is concerned, the authors do not recommend weighing their proposal down with additional features (this was Duff's mistake) as they endorse a much-shared social science principle: each policy instrument should be associated to not more than one policy objective, which in this case is to encourage the emergence of an EU-wide political arena. Thus, it is not pertinent to link the introduction of a system aimed at promoting an EU-wide political arena with the institutionalisation of the election of the president of the Commission. The latter should be an issue for the debate that is generated, because not all participants in such a transnational forum may agree that they should be directly elected (or indicated) by the voters (just like not all national voters and active political participants may necessarily agree with directly electing the head of state).

On the contrary, the concern of political parties whose agenda is against further European integration is understandable and fair. This may well be the case for region- or nation-bounded parties, such as Italy's Lega Nord, the French National Front, or the Hungarian Fidesz. Their concerns about being put at a competitive disadvantage when faced with a transnational constituency should be taken on board. However, it is also true that the voters of a transnational constituency would no longer vote in the national constituencies, so the potential reduction of the seats taken by Italy's League in the transnational constituency would be compensated for by the opportunity to gain more seats in the national one.

All things considered, the proposal offered in this article may be adjusted in the following ways:

- a) The abolition of the weighting mechanism to 'simplify' the scheme (so that traditional means of elections can also be employed): Voters would simply have an additional list when they are at the polls, as in Sandro Gozi's proposal (Gozi, 2021).¹⁵ In this case, a correction for more likely gaps among the Member States may be compensated for by a minimum quota by state (and by gender and/or age).
- b) The introduction of closed transnational lists proposed by political parties: Here candidates could be elected on the basis of their position on the party's list, so that a certain share of citizens from different countries (and a minimum gender and/or age balance) is guaranteed

¹⁵ As one of the three MEPS who were elected in an EU country other than their own, Gozi is arguably not only one of the promoters but also a symbol of European transnational democracy.

(Bol, 2016). This means competition would only be along political party lines, and the order of candidates would become the guarantee of cross-border and gender equality.

- c) The introduction of a fifth step that controls seat allocations to individual candidates so that a certain percentage of them is reserved for individuals of a certain nationality (similar positive action may also apply to gender or age).

A final consideration is that the three profiled optional adjustments would be sub-optimal. It could also be argued that they may even entail the acceptance of a legacy that should be proactively rejected. The reference is, again, to the idea that MEPs represent their own countries, which contradicts the very legal principle that should guide the functioning of the EP and its members: they are expected to represent all European citizens, to act in the interest of the Union, and to have the skills to govern hugely complex global issues.

A leap towards an advanced level of integration requires a sincere and constructive critique of the shortcomings of European democracy and of the EP elections followed by resolving through innovative mechanisms a major contradiction in what remains the greatest and most innovative political project of our times.

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ELF Papers

Why Europe Should Stand Up for Taiwan

A Question of International Law, Interests, and Values

Werner Somers

ABSTRACT

In recent years, China has become increasingly impatient with the status quo in Taiwan. Chinese President Xi Jinping stressed that the Taiwan issue cannot be passed down from generation to generation. This concerns the EU, as the growing tensions between China and Taiwan coincide with the new lows of the relationship between the West and China.

Many experts agree that the risk of the Taiwan question sparking a major great-power conflict in the next decade has increased dramatically. It remains to be seen whether and to which extent Russia's invasion into Ukraine will influence China dealings with Taiwan, also considering the close ties between Moscow and Beijing.

EU should strive to maintain the status quo, since a military conflict over Taiwan would have strong negative effects on European security, economy, and prosperity, as well as signaling that authoritarianism has an 'upper-hand' on democracy and rule of law – foundational principles which the EU vowed to promote and safeguard.

HISTORICAL ROOTS OF THE TAIWAN ISSUE

The current Republic of China (ROC) is a territorial entity that exercises power over Taiwan in a broad sense, that is, Taiwan, Penghu, Kinmen, Matsu, and a number of other insular territories. These territories – totalling 36,197 sq. km – are located in the Pacific Ocean between Japan and the Philippines, and are home to approximately 23.5 million people. The island of Taiwan (Formosa), whose capital is Taipei, is located about 153 km (95 miles) from the south-eastern coast of Mainland China, from which it is separated by the Taiwan Strait.

The current (Taipei-based) ROC should not be confused with the historical ROC, which was founded on 1 January 1912 after the fall of the

Chinese Empire. From 1927 onwards, the ruling Kuomintang (KMT) and the Chinese Communist Party (CCP) were involved in a civil war, which was interrupted only by the Second Sino-Japanese War (1937–45). The Chinese Civil War ended with the CCP gaining control over the entire Chinese mainland and the proclamation of the People's Republic of China (PRC) on 1 October 1949. Chiang Kai-shek, the leader of the KMT, fled with the remnants of his armed forces and the party elite to Taiwan. The seat of the 'Nationalist' government was thus moved to Taipei. Of the territories belonging to China at the time of the proclamation of the ROC in 1912, the Nationalist government controlled only the mini-archipelagos of Kinmen and Matsu, located near the Chinese mainland. It lost the island of Hainan in the South China Sea in May 1950.

Taiwan and the archipelago of Penghu (Pescadores), located about 45 km south-west of Taiwan, had been Japanese territory since the Treaty of Shimonoseki came into force in 1895, after the First Sino-Japanese War. Only after the Japanese defeat in World War II did they come under Chinese rule again. On 25 October 1945, the Japanese surrender in Taiwan was accepted on behalf of the ROC. Shortly thereafter, the island was proclaimed a Chinese province, although the ROC was allowed to exercise its power over Taiwan only as an agent of the four Allied Powers mentioned in General Order No. One, issued by the Supreme Commander for the Allied Powers, Douglas MacArthur, after the Japanese Instrument of Surrender was signed on 2 September 1945 (Supreme Commander for the Allied Powers, 1945).¹

The international community assumed that it was only a matter of time before Taiwan would be conquered by the communists (Neukirchen, 2004: 77). The United States too seemed to be resigned to Taiwan being incorporated into the state of China – embodied by the PRC – in accordance with the Cairo Declaration made during World War II.² The outbreak of the Korean War in June 1950 changed the whole picture. US President Harry S. Truman called an occupation of Taiwan by communist forces a direct threat to the Pacific and to the United States (Manthorpe, 2009: 195). This also explains why the Treaty of San Francisco – the peace

¹ The 'General Order No. One', 2 September, read that the Japanese forces had to surrender to 'commanders acting on behalf of the United States, the Republic of China, the United Kingdom and the British Empire, and the Union of Soviet Socialist Republics, as indicated hereafter or as may be further directed by the Supreme Commander for the Allied Powers', and that '[t]he senior Japanese commanders and all ground, sea, air and auxiliary forces within China (excluding Manchuria) [and] Formosa [...] shall surrender to Generalissimo Chiang Kai-shek'.

² The Cairo Declaration, announced on 1 December 1943 by British Prime Minister Winston Churchill, US President Franklin Delano Roosevelt, and Generalissimo Chiang Kai-shek, stipulated that it was their purpose that 'all the territories Japan has stolen from the Chinese, such as Manchuria, Formosa, and the Pescadores, shall be restored to the Republic of China'. See www.taiwandocuments.org/cairo.htm.

treaty between Japan and most of the Allies, signed on 8 September 1951 – only provided that ‘Japan renounces all right, title and claim to Formosa and the Pescadores’ (Treaty of Peace with Japan, 1952), thus ending Japanese sovereignty over Taiwan and Penghu without assigning these territories to another state.

Before and after the entry into force of that treaty on 28 April 1952, the KMT-led Taipei regime continued to call itself the ‘Republic of China’. It still claimed to be the legitimate government of China and regarded Taiwan as a base for the reconquest of Mainland China (Neukirchen, 2004: 308). Even after the loss of its seat in the United Nations to the PRC in 1971, the Taipei regime adhered to its claim of being the government of China. However, its expulsion from the UN resulted in more and more countries recognising the PRC and breaking off diplomatic relations with the ROC. The credibility of the Nationalist government’s claim to represent China was dealt a final blow in 1979, when the United States also recognised the PRC as the sole legitimate government of China. Today, the ROC is only recognised by fourteen states, mainly microstates and economically weak countries.

GROWING CONCERNS ABOUT PEACE AND STABILITY IN THE TAIWAN STRAIT

Whereas the ROC admitted in the 1990s that it did not have jurisdiction over Mainland China and announced that it would no longer compete with the PRC to represent China internationally, the latter still holds that there is only one China and that Taiwan is an integral part of it. Moreover, Beijing has never ruled out the use of force to ‘reunite’ the ‘renegade province’ with the motherland, although it continues to assert that it prefers peaceful unification under the ‘one country, two systems’ formula, which means that Taiwan would become a special administrative region of the PRC. In recent years, China has become increasingly impatient with the status quo. Chinese President Xi Jinping stressed that the Taiwan issue cannot be passed down from generation to generation (Bush, 2019).

In addition to the arsenal of approximately 1,500 ballistic missiles aimed at Taiwan and the exercises regularly held by the People’s Liberation Army (PLA) to simulate an invasion, the PLA has bombers circling the island at regular intervals and Chinese military planes make incursions into Taiwan’s Air Defense Identification Zone on an almost daily basis. The PLA’s incremental grey-zone operations have raised concerns about peace and stability in the Taiwan Strait. Over the past two decades, the military balance of power in the strait has unmistakably tilted in favour of the PRC as a result of the large-scale modernisation of the PLA.

The growing tensions between China and Taiwan coincide with the relationship between the US and the PRC reaching a new low.

Although it may seem an exaggeration to call Taiwan '[t]he most dangerous place on earth', as *The Economist's* cover did in May 2021 (*The Economist*, 2021), many observers agree that the risk of the Taiwan question sparking a major great-power conflict has increased dramatically. For instance, Admiral Phil Davidson, commander of the United States Indo-Pacific Command between 2018 and 2021, warned the US Senate Armed Services Committee in 2021 of the likelihood of a Chinese attempt to seize Taiwan during this decade, in fact in the next six years (Shelbourne, 2021). It remains to be seen whether and to which extent the course of events regarding the Russian invasion of Ukraine will have an impact on how China deals with Taiwan, also in light of closer ties between Russia and the PRC.

The following sections explain why the EU and its member states should stand up for the preservation of the status quo in the Taiwan Strait. International law, European interests, and European values all require this.

INTERNATIONAL LAW IS ON TAIWAN'S SIDE

My PhD thesis dealt with the international legal status of Taiwan (Somers, 2020).³ It found that the Treaty of Shimonoseki (1895) was legally valid, and therefore effected the cession of Taiwan and Penghu to Japan. China never regained sovereignty over these territories after the entry into force of that treaty. When the Treaty of San Francisco came into force on 28 April 1952, Japanese sovereignty over Taiwan and Penghu ended definitively through *derelictio*, without their being ceded to China or becoming a condominium of the Allied States parties to that treaty. The *derelictio* by Japan resulted in Taiwan and Penghu becoming *terrae nullius*, without these territories automatically reverting to China as the previous sovereign authority. China did not regain them through *occupation* either. In this regard, it is important to stress that, since the proclamation of the PRC on 1 October 1949, the state of China was continued and represented only by the PRC, which exercised effective control over virtually all the territory that belonged to China when the ROC was founded on 1 January 1912. Therefore, the effective control that the ROC had exercised over Taiwan and Penghu since October 1945 could no longer be attributed to the state of China when the Treaty of San Francisco entered into force.

My dissertation concluded that the Taipei-based ROC qualifies as a state, distinct from the state of China, with Taiwan in a broad sense as

³ An updated, revised, and expanded English version of this book will be published later this year with Brill Academic Publishers as part of the series *Geopolitics and International Relations*.

its territory. Here, I used the following definition of a state as a subject of international law:

An entity may be regarded as a state if it possesses its own institutional system that is not subject to any other institutional system and that exercises sustainable, effective control over a population living permanently within a defined geographical space, on the basis of its own legal order that is subordinate only to international law and otherwise is the exclusive source of all law applicable within that space, save where that entity has been established as a direct result of the unlawful use of force or has been specifically established to enable the systematic violation of peremptory norms of international law (*ius cogens*) (Somers, 2020: 446).

It would go beyond the scope of this article to discuss in detail the different components of this definition. I will only comment on a criterion that is *not* included in it and which is mentioned almost exclusively in conjunction with the international legal status of Taiwan: the so-called will to statehood, meaning that an entity can only be considered a state if it wants to be a state and claims statehood. Although the ROC has acknowledged since the 1990s that it does not exercise jurisdiction over Mainland China, it still does not consider itself unequivocally as a state distinct from the state of China, whose territory includes only Taiwan in a broad sense. For example, the so-called Additional Articles of the ROC constitution show that the Taipei-based ROC formally also includes the PRC-controlled mainland in its territory.

However, the will to statehood is not usable as a criterion that entities should satisfy in order to qualify as a state. Entities do not have a 'will' in a real, psychological sense, since they do not possess a brain and therefore consciousness. Nor can the will to statehood be identified with the 'state will' in the sense of a legal construct that allows certain acts to be attributed to the state. If the will to statehood were equated with the state will thus understood, an entity could never become a state, since it cannot possess a state will before it is a state. Since the will to statehood is not a useful criterion for statehood, no significance comes from the fact that the Taipei-based ROC still does not unambiguously conceive of itself as a Taiwanese state distinct from China. Moreover, to the extent that it would nevertheless be assumed that the will to statehood is a criterion that entities must meet in order to qualify as a state, it is important to note that since the proclamation of the PRC in 1949, the Taipei-based ROC has always stressed that it is a sovereign state and has never submitted to the PRC. It can therefore be considered to demonstrate the *general* 'will to statehood', understood as the expression of the fact that the entity in question claims sovereignty and recognises no superior above it.

To require the Taipei-based ROC to also express the *specific* will to be a state distinct from the state of China by means of a formal declaration of independence would be to misunderstand the fact that China lost sovereignty over Taiwan and Penghu upon the entry into force of the Treaty of Shimonoseki, and that it has never regained sovereignty over those territories since then. A declaration of independence would not only be superfluous, but would also lend legitimacy to the PRC's claim to Taiwan and Penghu by implying that sovereignty over those territories hitherto rested with China. Moreover, a very likely consequence of a declaration of independence would be that the PRC would attempt to undo the 'secession' of Taiwan militarily.

Thus, even if the will to statehood was a criterion that an entity would have to meet in order to qualify as a state, it would not preclude the qualification of the Taipei-based ROC as a state. Since the island of Taiwan represents more than 99% of the total area of the territories controlled by this state, it is essentially an independent Taiwanese state. After the Nationalist retreat to Taiwan in 1949, the ROC had no territory of its own since Taiwan and Penghu were still *de iure* Japanese territory, while Kinmen and Matsu were *de iure* part of the state of China. It was only bestowed with a territory of its own when Japanese sovereignty over Taiwan and Penghu ended through *derelictio* as a result of the entry into force of the Treaty of San Francisco in 1952.

As the current ROC is a sovereign state, international law prohibits a unilateral change of the status quo by the PRC. Annexation has not been a valid means of acquiring territory since, at the very latest, the entry into force of the Charter of the United Nations on 24 October 1945. Article 2(4) of the UN Charter provides that '[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state'. The prohibition on the use of force is also part of customary international law (See International Court of Justice, 1986: para. 190, p.100), and it even has the status of *ius cogens*. The prohibition on annexation is but a corollary of the prohibition on the use of force against the territorial integrity or political independence of states. It doesn't matter that the ROC (Taiwan) is not recognised by the vast majority of states and is not a member state of the UN, since neither recognition by third states nor UN membership is a prerequisite for statehood.

PRESERVING THE STATUS QUO IS IN EUROPE'S BEST INTEREST

For Europe, the ideal course would be to stand up for the preservation of the status quo: Taiwan as a sovereign state distinct from the PRC. As the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy point out, the region 'is home to three-fifths of the world's population, produces 60% of global GDP,

contributed two-thirds of pre-pandemic global economic growth and is at the forefront of the digital economy' (European Commission and the High Representative of the Union for Foreign Affairs and Security Policy, 2021). Trade exchanges between the Indo-Pacific and Europe reached EUR 1.5 trillion in 2019 (ibid.: 1). The Indo-Pacific includes waterways that are crucial to EU trade and is the second-largest destination for exports from the EU (ibid.: 1–2). Therefore, the maintenance of regional peace and stability is of paramount importance for Europe.

A military conflict over Taiwan would have strong negative effects on European security and prosperity. Such a conflict would not be confined to China and Taiwan, but would almost certainly involve the United States, Japan, and perhaps other allies in the region that are important economic partners of the EU (Bondaz and Tertrais, 2021). Moreover, a great-power war between China and the US, resulting from an attempted invasion of Taiwan, could be protracted. Thus, it would be wrong for Europe to assume that a Taiwan contingency is some faraway story. It is not hard to imagine that a war over Taiwan would precipitate a global recession or even depression. In a large part, international trade would come to a halt and global supply chains would break down for a long time. After the end of the war, it could take several years for the world economy to recover.

Obviously, a war over Taiwan would bring to a standstill all imports from the island. In particular, this would have detrimental consequences for the European economy because of the crucial role Taiwan plays in the global semiconductor supply chain. Taiwan's contract manufacturers account for more than 60% of total global foundry revenue. Much of this dominance is due to the Taiwan Semiconductor Manufacturing Company (TSMC), the largest contract chipmaker in the world. It produces nearly 90% of the world's most advanced chips, which are of vital importance for the development of cutting-edge technologies such as artificial intelligence and autonomous vehicles. Insufficient manufacturing capacities have given rise to a global shortage of semiconductors. Sectors hit by this microchip shortage include the automotive and consumer electronics industries.

Not only would a prolonged interruption of the supply of microchips from TSMC and other Taiwanese foundries as a result of war have dramatic consequences for EU industries, but there is also the risk of Taiwan's semiconductor manufacturing facilities being destroyed by acts of war. On the other hand, if the island's semiconductor industry were to emerge unscathed from war and fall into the hands of the PRC, the EU would become strategically dependent on Chinese semiconductor production, which would give the CCP the ability to threaten the EU with chip shortages and to increase prices.

LITMUS TEST OF EUROPE'S COMMITMENT TO PEACE AND DEMOCRACY

The EU's core values would also require it to discourage the PRC from seizing Taiwan by force. Pursuant to Article 2 of the Treaty on European Union (TEU), the EU is founded on values such as freedom, democracy, and the rule of law. According to Article 3(1) of the TEU, its aim is to promote peace and its values, among other things. Moreover, Article 21(1) of the TEU provides that the Union's action on the international scene shall be guided by 'the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world', including democracy, the rule of law, human rights and fundamental freedoms, and respect for the principles of the United Nations Charter and international law. Any unilateral change of the status quo in the Taiwan Strait by the PRC would be at variance with those values and principles.

Taiwan is a thriving democracy that fully respects the rule of law, human rights, and fundamental freedoms. In the 2021 edition of its Democracy Index, the Economist Intelligence Unit lists Taiwan as one of the twenty-one full democracies in the world and ranked it the eighth most democratic out of 167 countries surveyed (The Economist Intelligence Unit, 2022: 12, table 2). In turn, Freedom House lists Taiwan as 'free' with an overall score of 94/100 (Freedom House, 2021). The Taiwanese political miracle – the transition of the ROC from an authoritarian one-party state under the absolute rule of the KMT to a full-fledged democracy – shows that democracy can also flourish in a predominantly Chinese society.

Surrendering Taiwan would have implications well beyond the Taiwan Strait and would indicate that democracy is not considered something worth fighting for. Therefore, the preservation of Taiwan's sovereignty and democracy can arguably be considered a common interest and shared responsibility of all democratic states. As incumbent ROC President Tsai Ing-wen puts it, Taiwan is on the frontline between democracies and autocracies (Tsai, 2021: 82). She emphasises that 'if Taiwan were to fall, [it] would signal that in today's global contest of values, authoritarianism has the upper hand over democracy' (ibid.: 75). Europe's commitment to peace and democracy would turn out to be empty if it failed to stand up for the survival of the island's sovereignty and democracy.

RECOMMENDATIONS

Endorsing a 'one China, one Taiwan' policy

The present policy of strategic ambiguity should gradually be replaced with a policy of strategic clarity. As a first step, the EU and its member states must refrain from making statements implying that Taiwan is *de iure* part of the PRC. The next step is the issuance of a statement that

Taiwan is not a part of that state, which means clearly rejecting the Chinese claim to sovereignty over the island and endorsing a policy of 'one China, one Taiwan'. This statement should reiterate the recognition of the PRC as the sole legitimate government of China, which means upholding the One China policy.

Increasing the price the PRC would have to pay for seizing Taiwan by force

The EU and its member states should use every opportunity to make it plain that Taiwan's fate can only be determined by peaceful means. The best way to preserve Taiwan's sovereignty and democracy while at the same time preventing war is to increase to an unacceptable level the price the PRC would have to pay for attempting to unilaterally change the status quo. The domestic legitimacy of the CCP hinges on its economic performance and its ability to improve its citizens' standard of living. As China's largest trading partner, the EU has considerable economic leverage over the PRC. EU member states should agree on and announce a set of substantial economic sanctions to be imposed on China if it were to invade Taiwan, blockade the island or otherwise use force against it. Because the EU would also suffer from an interruption of trade with China, efforts to make supply chains more resilient and reduce strategic dependencies on China must be accelerated.

Expanding contacts with Taiwan and supporting its international participation

The EU and its member states should expand contacts with the Taiwanese authorities and people. For example, the member states should agree to lift the de facto ban on private visits to Europe by high-ranking Taiwanese politicians such as the president, prime minister, and foreign minister. In addition, specific programmes should be set up to promote people-to-people interactions in the fields of education, science, culture, and so on. Economic ties should be deepened by negotiating an EU–Taiwan bilateral investment agreement. Finally, the EU and its member states must vehemently support Taiwan's participation in international organisations such as the World Health Organization or the International Civil Aviation Organization. Another way in which the EU and its member states can expand the international space available to Taiwan is by participating or increasing their participation in the Global Cooperation and Training Framework, a multilateral platform established in order to utilise Taiwan's strengths and expertise to address global issues of mutual concern.

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The Promise of Magnetic Fusion Technology for a Sustainable Future

Francesco Cappelletti

ABSTRACT

Using nuclear fusion technology to produce clean energy is a way to improve the transition toward a sustainable economy in Europe, generating large-scale, carbon-free energy. Not only is it an important scientific and technological achievement, but it is also more efficient than all other forms of (clean) energy production. Fusing atoms in a controlled way releases nearly 4 million times more energy than a chemical reaction such as burning coal, oil or gas, and four times as much as nuclear fission reactions (at equal mass). Despite some technical limitations preventing extensive industrial implementation at this time, this technology, with its vast potential benefits and small environmental impact, must be put at the top of the EU agenda for sustainability.

Without claiming to be exhaustive, this paper aims to introduce the concept of fusion technology, providing an overview of the current achievements and regulatory framework in the EU, and highlighting the relevant stakeholders and projects that can potentially lead to future large-scale implementation of this technology as part of the EU sustainable transition. It also highlights how Europe, a leader in fusion research, should be able to capitalise on fusion energy research projects, positioning itself as a central player in the delivery of this sustainable technology for energy production, while at the same time strengthening itself as an example of best practices.

EXECUTIVE SUMMARY

The EU's plan to move towards achieving net-zero levels of emissions in the next 30 years needs bold economic and industrial policies, which were put forward in the Commission's 'Fit for 55' package (FF55). The FF55 is ambitious and necessary, but it comes with costly trade-offs and many checkpoints down the road toward 'greening' our future. Whereas the 'green' agenda only offers a single path, trust in the role of

technology and innovation is needed for Europe to be open to new and perhaps unforeseen ways forward for economic and human development. Instead of a narrow, unbending, and dogmatic approach, it is time for us to recognise the many roads to a net-zero future.

Seeking a sustainable future without a strategy for engaging cutting-edge technologies would be a risk, both to investments and Europe's strategic autonomy. Meanwhile, EU Member States' joint effort to bring together technologies, knowledge, and resources to achieve a techno-sustainable future will contribute to a better tomorrow. It will enable us to take advantage of the fourth industrial revolution with its technological advancements and translate them into a concrete sustainability project providing technological and market-based solutions to environmental problems.

The ELF's Techno-Sustainability Series is built on the assumption that technology is our ally in tackling climatic and environmental challenges. Existing applications of AI and quantum computing, new generations of networks, and IoT can already help in preventing energy poverty, enhancing energy efficiency in housing, and providing data and information to help achieve better living standards. Moreover, the techno-sustainability connubium will also contribute to creating new business opportunities that could boost the EU's economy. New and existing technologies are the pivotal point around which to construct the whole discussion about sustainability in Europe.

The discussion of nuclear technologies should look ahead, relying on science to support promising projects for the future of energy: nuclear fusion. The research in this field and the recent successes of various projects in which Europe is involved must be followed closely. Looking ahead to 2050, one cannot but think of the opportunities offered by this technology. Despite being currently at an early stage, it could represent a solution (if not 'the' solution) to the energy supply problems of the future. Even though magnetic fusion is still far from being implementable on a sufficiently large scale to produce energy, this technology has the potential to completely disrupt the energy market and mark the transition away from fossil fuels.

The necessary element to generate fuel for fusion (lithium and deuterium) can be found almost anywhere in the world in enough quantity for any country to be fuel-independent in a future where fusion power plants will be deployed. Furthermore, these complex power plants integrate hundreds of systems working together, creating a complex value chain that will require highly skilled personnel both for the design and operation of future fusion power plants. Geopolitically, there will be a shift away from fuel reserves as a source of power and money, to a world where access to this highly complex integrated system for fusion technology will be the key. For this, EU institutions need to help encourage research projects and investment in producing highly skilled personnel as a priority.

POLICY RECOMMENDATIONS

- Europe must welcome R&D projects in fusion technology without raising regulatory barriers, but rather by simplifying and streamlining them.
- EU regulatory power might be of help to better allocate resources representing a best practice on how to balance research projects and commercial deployment of this technology.
- Europe must favour multi-stakeholder and joint research projects in the EU that can solve the challenges related to fusion projects. This will also increase Europe's expertise and experience in the global race to fusion.
- The issue of social acceptance of fusion-based technologies is central. European institutions should communicate the advantages of the implementation of fusion energy and involve citizens in the development and adoption of this game-changing means of energy generation.

The EU has the opportunity to foster the development of a flourishing market based on a different paradigm: the one complementing environmental governance with advanced technological and market-based solutions. This will enable Europe to secure its place not only as a global frontrunner with regard to 'carbon targets' and 'emission crops' but also as a provider of best practices in terms of growth, circularity, and sustainability for our future. Climate goals should be eco-pragmatic and follow a realistic approach towards making our future more sustainable and more prosperous. Instead of a Green Utopia, our climate goals need to be based on a realistic vision for a techno-sustainable future.

FUSION: A POTENTIALLY DISRUPTIVE TECHNOLOGY

According to the latest Intergovernmental Panel on Climate Change Assessment Report, all countries in the world must act now, otherwise temperatures will inevitably rise much higher than the presently agreed limit of 1.5 degrees by the end of the century (IPCC, 2002). This implies that the use of fossil fuels (coal, oil, and gas) needs to be phased out as quickly as possible, while CO₂-free energy sources need to be developed and rolled out in parallel.

Nuclear fusion has the potential to cover a substantial fraction of the future energy mix (Braams & Stott, 2002). Nuclear fusion plants will not emit any CO₂ during their operations, the fuel is in practice inexhaustible and widely available, and the fusion process is intrinsically safe, with no chance of meltdowns and all activated reactor materials becoming reusable after 100 to 300 years.

Nuclear fusion is the process that powers the stars, including our sun – the source of all light and life on Earth. In the fusion process,

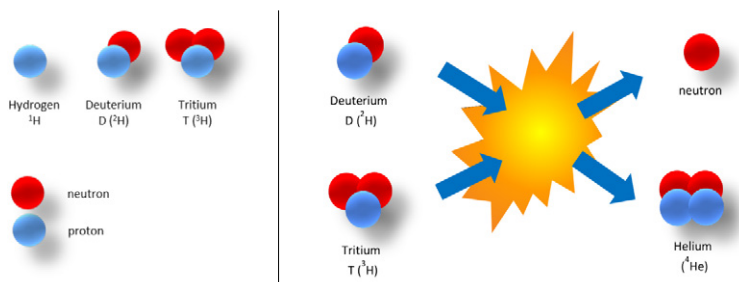
nuclei of light elements (typically hydrogen) are smashed together to form a nucleus of a slightly heavier element (typically helium). In this process, a minute amount of mass is lost as the new nucleus is lighter than the sum of the initial ones. This minute amount of missing mass is converted into an immense amount of energy in accordance with Einstein's famous equation, $E = mc^2$ (energy is equal to mass multiplied by the speed of light squared, which is 90 billion square kilometres per square second).

Nuclear fusion is the exact opposite of nuclear fission, in which heavy nuclei (typically uranium, plutonium) are split into lighter nuclei. In the fission process, mass is converted into energy; however, the energy released by a fusion reaction is three to four times greater than the energy released by a fission reaction because the quantity of mass transformed into energy is that much greater.

In the sun and stars, fusion reactions occur at temperatures of about 15 million degrees Celsius thanks to the immense gravitational forces that press the particles close together. To produce fusion reactions on Earth, much higher temperatures, about 150 million degrees Celsius, are needed to compensate for the lower gravity/density of the particles. On Earth, two main techniques are being explored to create fusion reactions. One of them is inertial confinement fusion in which a small pellet of fusion fuel, typically the size of a grain of sand, is irradiated from all sides by powerful laser beams. This simultaneously heats and compresses the pellet to conditions similar to those in the sun and stars, such that fusion can occur. The second more advanced and promising option is magnetic confinement fusion (MCF) in which a dilute gas is heated to temperatures of 150 million degrees. At these high temperatures, all atoms fall apart into positive nuclei and negative electrons; this is called a plasma state – the fourth state of matter. In this state, the turbulent charged particles can be confined using magnetic fields, such that they cannot touch the walls of the surrounding vessel. When the temperatures are high enough, the particles in the plasma can fuse when they collide. In a 'burning plasma', once started the fusion reactions keep providing enough energy back into the plasma that more reactions occur, with the excess energy leaving the plasma captured and used either as heat directly by industry, or to generate electricity. This is what makes MCF so attractive as a future energy technology.

The easiest fusion reaction to achieve on Earth occurs between two isotopes (variants) of hydrogen: deuterium and tritium (see Fig. 1). The nucleus of ordinary hydrogen consists of a single positively charged proton. In deuterium, the nucleus has both a proton and a neutral neutron. Deuterium occurs in nature (every litre of water on Earth contains 33 mg of easily extractable deuterium). Tritium has a proton and two neutrons in the nucleus. Tritium does not occur in large quantities in nature, because every 12.36 years 50 per cent of it decays (breaks

Figure 1: Top: The three isotopes (forms) of hydrogen. Bottom: Fusion reaction between deuterium and tritium yielding helium and a neutron.



Source: EUOfusion (<https://www.euro-fusion.org>).

down) and is lost. However, this is not a problem, as tritium is produced when the high-energy neutron released by the deuterium-tritium fusion reaction hits a lithium particle in blankets lining the interior wall of the fusion reactor. Therefore, one could say that the fuel of a fusion reactor is made up of deuterium and lithium (one of the most common metals in the world).

Apart from the high temperature, it is important to have a high enough density in the reactor vessel (the more particles, the higher the number of fusion reactions). Additionally, the time taken for the hot plasma to cool, when not being heated, needs to be long enough. Nevertheless, in MCF, the density is typically much lower than atmospheric pressure (the reactor vessel, which has a volume of about $1,000 \text{ m}^3$, typically contains at any moment only a few grams of fuel), while the energy confinement time (i.e. the cooling time) is typically in the order of seconds.

Since the fusion process is very efficient, only small amounts of fuel are needed. A working fusion plant delivering 2 GW (gigawatts) of electric power to the grid for a full power year of operation would need only about 500 kilograms of fuel (a fossil fuel power plant needs 4 million times more fuel to generate the same electric power). Half of this fuel is deuterium, and the other half is lithium – the equivalent of nine electric car batteries powering 1.4 to 1.5 million homes for a whole year.¹ Thus, the fuel is essentially inexhaustible. Fusion is also safe, as we will show after explaining the concept of MCF.

For comparison purposes, two GW of fusion power is the equivalent of the power produced by 6.25 million 320-watt solar PV (photo-voltaic) panels or 862 utility-scale 2.32 MW wind turbines (US Department of

¹ Specifically, fusion reactors need the isotope Lithium-6 is needed, which makes up about 10 per cent of the lithium in a car battery. Most of the lithium is Lithium-7.

Energy, 2019). While solar and wind are intermittent and thus require that new and massive electricity storage capabilities be developed and built, nuclear fusion power plants will have a similar uptime to nuclear fission power plants, making them baseload (steady, predictable, controllable) sources of heat and/or electricity.

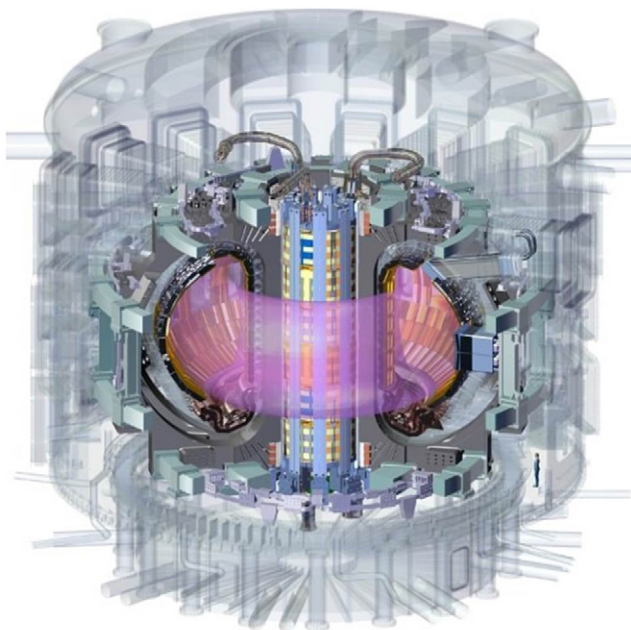
MAGNETIC CONFINEMENT FUSION

In MCF, torus-shaped vacuum vessel surrounded by strong magnetic field coils is used (see Fig. 2). Hydrogen gas (ideally a mixture of deuterium and tritium) is heated by various techniques (injection of energetic atoms, and microwave heating) to temperatures of 150 million degrees. At these high temperatures, the atoms fall apart into positive nuclei and negative electrons that are held away from the wall of the vacuum vessel by strong magnetic fields (Braams, Stott, 2002). Once the conditions for fusion are reached (hot enough and dense enough for long enough), the deuterium and tritium fuse into helium and a neutron. The helium is charged and will give its energy via collisions to the other particles in the hot plasma. The neutron has no electric charge and flies out of the magnetic confinement into the surrounding wall, where it will split lithium into helium and tritium, thus generating part of the fuel mix. Additionally, the neutron will heat the wall and, as in conventional power plants, the heat drives turbines that generate electricity.

There are two main types of magnetic confinement devices. The tokamak (see Fig. 2) is the one that is the most advanced in terms of development. In the tokamak, part of the confining magnetic field is generated by inducing a strong current through the plasma; the other part is generated by external magnetic field coils. The second device, called a stellarator, also has a torus shape, but here the magnetic field is completely generated by external magnetic field coils. Although the stellarator has a number of advantages over a tokamak, the design is technically more complex and therefore less advanced.

The best fusion energy result ever was reported in February 2022 by the EUROfusion consortium at the Joint European Torus (JET). A total of 59 megajoules of fusion energy was generated in a 5-second pulse using only 170 micrograms (millionths of a gram) of fuel (Banks, 2022). JET is a tokamak device with copper magnetic field coils, and this older magnet technology limits the duration of a high-performance pulse to 5 seconds. Thanks to advanced diagnostics recording what happens every millionth of a second, this was long enough to understand all the detailed processes taking place in the hot plasma. The results have validated the theoretical models predicting that the international ITER experiment, presently being built by China, Europe, India, Japan, Russia, South Korea, and the United States in Southern France, will be able to generate 500 MW (megawatts) of fusion energy using only 50 MW of

Figure 2. Picture showing a plasma inside the ITER tokamak.



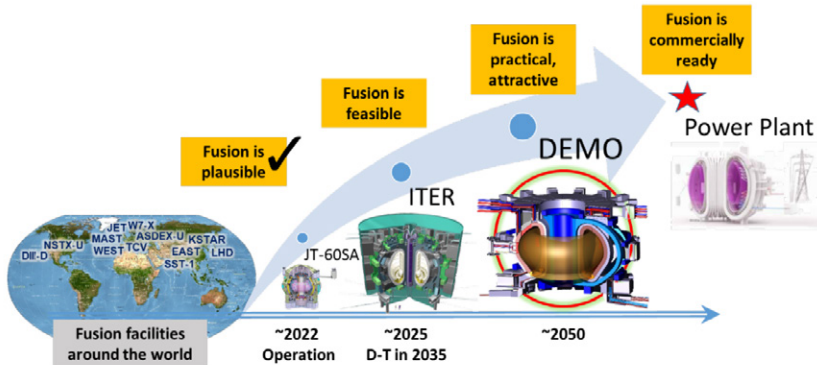
Source: ITER International Organisation (<https://www.iter.org>).

input energy. This tenfold return on energy within the plasma will be the fusion record that researchers have been waiting decades to achieve.

In short, one can say that JET has shown that fusion electricity is plausible. ITER, which will come into operation in 2025, will demonstrate that fusion electricity is feasible. As an experimental device, ITER will not yet generate electricity, but it will have reactor-grade plasma to test all the technologies that are being developed for a reactor (e.g., tritium breeding). The European demonstration reactor DEMO will for the first time deliver electricity to the grid (Federici et al., 2022). DEMO is presently being designed and should come into operation early in the second half of the century (see Fig. 3).

What are the advantages of fusion, apart from being virtually inexhaustible and CO₂-free? Fusion is safe because the reactor operates at well below atmospheric pressure. At any moment during its operation, there are only a few grams of fuel in gaseous/plasma form inside. The fuel needs to be continuously replenished, otherwise the reaction is extinguished. The equivalent of a meltdown in fission reactors is therefore impossible. In the exceptional case that a hole or leak occurs in the reactor, air will stream into the reactor's vacuum chamber and instantly

Figure 3. Simplified European Fusion Roadmap.



Note: Present devices such as JET have shown that fusion is plausible. ITER will demonstrate the feasibility of fusion under reactor conditions and test technological developments. DEMO will generate electricity for the first time.

Source: EUROfusion, ITER

stop the process. The tritium will stay inside the reactor and reactor building, as designed. This inherent safety of fusion power plants means that they could potentially be built close to where the heat and electricity are consumed by industry and cities, significantly reducing the transmission infrastructure required.

Over time, a fusion reactor will become radioactive due to the bombardment of energetic neutrons from the fusion reaction and because reactor materials will absorb small amounts of tritium. Suitable wall materials are being developed that will lose their radioactivity relatively quickly such that after 100 to 300 years the materials can be reused.

Another advantage of fusion is its small geographical footprint. It will not require large land areas, which are desperately needed for food production. Fusion power will be at least 200–400 times more land-efficient than solar, for example.

A final advantage of growing importance is the ubiquity of fusion fuel: it can be found nearly anywhere on the planet in sufficient quantities, so fuel dependency on a few nations will become outdated. This is the truly disruptive aspect of fusion energy: it will create a new world order while enabling humanity to develop potentially without any energy constraints. Fusion can help humanity transition away from fossil fuels completely and permanently, even as energy demands experience accelerated growth (demand is expected to double by 2050, and again by 2100). Fusion energy technology, instead of fuel resources, will therefore be the key to future energy independence for Europe for the next 100,000 years or longer. The opportunities for European industry and skilled workforces, as well as education, will be massive.

WHAT ARE THE REMAINING CHALLENGES?

Fusion researchers have made major progress in recent decades. Aside from the world-record fusion energy achieved in JET, progress has been made in several tokamak devices in Asia in which plasma pulses of more than 1,000 seconds were achieved (Malewar, 2022), albeit not with the same high-energy performance as those in JET.² The long pulses are possible thanks to the fact that these more modern machines are equipped with superconducting coils to generate the magnetic fields (Amelin, 2015). ITER also has superconducting coils and will be able to combine long pulses with deuterium-tritium fusion performance even higher than that of JET. In principle, it can be stated that, from the physics point of view, scientists are able to currently generate the hot plasmas with a performance close to that of a fusion power plant.

However, there are still a number of technical challenges that need to be resolved. This relates partly to the materials used in the reactor, which need to withstand intense heat loads (similar to those at the surface of the sun) and exposure to high-energy neutrons.³ Fortunately, the components in a fusion reactor can be actively cooled. Various ideas exist for tritium breeding by splitting lithium in the wall using the neutrons emerging from the fusion reaction, but all of them need to be tested and validated in the so-called Test Blanket Modules in ITER. Additionally, reliable remote maintenance techniques need to be developed that are fast and accurate. Maintenance times in a fusion power plant need to be optimised to keep the downtime as short as possible. There are challenges in developing an adequate nuclear licensing and regulatory system for fusion reactors, as these are completely different from fission reactors. Finally, a skilled workforce and actively involved industry must be promoted.

HOW IS FUSION RESEARCH AND TECHNOLOGY ORGANISED IN EUROPE?

The described challenges and the required effort for developing commercial fusion energy technology are clearly beyond the scope of a single nation, even nations with cutting-edge technological capabilities, skilled workforces, and generous funding. This is why there are joint initiatives at THE international level in fusion research. The European Union is currently contributing to a number of major fusion projects, and in Europe, two main fusion organisations are active.

² They did not use a deuterium-tritium fuel mixture, and while the plasmas lasted a long time, the number of fusion reactions taking place in the plasma was tiny.

³ Over the course of a fusion power plant's lifetime, it is calculated that every atom of the reactor materials will be hit by a neutron an incredible 50 times or more.

Fusion for Energy (F4E) was established within the regulatory framework of the European Joint Undertaking for ITER (European Council, 2007). ITER, 'one of the most ambitious energy projects in the world today',⁴ is an international collaboration involving hundreds of scientists and engineers from China, the European Union, the United Kingdom (EURATOM, 2021), India, Japan, South Korea, Russia, and the United States (European Commission, 2020b). The project was licensed as a nuclear facility in France in 2012 and it is currently being constructed in Saint-Paul-lès-Durance (France). The ongoing programme and contribution (entrusted to the F4E initiative) is a continuation of the previous Multi-Annual Financial Framework, and the total European financing for this project in Horizon Europe is more than 5.6 billion Euro (based on the ex-ante evaluation) to (European Commission, 2018):

fully support the continuation of ITER construction and to reach the operation of ITER with First Plasma by 2025, to be followed by first experimental operations as well as further installations and upgrades until 2027 and beyond, laying grounds for successful full power operation (so-called Deuterium-Tritium stage) by 2035. (European Council, 2021)

F4E is also involved in the broader approach wherein they partner with other countries to conduct research together – for instance, a recent partnership for the construction of a JT-60SA experimental tokamak device in Japan.⁵

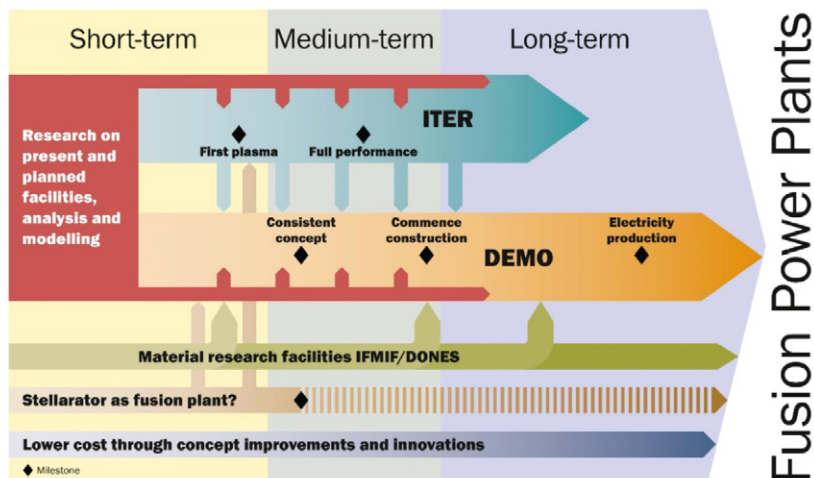
The other organisation involved in fusion projects is EUROfusion, a consortium of 30 national research laboratories from 28 countries, all brought together under one umbrella to cement European collaboration on fusion research. It oversees and funds all fusion research activities on behalf of the European Commission's Euratom programme, and is guided by the European Roadmap to Fusion Energy – the world's most comprehensive and certain path to realising commercial fusion energy (see Fig. 4). EUROfusion research, which is being done on a range of devices throughout Europe, including the world-record machine JET, is strongly aimed at supporting the ITER research plan. In simple words, EUROfusion's research helps ITER reach its goals in an optimised way (faster and cheaper). EUROfusion is also presently responsible for the conceptual design of the European demonstration reactor DEMO.⁶ While ITER aims to demonstrate the production of ten times more energy from the plasma than is needed to heat it (this is called $Q_{\text{plasma}} = 10$), DEMO

⁴ <https://www.iter.org/proj/inafewlines>.

⁵ For more information about the JT-60SA: <https://www.jt60sa.org/wp>.

⁶ After the successful experiment with fusion in ITER, the next step is the establishment and running of DEMO – a facility where fusion will be produced on a large commercial scale.

Figure 4: The European Fusion Roadmap.



Source: EUROfusion (<https://www.euro-fusion.org/eurofusion/roadmap>).

aims to demonstrate four times more fusion energy than ITER and deliver a net 500 MW (target) electrical power to the grid.

The roadmap is centred around ITER and DEMO as central devices and is optimised to tackle all remaining challenges in the shortest possible time. This implies that the conceptual design of DEMO has already started while ITER is still being built. During ITER construction, commissioning and testing, a constant stream of information is flowing into DEMO. Source: EUROfusion.

INNOVATION AND INDUSTRY COMPETITIVENESS (TECHNOLOGY TRANSFER AND SPIN-OFFS)

Fusion devices such as JET, ITER and DEMO are Big Science facilities. Companies that are involved in delivering components often need to boost their innovation levels as they need to deliver components that go beyond the state-of-the-art. This has the positive side effect that the companies considerably improve their market potential in other fields. Studies conducted by various Big Science organisations such as the European Organization for Nuclear Research (CERN) and the European Space Agency have concluded that the spin-off market is on average three larger times the original market.⁷ In this way, spin-offs from fusion

⁷ F4E states on their website (<https://fusionforenergy.europa.eu>) that €5.1 billion has been

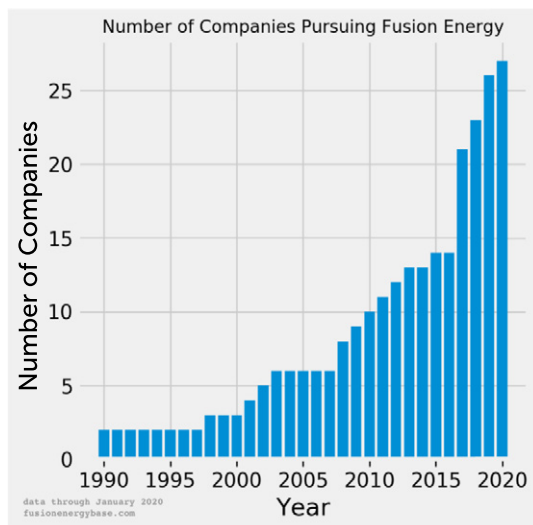
technology have led to completely new, and sometimes significantly large markets (EUROfusion, 2017). For instance, in the area of superconducting magnet technology, a company that worked on the prototype coils for ITER has become the world leader in the field of medical resonance imaging (MRI) equipment with a turnover of approximately €1.5 billion per year. The cockpit of the Airbus A380 is produced by explosive forming of metal plates, a technology originally developed for ITER. So the gains companies make are not limited to delivering on orders for components of future fusion reactors, but also in the continuous spin-offs, which generate profits on a much faster time scale with greater upside potential. Being involved in Big Science in general, and fusion in particular, has enormous benefits for Europe's industrial competitiveness.

European projects for ITER are awarded and carried out through specific calls for tenders that entrust companies with the construction of parts or sections of the ITER experiment. This ensures high-quality outcomes while involving companies from different European regions. It can be said that the overall advancement of this technology is thus the result of a shared effort in creating consistency between different areas of expertise, projects, and experiments, in several locations, in Europe and elsewhere, which in turn stimulate the related industrial sector.

The potential of fusion energy and recent advances in fusion research has drawn increasing interest from many private investors and entrepreneurs, because of the extent of the opportunities offered by this technological development and the increasing confidence in fusion technology for the long run. As a result, the number of privately funded companies that are participating in fusion-related projects has strongly increased in the past 30 years. The years to come will indeed be what Fusion Energy Base called 'exciting times', where the physics and mechanics will increasingly meet with the new information and communication technologies such as quantum computing and machine learning dealing with complex algorithms (Wurzel, 2020). Also, the availability of materials (such as high-temperature superconductors) is enabling small-scale experimentation that in turn helps to reduce the prohibitive costs of large projects (Wurzel, 2020), while contributing to the research effort on an international scale. Most privately funded companies focus on just one or two target technologies (e.g., high-temperature superconductors, liquid metal walls, magnetic target fusion), but they do not cover the full spectrum of challenges that need to be tackled, as the European Fusion Roadmap does. Instead, they leave the development of key technologies such as tritium breeding and reactor materials, as well as the regulatory environment and training of a skilled workforce, to public research

invested in companies and R&D organisations, 40,000 job years have been created between 2009 and 2017 and another 83,000 will be created by 2030.

Figure 5: Growth of the number of for-profit companies pursuing commercially viable fusion energy in a given year.



Source: Wurzel, 2020.

programmes and projects such as ITER. What they are very good at is the rapid development of specific technologies and experimental machines to test them using a continuous build process. Their high-risk approach to fusion research may also lead to an unexpected breakthrough, which is what interests their venture-capitalist backers.

As anticipated, most of the projects achieving technological steps toward fusion energy are shared among different institutions and investors. A good example of the multi-stakeholder cooperation to achieve this technology is Eni (which contributed to different fusion projects as an energy company), which in 2022 announced that, in collaboration with Massachusetts Institute of Technology labs, it had successfully completed a test of high-temperature superconductor magnets. The non-stop research approach that the different contributors are following is essential in solving technological challenges with the hope that they might be used by someone else in a future power plant. Despite being just one possible step towards the achievement of large-scale development, these innovative technologies are key to the successful energy transition, while 'magnetic confinement fusion (MCF) holds a pivotal role in the technological research for decarbonization'. Thus, MCF remains the most promising technology so far and 'a game changer' technology for our future (Eni, 2021).

A nuclear fusion race?

Considering the investment framework and looking at the global trend of energy companies shifting their interest from oil toward a broader energy investment, it is possible to make a comparison between fusion energy commercialisation and fossil fuels as the 'timeline for a typical upstream oil project from discovery to commercialization is on average about 10-15 years. This timeline is comparable to those proposed by many of the companies that are currently working towards commercialization of fusion energy' (Feygin, 2020).

However, it should be clear that it would be impossible for a single company to comprehensively solve all the challenges of replicating fusion energy on Earth. Each of these companies are focusing on individual issues while expecting some of the material technologies to be provided by other companies. This means that none of these companies are able to currently deploy technologies or generate fuel in commercial power plants, but rather are investigating and experimenting on *one of the many technologies* that might be implemented in bigger projects. This represents an 'R&D race', in which a successful technological development and experiments might be adopted in a commercial power plant.

FUSION IN AN INTERNATIONAL CONTEXT

The most important publicly financed fusion energy research projects share their progress and advancements internationally. Many countries are or have been involved in experimenting with fusion power technologies over the past 50 years: Brazil, Canada, China, Costa Rica, Croatia, Czech Republic, Denmark, France, Germany, Italy, Japan, South Korea, the Netherlands, Portugal, Russia, Spain, Switzerland, the United Kingdom, and the United States.⁸ Even during the Cold War, there was a constant and open exchange about fusion research between the East and the West. The ITER project was initiated during the Geneva Summit by US President Ronald Reagan and USSR's leader Mikhail Gorbachev back in 1985. Progress made by all countries is openly discussed every two years at the Fusion Energy Conference organised by the International Atomic Energy Agency.

In recent years, however, several countries have announced very aggressive programmes to develop nuclear fusion as an energy source. The White House recently launched its 'Bold Decadal Vision for Commercial Fusion Energy' (US Department of Energy, 2022), while

⁸ <https://www.fusionenergybase.com/projects>.

a similar plan has been published by the UK Government (UK Atomic Energy Authority, 2021). China has initiated a very aggressive fusion programme and aims to get the Chinese Fusion Experimental Test Reactor, which is equivalent to the European DEMO reactor, up and running by 2040.⁹ With its Fusion Energy Roadmap, Europe has the most comprehensive and advanced plan to tackle all the remaining challenges, and it is presently the world leader in the field of fusion research: ITER is being built in France and Europe is responsible for 46 per cent of its construction; the world's largest tokamak JET is being used by EUROfusion; the world's largest stellarator is in Germany; and Spain is planning to build the IFMIF-DONES neutron source facility to test fusion materials under reactor conditions. Despite this leading role, the budget for fusion research in Europe is decreasing. Due to the COVID-19 pandemic, the decision was made in 2021 to divert funds away from fusion research and into the Covid Recovery Fund. This strongly hampers Europe's ability to maintain its decades-long, hard-won lead in this field and compete with very aggressive programmes that have been set up and are ramping up in a number of other countries. The United States has recently stated that it wants to develop fusion in the coming decade in an effort similar to the Manhattan Project and the Moon Shot (Apollo). If nothing is done, and fusion budgets are not ramped up, Europe will lose its lead, with the risk that in the coming centuries it will need to buy technology from countries such as the United States and China.

When it comes to investment in technology, the EU took a step forward when it included nuclear energy (both fission and fusion) in the EU climate taxonomy. This means that energy produced in nuclear plants is intended as a non-polluting means to achieve climate neutrality, therefore suitable for private and public capital investment. Nevertheless, this decision has not yet led to an increase in public funding for nuclear fusion research.

THE EU FRAMEWORK AND THE CONTEXT OF THE GREEN DEAL

When it comes to sustainability, it is not a secret that there is a CO₂ cost to fusion – as there is for the construction of any kind of power plant or means of alternative energy generation. This carbon footprint does not come from the fusion process itself, but from the concrete and steel used to construct the power plant. Given new European strategies and the Green Deal aiming to soon produce these materials with a close-to-zero carbon footprint, the carbon footprint should fall significantly, perhaps even to zero, by the time Europe is ready to build its first generation of nuclear fusion power plants.

⁹ https://en.wikipedia.org/wiki/China_Fusion_Engineering_Test_Reactor.

Moreover, in the context of the EU's decarbonisation, fusion technology is essential as it can complement intermittent energy sources such as solar PV and wind by providing the baseload electricity that we all count on. With no chance of a runaway reaction or meltdown, if fusion power plants are built to safely contain tritium, then they could be built close to the point of use. To give an example, DEMO, intended as a technology demonstrator and not a commercial plant, is 100–200 times as land-efficient as an equivalent solar power installation. A full commercial plant should double this. And while fusion power plant materials can all be reused after 100–300 years, solar PV panels, and wind turbine blades and footings are non-recyclable.

On the other hand, problems of strategic autonomy, especially when it comes to the technology supply chain, might be mitigated by enhancing internal market initiatives and fostering European champions. The supply and value chains for building fusion reactors should rely more on providers from the EU once the experimentation phase ends. Dedicated standards, and security and competition rules within the EU regulatory framework, will be crucial for the success of the commercial deployment of fusion technologies. Whether or not the EU will be a regulatory champion in this field will determine the success of a resilient 'regulatory power' that sets high standards without hampering technological development.

CONNECTING THE DOTS: TECHNOLOGY FOR (FUTURE) SUSTAINABILITY

Despite the high commitment of many countries and the efforts by European institutions to succeed in achieving MCF technology for energy production, the link to the EU's sustainable, green, and carbon-free transition is still to be properly defined. While the whole world would undoubtedly benefit from the success of the ITER experiment, the urgent need to take actions to tackle climate change has pushed EU institutions towards a very tight schedule, which might not match the needs of experiments with such a complex technology.

What is clear is that there is enough fuel on Earth to meet our energy needs for thousands, hundreds of thousands, perhaps even millions of years if we can make fusion technology work. It is not only a matter of technology enthusiasm, it also means bringing the most advanced and promising approach to harnessing the fusion process as an energy source. While the tokamak MCF approach studied by EUROfusion/ITER is the most advanced and promising way of achieving this technology, perhaps in a few decades scientists will discover that other approaches work better. The key is to first get this approach to work. By so doing, the interest and support will be created to advance the many other approaches to recreating the nuclear fusion on Earth. As with nuclear

fission, nuclear fusion will advance through different generations of power plant technologies.

More broadly, linking the idea and the whole discussion around sustainability with that of advanced technologies is fundamental for many reasons. First of all, this allows policymakers to base their decisions on a strong scientific background, defining precise targets and reachable objectives based on quantifiable scientific knowledge. In turn, this would raise the level of the discussion around climate change, hand in hand with the growing interest (especially among the younger generations) about this issue. Finally, '*techno-sustainability*' will lead to better strategic communication, avoiding alarmism or polarisation in the political discussion.

CONCLUSIONS AND POLICY RECOMMENDATIONS

First and foremost, despite the fact that MCF is still far from being implementable on a large-enough scale, the development of such technology will have astonishing implications for the future of energy: it stands to completely disrupt the energy market and mark the transition from fossil fuels being a source of power and money to a world in which access to fusion technology will be key. The necessary fuel (lithium and deuterium) can be found almost anywhere in the world in enough quantity for countries to be fuel-independent in a future where fusion power plants will be deployed. Despite the main technical limitations and challenges briefly exposed, the scientific community's achievements in the field are remarkable.

Furthermore, there is a paradigm shift in the whole concept of the operational scheme of a power plant. As briefly described, these complex power plants integrate hundreds of systems working together, creating technological complexity and difficulties in handling the materials, complex hardware, and software for remote operation. This creates a complex value chain that will require highly skilled personnel both for the design and operation of future fusion power plants. Geopolitically, there will be a shift away from *fuel reserves* being a source of power and money, to a world where *access* to this highly complex integrated system for fusion technology will be the key. First and foremost, EU institutions need to help encourage research projects and investment in high-skill generations of personnel as a priority.

If, on the one hand, a realistic commercial large-scale spread of fusion power cannot be expected before 2050, on the other hand, we are 'only' 28 years away from that achievement. According to the EUROfusion Roadmap, the first demonstration power plant would start operating in 2055. It would then take another 10–20 years for a commercial power plant to start; as such, large-scale diffusion would take a long time. This has led to the consideration that such technology must

be considered not only a priority but a – real – opportunity to overcome the problems of energy supply and achieve a carbon-free economy in the future – as planned in the European Green Deal. While it is obvious that commercial fusion and energy-storing farms cannot realistically be deployed before 2050, what the EU can do is ensure a *smart regulatory environment* for fusion, one that is adaptive and capable of moving quickly. This would pave the way for the scientific community to come up with breakthroughs that could hasten the industrial deployment of fusion.

While it is not easy to give concrete policy recommendations, and because the main ongoing projects within this field are mainly shared internationally, the main scope of a pro-fusion (policy) agenda should be to ensure the long-term continuity of projects focusing on international cooperation. Europe could promote the EUROfusion programme, awarding it funds to advance more rapidly along its roadmap (and thereby bringing fusion electricity generation forward), while possibly also directing funds to a series of new European start-ups that would take high-risk approaches in the hopes of a breakthrough that would accelerate this progress even more. As the CEO of Commonwealth Fusion System asserted, the ‘world needs a fundamentally new technology that will support efforts to decarbonise on a timeline that can mitigate climate change’ (Commonwealth Fusion Systems, 2021).

Because of Europe’s commitment to fighting climate change through a sustainable transition, it must be prepared to welcome such technologies among the other existing options for producing clean energy, *simplifying and streamlining rather than raising regulatory barriers*. This would facilitate these technological advancements so that Europe would be able to remain a strategic actor at the forefront of the future energy supply.

Another important element is the question of *social acceptance* of fusion-based technologies, central to which is better communicating the advantages of fusion energy and involving citizens in the development and adoption of this game-changing energy. This is necessary, especially given the interest among EU citizens, especially younger people, in addressing climate change and the environment. Informing citizens and involving them in the development of commercial energy might also draw the interest of new and future researchers, creating a new generation of highly trained and capable scientists with many different specialisations, contributing to fusion energy projects and helping to bring about a future fuelled by fusion. It would be particularly timely to have a discussion around fusion energy as a viable solution for our greener future. Finally, in pursuit of achieving European sovereignty, and given the commitment of the European Commission to making ‘Europe the epicentre of “green tech”’ (European Commission, 2020a), it is undoubtedly necessary to have discussions on the political level about

technology that can enable the transition to a future where energy will flow as freely as water.

Some of the aspects highlighted in these few pages might seem either overly or insufficiently technical. Such technology is much more than just scientifically amazing both in terms of achievements for science and research. On the one hand, it allows us to discuss possible alternatives for energy supply. On the other hand, the international dimension of these initiatives allows the aims of cooperation to extend beyond national borders, in line with the founding principles of the Union. *Sustainability and technology*, or *techno-sustainability*, finally, must go hand in hand: only in this way will the objectives be achieved in a truly sustainable way, grounded in scientific evidence and shared internationally.

Despite geopolitical circumstances and strategic de-alignment between partners and rivals, the EU should foster research projects that can solve the abovementioned challenges together, in a global collaborative effort where the final result will be shared. Europe's expertise and experience can contribute to this global fusion race, while the EU's regulatory power might be of help to better allocate resources, representing best practice on how to balance research projects and commercial deployment of this technology.

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ELF Papers

Batteries Charging the Future: New and Future Materials, a New Cycle for Energy Storage, and the Global Arms Race

Francesco Cappelletti

ABSTRACT

Batteries represent a challenge and an opportunity for energy transition projects in Europe. While they play the central role of enablers of the sustainable transition in energy storage, problems in the supply chain of materials and components, and a strong dependency on foreign markets could put the sustainable transition at risk. While targeted investments are needed to revive the energy storage market and industries, existing technologies can be used for a made-in-Europe supply chain while also avoiding legislative bottlenecks.

EXECUTIVE SUMMARY

The EU's plan to move towards achieving net-zero levels of emissions in the next 30 years needs bold economic and industrial policies, which were put forward in the Commission's 'Fit for 55' package (FF55). The FF55 is ambitious and necessary, but it comes with costly trade-offs and many checkpoints towards 'greening' our future. Whereas the 'green' agenda envisages only a single path, trust in the role of technology and innovation is needed for Europe to be open to new and perhaps unforeseen ways forward for economic and human development. Instead of a narrow, unbending, and dogmatic approach, it is time for us to recognise the many roads to a net-zero future.

Seeking a sustainable future without a strategy for engaging cutting-edge technologies would be a risk, both to investments and Europe's strategic autonomy. Meanwhile, EU Member States' joint effort to bring together technologies, knowledge, and resources to achieve a techno-sustainable future will contribute to a better tomorrow. It will enable us to take advantage of the fourth industrial revolution with its technological advancements and translate them into a concrete sustainability

project providing technological and market-based solutions to environmental problems.

The ELF's Techno-Sustainability Series is built on the assumption that technology is our ally in tackling climatic and environmental challenges. Existing applications of AI and quantum computing, new generations of networks, and the Internet of Things (IoT) can already help in preventing energy poverty, enhancing energy efficiency in housing, and providing data and information to help achieve better living standards. Moreover, the techno-sustainability matrix will also contribute to creating new business opportunities that could boost the EU's economy. New and existing technologies are the pivotal point around which to construct the whole discussion about sustainability in Europe.

The electric revolution meant to replace fossil fuels should be strategically coordinated among Member States, both in terms of supply and value chains. This can only be achieved through a shared approach to the electric vehicle (EV) industry. A common effort is needed to make the supply chain of components a strategic priority, while encompassing new sustainable ways of production and rethinking the EV battery lifecycle. All this will have to happen through a bottom-up approach, which considers stakeholders' knowledge and priorities, and offers citizen-friendly solutions.

While battery technologies already exist for connecting the energy transition to the energy storage market, much more investment is needed in R&D in Europe. We also need a clear scheme for certification as well as targeted investments within the industry and in terms of public acceptance. This can foster a culture of sustainability: the importance of batteries to the EU's electric future is undeniable, and cutting-edge technologies must be used. However, clear policies are needed – and need to be understood and well communicated.

RECOMMENDATIONS

- The need for energy storage solutions and battery production is a strategic issue that European institutions should embed in their strategic planning for fully unleashing the electric revolution.
- The EU should develop close public–private partnerships in terms of promoting investments and joint ventures in mining projects to secure raw materials.
- It will be essential to foster proactive mining culture and support it through EU institutions' approvals and investments.
- Specialised training in schools and universities in this sector is essential to achieve the know-how necessary to make manufacturing plants successful.
- Investment in recycling technologies and developing the infrastructure to be able to collect, transport, and recycle are essential.

- Subsidising the sales of recycled materials to be on par or lower than virgin materials and enforcing through legislation a certain percentage of raw material to be used from recycled materials will greatly promote the recycling industry at the early stage of this revolution.

The EU has the opportunity to foster the development of a flourishing market based on a different paradigm: the one complementing environmental governance with advanced technological and market-based solutions. This will enable Europe to secure its place not only as a global frontrunner with regard to 'carbon targets' and 'emission crops' but also as a provider of best practices in terms of growth, circularity, and sustainability for our future. Climate goals should be eco-pragmatic and follow a realistic approach towards making our future more sustainable and more prosperous. Instead of a Green Utopia, our climate goals need to be based on a realistic vision for a techno-sustainable future.

INTRODUCTION

Storing electricity will be a crucial part of the European decarbonisation initiative and is an important complement to fluctuating energy sources (e.g., solar and wind), balancing the energy demand-supply chain even in a situation when no energy can be produced. Thus, batteries can play the central role of enablers of the sustainable transition in energy storage. New technologies and materials, a valuable life cycle, and manufacturing will enable large-scale deployment of devices to allow us to drive electric cars, use increasingly intelligent IoT devices, and create energy-self-sufficient houses or communities. On the other hand, this will only be possible through targeted investment in research and development while rethinking the production and recycling process, and considering a smart way of mining the necessary materials on European soil. Against the background of the sustainable transition, it is necessary to achieve the electrification of our future while also promoting the possibility of achieving energy independence by starting at the local level and exploiting the possibilities offered by energy storage systems.

THE CHALLENGE OF ENERGY: STORING POWER FOR OUR FUTURE

The invention of batteries is the result of the findings of scientific studies on electricity. Since the dawn of physical studies on the phenomenon of electricity, the idea of being able to 'trap' the power produced by various means has prompted scientists to create devices that were able to store this energy. Our relationship with electricity has its roots in Ancient Greece, and we can find traces in the script about of Thales of Miletus, who observed the electrical properties of amber. It is not a coincidence that the Greek word for amber is *elektron*, from which the modern term

'electricity' is derived (Meyer, 1972: 4–5). Jumping around 30 centuries into the future, the development of electrochemistry has led us to have batteries in our pockets and use them in our daily lives.

The basic idea behind a battery is to create a chemical process to release energy. Inside a battery device, this happens in a 'cell' composed of a simple electronic circuit allowing electrons to circulate from the negative toward the positive charge (anode to cathode) via an electrolyte.¹ The electrons move from anode to cathode when connected externally through a copper wire whereas the ions move through the electrolyte inside the cell – and this allows some batteries to be rechargeable. Inside the cell, the anode and cathode are separated to ensure there is no contact between them, as that would cause a short circuit.

Batteries can be defined as electrochemical devices in which an electromotive force is generated from chemical reactions. Modern chemistry and advancements in the industrial manufacture of batteries have made these devices smaller and longer-lasting. The batteries we use for energy storage are of different kinds and are built using different materials. The first distinction is between *primary* and *secondary* batteries. While the latter have the capacity of reversing the flow of energy into them once discharged, primary batteries, which consumers commonly use, can be discharged only once, and are made of materials such as zinc-carbon, zinc chloride, alkaline manganese, and lithium (Placke et al., 2017).

Despite the many types of batteries created over the centuries, '*the identification of solutions for efficient batteries is a highly difficult task [and] only very few efficient battery configurations have been successfully designed over the years*' (Ramstrom, 2019). The materials as anticipated may vary, and current technologies rely on a different range of materials. For instance, the majority of cars still start their engines using lead-acid batteries, which were invented about 160 years ago by the French physician Gaston Planté (ca. 1860). Another example is alkaline batteries, whose development started more than a century ago. More recently, the creation of lithium-ion batteries can be identified as the technological advancement that has enabled the *mobile revolution*, allowing for greater efficiency and portability in the energy storage process.

Lithium's properties are ideally suited for use in batteries. It is the lightest metal, and its physical characteristics make it suitable also for high-voltage battery cells. Lithium is used in batteries together with other materials for the cathode (manganese, iron, cobalt, nickel) and the anode (silicon, carbon). After many years of experimentation, and the use of

¹ Electrons are subatomic particles, found in all atoms, with a negative charge. Electrons act as the primary carriers of electricity in solids.

various materials for the electrolyte solution, the first commercial lithium battery was released in 1991 (Nishi, 2001), paving the way for the mobile revolution and the switch towards e-mobility as an alternative to vehicles running on fossil fuels (Ramstrom, 2019: 10). Lithium-ion (Li-ion) batteries represent one of the most advanced forms of battery technology, especially for smaller and lighter portable devices, as they are significantly smaller than traditional batteries. More recent developments and research projects aim to replace the liquid electrolytes with solid materials, which should offer much higher energy densities than liquid Li-ion batteries. In order to achieve this goal – much more important, as described below in terms of technological sovereignty – the new materials should have high conductivity and low resistance, while at the same time being stable and preventing lithium propagation (see Taylor & Sakamoto, 2019). Technical challenges remain in this field, mostly concerning the materials, but also regarding stability during cycling. Moreover, future technology shifts in the field of battery construction (e.g., solid-state batteries) will rely on the same lithium-based supply chain.

MATERIALS

As briefly described, building any kind of battery involves the use of (electro)chemistry and thus many different materials are involved. In the case of Li-ion batteries, the most common example is the batteries used in smartphones and portable devices, which use lithium cobalt oxide for the cathode,² and graphite for the anode. In recent decades, we have seen an increase in the number of materials used in energy storage technology. The increase in dependency on these materials has led to them being classified as critical raw materials (CRMs).

Based on the current need and availability of those materials, supply risks, and the economic implications, the EU Commission reviews a list of CRMs every three years (European Commission, 2020). Currently, the major supplier of CRMs (both for Europe and other countries) is China, both in terms of extraction and processing (European Commission, 2022). At the same time, more than 50 per cent of cobalt mined is sourced in the Democratic Republic of Congo, and lithium mainly comes from Australia, Chile, China, and Argentina (Besta, 2020). Countries that hold CRMs hold the oil of the future, in terms of the electric revolution.

This has different implications in terms of supply chains, industry, and geopolitics, considering the dependency on Asia as a problem both in terms of sovereignty and strategic autonomy. To overcome this dependency, it will be necessary for the EU and its stakeholders to rely

² About half of the current supply of cobalt is incorporated into such batteries for electric vehicles and consumer electronics.

on an internal market for raw materials. This can be achieved through the strategic and environmentally responsible actions of recycling and ethical sourcing. While the recycling option is much more needed in terms of the circularity of the battery economy, the EU only produces a small percentage of the required CRMs. Considering that the EU's lithium resources are scarce and of low quality (similar to the oil/gas situation) (Ivanics, 2021), it should build up a strategic partnership with a player that has an abundance of lithium, for instance Australia. Beyond mere mining and extraction, creating a strong partnership with lower-risk geopolitical actors will be central to the future of EU sovereignty.

CYCLE AND (CIRCULAR) ECONOMY

As mentioned above, there is currently no self-sufficient supply chain in Europe that can guarantee a reliable amount of the materials needed for in-house battery production. Moreover, the amounts of CRMs on European soil don't match the increasing need and demand for these materials. Therefore, Europe, and the manufacturers who use these materials, must import them from other continents. This is a problem in the light of the goal to implement the so-called electric revolution before 2050 because of the exponential increase in demand for these materials expected in the coming decades. It has been estimated, for instance, that the cobalt demand in 2030 will correspond to 280 per cent of the 2016 refinery capacity, and while the authors found that the current supply of the metal is enough to match the 2030 goals, the increase in demand, in the long run, will require the industry to invest in more efficient refining and in recycling (Fu et al., 2020).

Extracting raw materials from the soil is basically an activity of filtering and filtering again to separate refined materials from the processing slags.³ In the context of sustainability projects in the EU, ethical sourcing can be defined as a way to guarantee that the products are made through ethical (and sustainable) methods (Lambrechts, 2021). The lithium mining industry globally meets these standards, since there is no artisanal mining for lithium. Western and especially Australian requirements are very high for mining in general, and this would be also a useful benchmark to use in the EU for new mining facilities.

³ Direct lithium extraction (DLE) is the predominant extraction technique to produce lithium from brines (in Chile, Bolivia, and Argentina), together with hard-rock mining and other technologies; see Warren, 2021. The extraction of cobalt is the process of separation of the material from its ores. There are several methods to do this; they all involve separating cobalt from nickel and copper. 'Cobalt extraction routes can be in the form of open-pit mining, underground mining or a combination of open-pit and underground mining depending on ore grade, size and surface type'; Farjana et al., 2019.

In respect of raw materials, the process entangles the whole value chain, with the EU's aim being to increase resilience and (strategic) autonomy of the supply chain. First, it encompasses a series of practices for the mining cycle, while mining at EU standards, to achieve 'made-in-Europe' mining. This comes with problems both in terms of soil exploration and exploitability, and the social acceptance of the extraction and processing practices (Kotkina et al., 2018). Nonetheless, the availability of certain CRMs on European soil leaves space for a thoughtful discussion around the new techniques and standards that could be implemented to achieve an internal European supply chain in this sector (Euro Geo Surveys, 2016). Much more investment is needed in this market, which remains essential to succeed in achieving (strategic) autonomy.

On the other hand, the European Commission identified 'reducing and reusing' materials as the main way to achieve strategic autonomy in the sector (European Commission, 2020). Recycling raw materials could be the key to a transition towards a sustainable electric revolution in Europe. Despite not being a diffused practice in the EU, the recovery of CRMs inside the lifecycle of those materials, the availability of technologies, and the innovative potential that the sectors present for the internal market could be a way out of the dependency on non-EU suppliers (Blengini et al., 2019). Moreover, it can be a risk-reducing factor and help to diversify the supply chain (Blengini et al., 2017: 21–24). For instance, many valuable materials can be recovered by dismantling Li-ion batteries through the disassembling phase and mechanical and chemical processes.

Finally, a major point in the carbon-free transition concerns the life cycle of batteries. The concept of battery second life goes hand in hand with the sustainability of the whole battery life cycle, with direct implications for reducing greenhouse gas emissions (especially during manufacturing). Moreover, together with the recycling of materials and components, batteries can be reused once their capacity is not sufficient to ensure high performance, for instance, in an electric vehicle (EV). These aged batteries can be used in an Energy Storage System (EES), working at low discharge rates and ensuring the continuity of a broader electrical grid or system, for instance, in a self-sustaining home environment powered by solar energy.

However, some challenges exist for recycling. Since the EV sector is still in the nascent stage, the availability of Li-ion batteries for recycling is considered to be a long way off – potentially post-2040 – after these batteries are depleted after their second use in a significant amount to provide, for instance, energy storage. By that time, the recycling technologies will have to be efficient enough to guarantee that recycled materials can replace virgin raw materials. This also requires recycling procedures to ensure low greenhouse gas emissions. Finally, since Li-ion battery technology is still developing, it is difficult to know which type of battery will be the standard and adapt recycling technologies accordingly.

EU CONTEXT AND STRATEGY ON BATTERIES

While exploiting the potential of the means that allowed the mobile revolution, with sustainability as a core benchmark, the European institutions are committed not only to considering all the possible alternatives for a more sustainable lifecycle for batteries, but also to strengthening the internal regulatory framework so that it can enhance the opportunities offered by the innovative sector.

Acknowledging the role battery technology will play in the transition to a sustainable, circular economy, at the end of 2020, the EU Commission proposed a new sustainable batteries regulation that seeks to make batteries safer, bolster protection of the environment, and promote the recycling and reuse of batteries (European Council, 2019). The new regulation will harmonise requirements for batteries and ensure that all batteries circulating in the EU market are sustainable and safe. Pursuant to the regulation, batteries are to be long-lasting, safe, produced with the lowest possible environmental impact, and repurposed or recycled at the end of their lifecycles. This new initiative is inherently linked and is designed to advance the larger goal of increasing sustainability and achieving climate neutrality by using sustainable, clean technologies and processes.⁴

This regulatory proposal grounds itself in the Circular Action Plan (European Commission, 2020a), released in March 2020, which is a crucial feature of the European Green Deal and the Commission's plan to boost the economy with higher levels of sustainability (European Commission, 2019). The action plan includes measures to be implemented across the entirety of a product's life cycle, from design and manufacturing to the recycling phase. The sustainable batteries regulation is welcomed as a tool to enhance the sustainability of the emerging battery value chain and harness the circular potential of batteries available across the EU market.

Another tool aiming at increasing reliance on sustainable batteries is the European Battery Alliance (EBA, n.d.), launched in 2017. It brings together EU Member States, industry, the scientific community, and other stakeholders in the battery value chain. The alliance now numbers 440 members and strives to facilitate collaboration between stakeholders by creating a forum where strategic plans and strategic actions contributing to the development and sustainable use of batteries can be formulated and enacted. Like the EBA, the European Raw Materials Alliance is a flagship initiative addressing challenges regarding raw materials and determining the role of raw and advanced materials in the

⁴ Prior to the new, proposed regulation, the 2006 Directive on Batteries (later amended, most recently in 2020) governed the use of batteries. With the entry into force of the new regulation, the 2006 directive will be repealed.

transition to a sustainable and digital economy (ERMA, n.d). In addition, it aims to bolster the resilience of the supply chains and attract investments in the industry and harvest young talent.

THE (STRATEGIC) PROBLEMS OF DEPENDENCY

As anticipated, one of the main problems concerning the supply of batteries remains that the cells used for manufacturing electronics in Europe are provided by other markets (mainly China, Japan, or South Korea). China won the race to build batteries long before the electric revolution in Europe, investing extensively in strategic mining sites and R&D into this technology (Zhang et al., 2020). Furthermore, China's dominance of the raw materials supply chain doesn't come entirely from extraction, but from its imports from Australia and South America, coupled with the domestic implementation of the chemical stages. China developed technologies in the chemical processing of lithium minerals in recent decades, recognising the critical importance of this sector, which resulted in an important comparative advantage. The Chinese chemical industry alone supplies more than 60 per cent of the chemical procedures and refinement required to obtain the specific purity needed for battery materials (Moore, 2021). This, together with the predominance of Chinese companies in cell manufacturing, represents a competitive advantage with direct implications for the European market, also in terms of direct foreign investment.⁵

In respect of the suppliers' value chain, the battery industry in China remains highly automated and based on personnel trained with precise technical skills, in partnership with universities. Finally, it is worth mentioning that, in the past, most patents in this technology were held by US, EU, Japanese and South Korean companies in the past, while nowadays they have been sold or licensed to Chinese companies. However, the production areas of battery components are covered by corporate secrecy and are often off-limits, due to a very competitive market. Intellectual property thus contributes to making these companies maintain a leading position in Asia. Mining companies and suppliers are constantly evaluated by European customers, demanding certification and undergoing due diligence (DD) procedures. Original equipment manufacturers from Europe that set up joint ventures in China ask suppliers to

⁵ The first large-scale example of investment comes from Italy, where the Chinese company First Automobile Works (FAW), jointly owned by the Chinese government, invested 1 billion€, together with Silk-EV, in the so-called Motor Valley (next door to Ferrari, Maserati, and Lamborghini), to build electric supercars. Silk-FAW represents the first foreign direct investment by China in the context of mobility electrification, with expected large-scale design, manufacturing, and production on the continent. See Forbes.it, 2021.

undergo strict DD procedures. However, the risk of violation cannot be excluded entirely.

Thus, to ensure a meaningful, strategic approach to the electrification of Europe, while ensuring standards in accordance with EU values (both in terms of extraction and pollution, and concerning human rights) (Amnesty International, 2020), it is of utmost importance to act cohesively at the EU 27 level to foster the (internal) energy market.

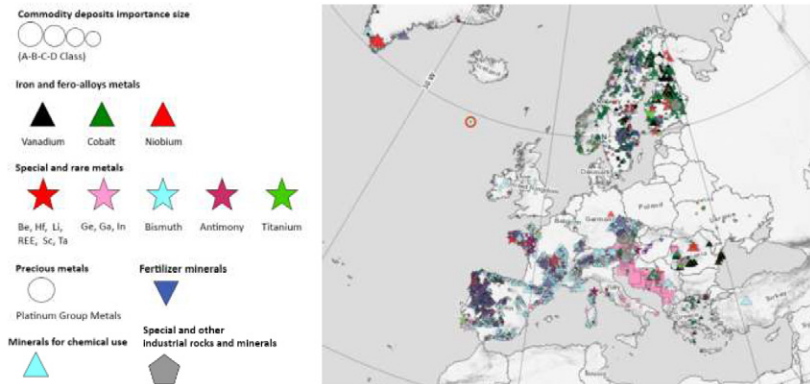
CONCLUSIONS

Strategic policies to promote energy storage technologies are needed ‘yesterday’. While the European institutions have made efforts to achieve sound legislation for a sustainable energy transition, bolstering a common European strategy for CRMs and cell supply chain is required urgently. The recent shortage of CRMs experienced during the COVID-19 pandemic might have rung alarm bells at institutions (Ivanics, 2021), but the timeframe of achievements proposed in the European Green Deal for 2030 seems to fall behind the real opportunities for the internal market to quickly adapt and build new segments of the industry for EES and battery supply.

While the technologies already exist for connecting the energy transition to the energy storage market, much more investment is needed in R&D in Europe, together with a clear scheme for certification, and targeted investment – within the industry and in terms of public acceptance – to foster the culture of sustainability. The importance of batteries to EU citizens’ electric future is undeniable and cutting-edge technologies must be used, but clear policies are needed, and have to be understood.

Recommendations

1. Resources: the EU could develop close public–private partnerships with Western Australia and South America in terms of promoting investments and joint ventures in mining projects to secure raw materials.
2. Mining in the EU: developing a proactive mining culture and supporting it through EU institutions’ approvals and investments is critical.
3. Subsidies: the EU’s subsidies for EVs and reduction in emissions are pulling the development of the upstream supply chain. Supporting the manufacturing of cells, cathodes, anodes, and other battery materials through investment is important.
4. Technical skills: having specialised training in schools and universities in this sector is essential for making these manufacturing plants successful. The local skilled workforce is crucial, as it also has an important role in empowering local and energy communities.
5. Recycling technology: investments in recycling technologies and developing the infrastructure to be able to collect, transport, and

Figure 1: Map of CRMs in Europe.

Source: EuroGeoSurveys.

recycle are essential. Research and development should follow the same logic of sustainability with regard to the emissions and footprint of the recycling facilities.

6. Recycling policy: subsidising the sales of recycled materials to be on par or lower than virgin materials and enforcing through legislation a certain percentage of raw material to be made up of recycled materials will greatly promote the recycling industry at the early stages of this revolution.

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Russian Nuclear Threats: How Should EU Countries Respond?

Wannes Verstraete

ABSTRACT

The ongoing war between Russia and Ukraine is being fought under a nuclear shadow, because Russian President Vladimir Putin issued nuclear threats in the early days of the invasion. For the first time since the end of the Cold War, nuclear weapons are thus back at the forefront in Europe. Addressing the crucial security question of how EU countries should respond to these nuclear threats made by Russia, this policy paper, first, discusses the nuclear dimension of the Russian invasion of Ukraine. Second, it analyses the effects of the war on the nuclear security and arms control architecture in Europe. Third, it formulates the answer to the above-mentioned security dilemma and proceeds with four policy recommendations. Thus, for the short term (1) EU Member States should be cautious and pursue a strategy of responsive restraint and (2) together with their partners, prepare in advance possible responses to further nuclear escalation by Russia. In the long run, EU Member States should start (3) working today on the future after the war, especially concerning the role of arms-control, confidence-building, and risk-reducing measures, and (4) thinking about the role of nuclear weapons and nuclear deterrence in Europe in the twenty-first century.

INTRODUCTION

On 24 February, the first day of the Russian invasion of Ukraine, and on 27 February, the Russian President Vladimir Putin issued nuclear threats to deter possible external military intervention. As a result, the ongoing war is being fought under a nuclear shadow, again making nuclear weapons a central issue in European security. Evidently, EU Member States and their partners (especially other NATO allies such as the US and the UK) need to respond appropriately to Russian nuclear threats.

The paper first discusses the nuclear dimension of the ongoing war between Russia and Ukraine. It will become clear that, at present,

because of a lack of transparency and clarity, it is difficult to adequately interpret Russian nuclear signalling. This situation creates the danger of unwanted escalation through miscalculation, miscommunication, and accidents. For this reason, the approach recommended in this policy paper is one of prudence and responsibility.

Subsequently, the paper will briefly analyse the effects on Europe's nuclear security and arms control architecture. These early observations and interpretations of the nuclear dimension and the potential impact of the war are key to understanding the nature of the nuclear threat that the EU Member States are dealing with, and how to respond to them appropriately.

The third section provides an answer to the paper's central question: how should EU Member States respond to the Russian nuclear threats? Four policy recommendations emerge from the analysis and the author's assessment.¹

THE NUCLEAR DIMENSION OF THE ONGOING WAR BETWEEN RUSSIA AND UKRAINE

On 24 February, Russia invaded Ukraine and the ensuing war, now in its 'second phase', is unfortunately far from over by the time of this writing (Hunder, 2022). Heavy fighting continues in eastern and Southern Ukraine. Nevertheless, this section will focus primarily on important developments regarding the nuclear dimension during the first weeks of the war, due to the fact that Putin issued his nuclear threats at that time.

On 3 January, Russia, the US, the UK, France, and China released the 'Joint Statement of the Leaders of the Five Nuclear-Weapon States on Preventing Nuclear War and Avoiding Arms Races'. The statement declared that 'a nuclear war cannot be won and must never be fought' (The White House, 2022). During the build-up of Russian troops on the Ukrainian border, this seemed like a reassuring signal by the five nuclear-weapon states (especially Russia) (Notte and Bidgood, 2022). However, in light of the nuclear threats issued by Putin on 24 and 27 February, Russia's credibility regarding this statement can be questioned. Subsequently, in January, there was a series of diplomatic negotiations between Russia and the West on the two Russian security proposals that included prospects for an arms agreement on intermediate-range and shorter-range missiles (The Ministry of Foreign Affairs of the Russian Federation, 2021b).

A week before the start of the war, the Russian Strategic Forces conducted a planned nuclear exercise, 'as a reminder, and warning, of its nuclear capabilities' (Woolf, 2022). Consequently, on the first day of

¹ I draw from a series of discussions with experts under the Chatham House Rule.

the war, Putin declared in a speech: 'I would now like to say something very important for those who may be tempted to interfere in these developments from the outside [...] they must know that Russia will respond immediately, and the consequences will be such as you have never seen in your entire history' (Bloomberg News, 2022). This implicit nuclear threat was clearly meant to deter a Western military intervention (Woolf, 2022). Then on 26 February, Deputy Chairman of the Russian Security Council Dmitry Medvedev warned that Russia should take drastic diplomatic steps in reaction to Western sanctions and support for Ukraine, such as leaving New START (Strategic Arms Reduction Treaty) (Gottemoeller, 2022).

The nuclear threat thus remained implicit in the speech of 24 February, the day that the Russian invasion started. In contrast, as a reaction to the economic sanctions imposed by the West, on 27 February Putin ordered a 'special mode of combat duty in the strategic deterrence forces' to dissuade external military intervention and signal Russia's resolve to accomplish its objectives (Holloway, 2022). This 'mode' was unknown before, so Russian Defence Minister Sergei Shoigu clarified later that this order meant an increase in the staffing levels of Russia's nuclear strategic force command centres (Oliker, 2022). As a result, the survivability and readiness of the forces increased (Williams, 2022). However, the Pentagon stated on 28 February that 'it had not seen any changes in Russia's nuclear forces as a result of the increase in their alert level' (Woolf, 2022). Consequently, this expression was probably deliberately vague, an attempt to create nuclear ambiguity for deterrence purposes.

On that same day, 27 February, Belarus amended its constitution via a disputed referendum (Williams and Ljunggren, 2022). The country changed its nuclear status by allowing Russian nuclear weapons to be permanently stationed on its territory (Woolf, 2022). Subsequently, on 25 June, Putin offered Belarusian President Alexander Lukashenko nuclear-capable Iskander missile systems and said that Belarusian Su-25 close-support aircraft could be updated to carry out nuclear missions. The reason for this offer was 'to counter an "aggressive" West' (Reuters, 2022). In addition to these developments, Russia and the US also adjourned their strategic stability talks on 27 February (Foley, 2022).

In contrast to Russian rhetoric and actions, the Pentagon decided on 2 March to postpone a planned Minuteman III missile test. According to Kimball (2022), the US wants 'to avoid the possibility that Putin might use it as a pretext for further nuclear escalation'. This test was finally cancelled on 1 April (Steward and Ali, 2022).

Nonetheless, there are also concerning developments regarding nuclear safety. For instance, Russia occupied the (inactive) Chernobyl nuclear power plant from 24 February until the end of March. During the occupation, the workers were functioning under stress and fatigue because it was impossible to have normal shift rotations (Potter, 2022).

Then, the active nuclear power plant in Zaporizhzhia was hit on 4 March by a Russian missile attack (Lewis, 2022). Conquering and attacking these nuclear sites is obviously risky from an environmental and health perspective. There were also unconfirmed reports that Russian troops dug trenches in the Red Forest, one of the most contaminated parts of the Chernobyl Exclusion Zone. As a result, some soldiers apparently suffered radiation illness (D'Agostino, 2022).

Russia also spread disinformation regarding weapons of mass destruction. For example, the Russian government falsely claimed that Ukraine wanted to make 'dirty bombs' and circulated lies regarding biological laboratories (Leitenberg, 2022). On 11 March, the UN Security Council discussed the Russian claims of a US-supported military biological programme. The UN Undersecretary-General and High Representative for Disarmament Affairs Izumi Nakamitsu said on this issue that 'The United Nations is not aware of any biological weapons programs' (Quinn, 2022).

Russia claimed that it used Kinzhal missiles to strike a weapons storage facility in Western Ukraine on 19 March and a fuel depot close to Mykolaiv on 20 March (Woolf, 2022). The use of Kinzhal is important because it has dual capability – it can carry a conventional or nuclear warhead (Woolf, 2022). According to Ven Bruusgaard (2022), the increased use of dual-capable systems could signal 'a warning to the adversary of a move toward the nuclear threshold'.

France, the only remaining EU Member State with nuclear weapons after Brexit, changed in March the deployment schedule of its sea-based deterrence force from one nuclear-armed ballistic missile submarine (SSBN) at sea to three (of the four available) submarines. This change was intended to make the sea-based deterrence force more capable of surviving a strike on Île Longue, the home port of the French SSBNs (Tanguy, 2022). Besides this, France tested its new air-launched strategic missile ASMPA on 23 March (Ministère des Armées, 2022).

Later in the war, Russia again issued nuclear threats when Finland and Sweden were considering joining NATO. Putin stated on 14 April that if the two states become NATO allies, Russia would deploy hypersonic missiles and nuclear weapons to Kaliningrad. Russian nuclear coercion is clearly not restricted to Ukraine (Faulconbridge, 2022). Russia also conducted a successful test of its new Sarmat intercontinental ballistic missile (ICBM) on 20 April, and when Putin congratulated the Russian Ministry of Defence he said that the test 'will be a wakeup call for those who are trying to threaten our country in the frenzy of rabid, aggressive rhetoric' (The Kremlin, 2022). This was another example of nuclear signalling to deter potential intervention in the war.

Experts disagree on whether Putin is likely to order a Russian nuclear strike and why he would do so. Woolf (2022) concluded that most analysts 'argued that President Putin was seeking to bully or coerce the United States and NATO so that they would limit their support for Ukraine

and cease their interventions in the conflict'. In other words, most experts saw the Russian nuclear signalling as an implicit nuclear threat and few of them believed it was 'an explicit threat to employ nuclear weapons in attacks against Ukraine' (Woolf, 2022). In short, it is at present difficult to correctly interpret the recent nuclear signalling. Moreover, this lack of clarity and transparency also creates the danger of unwanted escalation through miscalculation, miscommunication, and accidents. As a result of this difficult situation, this paper favours a more prudent and responsible approach. EU states should remain cautious and be careful of policy moves that could be seen as escalatory. One of the paper's policy recommendations, therefore, calls for a 'strategy of responsive restraint'.

THE NUCLEAR SECURITY AND ARMS CONTROL ARCHITECTURE IN EUROPE

This section briefly analyses the effect of Russia's rhetoric and actions on the nuclear security and arms control architecture in Europe. Global and regional arms control and non-proliferation architectures were already eroding before this war. In 2015, the review conference of the Nuclear Non-Proliferation Treaty (NPT) failed to agree on a final document (Notte and Bidgood, 2022). Then, in 2019, the US withdrew from the Intermediate-Range Nuclear Forces Treaty because of Russian treaty violations. This 1987 treaty between the US and the USSR was particularly important for Europe because the types of missiles it forbade were meant for use in the European theatre (Deveraux, 2022).

If Russia leaves the New START nuclear arms control agreement, as Medvedev suggested it might, there would be no bilateral treaty left between the US and Russia. Kimball argued that without 'nuclear arms control guardrails, the risk of [a] costly, unconstrained global nuclear arms race will grow' (Kimball, 2022). On 27 March, Russia and the US also adjourned the bilateral strategic stability talks. Consequently, a breakdown of Russian-US bilateral arms control is not only 'a significant loss for both countries', (Maurer, 2022) but also for Europe and the rest of the world.

Gottemoeller, former Deputy Secretary-General of NATO, expects the next NPT review conference in August this year to have a negative outcome (Gottemoeller, 2022), just like in 2015. Similarly, Meier (2022), said that 'the conflict will likely increase the salience of nuclear weapons [...] Attributing responsibility for the greater role of nuclear weapons will be contentious, creating a major obstacle for a successful review conference'. Moreover, former UN assistant secretary-general Ramesh Thakur argued that 'Russia's aggression [...] could also revive interest in proliferation among some countries' (Thakur, 2022). In other words, there is an increased risk of horizontal proliferation, which includes 'the acquisition of nuclear weapons, or the fissile materials and

the technology to make them, by nation states or by non-state groups or individuals that did not previously have them' (Sidel, 2007).

The ongoing war and the Russian nuclear threats will probably also have an impact on vertical proliferation, 'which includes the ways in which a nation state that possesses nuclear weapons expands or improves its arsenal by increasing the number, type or reliability of its nuclear warheads or the number, types, reliability or range of the missiles, submarines or planes designed to deliver nuclear weapons' (Sidel, 2007). Even before the war, certain nuclear-armed states had decided to modernize and expand their nuclear arsenals. First, Russia is modernizing its nuclear delivery systems (Woolf, 2022). Second, despite the size of its nuclear arsenal falling to 225 since the end of the Cold War, the UK decided in 2021 in the Integrated Review that 'in recognition of the evolving security environment [...] the UK will move to an overall nuclear weapon stockpile of no more than 260 warheads' (HM Government, 2021). Third, in 2021, commercial satellite imagery revealed that China was building 'hundreds of new missile silos' (Kristensen and Korda, 2021). These new Chinese silos 'could potentially double the size of its arsenal of intercontinental ballistic missiles' (Das, 2021).

One of the main questions in this regard is whether this changed security environment will lead to a new nuclear arms race in Europe. Some EU countries are already augmenting their defence budgets and are procuring new conventional weapon systems, but it is still unclear how this will impact on the nuclear balance.

The constitutional changes in Belarus mentioned above are important because Russian nuclear weapons can now be permanently stationed in Belarus (Lewis, 2022). Alberque (2022) stated that these constitutional changes 'have enormous implications for European security in the context of the current crisis around Ukraine'.

Apart from the environmental and health risks, Russia's attacks on nuclear power plants are, according to Potter (2022), 'a direct assault on the international norms regarding nuclear violence that have developed since the advent of the nuclear age'. Obviously, the erosion of these norms is a worrying development.

Regarding Russian lies about biological laboratories in Ukraine, Leitenberg (2022) noted that 'false allegations undermine the authority and legitimacy of international treaties such as the Biological Weapons Convention'. Similarly, the false claims about 'dirty bombs' demonstrate 'the same destructive disregard for the [NPT]' (Leitenberg, 2022). Meier (2022) predicted that 'these lies will undermine the norms against weapons of mass destruction for years to come and place Russia outside the nonproliferation mainstream'. As a result, Russia is damaging existing treaties on weapons of mass destruction with their disinformation campaigns.

HOW SHOULD EU MEMBER STATES RESPOND TO THESE NUCLEAR THREATS?

This section aims to answer the central question of the article: how should EU Member States respond to the nuclear threats discussed above? A major caveat here is that this paper interprets the ongoing war without knowing its outcome. Therefore, the first two policy recommendations must be read as an initial answer to the evolving situation, while the last two policy recommendations are responses for the long term, meant to remain relevant regardless of the final outcome of the war. Because of the difficulty discussed above in interpreting the Russian nuclear signalling correctly, this policy paper favours a more prudent and responsible approach.

Since direct military intervention could potentially lead to further conventional and perhaps nuclear escalation, in the short term, EU Member states Should be cautious and pursue a strategy of responsive restraint.

EU Member States should remain united and strongly condemn Putin's irresponsible nuclear sabre-rattling. At the same time, the European countries and their partners, particularly the US, should be aware of the dangerous potential for escalation. It is impossible to predict what the Russian response would be to direct military involvement of the West, with a 'no-fly zone' (Pietrucha and Benitez, 2022) or 'boots on the ground', for example. However, not all experts agree with this more cautious approach. Alberque and Hoffmann (2022), for instance, argue that 'leaders must state that nuclear use would risk a military response by NATO [...] NATO would not need boots on the ground to conduct such an attack; massed conventional cruise missile strikes fired from aircraft above NATO territory and the surrounding seas could do the job'. Nevertheless, Russia's nuclear deterrence policy 'envisages the use of atomic weapons in response to what could be a conventional strike targeting the nation's critical government and military infrastructure' (Deveraux, 2022). A massive conventional missile strike by NATO as a reaction to Russian nuclear use in Ukraine could thus potentially lead to Russian nuclear strikes on NATO territory. As a result, EU countries should pursue a strategy of responsive restraint. This in turn calls for caution in considering such a dangerous situation. Accordingly, direct military intervention appears to be too risky because this could potentially lead to a regional (European) war and even a nuclear war. The responsive part of the strategy suggests a conditional approach to the use of political responses, economic sanctions, and indirect military assistance that is based on the evolving situation on the ground. Consequently, EU countries and partners should only continue to help

Ukraine indirectly with political and economic support, humanitarian aid, and indirect military assistance such as equipment deliveries, training, and intelligence sharing. It could also be argued that by not intervening directly in the war, EU states and partners avoid giving Russia a pretext to use nuclear weapons.

EU Member States and their partners should prepare in advance possible responses to further nuclear escalation by Russia.

The second policy recommendation is connected to the first one. It suggests that EU countries should prepare in advance possible responses to further nuclear escalation by Russia. Holloway (2022) states that European leaders should together with other global leaders dissuade a Russian nuclear strike through 'a massive political response' if Putin crosses the nuclear threshold, 'not so much by the threat of retaliation in kind, since that could lead to dangerous escalation'.

However, there are any number of steps that Russia could take regarding further nuclear escalation. Experts are not paying sufficient attention to options other than a nuclear strike. Instead of focusing on the most extreme case of a direct nuclear strike, we should consider alternative scenarios more seriously. First of all, Russia could increase the alert level of its strategic deterrence forces again. This would build upon the 'special mode of combat duty' order issued on 27 February. Second, Russia could make greater use of their non-nuclear deterrent forces (dual-capable systems), such as Kinzhal (Ven Bruusgaard, 2022). Third, Russia could conduct a nuclear exercise close to Ukraine or a NATO country. Fourth, Russia could start moving 'low-yield' nuclear warheads out of storage and stationing them closer to the front (Podvig, 2022). This step would be a strong signal because it cannot be done in secret because of the satellite surveillance capabilities of the US and other Western states (Lewis, 2022). Fifth, Russia could station nuclear weapons in Belarus, Kazakhstan, Syria, or even the occupied territories of Ukraine. Sixth, Russia could conduct a nuclear demonstration or test, thereby de facto withdrawing from the Comprehensive Nuclear Test Ban Treaty (Adamsky, 2022). Seventh, Russia could carry out a nuclear strike on an uninhabited location (Alberque and Hoffmann, 2022). Finally, Russia could conduct a nuclear strike on the battlefield in Ukraine or against a NATO country. A strong, united response from the European countries to each of these scenarios should be prepared in advance and used to dissuade Russia from further nuclear escalation. Consequently, EU states should together with their partners (especially the other NATO allies) exchange information and intelligence, plan for various scenarios, and develop possible political, economic, and military responses beforehand to react fast in the event of further nuclear escalation.

EU Member States should start working today on the future after the war, especially concerning the role of arms-control, confidence-building, and risk-reducing measures.

As discussed above, Russia's rhetoric and actions will have negative effects on the nuclear security and arms control architecture in Europe. In this regard, Meier (2022) concludes that 'the war will have serious, long-lasting effects on how the world views nuclear weapons, how it seeks to control them, and how Europe develops a new security structure'. Evidently, the final impact on the nuclear security and arms control architecture depends on how the war will play out. Nevertheless, we can already see worrying developments. Meier argues that 'finding ways to prevent nuclear war will have to be the backbone of any future nuclear arms control agenda again'. Concerning this issue, the new Strategic Compass states that 'the EU remains committed to preserve the disarmament, non-proliferation and arms control architecture. A coordinated approach with partners is also essential in this regard' (Council of the European Union, 2022). Therefore, EU countries and their partners should remain open to possible new arms control initiatives, confidence-building, and risk-reducing measures as part of a sustainable solution to the current crisis. Both the EU and NATO have a crucial role to play here.

EU Member States should also start thinking about the role of nuclear weapons and nuclear deterrence in Europe in the twenty-first century.

In light of the ongoing war, European states and organisations like NATO and the EU should re-evaluate the place of nuclear weapons and nuclear deterrence in their policy documents and strategies. NATO, as a nuclear alliance, is paying attention to the changing nature of the security environment. The various summit declarations since 2014 (the start of the conflict in Eastern Ukraine and the annexation of Crimea) (NATO, 2014) are changing in tone (Mattelaer, 2022). This month, the new Strategic Concept was adopted at the NATO Summit in Madrid (NATO, 2022). This concept formulates a response to the changed security environment since the previous concept of 2010. As a result, we see a renewed focus on the importance of nuclear deterrence alongside a substantial strengthening of conventional deterrence. Besides the new Strategic Concept, it also appears necessary to update the 2012 NATO Deterrence and Defence Posture Review (DDPR).

In contrast, the EU's new Strategic Compass (adopted on 21 March) only talks about arms control and disarmament issues (Council of the European Union, 2022). The EU completely ignores the role of nuclear deterrence. This is probably due to the fact that the EU Member States have greatly diverging opinions on this matter, from the nuclear-armed France to other NATO allies that are part of the Nuclear Planning Group

(NATO, 2020), to neutral countries like Austria and Ireland that have signed and ratified the Treaty on the Prohibition of Nuclear Weapons (UNODA, 2021). Nevertheless, at the least, some EU countries should start thinking informally about ideas such as the European dialogue on nuclear deterrence proposed by Tertrais (2019), wherein ‘interested European countries could embark on a dialogue on nuclear deterrence issues, which could include common visits to nuclear bases and attendance at exercises’. Regardless of the outcome of the war, it is clear that the nuclear weapons question for Europe will become very important in the coming years and should not be ignored. It is in the interest of the EU Member States, together with non-EU countries (especially the UK as the other nuclear-weapon state in Europe), to tackle this existential question among themselves. As a result, the EU would be better prepared to take a common stance vis-à-vis other international players.

CONCLUSION

This policy paper has discussed the nuclear dimension of the ongoing war between Russia and Ukraine. The first part provided an overview of recent events and concluded that, at present, it is difficult to accurately interpret Russia’s nuclear signalling. This lack of clarity and transparency creates the danger of unwanted escalation through miscalculation, miscommunication, and accidents. For this reason, the policy recommendations presented in this paper favour a cautious and responsible approach. In the second part of the paper, the effect of Russia’s nuclear threats, rhetoric, and actions on the nuclear security and arms control architecture in Europe have been briefly analysed. This revealed potential negative effects on the nuclear security and arms control architecture in Europe, as well as in the rest of the world. Following the discussion and analysis, the third part formulated a range of possible responses to the central question of this policy paper, ‘How should EU countries respond to these nuclear threats?’. The following policy recommendations were provided:

- EU Member States should, in the short term, be cautious and pursue a strategy of responsive restraint, as direct military intervention could potentially lead to further conventional and perhaps nuclear escalation.
- EU Member States and their partners should prepare in advance possible responses to further nuclear escalation by Russia.
- EU Member States should immediately start working on the future after the war, especially concerning the role of arms-control, confidence-building and risk-reducing measures.
- EU Member States should also start thinking about the role of nuclear weapons and nuclear deterrence in Europe in the twenty-first century.

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The Potential of Harm Reduction: A Novel EU Strategy on Tobacco Regulation

Frank-Ulrich Fricke

ABSTRACT

The Council Directive 2011/64/EU on the structure and rates of excise duty applied to manufactured tobacco (TTD) is currently under review. This re-introduces the question of how to proceed with the tobacco 'blind spot'. Against this background, two main challenges arise for the revision of the TTD. First, tackling the lack of integration of non-combusted alternatives (NCAs) into the current legal framework. Second, improving the alignment of the tax policy outlined in the TTD with the main public health objective – to curb smoking. Policymakers should take the harm produced by combusted products seriously. This means applying the principle of harm reduction and treating NCAs differently from traditional combusted cigarettes (CCs) in respect to both regulation and taxation.

HARM REDUCTION: EVERYBODY'S DARLING

Harm reduction can be defined as actions directed to reducing the damage resulting from harmful behaviour by both individuals and society (Levesque, 2018). This approach is often adopted in relation to addiction, where prohibition does not work and/or causes more harm than good to individuals and society. The history of prohibition is a history of failures (or suboptimal results, at best). In recent years, this traditional strategy has been gradually replaced by harm-reduction policies related to drugs, alcohol, gambling, prostitution, sexual activity, and smoking. The targets of harm-reduction policies can vary as well as the success rates of the policies. Hence, there is no 'one size fits all' harm-reduction policy due to the very nature of harmful behaviours and the differences in people targeted. In addition, it is not always clear how to measure the success of harm reduction. Sometimes inputs can be measured, for example the number of safer smoking kits provided for crack smokers

(see Vancouver Coastal Health, 2013: 13). At other times outcomes are the centre of analysis, for example the change in the number of injuries because of the adoption of makeshift supplies (see Vancouver Coastal Health, 2013: 17f).

Harm-reduction initiatives are abounded and supported by numerous national and supranational institutions. The European Union (DG Santé) is funding initiatives to provide harm-reducing interventions as well as initiatives to monitor and benchmark harm-reduction activities in Member States, such as the European Harm Reduction Network, which is responsible for the Civil Society Monitoring Report of Harm Reduction in Europe. This report focuses on needle and syringe programmes, overdose prevention and drug consumption, hepatitis, tuberculosis, and HIV. Although the mission of the network is 'to strengthen harm reduction policies in Europe' (Rigoni et al., 2021: 12), when discussing tobacco, harm reduction does not feature. Harm Reduction International (HRI) is another NGO supported by, among others, the World Health Organization (WHO), the European Commission, and the UN Office of Drugs and Crime. The focus of HRI is comparable to that of the European Harm Reduction Network – including the 'blind spot' in relation to tobacco.

SMOKING STILL DISPROPORTIONALLY AFFECTS THE POOR

Smoking is a behaviour linked to socio-economic status. It is largely prevalent among the poorer classes. While attempts to quit smoking have a low success rate across the board, they are even less likely to be successful among smokers with a low socio-economic status (see Hiscock et al., 2012; see Hatsukami & Carroll, 2020). Hiscock and colleagues (2012) suggest several measures to reduce smoking including increasing the price of tobacco products, targeted cessation programmes, and mass media interventions. Once again, harm reduction does not feature in their suggestions (see Hiscock et al., 2012: 117f). This begs the question: given the low success rates of quitting, why does harm reduction play such a minor role?

The European Commission should consider harm reduction policies to reduce the negative effects of tobacco.

Harm reduction related to smoking can be defined as 'minimizing harms and decreasing total mortality and morbidity, without completely eliminating tobacco and nicotine use' (Stratton et al., 2001: 25). Based on that definition, over the last two decades several products have been developed: SNUS, the abbreviation for smokeless tobacco with lower levels of tobacco-specific nitrosamines (TSNAs) and other toxicants; e-cigarettes; heated (not burned) tobacco products; nicotine pouches;

and alternative nicotine delivery systems (ANDS). The main feature of all these novel products is non-combustion to enable lower-risk nicotine consumption if cessation is unlikely to be achieved.

PUBLIC HEALTH POLICY SHOULD ENTAIL HARM-REDUCTION POLICIES

One of the early reports on the potential of harm reduction concluded that '(f)or many diseases attributable to tobacco use, reducing risk of disease by reducing exposure to tobacco toxicants is feasible' (Stratton et al., 2001: 5). Currently, public health policy does not consider that using NCAs or ANDS can reduce the harm of combustible cigarettes. The current tobacco control strategy is aligned on the fact that 'quitting entirely is the best option for reducing harm' (Tobacco Tactics, 2022). Additionally, fears such as the increased uptake of smoking in adolescents or nicotine-naïve consumers, dual use, and the uncertainty around long-term sequelae play a part.

THE UK: HARVESTING LOW-HANGING FRUITS

Despite these concerns, public health authorities in some countries are already exploring the potential of harm reduction delivered by NCAs or ANDS. For example, in the United Kingdom, nicotine replacement therapies, patches, and nasal sprays were accepted in 2013 by the National Health Service as risk-reducing alternatives to initiate smoking cessation. In this case, the first National Institute for Health and Care Excellence (NICE) guidelines on harm-reduction approaches to smoking acknowledged the fact that tar and other toxins – and not nicotine – are the drivers of disease and premature death. The guidance was updated in 2021 to include e-cigarettes as well. The update was encouraged by the evidence review on e-cigarettes, performed by Public Health England in 2015, which concluded that e-cigarettes are roughly 95 per cent safer than smoking. Based on this, NICE guidance adopted e-cigarettes as a support to quit or reduce the level of intoxication.

With this experience and remaining prejudices in mind, there is a need to explore the ANDS harm-reduction potential including heated tobacco products and pouches. Exploration should start quickly given the time lag between the intervention (ANDS) and consumer-relevant outcomes (morbidity, mortality). Current available evidence suggests that ANDS are potential harm-reducing interventions. Further research on the dual use of combustible and non-combustible products is needed. Moreover, the 'gateway-effect-hypothesis' – which suggests that NCAs trigger the adoption of smoking behaviour in adolescents – should be tackled in longitudinal studies to clarify its relevance for harm-reduction strategies based on NCAs. What we do know is that the latest Eurobarometer

shows a very low initiation rate for e-cigarettes (2 per cent), and a virtually non-existent (0.5 per cent) initiation rate for HTPs.

BEYOND TAXATION: NEW PRODUCTS REQUIRE NEW STRATEGIES

In discussions on combusted products, historically speaking tobacco taxation has been considered a best-practice prevention strategy to curb smoking. Excise taxes normally change relative prices, if taxes are not fully absorbed by producers, they can contribute to channelling consumer demand. Therefore, the behavioural significance can be estimated based on the price elasticity of demand. A global literature review executed by Chaloupka and colleagues (2019) on the association of taxes, prices, and consumption demonstrated that in high-income countries 'price elasticity estimates are around -0.4 , implying that a 10% increase in price reduces overall consumption by 4%. Estimates from LMICs [low- and middle-income countries] range from -0.2 to -0.8 , clustering around -0.5 ' (Chaloupka et al., 2019: 189). For Europe Gallus and colleagues (2006) have estimated price elasticities between -0.5 and -0.7 on average. Price elasticities change over time and depend on alternatives. This needs to be considered. Given the advent of NCAs, there are good reasons to advocate a novel EU strategy on smoking regulation, including tax policies.

INCENTIVISE LOW-RISK SUBSTITUTES VIA TAX POLICIES

Given the advent of NCAs, tax policies should take the differential harm potential into account.

Wang and Hagedorn (2020) found evidence for NCAs to substitute cigarette smoking. Using a difference-in-difference approach exploiting a natural policy experiment in the US, they analysed the effect of the e-cigarette tax introduced in Minnesota on 1 August 2010, with 'an initial tax rate of 35 percent, followed by another 60 percentage points on July 1, 2013, increasing the total tax rate by 95 percent' (Wang & Hagedorn, 2020: 17). In this setting, the treatment group – Minnesota – and the control group – the rest of the US – had equally high smoking rates before the tax was introduced. Subsequently the e-cigarette and smoking prevalence rates started to diverge with more notably falling rates in the US, Minnesota excluded (Wang & Hagedorn, 2020: 18). The shift of relative prices raised the smoking prevalence rate by 0.9 percentage points, 'equivalent to a 5.4 percent prevalence increase relative to the pre-tax increase level in Minnesota' (Wang & Hagedorn, 2020: 20).

Policymakers should advocate risk-based regulation and call for differentiation in the taxation of nicotine products in the upcoming TTD revision.

In general, a literature review supports the e-cigarette substitute hypothesis. Zheng and colleagues (2017) found that the own-price elasticities of demand are exclusively and highest for e-cigarettes as substitutes for cigarettes (Zheng et al., 2017: 1077). In their study, a 10 per cent e-cigarette price increase results in a 0.04 per cent increase in cigarette demand, while an equivalent cigarette price increase leads to a 18.59 per cent increase in e-cigarette demand (Zheng et al., 2017: 1079). Huang and colleagues (2018) indicate that the market-store level demand of e-cigarettes is elastic and a price hike of 10 per cent will reduce consumer demand by roughly 14 per cent for reusable and 16 per cent for disposable e-cigarettes, respectively. These findings are consistent with the estimates from Wang and Hagedorn (2020).

DIFFERENT HARM POTENTIAL SHOULD LEAD TO CUSTOMISED REGULATION

In the absence of broad-scale tax adjustments on all tobacco and nicotine products, the individuals at risk can be clustered into four behavioural types: first, the group of ex-smokers who switch back to cigarettes, responding to changes of relative prices and resubstituting products. Second, the group of dual users falling back on exclusive cigarette use. Third, the group of current smokers, who are motivated to quit cigarette smoking and are discouraged by one-sided tax adjustments. Finally, the fourth group, the real quitters who cease vaping or cease heated tobacco product use entirely and do not relapse into the use of more damaging products such as cigarettes. Unilateral tax increases are therefore solely effective in respect of limiting the consequences of a single-item non-communicable disease, but in a broader health context all close substitutes with 'similar benefits to the consumer' (Wang & Hagedorn, 2020: 1) should be targeted.

Besides relative price adjustments, similar effects can also be identified amongst more incisive regulations, which further backs the substitute hypothesis. Based on a difference-in-differences analysis, Friedman (2021) revealed that the San Francisco flavour ban was 'associated with more than doubled odds of recent smoking among underage high school students relative to concurrent changes in other districts' (Friedman, 2021: 864). Friedman taps into one of the two major targets of criticism here: the potential gateway effect of smoking initiation, especially among teenagers. He raises concerns that 'reducing access to flavoured electronic nicotine delivery systems may motivate youths who would otherwise vape to substitute smoking' (Friedman, 2021: 865). In other words, Friedman claims that the attractiveness created by flavours could represent a tool to decrease smoking amongst youth. In line with the policy effects of bans, Dave and colleagues (2019) produced similar results evaluating the relationship of e-cigarette minimum legal sale age

laws and youth cigarette smoking, as well as alcohol and marijuana consumption. While vaping was successfully inhibited, alternative harmful consumption patterns were fostered.

POLICY RECOMMENDATIONS

- Policymakers should investigate and adapt novel harm-reduction strategies.
- In practice, this would require treating non-combusted alternatives differently from traditional combusted cigarettes with respect to regulation and taxation.
- As a short-term policy target, the reduction of smoking intoxication should be prioritised by policymakers, which could mean promoting lower-risk nicotine consumption in the short- to medium-term.
- From a fiscal perspective, a short- to medium-term decrease of tax revenues on non-combusted alternatives could be compensated by substantial health cost savings in the future, which would decrease financial pressure levels in the EU Member States' health care systems.
- Therefore, a revision of the excise rules for tobacco should be very cautious with respect to minimum tax level adjustments of non-combusted products. It should propose only minor tax increases on non-combusted alternatives within the European Union.

CONCLUDING REMARKS

The current WHO Framework Convention on Tobacco Control (FCTC) is based on obsolete evidence on the 'role of innovative nicotine delivery devices in assisting the transition from cigarettes to much less harmful products' (Beaglehole & Bonita, 2022: 1865). Policymakers should explore and incorporate harm reduction into WHO and FCTC policies to reduce 'the harm caused by burnt tobacco by replacing cigarettes with much less harmful ways of delivering nicotine' (Beaglehole & Bonita, 2022: 1865).

As a first step, non-combusted alternatives should be treated differently from traditional combusted tobacco products. This differential treatment includes taxation. The substitution of more damaging products with less harmful alternatives should be incentivised by public authorities to improve public health outcomes. The Council Directive 2011/64/EU (Council of the European Union, 2011) on the structure and rates of excise duty applied to manufactured tobacco (TTD) is under review in 2022. The overarching objective of this directive is to promote 'a high level of health protection' (Council of the European Union, 2011: 24) of citizens and maintain a single market for tobacco products, considering 'any new developments based on scientific facts' (The European

Parliament and the Council of the European Union, 2014: 2). Against this background, two main challenges arise for the revision of the TTD: first, tackling the lack of integration of NCAs into the current legal framework. Second, improving the alignment of the tax policy outlined in the TTD with the main public health objective to curb smoking. A central question of the directive's review process is how minimum tax levels of different tobacco and nicotine products can be set in the TTD to achieve the policy objectives most efficiently and without undesirable – and counterproductive – side effects. The TTD offers the opportunity to finally make progress on the tobacco front.

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Military Aggression against Ukraine: Russia's Rhetoric and the International Legal Framework

Majed Dib

ABSTRACT

On 24 February 2022, President Putin announced the beginning of a full-scale military invasion of Ukraine. This blatant act of aggression shocked the international community, with many states condemning Russia's violation of its binding obligations under the UN Charter and the international framework of *jus ad bellum*. In response, the Russian narrative advances a number of claims using the language of *jus ad bellum* and the UN Charter to justify its invasion of Ukraine. As this paper aims to show, these claims are not only demonstrably baseless, but also set a dangerous precedent to which Europe must decisively respond. In doing so, the paper provides an analysis of the relevant international legal framework and suggests policy recommendations for EU policymakers.

INTRODUCTION

In the early morning of 24 February 2022, President Putin delivered a speech in which he announced a 'special military operation' to be conducted in neighbouring Ukraine.¹ After months of military build-up along the border, this speech signalled the beginning of a full-scale military invasion of Ukraine. With this invasion, the Russo-Ukrainian conflict has reached its highest point since the annexation of Crimea in 2014, sending shock waves across Europe and the globe. As the war continues to unfold, so do its repercussions, with massive economic, political, legal, and humanitarian consequences.

On the legal front, the invasion touches on various fields of international law (Law on the Use of Force, Humanitarian Law, State Responsibility, etc.).

¹ See Putin (2022).

Given its multifaceted nature, the questions and implication arising out of the conflict are many. Although they each deserve special attention, none of them are perhaps as central to the current dispute as the question of the legitimacy of Russia's use of force against Ukraine. As a party to the United Nation's Charter, Russia has an obligation to comply with the existing legal framework and principles regulating the permissibility of resorting to the use of force (*jus ad bellum*). Paradoxically however, in President Putin's 24 February speech, as well as in other statements made by Russian officials, Russia relies on these very principles to justify its 'special operation' in Ukraine, presenting claims of the necessity of 'self-defence', among others.² To make matters worse, other political leaders have continued to support the Russian rhetoric that justifies the invasion of Ukraine under international law.³

Russia's reliance on international law to justify its actions may not come as a surprise, given that it has repeatedly done so in the past.⁴ Nonetheless, it sets a dangerous precedent by attempting to expand the law on the use of force beyond reasonable confines. It is therefore vital to push back against such rhetoric and shed some light on whether the claim possesses any legal merit, particularly for an audience that may not be familiar with the intricacies of the legal regime regulating the use of force. To that end, this paper seeks to explore the legitimacy of Russia's invasion of Ukraine under the applicable international legal framework of *jus ad bellum*. In doing so, it aims to scrutinise the justifications provided by Russia, demonstrating their baselessness and how, ultimately, Russia's invasion amounts to a violation of the law on the use of force. Lastly, potential policy recommendations are provided by way of conclusion.

THE LAW ON THE USE OF FORCE

The body of *jus ad bellum* is comprised of international treaties, with the UN Charter as the core document, in addition to legal principles that have been derived from state practice under customary international law. Here, it is important to emphasise that *jus ad bellum* seeks to address questions *before* engaging in war – that is, it aims to specify the conditions that may justify the transition from peace to armed force.

² 'Self-Defence' is also the central claim upon which Russia defends its invasion before the International Court of Justice, in the recent case brought against Russia by Ukraine. See ICJ Allegations of Genocide (2022).

³ Among such leaders are the President of Belarus Aleksander Lukashenko, President of Syria Bashaar al-Asaad and Cuban Minister of Foreign Affairs Bruno Roriguez. For more on their statements see Marnin (2022).

⁴ For example, Russia has relied on international legal norms to justify its 2008 military intervention in Georgia and its 2014 military intervention in Crimea. For Georgia see Allison (2009); for Crimea see Kremlin (2014).

It is therefore independent from questions of how states should conduct themselves *after* engaging in warfare (International Humanitarian Law/ *jus in bello*).

Traditionally, the use of armed force was justified on grounds of conquering foreign territories or securing strategic territorial interests. However, the post-World War II–UN era saw the revitalisation of the collective security system. This led to the formalisation of *jus ad bellum* notions on the international stage, with the central tenet of the modern system being the general prohibition on the use of force as enshrined in article 2 UN Charter. Specifically, article 2 (4) states that:

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.⁵

Accordingly, article 2 (4) presents an absolute prohibition against the threat or use of force, outlawing warfare as a legitimate means of conducting state affairs in the international arena.⁶ With the establishment of the UN Charter in 1945, the prohibition against the use of force has become increasingly recognised as the bedrock of public international law, having the status of a *jus cogens* norm (from which no derogation is permitted).⁷ However, two formal exceptions exist to this prohibition, the first being an authorisation by the United Nations Security Council (UNSC) under article 41 UN Charter and the second being self-defence in response to an armed attack under article 51 UN Charter.⁸

It follows from the foregoing that Russia's invasion of Ukraine is *prima facie* a violation of the prohibition on the use of force, and that it is incumbent on Russia to justify its act of aggression under *jus ad bellum*.⁹ In the absence of a UNSC resolution, President Putin turned to article 51 to justify the invasion, directly citing the article in his speech

⁵ Charter of the United Nations (2 October 1945) 1 UNTS XVI, art. 2 (4).

⁶ Notions regarding the prohibition on the use of force were mooted in both customary and treaty form prior to the establishment of the UN Charter. For custom, the ICJ notes that that article 2 (4) can be seen to have codified existing customary norms regarding the prohibition of the use of force: see *Nicaragua v USA* (Merits) [1986] ICJ Rep 1986, para. 181. As for treaty form, the 1928 Kellogg-Briand pact was one of the first instruments to encapsulate a worldwide prohibition on the use of force: see General Treaty for Renunciation of War as an Instrument of National Policy (adopted 27 August 1928, entered into force 27 August 1928) 94 LNTS 57, arts. I & II.

⁷ Corten and Koutroulis (2021).

⁸ UN Charter (n 5) arts. 42 & 51.

⁹ Indeed, the Russian use of force against Ukraine constitutes an act of aggression, defined as 'the most serious and dangerous form of the illegal use of force'. See UNGA Res 3314 (XXIX) (14 December 1974), p. 143.

and asserting Russia's inherent right to individual and collective self-defence. Although President Putin goes further, implying more questionable exceptions to the use of force that are absent from the UN Charter (e.g. humanitarian intervention), the present contribution will restrict itself to the self-defence claims that were directly and formally invoked by Russia under the Charter.

INDIVIDUAL SELF-DEFENCE

Just as criminal systems recognise that individuals have the right to self-defence, the drafters of the UN Charter similarly recognised the need for states to defend themselves against the use of force by other states. This leads to the famous article 51, which reads:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations.

As such, a state that has been the victim of an 'armed attack' can trigger its right to use force in self-defence. However, this right is not absolute and is subject to limitations under customary international law, requiring any lawful use of force to be both *necessary* (as a last resort) and *proportional* (in magnitude).¹⁰ Additionally, the exercise of this right is only temporary until the Security Council has taken the necessary measures to maintain international peace and security.¹¹

In this context, the Russian narrative attempts to paint Russia as a *victim* of various threats emanating from NATO and Ukraine. President Putin begins his 24 February speech by signalling the encroaching threat posed by the eastwards expansion of NATO. He then goes on to highlight how this 'military machine' is approaching the Russian border, presenting a threat to Russian territory and citizens. Moreover, the Russian delegation at the UN Security Council repeatedly alleged that Ukraine has become host to US/NATO biological facilities that are developing biological weapons programmes to be used against Russia.¹²

What appears to be missing from this formulation is the existence of an actual 'armed attack' against Russian territory, which would then trigger Russia's right to self-defence. While the notion of what constitutes an 'armed attack' under article 51 remains a topic of debate among scholars, it is generally understood to indicate a grave use of force that

¹⁰ For more on this see O'Meara (2020).

¹¹ Considering its limited and temporary nature, the right to self-defence can be described as a subsidiary right: see UN Charter (n 5) art. 51. Note that a state which exercises the right to self-defence must immediately report its actions to the Security Council.

¹² Russian delegation at the Security Council (2022).

occurred or is occurring. On this point, the evidence is plainly clear that no armed attack, grave or otherwise, had been perpetrated by either NATO or Ukraine against Russia prior to the 24 February invasion.

Anticipatory self-defence

President Putin is, of course, aware of this, and therefore relies not on attacks that have occurred, but on impending future threats against which Russia must ‘decisively’ respond. This notion of anticipatory self-defence in response to an *imminent* threat is not new, and has been emerging in customary international law since the 19th century.¹³ Although the wording of article 51 UNC would seem to suggest that an ‘armed attack’ must have taken place, there is considerable state practice and scholarship to support the interpretation that a state can use self-defence in response to *temporally imminent* threats, ones that are immediate and instant in nature.¹⁴ Despite this however, anticipatory self-defence remains a controversial *jus ad bellum* notion, and a debate persists to whether article 51 UNC does in fact contain such a right.¹⁵

Nonetheless, if one were to accept the validity of anticipatory self-defence under the Charter, then Russia’s claim can be construed as being that NATO’s eastwards expansion, together with the presence of biological facilities in Ukraine, present a threat of an *imminent* armed attack against Russia, to which it can defend itself through resorting to anticipatory force. This claim is unfounded, however, as there is no evidence to suggest that either NATO or Ukraine intended to launch an imminent armed attack against Russia prior to the invasion. At the time of invasion, NATO had a very limited number of military assets close to the Russian border, in comparison with the 150,000 plus troops that Russia had amassed close to the Ukrainian border.¹⁶ Even after the invasion took place, NATO members continued to express fears of a possible direct confrontation with Russia, opting to avoid further escalation of the situation.¹⁷ Moreover, while the United States publicly funds biological research in Ukraine, Russia’s claims that the US is funding biological weapons programmes in Ukraine are baseless and may well be the result of Russian propaganda. This was confirmed by the UN High

¹³ The emergence of anticipatory or preemptive self-defence under customary international law can be traced back to the so-called Caroline test or the Webster formula (1837), in which the right to use force against threats which have *yet to occur* is justified if such threats are ‘instant, overwhelming, and leaving no choice of means, and no moment for deliberation’. This formulation of the right to self-defence was later reconfirmed by the Nuremberg Tribunal: see Svarc (2008).

¹⁴ *Ibid.*; see further Duffy (Cambridge, 2005), 153–155.

¹⁵ For more on this debate see: Svarc (2008); Rothwell (2005), pp. 699, 706 and 711.

¹⁶ Schmitt (2022).

¹⁷ Popli (2022).

Representative for Disarmament Affairs, who made it very clear in the UNSC meeting on 13 May 2022 that the UN had no reason to believe that any such programmes existed.¹⁸

Another anticipatory self-defence argument that deserves special mention is the one advanced by the Russian Ministry of Defence two weeks after the start of the invasion. On 9 March 2022, the Ministry purported that Russian forces had ‘uncovered’ secret documents confirming that Ukraine, supported by NATO, was secretly planning a military operation in the Donbas region in March 2022.¹⁹ The spokesperson of the Russian Defence Ministry later indicated that Russia’s ‘special military operation’ had pre-empted the alleged Ukrainian offensive on the Donbas region.²⁰

What immediately stands out as paradoxical about this argument is that Russia premises its resort to anticipatory self-defence in response to an imminent threat to which it was not yet aware of at the time it responded. Nor could Russia have been aware of this ‘imminent threat,’ since the alleged secret documents were only uncovered *after* the invasion took place. Yet the Russian narrative conveniently creates this circular argument, whereby the documents that justify the action were found because of it. In addition to the incoherency of this line of reasoning, anticipatory self-defence still requires the existence of an *imminent* (specific and demonstrable) threat to be triggered and cannot be premised on a purely speculative threat. In any event, the authenticity of the alleged documents remains dubious and has yet to be verified.

It is therefore clear that no imminent, or even credible, threats of armed force existed that could justify Russia’s resort to anticipatory self-defence. Interestingly however, President Putin’s reliance on international law does not appear to be confined only to *temporally imminent* threats, but also to threats that are more distant in nature – threats that NATO’s increasing sphere of influence poses to Russia ‘for decades to come, or maybe forever’.²¹ This notion of self-defence in response to *non-imminent* threats is known as preventive self-defence, and, like anticipatory self-defence, has been increasingly cited in recent decades.²² Unlike anticipatory self-defence however, preventive self-defence continues to

¹⁸ See UNSC meetings coverage, <https://www.un.org/press/en/2022/sc14890.doc.htm>.

¹⁹ See tweet by Russian Ministry of Defence official account: https://twitter.com/mfa_russia/status/1501461950735257602; see further ‘Secret documents ‘surfaced’: Ukraine designed military operation in Donbas for March’ (B92 9 March 2022), https://www.b92.net/eng/news/world.php?yyyy=2022&mm=03&dd=09&nav_id=113234.

²⁰ See, in Russian: В Минобороны России заявили о раскрытии планов Украины о вторжении в Донбасс (gazeta.ru 9 March 2022), <https://www.gazeta.ru/army/news/2022/03/09/17399521.shtml?updated>.

²¹ Putin (2022).

²² Particularly against the war on terror, see Brown (2003).

find little support, having been widely rejected by the international community.²³ As such, in the absence of a UNSC resolution, there is currently no basis under article 51 UNC or customary international law for self-defence to be used in response to *non-imminent* or speculative threats.

Even if, for the sake of argument, we assume that there were some grounds in international law for Russia's invasion, then the customary principles of *necessity* and *proportionality* would still govern Russia's use of force. It is difficult to see how the scale and intensity of the current Russian offensive can amount to a *necessary* and *proportional* response to the threat posed by Ukraine and NATO. If anything, the nature of the Russian offensive clearly indicates that Russia has other motives than defending itself, such as brining about a regime change in Ukraine and bringing the country closer to Russia's sphere of influence.

COLLECTIVE SELF-DEFENCE

Collective self-defence entails the right of all UN countries to use military force to defend other members under attack. For the most part, this type of self-defence is governed by criteria similar to those governing individual self-defence, requiring the presence of an actual (or arguably imminent) threat, in addition to the twin conditions of necessity and proportionality. Unlike individual self-defence however, collective self-defence is only triggered when the government of a state under attack (the victim state) requests military aid from a third state in response to an actual (or imminent) threat of armed attack.

In the present case, President Putin further advances a claim of Russia's right to collective self-defence under international law to justify the operation. However, as with our findings on individual self-defence, Russia's present claim is also baseless according to the current *jus ad bellum* framework. This is borne out by the fact that Russia bases its claim on the 'requests for military assistance' from two separatist-leaning regions in the Donbas area of Ukraine (Donetsk and Luhansk). Following the 2014 Ukrainian revolution, these regions held what is widely recognised as illegitimate and fraudulent status referendums, resulting in their self-proclaimed independence from Ukraine. Since then, the lawfulness of these regions' self-proclaimed independence has remained very much in question, with a majority of the international community rejecting the legitimacy of their statehood.²⁴ However, a few days before the invasion, on 21 February 2022, Moscow recognised these regions as the so-called 'Donetsk People's Republic' (DPR) and the 'Luhansk People's Republic' (LPR), after which the regions immediately signed treaties of

²³ See Svarc (2008), pp. 42–45; Murphy (2005), pp. 714 and 715; Shirayev (2008), pp. 80, 83.

²⁴ For more on the legal status of the DPR and the LPR, including why they fail to qualify as states under the 1933 Montevideo convention, see Korotkiy & Hendel (2018), p. 146.

friendship and mutual assistance with Russia and requested its military assistance. As President Putin puts it:

[t]he people's republics of Donbass have asked Russia for help ... we had to stop the atrocity, that genocide of the millions of people who live there and who pinned their hopes on Russia.²⁵

President Putin is therefore attempting to justify the invasion by relying on the requests for military assistance from Donetsk and Luhansk, thereby invoking Russia's right to collective self-defence. This line of reasoning is problematic in several aspects. As mentioned above, a claim to collective self-defence arises when a *state* is the victim of an *armed attack* by *another state*. In the present case, the illegitimacy surrounding Donetsk's and Luhansk's claims to independence, and the accompanying rejection of these claims by the international community, significantly undermines the proclaimed statehood of these regions.²⁶ Russia's premature and self-serving recognition of these regions does not change this fact, nor does it magically imbue them with an international legal personality. This view is complemented by the Minsk Agreements, signed by Russia, which did not recognise the independence of the regions and which acknowledge, albeit implicitly, Ukrainian sovereignty.²⁷ The invalidity of Russia's claim was made further clear by the UN General Assembly on 2 March, which unequivocally denounced the Russian 2022 recognition of the regions as a violation of the territorial sovereignty of Ukraine and as inconsistent with the principles of international law.²⁸

Even if we are to assume that Donetsk and Luhansk are states (which they are not), then the requirement of an armed attack is still necessary to invoke collective self-defence. As we have previously discussed, there is very little evidence to support that these regions have been the victims of an armed attack within the meaning of article 51. While it is uncontested that a non-international armed conflict broke out in 2014 between Ukraine and pro-Russian separatists in the Donbas region, one which continues to this day, such intra-state conflict is not the same as an armed attack by one state against another. President Putin's 'recognition' of the Donbas regions does not suffice to reframe the ongoing internal conflict as an international one for the purposes of collective

²⁵ Putin (2022).

²⁶ The circumstances and means by which these regions claimed independence are considered to be at variance with a number of fundamental principles of international law, such as the principle of territorial integrity, the principle of non-interference, the principle of legitimate self-determination, etc. see Korotkiy & Hendel (2018), p. 148.

²⁷ Pitchford (2022).

²⁸ UNGA Resolution adopted by the General Assembly on 2 March 2022, UN Doc A/RES/ES-11/1, para 5.

self-defence. This point is further reinforced when considering that for a claim to qualify for the purposes of self-defence, there needs to be a degree of proximity between the invocation of the right to self-defence and the occurrence of an armed attack. In the present case, the intra-state conflict that President Putin attempts to invoke has been going on for eight years. Additionally, President Putin's allegations of 'genocide' being perpetrated against the people of the Donbas region remain completely unsubstantiated.²⁹ This lack of evidence is all the more telling in view of the constant monitoring of the region since 2014 by various non-governmental and international organisations, none of whom indicated that the ongoing internal conflict in Ukraine qualifies as genocide. The International Court of Justice conclusively ended these allegations by noting that:

the Court is not in possession of evidence substantiating the allegation of the Russian Federation that genocide has been committed on Ukrainian territory.³⁰

CONCLUSION

As this paper has demonstrated, the Russian reliance on self-defence to justify the invasion of Ukraine is legally and factually unfounded. A majority, if not all, of President Putin's various claims are devoid of legal merit and are incoherent, at best. Under the current international framework of *jus ad bellum*, the Russian narrative fails at every level of analysis, setting a dangerous precedent by attempting to expand the law on the use of force beyond its breaking point.

It is true, as some readers may be aware, that other countries have previously attempted to expand the law on the use of force through controversial military action. President Putin has capitalised on this, making reference in his speech to the military interventions in Yugoslavia, Iraq, and Syria as examples. However, setting aside the fact that these interventions, like the current one, have also been criticised in legal scholarship, mere reference to past transgressions does not justify present ones. Let us therefore consider these references by President Putin for what they truly are, a distraction from the true atrocity in the present case: the illegal use of force against Ukraine.

Ultimately, the conduct of Russia serves as a valuable reminder to Europe and other states to be more careful and prudent when setting precedent regarding exceptions to the use of force. It is also an important reminder that the ramifications of Russia's illegal transgression go

²⁹ DW Akademie (2022).

³⁰ ICJ Allegations of Genocide (2022).

beyond international law, creating serious geopolitical, economic, and humanitarian consequences for the region, as the rest of this study will proceed to detail. The burden of these consequences has inevitably and largely fallen on Europe's shoulders and will continue to do so for the foreseeable future. Russia's blatant and unilateral violation of its obligations to Ukraine under the 1994 Budapest Agreement, Minsk Agreements, as well as the European Convention on Human Rights and various other instruments, poses a serious threat to Europe's stability and, more broadly, the fundamental rules on which the European order is based. Therefore, despite the fact that the use of force is primarily a question of international law, and that the EU has no regulatory hard power in this area, the Union can nonetheless make use of its geopolitical reach and its so-called 'Brussels effect' to sanction Russia's illegal transgression, while further deterring and containing the conflict.

RECOMMENDATIONS

(1) Realising the true potential of the EU's geopolitical toolkit

The EU's history as a peace project should not hinder it from acting strategically during war time. To do so, the EU must start taking full advantage of its available toolkit for gaining geopolitical leverage, while mitigating the war's consequences and tackling Russian disinformation. The first step to fully realising this potential begins with the acceptance that a new age in EU–Russian relations is upon us, one where Russia is no longer partially integrated into European political, legal, and economic networks. The Union has so far responded fiercely, enacting sanctions and gradually reducing Europe's reliance on Russian energy. It is vital for the Union to maintain its solidarity and enact further measures, including phasing out EU imports of Russian oil and coal in their entirety and cutting off Russian state-owned networks from broadcasting in the EU.

(2) Widening the scope of sanctions imposed upon Russia and its allies

The EU's sanctions have so far been narrowed by their proportionality to the objectives they aim to achieve and the limitations of EU law. The EU should consider whether imposing sanctions similar to those imposed by the UN against Iraq for its 1990 invasion of Kuwait might prove beneficial under the present circumstances. Such sanctions required UN members to impose a total ban on the import of all Iraqi products, in addition to prohibiting the sale or supply of any products to Iraq and a total ban on financial dealings with Iraq. Of course, the presence of Russia as a permanent member in the Security Council prevents any such actions from being taken on the UN level in the Ukraine situation. Moreover, Russia's possession of nuclear weapons further limits any options of military intervention due to fears of escalation. Since both diplomatic and warfare avenues are severely limited in the present case, the requirement

of proportionality for EU sanctions must be construed less narrowly, allowing the EU to adopt effective sanctions of a wider magnitude.

(3) Bolstering European integration in the Common Security and Defence Policy

The EU must be able to emerge as a security actor on the geopolitical plane. This geopolitical awakening has already begun, with various EU countries, most notably Germany, drastically boosting their defence expenditures. However, while increase in defence spending on the national level is an important starting point, it must also be accompanied by coordination at the EU level and, more importantly, unequivocal political unity and leadership. Consequently, member states should be encouraged to make use of available mechanisms, such as the Permanent Structured Cooperation and the European Defence Fund, to ensure that their increased defence budgets are properly coordinated, while bolstering European security and defence capacities.

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One Year after the Fall: Assessing the Consequences of the Taliban Takeover in Afghanistan

Asia Vellante

ABSTRACT

One year after the establishment of the Taliban regime in Afghanistan, this policy paper analyses the consequences of the withdrawal of Western troops from the country in August 2021. Using secondary data from multiple sources, the paper testifies to the increase in terrorist attacks in Afghanistan and identifies the risks that they present to the Afghan population, neighbouring countries, the European Union, and the world at large. It focuses on the likelihood of a civil war and the risks arising from the spread of extremism, a new wave of migration to the EU, and global security threats from other terrorist groups inspired by the Taliban example. The paper addresses the root causes behind the increasing violence in the country and concludes with policy recommendations aimed at managing these risks.

INTRODUCTION

After 20 years of war between the US and terrorists in Afghanistan, NATO and US troops left the country between 15 August and 30 August 2021, leaving the country in the hands of the new Taliban de facto government. The long troop withdrawal process that started under the Trump administration in February 2020 was planned with the intention of removing all US troops by May 2021. However, under the Biden administration, the withdrawal was delayed until the end of August 2021. The departure of President Ghani and the entry of Taliban forces into the capital on 15 August saw the de facto disintegration of the government.

The Taliban are therefore back in Afghanistan as leaders with their own ideology, intent on adapting current laws to their own customs and traditions. As soon as the Taliban seized power, the majority of the people either tried to escape the country or braced themselves for life under harsh rules. The streets of the capital were emptied, and the

population is fearful that the Taliban will return to the cruel and repressive practices that defined their leadership role between 1996 and 2001 (Ellis-Petersen, 2001). Most of the positive developments that international support brought to the country over the last 20 years – such as new infrastructure, new career opportunities, the possibility for women to attend school and university, policies dedicated to slowing down the shadow economy and supporting the failing economy – are now in jeopardy. Moreover, since the US began to officially remove troops from Afghanistan, violence between factions inside the country has resumed. Support from the international community has lessened, as providing support to the country means strengthening the political power of the Taliban. As Raffaello Pantucci and Abdul Basit have pointed out in their latest research, it is crucial to consider how the situation in the post-Taliban takeover will influence the global jihadist threat (Pantucci and Basit, 2001; Chang, 2021), especially in view of the fact that the Taliban released multiple Islamic State (IS) and al-Qaeda fighters from jail when they took the US air base at Bagram on 1 July 2021 (Ankel, 2021; Turner, 2021).

This paper will analyse how the increasing number of terrorist attacks, especially those conducted by the Islamic State Khorasan (IS-K), will influence the stability of the country, the safety of its population, and its economy. The final section will look into the risks posed by the unorganised, divided, distrusted Taliban government at the at an EU and global level. Immediately after the Taliban takeover, the EU and its neighbours began to show concern about developing instability in the country, as the EU was starting to think about “how to act jointly to prevent the recurrence of uncontrolled, largescale, illegal migration movements faced in the past” (Dettmer, 2021), or by building a border wall similar to Turkey (France 24, 2021a) .

INCREASE IN TERRORIST ATTACKS IN AFGHANISTAN SINCE THE TALIBAN TAKEOVER

The report entitled ‘Afghanistan: protection of civilians in armed conflict: midyear update: 1 January to 30 June 2021’ issued by the United Nations Assistance Mission in Afghanistan (UNAMA) clearly shows a 47 per cent increase in casualties compared with the same period in 2020, with up to 5,183 civilian deaths (UNAMA, 2021a). More specifically, the report highlights an increase in attacks conducted by the IS in Iraq and the Levant Khorasan (ISIL-K). Between 16 May and 18 August, the UN reported 88 attacks, in contrast with the 15 recorded during the same period in 2020. It is crucial to note that most of these targeted civilians in urban areas (UN, 2021). Data provided by Special Eurasia, a geopolitical and intelligence analysis platform, confirms the increase in terrorist attacks, injuries, and deaths from May 2021 (Bifulchi and Boltuc, 2021).

The increase became significant in that month immediately after US President Biden began to withdraw US troops from Afghanistan. In addition, there was a clear increase in the intensity of attacks, with a higher number of deaths and injuries being recorded (Bifulchi and Boltuc, 2021). These statistics, especially as they relate to IS-K immediately after the US–NATO withdrawal, are confirmed by the Armed Conflict Location & Event Data Project (ACLED, 2022).

In this section, we compare data from the UN monitoring team reports that were published in February and July to highlight the considerable increase in the number of IS-K fighters in Afghanistan and the number of terrorist attacks conducted by the group. This terrorist organisation was established in 2015, and numerous members of the Taliban have defected and joined it. Since its creation, IS-K has targeted Afghan security forces, the Taliban, and religious minorities, especially Shia Muslims, as well as US and NATO forces, international agencies, and aid organisations (Paybarah, 2021; Truman Zinman, 2021; Goldbaum, 2022). Since 2017, the group has conducted at least 250 attacks specifically against US, Afghan, and Pakistani security forces. IS-K primary cells are based in the eastern province of Nangarhar: although most of its activities take place in Nangahar and Kabul, attacks have also been conducted in the provinces of Kunar, Jowzjan, Paktia, Kunduz, and Herat (Paybarah, 2021). After the Taliban's takeover, Afghanistan IS-K leaders began to criticise the group's behaviour, since they perceive their interpretation of Sharia law as not severe enough (Schmitt, 2021). According to the UN monitoring team report published in February 2021, there were between 1,000 and 2,200 ISIL-K fighters spread across the Manogay and Achin districts, in Kunar and Nangarhar respectively, and Kabul; while there were estimated to be between 200 and 500 members of al-Qaeda and its affiliates in Afghanistan spread across at least 11 provinces: Badakhshan, Ghazni, Helmand, Khost, Kunar, Kunduz, Logar, Nangarhar, Nuristan, Paktiya and Zabul (UN Monitoring Team, 2021). In July (post-withdrawal), the UN monitoring team reported an increase in the presence of ISIL-K fighters: 'Despite territorial, leadership, manpower and financial losses ... Islamic State in Iraq and the Levant-Khorasan (ISIL-K) has moved into other provinces, including Nuristan, Badghis, Sari Pul, Baghlan, Badakhshan, Kunduz and Kabul, where fighters have formed sleeper cells.' One Member State asserted that numbers might rise to as many as 10,000 fighters over the medium term (UN Security Council, 2021b). During the 17 November briefing to the UN Security Council, the Secretary-General's Special Representative for Afghanistan highlighted that ISIL-K had increased its activity in Afghanistan and its presence in all provinces, supporting these statements by quoting a dramatic 300 per cent rise in terrorist attacks in Afghanistan, with only 60 attacks in 2020 and 334 attacks until November 2021 (UNAMA, 2021b). In the following section, the risks for the Afghan population, neighbouring

countries, the EU, and the world that resulted from this increase in terrorist attacks and the spread of IS-K members will be analysed.

THE REASONS BEHIND THE INCREASE IN TERRORIST ATTACKS

There are numerous reasons why the terrorism problem is a significant threat, and also numerous reasons why terrorist activity increased as troops were withdrawing and immediately afterwards.

First, the Taliban lack a solid counterterrorism strategy, and it is only the official government that can address the increase in terrorist attacks given the withdrawal of US and NATO troops. In the majority of cases, the Taliban had only basic, brutal tactics to counter the IS-K threat, such as public hangings, beheading of suspected IS-K members, increasing the number of soldiers patrolling the most unstable provinces, and increasing the number of night raids against suspected IS-K members (George, 2021). During one of the talks held between senior Taliban officials and US representatives in October, the Taliban political spokesman Suhail Shaheen affirmed, 'We are able to tackle Daesh independently', and said there would be no cooperation between the US and the Taliban to counter the IS threat (Associated Press in Washington, 2021).

Second, although there are no direct links between IS-K and the Taliban, however there has been a historical connection between the Haqqani family and terrorist organisations, including IS-K. These links have been confirmed by researchers such as Sajjan Gohel from the Asia Pacific Foundation, who has focused on terrorist organisation networks and activities in Afghanistan. Gohel has noted that 'several major attacks between 2019 and 2021 involved collaboration between IS-K, the Taliban's Haqqani Network, and other terror groups based in Pakistan' (Gardner, 2021). Sirajuddin Haqqani, the leader of the Haqqani family is the current Taliban Interim Government's interior minister, in charge of police and security. It should be noted here that numerous terrorist attacks have targeted the less radical sections of the Taliban – perhaps in order to take more moderate members of the government out of the picture, so that cooperation with international organisations becomes less likely.

Third, there has been an increase in the number of terrorists in Afghanistan thanks to the escape of an untold number of IS-K members from the country's prisons during the turmoil of summer 2021 (Haltiwanger, 2021). The Pentagon Press Secretary John Kirby released a statement in which he confirmed that on 1 July 2021 the Biden administration abandoned Bagram Air Base. Immediately afterwards, the Taliban emptied the prison on the base, freeing around a thousand IS-K fighters (American Military News, 2021). As Kirby confirmed, the prison should have been evacuated by Afghan forces as stipulated in the plans made in April, but they showed little resistance when the Taliban occupied

the airbase. In addition, as Nathan Sales, Special Envoy to the Global Coalition to Defeat IS-K, pointed out, just a few days after the release of the prisoners, a major terrorist attack was conducted in Kabul on 27 August 2021, with IS-K claiming responsibility (Laco, 2021). These events are likely to be connected.

FUTURE RISKS FOR AFGHANISTAN, ITS NEIGHBOURS, AND THE WORLD

From this discussion, it is clear that, after the reestablishment of the Taliban regime, terrorist attacks and casualties increased in Afghanistan, especially those conducted by IS-K. The statement issued by the Islamic State (of which IS-K is affiliated with) that ‘From Baghdad to Khorasan, Shi’ite Muslims will be targeted everywhere’ should also be borne in mind as it indicates that the Hazara Shia community, a minority that was already experiencing much violence and racism, especially in Pakistan (Balochistan Post, 2021), was going to be the main target for IS-K. An IS-K mission could endanger the minority, and even its existence, but primarily it brought another violent player to the unstable situation. As a reaction to the threat from IS-K, the Hazara community announced the creation on 8 October 2021 of a new militia group, the Anonymous Soldiers of Hazaristan.¹ This was not the first group created to defend the Hazara minority, as another had already been formed in January 2021. Such a resistance group was needed, the community pointed out, since those whom they expected to defend them were not doing so (France 24, 2021b). Therefore, the risk of a sectarian war dramatically increased. In addition, the creation of these new militia groups indicates that the population is disillusioned by the Taliban government, feeling it is not up to the task.

The increase in terrorist activity in Afghanistan is also concerning because it threatens the future of the country on an economic level. If internal security is dealt with first, the government will perforce neglect the failing economy and deteriorating public infrastructure – and the increasing disenchantment of the population. As the economy collapses, the shadow economy, including the illicit trafficking of drugs, arms, and humans, will be fostered – thus creating conditions in which extremism and terrorism can flourish (UNAMA, 2021b). This situation could become much worse, especially as Afghanistan has a long history of conflict, with more than a hundred years of ethnic violence (Ali, 2015) thanks to multiple ethnicities and tribal allegiance. There is also a lack of political rights and civil liberties, with a Freedom House report ranking the country as one of the worst in these respects in the world (Freedom House, 2021). Data provided by researchers such as Philip A. Martin (Martin, 2021) indicate

¹ See https://www.youtube.com/watch?v=Zbscva_g4Sc.

that more than half of all rebel victories worldwide end in governmental collapse, infighting, coups, or defections. In addition, Afghanistan has a major corruption problem, one of the worst in the world (Global Risk Profile, 2020). With the increase in terrorist attacks, the Taliban government will be incapable of bringing peace to the country or countering the collapse of the economy and the dwindling of social services.

The likelihood that IS-K could become stronger poses a threat on a global level. As happened in Syria in 2014, after the government lost control and IS gained control of most of the cities, IS-K could begin to plan and conduct attacks in Europe and the Middle East. Expert analysts are predicting that this will occur. Fawaz A. Gerges, for example, highlights how the Taliban do not have significant support from the Afghan population and are struggling to govern, unlike the situation in the past (Gerges, 2021). Consequently, the Taliban have to deal with possible threats from within their ranks and from other armed groups, and if nothing is done they may lose the country, leaving it to another – even more radical – group.

As the economy continues to collapse, the threat of civil war becomes even greater, as highlighted by the Human Security Lab in their briefing note published in September 2021 (Human Security Lab, 2021). Afghanistan already has the structural conditions that might lead to such an event, including a population of which more than 64 per cent is under the age of 25, low economic development, a rough terrain not suitable for agriculture, and ethnic fractionalisation.

The increase of terrorist activities in Afghanistan presents a threat for neighbouring countries, such as China and Russia. Confirming the fear that Islamist militants might cross the Afghan border and enter Tajikistan or other former Soviet republics in Central Asia, which are Russia's regional defensive shield (Reuters, 2021), Russia began to reinforce its military base in Tajikistan during the first week of December 2021 – sending 30 new tanks to its military base there and carrying out missile defence system exercises.

China is also worried about the future of Afghanistan. The main concern revolves around spreading violence in the Afghanistan–China borderland region of Badakhshan. In June 2021, the Taliban seized much of this province, which borders Xinjiang, the Uyghur Muslim region. (Myers, 2021). Since the start of the war on terror in 2001, China's interest in Afghanistan has been powered by a desire to avoid the spread of the Uyghur militant groups, thereby preventing possible terrorist attacks in China, but has also felt obliged to adjust its economic initiatives in order to sustain Afghanistan, protecting its investments and especially the future of the Belt and Road Initiative. China, like Afghanistan's other neighbours, is afraid that Afghanistan will once again become a haven for terrorist organisations. It is clear from the past relationship between the Taliban and other terrorist organisations, especially al Qaeda, that,

in order to avoid its fighters joining the ranks of IS-K, the Taliban will cooperate with other terrorist organisations instead of respecting peace agreements.

Not only in Asia but also in the EU, there are increasing concerns about the possibility of a new wave of migrants as a consequence of a failing state with an unstable economy. Europe has been severely affected by the Syrian civil war and the world's largest refugee crisis: the EU in 2021 has been hosting over 1 million Syrian asylum seekers and refugees who fled to Europe by crossing from Turkey to Greece – with 59 per cent hosted in Germany and 11 per cent in Sweden (UNHCR, 2021). The EU Home Affairs Commissioner Ylva Johansson warned immediately after the Taliban takeover that there could be a replay of 2015, when asylum seekers, mostly Syrians, Iraqis, and Afghans, fled to Europe in search of security and opportunities. Johansson not only highlighted the instability of the situation in Afghanistan, 'there is a huge risk of economic collapse, there is huge risk of famine and humanitarian catastrophe', but also pointed out that half a million people had been displaced within Afghanistan in the latest months and that the increasing lack of infrastructure and the worsening economic collapse could only increase the number of displaced people (Siebold, 2021).

In terms of health security, a new wave of migrants will bring expense and another threat to the already unstable situation in the EU, impacted as it has been by the COVID-19 pandemic. The health sector, in particular, will find it difficult to support the healthcare needs of asylum seekers as well as EU citizens. This will be a significant concern in terms of human rights, and will create widespread disillusionment: the EU was founded on the values of respect for human dignity and respect for human rights, including those of persons belonging to minorities.

At global level, an increase in terrorist attacks and IS-K members, as well as the power gained by the Taliban, will pose significant security risks. Individual extremist and terrorist groups such as ISIS, al-Qaeda and Boko Haram that have been demoralised by the previous years of military setbacks across the Middle East will increase in confidence, and this will lead to an increase in mobilisation and a likely increase in attempts to emulate the Taliban – with the final goal of gaining territorial and political legitimisation, not only in the Middle East but also worldwide.

RECOMMENDATIONS FOR THE INTERNATIONAL COMMUNITY

- At this point, neither a purely military solution nor removing Afghanistan from the foreign policy agenda is an option for the EU. Instead, there should be a shift from funding the country's military needs to providing support for the Afghan population, recreating basic public infrastructure, and preventing the economy from completely collapsing. This should be accompanied by a focus on transparency and

accountability to prevent terrorist groups from using aid as a resource that further strengthens their position.

- Instead of pushing for negative peace strategies with the goal of maintaining just the absence of direct violence, a better option would be to support a political campaign that will bring about positive peace, aiming for the absence of indirect and structural violence in Afghanistan and prevent the IS-K province from becoming an even stronger actor. For this to happen, we have to remember that the Taliban is not a monolith but is composed of numerous factions that possess varying degrees of extremism and propensity to support other terrorist groups. Since the reestablishment of the previous government is not an option, it is in the best interest of the EU to use coercive diplomacy to push the Taliban towards the creation of a new, more inclusive one. As was tested in Lebanon,² there should be a tight deadline for creating a new government, including both the Taliban and Hazara community members. Including the latter will help to prevent the rise of militia groups. If there is cooperation, the new regime would receive access to the country's central bank reserves that are held in US financial institutions, denied to the Taliban by the US Treasury. In addition, the World Bank and the International Monetary Fund would also partially release monetary disbursements to the newly created government. In this scenario, Afghanistan would not be ruled by a government that has a significant connection to al Qaeda.
- Afghanistan and its new government should receive support in shaping its counterterrorism strategy. This will help to stabilise the country and decrease security threats. Furthermore, as mentioned by the UN, the government's 'credibility as a counterterrorism partner for the international community will rest on their success in counter-ing the threat from ISIL-K' (UN Security Council, 2020). A targeted team of counterterrorism experts should be created to work with the new government. It could initially present a detailed country risk analysis, including the threat posed to the country's stability by IS-K and all the small militia groups that have arisen owing to the population's dissatisfaction with the current situation. The experts should come from non-Western countries, ideally from Muslim-majority nations

² During one of the biggest economic crisis in Lebanon France intervened and Macron himself took the reins of a 'roadmap' based on diplomacy to push for positive change economically and politically. The main aim was to rapidly form a government, to avoid a power vacuum that could have led Lebanon to sink even further into the crisis. The roadmap outlined clear political and financial reforms in order to unlock foreign aid. The roadmap delivered by the French ambassador to Beirut included many points such as the need to appoint an interim government able of making urgent reforms, and early legislative elections within a year.

with good knowledge of the region. The EU, as a member of the Global Counterterrorism Forum and as a partner of multiple African and Muslim countries, should actively supporting the creation of this specialised team.

- The EU should also support the creation of an international preventive peacekeeping mission to protect the population, avoid further deterioration in their living conditions, and, finally, prevent civil war. In 2009, the Taliban expressed their willingness to replace foreign troops with peacekeepers who came from Muslim-majority nations and not exclusively from the West (Filkins, 2009). Research shows that despite the risk of troop casualties, abuses against civilians, and the potential to strengthen an authoritarian government, the use of impartial peacekeepers helps to finalise peace accords, prevents civil war, protects civilians, and improves human rights (Gowan, 2009). Since multinational peacekeeping operations are founded on three foundational principles, impartiality, host nation consent, and a lack of force (beyond self-defence) (UN, 2000), this would help to avoid foreign intervention that has significant political, economic, or cultural interests in the country. The UN mission should focus primarily on development projects, since these are most effective immediately after the end of a war: they are the best way of bringing about positive peace, and consequently avoiding the onset of a new conflict in the long term.

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EU Sanctions and Russian Gas Deliveries: Implications on the EU Energy Market

Deivid Mustafa

ABSTRACT

The purpose of this paper is to provide an overview of the current difficulties with the delivery of Russian gas to the EU as a result of Russia's invasion of Ukraine. The ongoing economic restrictions introduced by both blocs have complicated the gas supply process, creating a supply crunch in several European states. The paper provides an overview of the challenges behind gas supply and explores the options EU Member States have for navigating the sanctions and replacing Russian gas altogether. Most importantly, the paper argues that the EU should adopt a more cohesive approach to dealing with Russian sanctions and give European gas importers more flexibility to ensure a gradual and steady transition from Russian energy. The paper starts with an overview of the legal basis for EU to deploy sanctions, followed by a description of the current EU sanctions framework in place against Russia. It continues with an analysis of the Russian sanctions and the effect they have on the gas supply contracts between European gas companies and Gazprom, a Russian state-owned company. The paper concludes with policy recommendations for navigating both the current gas crisis and the long-term energy supply transition as smoothly as possible.

INTRODUCTION: THE NEW NORMAL IN THE GAS ECONOMY

The Russian invasion of Ukraine has caused shock and outrage world-wide, prompting the EU to impose a series of sanctions upon the former. In addition to the sanctions in effect since the Russian annexation of Crimea in 2014, the EU has adopted six new sanctions packages. These extensive measures have drastically affected relations between the EU Member States and Russia. In response, on 1 April 2022, Russia imposed new payment conditions on the gas delivery contracts between

European gas importers and its state-owned energy company, Gazprom (Putin, 2022).¹ Many EU Member States have disapproved of the decree, while others have been attempting to find a way around it (Abnett, 2022).

Gas supplies to countries refusing to comply with the new conditions have been cut, while the rest are struggling to secure a steady supply while also complying with the sanctions by both sides. This dynamic puts states that are heavily dependent on Russian gas – such as Germany, Poland and the landlocked countries in Eastern Europe – in a difficult situation, with low supplies and increasing gas prices (Dezem, Shiryayevskaya, and Stapczynski, 2022).

Considering these issues, this paper will provide an overview of the challenges to gas supply and explore the options EU Member States have for navigating the sanctions and replacing Russian gas altogether. Most importantly, it argues that the EU should adopt a more cohesive approach to Russian sanctions and give European gas importers more flexibility to ensure a gradual and steady transition from Russian energy sources. The paper starts with an overview of the legal basis for the EU to deploy sanctions, followed by a description of the current EU sanctions framework against Russia. It continues with an analysis of the Russian sanctions and their effect on the gas supply contracts between European gas importers and Gazprom. The paper concludes with recommendations for navigating the current gas crisis and the long-term energy transition as smoothly as possible.

THE EU'S POWER TO ADOPT SANCTIONS

The EU's power to deploy political and economic measures against countries is enshrined in article 29 of the Treaty on the European Union (TEU). Accordingly, the Council of the European Union can unanimously define the approach of the Union to particular geographical or thematic issues (Dezem, Shiryayevskaya, and Stapczynski, 2022).² This legal basis is used to adopt *decisions* concerning arms embargoes and restrictions on admission, and the Member States are ultimately responsible for implementing them.³ Additionally, the EU has also the power under article 215 of the Treaty on the Functioning of the European Union (TFEU) to adopt *regulations* pertaining to the interruption of economic relations and

¹ The conditions are addressed in detail later in the paper.

² TEU, article 29, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:sanctions>.

³ Council of the European Union (2018), 'Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU common foreign and security policy', 4 May, <https://data.consilium.europa.eu/doc/document/ST-5664-2018-INIT/en/pdf>.

freezing of funds and financial sources.⁴ The Council of the European Union first receives a joint proposal on such regulations from the High Representative of the Union for Foreign Affairs and Security Policy and the European Commission, and then adopts them after securing a qualified majority. The regulations are then implemented across the EU.⁵ Moreover, the Court of Justice of the European Union has the authority to rule on challenges to the legality of these acts.⁶ According to article 263 of the TFEU, individuals and other entities can challenge the decisions of the Council that address them and are of direct and individual concern to them.⁷ Additionally, individuals can also challenge regulatory measures that are of direct concern to them and do not entail implementing measures.⁸

It is also important to note that apart from its own capacity to deploy sanctions, the EU can also deploy sanctions on behalf of the United Nations Security Council (UNSC). The UNSC has the authority to adopt binding resolutions that involve restrictive measures under Chapter VII of the UN Charter, and the EU has to implement them. However, the UNSC was unable to adopt a resolution regarding the conflict between Russia and Ukraine because Russia, which as one of the 'permanent five' members holds veto power, blocked the resolution. For that reason, the EU and countries such as the United States decided to adopt sanctions by themselves.

EU SANCTIONS AGAINST RUSSIA

The first wave of sanctions deployed by the EU against Russia came in 2014, in response to Russia's illegal annexation of Crimea. This was done through the 'Regulation concerning restrictive measures in view of Russia's actions destabilising Eastern Ukraine'.⁹ These sanctions primarily targeted the Russian defence sector, cutting it off from EU capital markets, placing an embargo on arms trading, and banning exports of dual-use goods for military and civilian purposes.¹⁰ Moreover, the

⁴ Consolidated version of the TFEU, article 215.

⁵ Ibid.

⁶ Ibid., article 267; European Parliament Policy Department for External Relations (2018), 'Targeted Sanctions against individuals on grounds of grave human rights violations – impact, trends and prospects at EU level', PE 603.869, [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/603869/EXPO_STU\(2018\)603869_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/603869/EXPO_STU(2018)603869_EN.pdf).

⁷ TFEU, article 263; European Parliament Policy Department for External Relations (2018).

⁸ Ibid.

⁹ Council Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, and amending Regulation (EU) No 960/2014 amending Regulation (EU) No 833/2014.

¹⁰ Council Regulation (EU) No 1290/2014 of 4 December 2014 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the

EU restricted Russian oil exploration and production activities in the offshore area north of the Arctic Circle.¹¹ More precisely, it prevented Russian companies from gaining access to exploration technology, thus making it too costly to exploit the Arctic Circle. These measures left the companies unable to find new sources of oil because they were reliant on exported technology and services as most Russian exploration technology was outdated and based on Soviet models (Gustafson, 2021: 83). Aside from losing opportunities to find new oil, the Russian finance minister declared in 2014, the sanctions would cost Russia \$140 billion (Rutland, 2014).

Despite the severity of the sanctions, Russia decided to invade Ukraine in February 2022, prompting the EU to impose even more extensive and fiercer sanctions. The first of these was introduced on 23 February 2022, in response to Russia's recognition of the areas of Donetsk and Luhansk as independent and its decision to send troops to the region. The sanctions package targeted the Russian state and a number of individuals, and added further restrictions on access to EU capital and financial markets.¹² The second package, released on 25 February 2022, prohibited the sale, supply, transfer, or export to Russia of specific goods and technologies in oil refining and added further restrictions on financing activities. The third package was announced on 28 February 2022 and was amended on 2 March 2022. It banned transactions with the Russian Central Bank and excluded key Russian banks from the SWIFT system, only exempting banks designated to facilitate transactions related to energy and gas supply (Moens and Barigazzi, 2022). It also cut off access to EU airspace and airports for all Russian carriers, among other heavy restrictions (Moens and Barigazzi, 2022). This was followed by the Compliance Package, introduced on 9 March 2022, and the fourth package introduced on 15 March. These added further prohibitions on dealing with Russian banks and enterprises, and imposed a ban on imports of iron and steel products from Russia. The fifth package added a ban on Russian coal and freight road operators as well as on exports and imports of many other Russian goods. In the sixth package of sanctions, introduced on 3 June 2022, the EU banned all Russian seaborne crude oil and petroleum products.¹³ This ban covered 90 per cent of current EU oil imports

situation in Ukraine, and amending Regulation (EU) No 960/2014 amending Regulation (EU) No 833/2014 article 2.

¹¹ Ibid., article 1(4).

¹² European Commission, 'Sanctions adopted following Russia's military aggression against Ukraine' https://ec.europa.eu/info/business-economy-euro/banking-and-finance/international-relations/restrictive-measures-sanctions/sanctions-adopted-following-russia-s-military-aggression-against-ukraine_en.

¹³ European Commission, 'Russia's war on Ukraine: EU adopts sixth package of sanctions against Russia' https://ec.europa.eu/commission/presscorner/detail/en/IP_22_2802.

from Russia and is expected to prompt Member States to further reduce reliance on Russian energy sources. Considering Russia is the second largest exporter of oil in the world, this move could deepen the EU's energy crisis.

RUSSIA'S RESPONSE TO THE SANCTIONS

Unsurprisingly, the EU measures met with retaliation from Russia. In March, Russian President Vladimir Putin issued a decree mandating that, from 1 April, gas payments would have to be made in roubles (Putin, 2022). He declared that the new condition would also apply retroactively. Additionally, the decree provided a second payment option whereby European importers could pay in euros, but only through an account held in Gazprombank. To elaborate, it required European importers to open a foreign currency and rouble account – called 'type K' – with Gazprombank, in which they may deposit money (in euros or dollars) to pay for gas. Gazprombank will arrange the currency conversion and pay the funds into the Russian exporter's account in roubles (Davies and Roth, 2022). Only then would the payment obligation be deemed completed.

According to the decree, a refusal to comply would amount to a failure to fulfil contractual obligations and thus lead Gazprom to halt gas deliveries. It is not clear whether companies can comply with the Russian decree without breaching EU sanctions (Murray, 2022). As noted in the introduction, several Member States, such as Poland, Bulgaria, Finland, France, the Netherlands, and Denmark, declared that they would not comply with the new conditions. Consequently, Russia cut all gas supplies to those states, and partial cut supplies to others (*The Economist*, 2022a). The question is whether Russia's actions are legal and whether the European gas importers can find a remedy for the failure to deliver.

UNDERSTANDING GAS SUPPLY CONTRACTS

Firstly, it is important to note that gas supply is managed through complex, long-term contracts running from 10 to 25 years. This is because gas deliveries are crucial to consumers, and if the parties had to renegotiate the terms every year it would risk supply disruptions. This also causes the parties to become more reliant on each other, as with Europe and Russian gas. For that reason, the parties usually agree that the terms of the contract cannot be changed unilaterally. If one of the parties decides to introduce new terms to the contract without the other party's approval and stops fulfilling its obligations as per the original terms of the contract, that party would be in breach and thus, liable for damages or performance (delivery of the gas). However, before getting

into that discussion, we will first clarify the role of the state in gas supply as well as the influence it has on gas importers and exporters.

As noted above, the need for long-term arrangements complicates gas supply contracts, but that is not the only reason these contracts can be troublesome. In fact, the issue with gas supply contracts is that they involve gas, a natural resource owned by the state, and states can be very sensitive about natural resources. Nevertheless, states do make arrangements for the sale of such resources, but most of the time they are not the ones entering into the supply contract. Instead, they do so through private companies that are fully or partially state-owned, while still reserving the right to legislate on the use of the resources. For example, Finland has used Gasum, a fully state-owned entity to enter into a gas delivery contract with Gazprom, the Russian state-owned gas exporter. In this way, states avoid direct contractual liability to each other and thus, turn gas delivery issues from an inter-state dispute into a commercial matter. So, Finland is facing a complete Russian gas cut, but the dispute has remained between Gasum and Gazprom (Ballantyne, 2022). The next section analyses the obligations that the two parties have towards each other in connection with the new Russian decree.

THE RUSSIAN DECREE AND CISG

It was recently announced that Gasum has decided to sue Gazprom in the Stockholm Court of Arbitration for not delivering gas. The Stockholm Court of Arbitration is a commercial tribunal and not a national court, and the latter usually have more flexibility when it comes to dealing with the relationship between contracts and state sanctions (Kotelnikov, 2021).¹⁴ This means that the tribunal at hand will focus more on the contractual terms and then ascertain whether the sanctions apply to the contract. As for now, the contract has not been made available to the public, so it is impossible to identify the exact obligations that the parties have agreed on, or determine whether EU law or Russian law applies to the contract. Thus, for the purpose of this discussion, we will assume that the applicable law is the United Nations Convention on Contracts for the International Sale of Goods (CISG). The reason why we are using this body of law is that it was created for the purpose of governing contracts for the international sale of goods such as gas and, most importantly, it has been signed by both Russia and Finland.

It is relevant to the new payment conditions and the modifications that they impose on the original contract between Gazprom and Gasum that article 29 CISG notes that a contract may only be modified

¹⁴ Usually, tribunals enjoy a wider discretion than national courts in determining the applicable law or mandatory rules.

or terminated with the *agreement* of the parties. This means that even under CISG, a party cannot introduce new terms to a contract without the other party's approval. Concretely, Gazprom cannot introduce new payment conditions and demand Gasum follow them if Gasum did not agree to those terms. On the other hand, if Gazprom does not adhere to the original terms of the contract, it would be in breach of the contract, allowing Gasum to either require performance (gas delivery) under provisions in articles 46 to 52 CISG or claim damages.

However, as noted above, the new payment terms were not introduced by Gazprom but rather imposed by the Russian government acting in its capacity as a legislator. To that end, Gazprom will claim that the laws of the Russian government make it impossible for it to adhere to the original contract terms. article 79(1) CISG states that a party can escape liability under the contract under two conditions: First, it needs to prove that the failure was due to an impediment beyond its control. Second, it needs to prove that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.

Gazprom can easily satisfy the first condition, as the Russian government controls Gazprom and not vice versa, and so an act by the former is beyond the control of the latter. Moreover, even if the Russian government had not had control over Gazprom, its laws would still be superior and binding on every Russian natural or legal person, and that authority is also beyond Gazprom's control.

In respect of the second condition, however, the discussion gets more complex. The Russian government owns 51 per cent of Gazprom, so it is reasonable to assume that Russia is the main stakeholder that defines the company's agenda. That also means that Russian officials are in close contact with Gazprom executives, so the acts of the former do not come as a surprise to the latter. In fact, history shows that Russia has indeed used Gazprom as a foreign policy tool, or more precisely, as leverage against other countries who are dependent on its gas to further its ambitions (Light, 2008). A recent example includes the 2005 case in which Gazprom raised the highly subsidised price of gas sold to Ukraine, leading costs to quadruple without any transition period; a move that corresponded with the timing of the Ukrainian parliamentary election. Another recent example is from 2006, when Gazprom threatened to take its business to China and North America and cut gas supplies, in an attempt to induce Europe to be more responsive to Gazprom's business proposals to acquire European downstream assets. These cases show that Gazprom is not just a regular company acting in its own capacity, but rather is under the Russian government's control. Gasum could use these examples to point out that the close relationship between the Russian government and Gazprom suggests that the latter was aware of or could have been expected to be aware of the intentions of the former.

However, according to article 79(1) CISD, the decisive point here is not whether Gazprom was aware of Russia's intentions, but whether it knew or was expected to know that this decree would be introduced at the time when the parties were concluding the contract. If the time when the contract was concluded corresponds with the time when Russia initiated or was preparing to initiate the conflict in Ukraine, then Gasum might have a better chance of attributing liability to Gazprom. This is because the new decree could have been part of Russia's larger strategy to manage the conflict, and because Russia is close to Gazprom executives, there's a high chance that the executives were briefed or even consulted on the plan. On the other hand, if the contract was concluded long before Russia initiated the conflict, then Gasum will have little chance of holding Gazprom accountable.

Nevertheless, it is important to be realistic and understand that finding proof that Gazprom executives were aware of Russia's intentions will be very difficult. This proof is likely to be found in Russian official and perhaps classified documents, and considering the present political climate, obtaining these documents seems impossible. Even if Gasum were to somehow find these documents and attribute liability to Gazprom, it would be unrealistic to imagine a scenario in which Gazprom decides to defy the Russian government and supply the gas in accordance with the original contractual terms. Compensation for the damages caused by the supply cut seems more probable, but considering the present energy crisis, this is not the ideal solution, because gas is more valuable than monetary compensation.

It is discomfoting to see the true intentions behind Russia's tactics in this conflict. It appears that Russia intends to impose the new payment conditions on European gas importers, putting them in a difficult position, as a means to fuel its war machine. The importers will either have to comply with the conditions or be left without gas or compensation, since Gazprom will try to shift the blame on the Russian government, which in turn cannot be sued or held accountable directly.

Fortunately, Finland has announced that it is prepared for a gas shortage and can find alternatives (Laikola, 2022), but what about other countries that are less able to do so? Given the fact that a successful legal challenge to the Russian decree is unlikely, is there a way for these countries to comply with the Russian decree without breaching the EU sanctions?

As noted above, it is unclear whether European gas importers can do so. Technically, in its guidelines, the European Commission has declared that opening an account with Gazprombank is not in breach of EU sanctions, while Commission President Ursula von der Leyen has claimed that if companies that have contracts with Gazprom accede to the new terms, they would be in breach of EU sanctions (Thomas, 2022). The following section further elaborates on this issue.

THE INTERPLAY BETWEEN RUSSIA'S RETALIATORY DECREE AND EU SANCTIONS: AN ISSUE OF LEGALITY, INTERPRETATION, AND LOOPHOLES

Regarding the legality of the payment procedure introduced by the decree, the Commission warned that the procedure would potentially involve the Russian Central Bank, giving it complete control over the euro notes for the time of the conversion.¹⁵ Due to the fact that the time of this process is indefinite, the transfer could amount to a loan, and loans are prohibited under the sanctions regime (Eni.com, 2022). This statement, however, is ambiguous, because Council Regulation (EU) 833/2014 does not provide any exact conditions or time limits that further explain how a payment can be considered a loan. In fact, article 1(o) clarifies in the financial assistance definition that 'payment as well as terms and conditions of payment of the agreed price for a good or a service, made in line with normal business practice, do not constitute financing or financial assistance'.¹⁶ Therefore, a plain reading of this article does not clarify the difference between a loan and a payment. As a result, this leaves it entirely up to companies to determine whether their engagement with Gazprombank is legal. Considering the fact that gas deliveries are crucial at the moment, the burden seems heavy.

In practice, some companies have attempted to find a way around the decree without breaching the sanctions. For example, Eni, an Italian energy company that imports from Gazprom, has decided to open an account with Gazprombank. On its official website, Eni clarifies that the account has been opened without prejudice to the present contractual rights and without recognising the new payment procedure as an amendment to the contract (Eni.com, 2022). The reason for opening such an account was to comply with upcoming payment deadlines and to ensure that uninterrupted gas supply.

Several conditions have been attached to this payment. First, Eni explains that the risk or cost of this payment procedure is allocated to Gazprom Export. Second, the invoicing and payment will continue to take place in euros. Third, the conversion will be carried out by a clearing point agent operating at the Moscow Stock Exchange within 48 hours and without any involvement of the Central Bank of Russia. Finally, in the

¹⁵ European Commission (2022) 'Frequently asked questions on imports and purchase of goods concerning sanctions adopted following Russia's military aggression against Ukraine', 14 June, https://ec.europa.eu/info/sites/default/files/business_economy_euro_banking_and_finance/documents/faqs-sanctions-russia-gas-imports_en.pdf.

¹⁶ Consolidated text: Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine article 1(o).

event of any delays or technical inability to complete the conversion on time, there will be no impact on supplies (Eni.com, 2022).

Eni claims that this decision has been shared with Italian institutions and to date it has not faced any objections (Eni.com, 2022). This approach may serve as an example for other companies, especially when considering the issue of determining whether the payment to Gazprombank can be considered a loan. Concretely, as noted above, the Commission has clarified that Council Regulation (EU) 833/2014 prohibits payment to Gazprombank to the extent that the conversion process involves the Russian Central Bank or falls under the category of a loan. By agreeing with Gazprom Export that the conversion will be conducted by a clearing point agent without the involvement of the Central Bank of Russia, Eni could be setting an example of how to ensure gas delivery while still adhering to the sanctions regime.

WHAT'S NEXT? A DESIRABLE WAY FORWARD AND A PATHWAY FOR POTENTIAL COMPROMISE

It is safe to say that the present circumstances have made it difficult for Member States and European gas importers to go about business as usual. To address these disruptions in the long run, on 18 May 2022, the European Commission released its plan to replace Russian energy sources, particularly gas, by 2027. The communication is called the 'REPowerEU Plan'.¹⁷ The Commission stated that as a result of the invasion of Ukraine as well as the above-mentioned decree, Russia could no longer be considered a reliable partner and so the EU should seek new energy supply partners. The plan aims to accelerate diversification and the addition of more renewable energy sources, front-load energy savings and electrification with the potential to deliver as soon as possible energy savings equivalent to the fossil fuels that Europe imports from Russia annually.¹⁸ It is an ambitious strategy that requires solidarity among Member States and an investment of up to €210 billion. In the long term, the plan seems promising. However, in the short term, it has a few shortcomings.

First, the plan does not sufficiently address the impact on some European countries of Russia's decision to cut gas deliveries. The main alternative that the plan presents for replacing Russian gas is imported Liquefied Natural Gas (LNG) from North America and Asia. However, some claim the EU cannot realistically use all its import capacity to

¹⁷ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and The Committee Of The Regions REPowerEU Plan <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2022%3A230%3AFIN&qid=1653033742483>.

¹⁸ Ibid.

immediately replace Russian gas for the whole bloc (McWilliams et al., 2022). Moreover, the high demand from the EU is expected to tighten the market and drive up LNG prices (BloombergNEF, 2022).

Second, the plan is dependent on immediate cooperation among the Member States. As the Commission notes in REPowerEU Plan, there is a risk that without further action in the coming months, storage will not be sufficiently filled to meet the demand over the coming winter (BloombergNEF, 2022). Additionally, the plan requires national-level implementation, which makes it subject to lengthy bureaucratic procedures and dependent on the political willingness of each Member State. Since the degree of reliance on Russian gas differs among Member States, the incentive to replace it might also differ, causing a real challenge in terms of coordination.

There have also been suggestions that the EU should subsidise energy use reduction instead of subsidising replacement of the gas (McWilliams and Zachmann, 2022). One way that this could be achieved is by pooling all the untapped energy potential of the Member States and jointly procuring gas on international markets (McWilliams, Tagliapietra, and Zachmann, 2022). For example, exploiting and utilising Dutch gas fields or German and Ukrainian nuclear capacities could reduce the energy demand and give the EU a stronger bargaining position with Russia (McWilliams, Tagliapietra, and Zachmann, 2022). This also requires the Member States to make energy replacement a top priority and reach difficult compromises. As reality has shown, the gas crisis and sanctions have led to a disparity instead of unity in action, because Member States have taken different approaches. One reason may be that some states cannot imagine a scenario in which they are completely independent of Russian gas. But nevertheless, the governments of the Member states should understand that by acting individually they will have a much weaker bargaining position and, at some point, Russia will use their dependency on its gas against them. For that reason, the Member States should strive to make both the replacement plan and demand reduction top priorities. It is important for the EU to use this powerful window of opportunity to not only reduce demand for Russian gas, but also enable a speedier transition to non-fossil fuels, which is at the core of the sustainability goals of the EU Green Deal and Fit-for-55 initiative.

In the meanwhile, more cohesion and flexibility are required regarding the sanctions regime and gas delivery issues. Although bending completely to the Russian demands is not advisable, a total refusal is not practical either. It is understandable that some countries have the capacity to say 'no' to Russian gas, but as noted above, an immediate replacement of Russian gas for the whole bloc is not possible yet. Besides, despite the extensive scope of the EU sanctions, the Russian economy has proven to be more resilient than expected (*The Economist*, 2022b). And although the measures are sending a strong

message to Russia and may damage its economy in the long term, the sanctions are also damaging the EU and its gas consumers. Therefore, it is in the interest of the EU to grant EU gas importers more flexibility, and not shoot itself in the foot when making a new energy transition and meeting its requirements.

Member States should instead undertake a gradual replacement, allowing highly dependent countries to also adjust to the tight gas market without risking their energy supply or ability to meet demand. Moreover, the Commission needs to clarify the legality of gas payments, the time limit for defining the difference between a payment and a loan, and encourage cohesion in terms of dealing with Russian sanctions and avoiding confusion. Ultimately, these economic measures will cripple Russia and its war resources permanently. However, it is necessary to remind ourselves that this is a tit-for-tat situation, and the EU should prepare for retaliation.

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ELF Papers

Staged Integration for Future EU Enlargement: Geopolitical Imperatives and Liberal Leadership

Maria Alesina

ABSTRACT

European integration has resulted in an unprecedented period of peace and ever extending liberties for European citizens. When peace, security, and freedom on the continent are once again at stake, it is time to return to the fundamentals of the European project and renew our commitment to its initial purpose and vision. Based on the results of the 2022 ELF Working Group on staged integration, this paper proposes a policy model that can bring a solution to the long-lasting stalemate in EU enlargement. The first part problematises the lack of progress in the accession of candidate countries, outlines the geopolitical imperatives for renewing the enlargement project, and calls for liberal leadership in this process. The second part discusses the lasting need for a revised enlargement methodology and puts on the liberal policymaking agenda a proposal for a ‘staged integration’ approach to progressive accession across a variety of sectors, pending full membership. The paper then suggests modifications and updates to the existing template for staged integration models and concludes with recommendations for policymakers.

RENEWING THE EU ENLARGEMENT PROJECT: A MATTER OF NECESSITY, NOT CHOICE

The EU in 2022: Security Threats and Illiberal Trends

Throughout 2022, the European Union has been facing existential decisions about its geopolitical present and future. The Russian invasion of Ukraine and the collapse of the post-Cold War security architecture have shown that neither peace nor freedom should be taken for granted. Large-scale military aggression by an illiberal regime against a sovereign democratic state presents Europe with a major security threat. Furthermore, it also poses a challenge to the fundamental liberal values

of the European project. Despite the high level of unity and determination of EU institutions and Member States to support Ukrainians' fight for freedom and right to self-determination, illiberal forces both outside and within the EU continue to limit the bloc's ability to act and protect itself and its values within its borders and right next to them.

When peace, security, and freedom on the European continent are at stake, it is time to come back to the fundamentals of the European project and renew our commitment to its initial purpose and vision. The integration of the European nations has resulted in an unprecedented period of peace and extended freedoms for Europe's citizens. As in decades past, the EU is yet again tasked with thinking strategically about the opportunities that internal integration may produce further down the road and how to extend them to nations beyond Europe's current external borders. Even more importantly, the EU should be fully aware of the risks of non-integration. There might be no other moment like this in the years to come.

This paper is based on the results of the 2022 ELF Working Group on Staged Integration for EU Enlargement. The international expert group brought together academics as well as practitioners from both within and outside the EU: professors from the University of Macedonia, American University in Bulgaria, Pedagogical University in Krakow, Vrije Universiteit Brussels as well as experts with policymaking and civil society experience in Georgia, Ukraine, Moldova, Serbia, Croatia, North Macedonia, Kosovo, Bosnia and Herzegovina, Bulgaria, and Hungary. Building on the 2021 ELF project 'Multi-speed Europe – Embracing the Reality' (Stefan, 2021), the Group focused on addressing a long-standing enlargement impasse and developing the concept of 'staged integration' – that is, the idea that 'countries acceding to only certain sectors of the Union, pending full membership'.

This paper is divided into two parts, the first outlining the problem and the second suggesting a solution. The first part consists of listing the geopolitical imperatives for EU enlargement, discussing the political momentum created by the June 2022 Council Summits (European Council Oversight Unit, 2022). The second part of the paper outlines a way out of the enlargement stalemate and presents a 'staged integration' model as an innovative approach to the EU accession process. Based on the previous work on this matter, further updates and upgrades of this alternative roadmap to the EU membership are suggested. The paper concludes with a list of recommendations for EU policymakers.

EU ENLARGEMENT AFTER JUNE 2022: CONTINUING STALEMATE OR A LONG-AWAITED BREAKTHROUGH?

Some 18 years ago, the Thessaloniki Summit opened the door to a European future for the Western Balkans. However, since then the

impetus for enlargement has been steadily dissipating. On the one hand, the EU has shown acute signs of enlargement fatigue and a lack of visionary political leadership; on the other, Western Balkan countries have failed to keep up with the pace of reform required (European Commission, 2022a).¹ Alongside these unreasonably delays in the EU integration of the Western Balkans, the global rise of authoritarianism and competition for regional influence on the part of the EU's geopolitical competitors, namely Russia and China, is challenging the 'European' perspective of the region.

Following the enlargement promise to the Western Balkans region, in 2009 the EU also initiated the Eastern Partnership (EaP) instrument to coordinate its relations with its neighbours in the East. Although it has never voiced an explicit intention to eventually integrate the countries of the region as full members of the EU, it has brought under one regional umbrella six states with diametrically different, even conflicting geopolitical orientations. Allowing for the formation of the 'Associated Trio' of Georgia, Moldova, and Ukraine (Cenusa and Longhurst, 2022), the EaP framework has left the aspiring countries stuck in limbo between the two geopolitical 'camps' embodied by the EU and Russia (Delcour and Kostanyan, 2014).

In 2022, Russia's fully fledged war against Ukraine made it clear that all the states in the EU's immediate neighbourhood region are under direct or indirect threat. The countries to the east of the EU are in danger of losing their sovereignty, freedom, and territories to the increasingly aggressive neighbour. The states of the Western Balkans region remain as exposed to Russian propaganda as to the growing Chinese influence (Marusic, 2022). On the eve of 2023, the EU enlargement and its 'stable and secure neighbourhood' projects could not seem farther away from reality.

Geopolitical Imperatives for EU Enlargement

EU enlargement was initially framed by the European Commission as a strategic investment in peace in Europe. Meanwhile, the security threats that it aimed to address have not disappeared. As during the wars in South Eastern Europe in the 1990s, in 2022 the EU keeps demonstrating its inability to both prevent and stop brutal military conflicts in its immediate neighbourhood. The EU's rationale of keeping the aspiring EaP countries at arms-length so as not to provoke Russian aggression has proven to be a dramatically misleading and eventually failed policy. On the contrary, the ambiguity surrounding the EU as an autonomous

¹ A detailed up-to-date analysis of the state of EU integration in each of the countries in the Western Balkans regions can be found in Rustemi, Steric and Drajić (2022).

strategic actor has contributed to the instability of its direct neighbourhood, which is under the constant threat of military aggression.

Furthermore, both in the Western Balkans and in the EaP region, the EU's influence and attractiveness do not come without competition. The EU's increasingly aggressive geopolitical competitors, namely China and Russia, seek to promote alternative external agendas that challenge the spread of liberal values on the European continent (Buyuk 2022). The unreasonably slow pace of EU integration, the absence of achievable prospects, and lack of determination and consistency on the EU's part (increasingly seen as double standards) lead to the disappointment of the candidate countries, giving rise to anti-EU narratives, and inevitably result in democratic backsliding and illiberal developments (Bechev, 2022). Interestingly, Russian-backed governments might try to cooperate among themselves in opposition to the liberal forces in Europe (Stojanovic, 2022).

We need to see these developments against the backdrop of the fact that US foreign policy has been gradually shifting towards the Pacific region and away from the European continent. Although the US remains an important ally of the EU, every new election brings a growing risk of a dramatic change in its foreign policy, potentially leaving Europe one-on-one with its regional challenges (Montgomery, 2022).

In this challenging geopolitical reality, with an increasing threat of authoritarianism and military aggression, the EU Enlargement in the two strategic regions seems to be the only viable way to guarantee peace, security, and freedom on the continent. Closer relations with the EU, aspirations to join the club and get access to the benefits of European integration are the strongest driving factors behind EU neighbours' motivation on the path to liberal reform and democratic transformation (unless the democratic backsliding within the EU itself calls this into question).

June 2022: Match Point for the EU

Given the intensified geopolitical situation in the first half of the year, June 2022 became a watershed in EU relations with both the Western Balkans and the EaP regions. Russia's aggression in Ukraine created the momentum to fast-track the EU integration process for the so-called Associated Trio from the EaP region. Granting the prospect of membership to Ukraine and Moldova (and, to Georgia, 'the perspective to become a member' (European Commission, 2022b)) has been immediately deemed 'historical' within the European political narrative (European Union, n.d). For the first time, the EU has formally admitted that its enlargement to the East (i.e. closer to Russia and its self-proclaimed 'sphere of influence') is a realistic and not merely a hypothetical possibility. This breaking point has resulted in bringing the two countries – as well as Georgia – out of the neighbourhood and into

the enlargement policy basket, while simultaneously de facto dismissing the EaP framework as such.

In contrast, during the Western Balkans Summit held in June, the years of stagnation, fatigue, and unfulfilled hopes of the countries of the region reached boiling point, with zero progress achieved on any of the long-stalled EU bids (Gijs, 2022). The consecutive Council's decision to grant candidate status to Ukraine and Moldova was generally perceived as a blow in the face of those Western Balkans countries, which have been waiting on the EU doorstep for years (de Jong, 2022). Yet the EU's bold move towards its eastern neighbours amidst the prolonged stagnation vis-à-vis the Western Balkans could be seen a window of opportunity for the aspiring countries from both regions – as well as for the EU itself. The decision around Ukraine's application was a true match point for Europe, when the scales shifted towards completing the integration of the aspiring nations – to achieve enlargement. This was later proven by the eventual progress in overcoming Bulgaria's veto on the North Macedonian EU bid (Gotev, 2022). This was followed by the long-awaited green light from the European Commission to start accession talks with North Macedonia and Albania in July 2022 (Brzozowski, 2022). Coincidentally or not, this happened following weeks of tension and potential military conflict in the Western Balkans region (International Crisis Group, 2022).

Although the 'perspective' of membership does not in any way guarantee that accession will ever take place, what matters is not only and not primarily the speedy granting of the candidate status itself, but, above all, the changed geopolitical context that has led to a change of reasoning within the EU (Alesina, 2022). Not only this has shown us yet again that the EU, when pushed to the limits of its comfort zone by security imperatives, is capable of gathering the political will and taking much-needed, even if long-overdue decisions. Most importantly, this has demonstrated that the ice of the enlargement stalemate has finally been broken.

The credibility of enlargement has often been questioned, but the Russian war against Ukraine, which is also perceived as an act of aggression against the liberal world, has shown that there is no viable alternative. A war – the most fundamental negative driver of the European project – pushed the hesitation and internal disputes to the background and made all 27 leaders give their consent to formalising the European path of Ukraine and Moldova and to open accession negotiations with North Macedonia and Albania. Most importantly, military aggression against a sovereign country is not a stand-alone phenomenon but a symptom of the multi-sided processes that have been taking place on the continent and which have started to turn the tide of political considerations. Faced with a harsh geopolitical reality, the EU, willingly or unwillingly, has taken historical decisions, which are, however, yet to be backed up by practical steps and political determination.

The EU's united front in supporting Ukraine has created a unique impetus for the bloc to extract solutions from the current security crises and improve and expand the European area of prosperity and stability. There is now no way back. To preserve Europe as a continent of freedom and peace, enlargement has become a matter of necessity, not choice. This is the time for the EU to become creative in how it approaches its own functioning as well as how it interacts with the world beyond its borders.

The EU's political leadership is currently exploring how to bring aspiring countries into the European club and facilitate their closer integration. Among the options on the table are proposals for a new European (geo-)Political Community initiated by the French President Emmanuel Macron (Stratulat, 2022) and the European Council President Charles Michel (Emerson and Blockmans, 2022). These initiatives, if further elaborated, can bring added value to strengthening the wider pan-European political unity of democratic countries. However, they should not and cannot become an alternative to the enlargement project, as they will not address the geopolitical issues discussed above nor provide sufficient mechanisms for fully-fledged integration.

FROM CANDIDACY TO MEMBERSHIP: EU ACCESSION ROADMAP REVISED

Apart from putting enlargement at the top of the political agenda, the granting of candidacy to Ukraine and Moldova has foregrounded consideration of the practicalities of the accession process itself. What is thus clear at this point is that the EU accession process needs to be redesigned in order to address the grey zone between the receiving of candidate status and actual membership, a zone in which a country can be stuck indefinitely without any tangible progress.

In 2020, to address the lack of progress, the European Commission adopted a revised enlargement methodology (European Commission, 2020). It aimed to provide fresh impetus for fundamental political reforms in the Western Balkan countries. Even though the methodology has received mixed reactions among experts, it has introduced a key improvement by packaging the 35 negotiation chapters into six clusters, enabling all of them to be worked on simultaneously. This has certainly made the process more dynamic. However, despite this, the Commission's revised methodology has failed to properly address and practically resolve such major issues as the lack of tangible results for citizens and the countries during the lengthy accession process, the lack of tailored country-specific approaches to measuring the results and progress, insufficient involvement of civil society and national parliaments in the accession procedures (Lazarević and Subotić, 2021). The initiative has thus acknowledged the need for revision, but to date has not fully delivered.

As the EU can no longer afford the integration process for its aspiring neighbours to stagnate, accession must become dynamic, visibly progressive, and tangible. It must aim at strengthening liberal values in all the (potential) candidate countries and include a clear timeframe and improved cooperation mechanisms.

Regional perspective vs. country-specific approach and conditionality

The EU has consistently argued that each candidate country has to be assessed individually according to its progress and commitment, while recognising that a country's historical background and regional context cannot be deliberately ignored or put aside.

The Balkan and the three EaP countries aspiring for EU membership are comparable in regard to the political, legal, and economic criteria. On political and legal criteria, the Balkan countries' average ratings were slightly higher than those of their Eastern European counterparts, although in recent years there has been a noticeable decline in the functioning of their democratic institutions (Stojanovic, 2020). At the same time, the Eastern partners are dealing better with regard to trade and economics, achieved due to their Deep and Comprehensive Free Trade Agreements (DCFTAs) with the EU (a detailed comparative analysis is provided by Emerson et al., 2021a).

Taking a regional perspective to EU integration certainly has added value: for example, it can be provide insights into region-specific systemic problems and foster intra-regional cooperation. Nevertheless, it can also limit the countries' individual potential, ambitions, and progress. Even in the case of the Eastern Partnership, where accession has never been presented as a goal, the EU has eventually come to understand that it is impossible to have a one-size-fits-all umbrella policy addressing the specificities of six different countries.

Thus, when we talk about the accession roadmap for countries from two different regions, with diverse historical, societal, and geopolitical influences, the need for a country-specific tailored approach is evident and unavoidable. One-on-one relations would allow for developing a more accurate and specified accession framework for each candidate country. Such an approach helps uncover the unique potential of each future member state and its strongest internal drivers, and thus develop and apply the most effective conditionality instruments (Mirel, 2022).

A staged integration approach: countdown to full membership

The simple binary of 'full member vs. an outsider' no longer corresponds to geopolitical realities or to internal developments in the neighbouring countries. For the enlargement strategy to adequately reflect the EU's liberal agenda and current geopolitical challenges, the approach needs to be revised and updated with concrete, tangible, and pragmatic milestones and programmes as well as the political will and commitment on

the part of the EU to achieve real progress on the issue of enlargement. Considering that differentiated integration is quickly becoming a *de facto* reality in Europe (Stefan, 2021), it is time we asked whether there are different ways to renew EU enlargement in these crucial regions. A so-called staged integration approach could be a means to achieve progressive integration while avoiding the delays and potential stalemate of the membership/no-membership binary.

In the past few years, the concept of staged, or differentiated integration has been introduced within the expert community as a potential solution to the stalemate in the Western Balkans accession process. Based on studies independently conducted by think-tanks in Brussels and Belgrade, a common proposal was eventually developed by the Centre for European Policy Studies (CEPS) and Center for European Policy (CEP) (Emerson et al., 2021b). It suggests a roadmap for candidate countries to 'progressively and conditionally access the rights and benefits of EU membership' pending fully fledged accession, which remains the ultimate final goal.² This framework thus proposes an alternative accession model based on gradual opening of a members' rights and obligations, including increasing access to the EU structural funds and involvement in EU institutions. This happens upon the fulfillment of concrete pre-defined criteria and benchmarks and is based on the system of strict monitoring and conditionality.

As to the general framework, the proposal envisions two implementation instruments: a new legal text adopted by the EU outlining the progressive accession stages and the bilateral agreements with candidate countries marking the transition from one step to the next. At the same time, the experts insist on upgrading and improving the monitoring and assessment mechanisms in order to ensure the transformative effect and credibility of the accession process.³

The model breaks the process down into four progressive stages: 'initial', 'intermediate', 'new Member State', and 'conventional membership' (Emerson et al. 2021b). Based on the six-clusters-framework suggested by the 2020 Commission's revised methodology, it suggests opening all the clusters in the very first stage (Emerson et al. 2021b). Upon the fulfillment of the required ratings of cluster averages, the country graduates to the next consecutive stage. Closing all the six clusters leads to the third accession stage, while the fourth and final stage is linked to getting unrestricted access to all forms of voting, including veto rights. Throughout the entire process, passing to each new stage brings an increase in EU funding and broadens the country's participation in EU

² 'The Enlargement Impasse and the Necessity of its Transformation', TEN, CEPS, 2021, available at ..., p.1.

³ Ibid.

policies and institutions. Specific details and criteria for each of the stages can be found in the template.

The idea behind the staged integration approach is to consider the glass as half-full instead of half-empty. The candidate countries are thus being treated as members of the community throughout the entire integration process, even if substantial work remains to be done by their governments to unlock access to full membership rights. This implies a switch both in perception and in the accession methodology: instead of seeking a potentially unachievable and uncertain goal, the country goes through a countdown towards fully fledged membership. Accession thus becomes a dynamic and predictable process of gradually removing all the restrictions and barriers, conditioned exclusively on the country's progress in adjusting its standards and practices to the club's norms and requirements. A new EU legal text is needed to outline the process of staged integration as well as details and procedures related to signing accession treaties with, in the context of the new geopolitical reality.

For this framework to work and reach its full potential, it needs to be driven by two key factors: criteria, or milestones, and timing, or deadlines. Based on the template outlined above, further modifications are suggested in these key dimensions. First, to fully cover the integration process, a starting 'zero stage' needs to be added to the milestones. It signifies the country's EU aspiration and is linked to submitting the membership application. Currently, all the candidate countries are at this initial, 'zero' phase. They will have to pass a qualification test for entering the first stage, from where their countdown to full membership begins. At this moment, the EU and a candidate country sign a legally binding Accession Treaty, which sets out all the details and milestones of the process. These bilateral treaties also open up the possibility for introducing transitional mechanisms and adjustment or improvement of the treaty on the functioning of the EU.

Second, the factor of timing needs to be introduced. While the criteria for all the stages have been set by the *acquis communautaire* and the milestones suggested by the previous template, adding the aspect of timing and pre-defined deadlines makes the process more credible and tangible and keeps both sides committed and accountable. A shared final deadline is suggested for the Western Balkans countries: final accession must take place in 2030 at the latest, marking the 20th anniversary of the Thessaloniki agenda which has promised membership to all the countries of the region. A 2035 accession deadline should be set for Ukraine and Moldova and suggested for Georgia and Turkey. After this point, if the country still does not qualify for full membership, either the process is considered closed or a new extended deadline can be set. The set of intermediary deadlines for the passage to each consecutive integration stage needs to be agreed upon for each individual country.

STAGED INTEGRATION FOR EU ENLARGEMENT: POLICY RECOMMENDATIONS

To put into practice the reasoning outlined above – to place enlargement on the liberal family's agenda and promote it as part of the EU's *modus operandi* – a set of recommendations for implementing the staged integration approach is formulated as follows.

Revised frameworks for relations with candidate and neighbouring countries

- The priority for future EU enlargement lies in advancing negotiations with the Western Balkans and the three interested EaP countries that have expressed their EU aspirations and demonstrated certain progress in implementing the reforms requested by the EU. These countries should be followed by Turkey, on condition that its political regime reconfirms the country's willingness to advance the accession process while implementing the required democratic reforms. This suggestion and a deadline can be considered the final call for the long-standing candidate country, after which the process is either repeated or the case becomes officially closed.
- A move from a geography-based enlargement strategy to the merit-based approach is required, while designing tailor-made accession roadmaps and bilateral relations freed from regional categorisation. However, this does not exclude overlaps and takeovers in addressing region-specific issues and supporting intra-regional cooperation.
- Due to the radical change in the geopolitical and security context, the EaP framework must be reviewed and even replaced with other forms of interaction between the EU and the countries of the region, by investing in bilateral channels and multilateral formats better suited to dealing with the new challenges.

Facilitating accession for EU candidates

- Mentorship, or sponsorship: Develop and apply the concept of political mentoring of candidates or sponsorship by EU Member States to share the experience of joining the EU. This has been the case in the past, when Greece helped Bulgaria; Denmark was close to Latvia and Finland to Estonia.
- Upgrading the 'more-for-more' principle: Membership based on closed clusters (chapters) should result in access to pre-defined EU programmes, funds, and agencies. This enables a phased enlargement of the EU to be launched, during which candidate countries can see tangible results as they move towards full member status thanks to a 'more-for-more' approach.
- A new 'carrot-and-stick' mechanism should be established and clearly defined as to increase public awareness in the candidate countries

of possible losses for the country and maximise political costs and pressure on political elites. The carrots must include the opportunities for the candidates to benefit from the structural funds. Material rewards have the potential to incentivise overcoming difficult chapters, as in the case of Serbia it is chapter 35 on normalising relations with Kosovo. New sticks should include the possibility for reversible sectoral integration for the candidate countries, such as the limitation or exclusion of certain EU programmes or funds, as well as the reintroduction of visa obligations for particular groups of stakeholders responsible for democratic setbacks or the rule of law (judges, politicians, etc.).

- Rules of the game: At the procedural level, the conditions and criteria of the extension must be pre-defined and should not be subject to change throughout the accession process, as to avoid confusion and frustration among the public and the political elites of the candidate countries. This includes setting fixed deadlines, benchmarks, and a reward system as well as clear criteria for reversing the benefits in case of backsliding in the reforms process. However, we must ensure that the process does not become too rigid and technical and instead embrace flexibility by taking into account delivering reforms with political-electoral cyclicity in the EU candidate state for greater benefits.

EU functionality and liberal positioning

- Before addressing the new approach to EU enlargement, the decision-making process should be changed by removing the unanimity rule and replace it by QMV in order to avoid any future blockages when it comes to accepting new member states.
- A radical, new staged integration approach should be evaluated. The candidate countries must be admitted more quickly as members, with conditionality clauses introduced in the accession agreements, with full admission in certain aspects of the Union or the voting rights in the various institutions (Parliament, CoR, Commission, Council) will be linked to the reform progress (similar to the transnational clauses for the full access to the labour market of the Member States which were included in the last enlargement cycles).
- A new EU narrative must be created to emphasise that the EU is not only an economic power dealing with the looming risks of growing inflation but also, and primarily, a political project aimed at achieving peace and security in a new context of the Russian military aggression against Ukraine.
- Liberals should continue working on promoting EU enlargement and supporting liberal forces across Europe while preparing new emerging liberal elites in order to consolidate the support for EU enlargement among the public at large. During official visits to the candidate

and aspiring countries, European liberal leaders and politicians should not refrain from having direct meetings and engagements with liberal and pro-European political forces, instead of focusing only on government-to-government links. This will send a clear message to the public in those European nations that the democratic pro-European forces enjoy support and endorsement.

- Accelerating effective EU enlargement and European integration should serve as a way to revitalise liberal democratic values, counter the stagnation of liberal democracy and the spread of illiberal regimes among the EU members, neighbours, and candidate countries.

Managing relations with external spoilers and autocracies

- The Western Balkan countries and the (potential) candidate countries of the EaP should be involved in the European conversation about the present and future of the EU project. At the same time, the fight against disinformation and anti-democratic propaganda must address not only the discourses of Russia and China, but also the messages used by local politicians who aim to promote illiberal regimes domestically.
- The normalisation of relations with Russia should not be a precondition for the enlargement of the EU towards Eastern European candidate countries. However, the Russian factor should not be ignored. For the (potential) candidate countries of the Eastern Partnership, the EU should develop strategies to decoupling their economies from dependency on Russia (energy, trade, movement of people, supply chain, transport routes, etc.).
- The promotion of democratic values through foreign affairs must be at the core of the EU's external actions, with the aim of creating a balanced approach between defending human rights and developing a strategic energy dialogue with countries such as Azerbaijan. Strategic relations with third countries should not be detrimental to the EU's liberal profile and agenda or to the enlargement process.
- Conditionality linked to the rule of law and the fight against corruption must remain at the heart of the accession process, using temporary and group-targeted sectoral disintegration (visa liberalisation) and cuts in access to EU finances to offset setbacks and increase costs for responsible national stakeholders.

Timeline of EU relations with the Western Balkans and the Eastern Partnership countries

State	Application	Avis	Candidate status	Accession negotiations	Closed chapters
Serbia	2009	2011	2012	2013	2
Montenegro	2008	2010	2010	2012	3
Northern Macedonia	2004	2005	2005	2022	–
Bosnia and Herzegovina	2016	2019	–	–	–
Albania	2009	2010	2014	2022	–
Kosovo	End of 2022	–	–	–	–

State	Association Agreement	DCFTA	Visa-free regime with the EU	EU Membership application	EC Opinion
Armenia	–	–	–	–	–
Azerbaijan	–	–	–	–	–
Belarus	–	–	–	–	–
Georgia	June 2014	June 2014	March 2017	March 2022	June 2022
Moldova	June 2014	June 2014	April 2014	March 2022	June 2022
Ukraine	March 2014	June 2014	June 2017	March 2022	June 2022

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Georgia's European Perspective: A Litmus Test for EU Conditionality?

Ana Andguladze

ABSTRACT

In June 2022, the European Council announced a historic decision: to grant candidate status to Ukraine and Moldova. Meanwhile, Georgia, once a 'poster child' of the Eastern Partnership initiative, was only recognised as having a European perspective, and was provided with a list of conditionality-based requirements to become a candidate in future. Considering the recent democratic backsliding in Georgia and its government's strained relations with Brussels, the main question is whether the incentive of candidate status will be significant enough to ensure the country proceeds with the reform agenda. This policy paper contextualises Georgia's European Union (EU) membership application and the EU's decision, and discusses the main challenges facing Georgia in its path to join the EU. The paper finishes with lessons and policy recommendations for the EU on how to improve the effectiveness of the conditionality approach in Georgia and beyond.

GEORGIA'S 'BUMPY' ROAD TOWARDS THE EU

Geopolitics was and remains important with regard to Georgia's European Union (EU) membership application. Membership of the EU (and of NATO) is a way for Georgia to ensure its security from Russia. But it also stems from discourse on Georgia's European identity that has shaped the country's foreign policy since the early 2000s (Kakachia and Minesashvili, 2015). Georgia established its first ties with European institutions in the mid-1990s. However, the relationship intensified after the 2003 'Rose Revolution', when European and Euro-Atlantic integration became primary foreign policy goals for the country. Over the last two decades, EU–Georgia relations evolved and significantly advanced through the European Neighbourhood Policy (ENP) framework and its sub-regional dimension, the Eastern Partnership initiative (EaP). The Georgian population's support for European integration has been unwavering for over a decade and remains among the highest in the region

(National Democratic Institute, 2022).¹ Initially, Georgia planned to apply for EU membership in 2024 (Makszimov, 2021). However, Russia's unjustified full-scale invasion of Ukraine has altered the geopolitical context, giving impetus to Ukraine, Moldova, and Georgia to pursue EU membership earlier than planned. Following Ukraine's EU application, and popular demand locally, Georgia applied on 3 March 2022 (Brzozowski, 2022). For many Georgians, the EU membership application is a natural continuation of decades-long foreign policy aspirations.

Even though, in previous years, Georgia, Ukraine, and Moldova expressed their EU membership aspirations on numerous occasions, the Associated Trio's² applications were still an unexpected challenge for the EU, which, until recently, remained highly reluctant to consider Eastern enlargement. Observers warned that refusal from the EU's side would damage its image and result in 'negative spill-over effects', whereas a positive decision would help halt Russia's 'aggressive and destabilising regional policy' and strengthen the EU's position in the region (Kakachia and Lebanidze, 2022). In an unprecedented, fast-tracked application review process, on 17 June the European Commission (EC) recommended granting candidate status to Ukraine and Moldova. However, Georgia was instead recognised as having a European perspective and was presented 12 priorities that must be implemented first (EC, 2022a).³ Even though Ukraine and Moldova have also received a list of recommendations from the EC, the different status applied to Georgia could be explained by recent developments that seem to have undermined the Georgian authorities' credibility (Emerson, Blockmans, and Akhvlediani, 2022). Failure to implement Charles Michel's 2021 agreement, losing the second tranche of macro-financial assistance from the EU, or lack of political will to implement substantial reform in the judicial field are among possible issues. Unsurprisingly, the European Council's decision on 23 June, which mirrored the EC's opinion, was met by many in Georgia with disappointment and frustration. Following the EC's announcement, on 20 June around 120,000 people took to the streets, to express their wish to join the EU (Radio Free Europe, 2022b). More demonstrations were held following the European Council's decision. The rallies, organised by the 'Shame Movement', considered the government responsible for the outcome and demanded the Prime Minister's resignation, asking that a new government be formed (Heil, 2022). However, after a rally on

¹ Recent polls show that support for EU membership is at around 82%.

² The Associated Trio refers to Georgia, Moldova, and Ukraine. The three countries signed a joint memorandum establishing a format for deeper cooperation among themselves and the EU in 2021.

³ Among the listed issues is the improvement of the judicial system, ensuring media freedom, strengthening anti-corruption measures, and de-oligachisation, which was also one of the recommendations in the EP's June 2022 resolution on Georgia.

3 July, which still did not achieve the demonstrators' primary goals, street protests died down (Kinch, 2022b), leaving Georgia's European aspirations uncertain.

This policy paper contextualises Georgia's EU membership application and the EU's decision to only recognise the European perspective for the country, and discusses the main changes, opportunities, and challenges that such a perspective brings to EU–Georgia relations. For Georgia, the main question is whether the prospect of being granted EU candidate status in the near future is a strong enough incentive for the government to deliver change and move forward on the reform agenda. It may also be a litmus test for the EU and its use of conditionality. With EU enlargement on the horizon, with ever more countries wishing to join, the EU's policies and practices will need substantial reconsideration. Georgia's case may be an important lesson in that direction.

EUROPEAN PERSPECTIVE: WHAT DOES IT CHANGE?

From the geopolitical perspective, one can consider that the EU rose to the occasion by granting candidate status to Ukraine and Moldova, and the European perspective to Georgia, in an unprecedentedly short timeline. Considering that none of these countries were ever considered to have had a European perspective, despite their long-expressed wish to join the EU, such a move is indeed a positive development and reshapes the future framework for their relations with the EU. For decades, the EU's so-called Eastern neighbourhood has remained a 'security-political grey zone' between Russia and the West. Nevertheless, the Associated Trio's eventual accession to the EU may 'give full structure to the East European geopolitical space' (Umland, 2022).

Geopolitical reasons aside, candidate status – or potential candidate status for that matter – is perceived to be an important motivating factor in pushing forward the EU's required reform agenda. Indeed, studies show that democratic conditionality, a key element of the enlargement policy, is one of the most important mechanisms through which the EU seeks to promote democratisation in candidate countries (Dimitrova and Pridham, 2004). As Schimmelfennig and Sedelmeier (2020: 817) put it, 'membership in the EU, which entails larger financial assistance, unconditional market access, and voting power in the EU, is a bigger "carrot" than association'. Due to the absence of a clear membership perspective, the ENP and its sub-regional dimension – the EaP – have been lacking such an instrument. The EaP provides significant benefits for interested partners. However, after signing the Association Agreement and benefiting from the visa-free regime, the Associated Trio has been searching for new goals in terms of European integration. Refusing in the past to acknowledge the European perspective of the Associated Trio, the EU has struggled to develop a new and substantial agenda for

ambitious partners. Their inclusion in the enlargement framework is a significant move by which the EU and the countries in question can foster democratic reform. This also entails a potentially more important role for non-state actors. Georgia's opposition parties and civil society representatives called on the EU to grant the country candidate status (Civil Georgia, 2022f, 2022a). The rationale behind such calls (apart from geopolitical reasoning) was that moving Georgia from the neighbourhood to the enlargement framework would give more decisive impetus for social mobilisation, further empower domestic actors to create internal pressure for reforms and strengthen external pressure on the government.

However, with opportunities come risks. The EU is known for its lack of appetite for enlargement – so-called enlargement fatigue – which largely depends on its capacity to absorb new states but also on (potential) candidate countries' progress in terms of reforms (O'Brennan, 2014). The differentiation principle that the EU applied to the Associated Trio's applications may have an unintended negative effect on Georgia's European future if its government fails to deliver on the required reforms in the near future. The Western Balkan countries' protracted and complicated accession process does not give much hope in this regard. After a long and intense talk, Albania and North Macedonia opened accession negotiations with the EU in July (Euronews, 2022), which could be considered a positive sign for countries in the enlargement framework. However, such developments should be taken with a grain of salt. First, they again demonstrate that the enlargement process can be protracted, and thus seizing the window of opportunity – when the EU shows its readiness to enlarge – is crucial, especially in the current fast-changing geopolitical context. Second, they show that the EU still follows its traditional approach of treating countries as a multi-country package when dealing with enlargement. There is a risk that if the Georgian government does not show its strong commitment to implementing the Commission's 12 priorities, the country may become dissociated from Moldova and Ukraine, and these latter two will continue to move forward without Georgia. Such developments and lack of clarity risk making the Georgian public frustrated with the EU, stalling the reform process and causing the potential disempowerment of pro-democratic actors in the country.

CHALLENGES AHEAD: IMPLEMENTATION OF THE EU'S 12 PRIORITIES FOR GEORGIA

The European perspective may have opened the door to a new, more ambitious chapter in EU–Georgia relations. However, it also entails a significant test for both sides. The EU's 12 recommendations are at the centre of political discussions in Georgia. The priorities that EC unveiled

earlier in summer 2022 include (among other issues) addressing political polarisation, implementing effective judicial reform, 'de-oligarchisation', ensuring a free media environment, strengthening the protection of human rights, gender equality, and the appointment of an independent Ombudsperson. Challenges on the road to fulfilling these priorities are multifaceted. To begin with, the ruling elite's political will and the state's capacity to implement substantial agenda for democratic reforms are crucial for moving forward. Some of the issues put forward by the Commission have been on the country's agenda for no less than ten years, while others have emerged more recently. Despite having 'positive track record' of reforms in the framework of the EU–Georgia Association Agreement (EC, 2022c), in recent years Georgia has seen democratic backsliding. According to Freedom House's 'Nations in Transit' 2022 report, Georgia's democracy score has been declining since 2018 (Freedom House, 2022).

Taking efficient and systematic steps to address some of the most problematic areas for Georgia's democracy will be crucial and challenging. Unsurprisingly, a lot of attention is currently directed towards Georgia's judiciary, often seen as the 'invalid' of the country's fragile democracy (Jones, 2015). Since 2013, the Georgian government has initiated four waves of reform (for a detailed analysis see Verdzeuli, 2021). If the initial stage was considered a 'promising start' (Tsereteli, 2022), the following waves showed a different trend. Critics argue that, overall, the 'institutional changes served as a convenient facade' (Tsereteli, 2022:191), while fundamental problems (such as independence of the judiciary) remained unsolved (Imnadze, 2021). Observers point out that the EU's 'technical attitude towards judicial reform' also contributed to the EU 'neglecting the political factors hindering' it (Erkvania and Lebanidze, 2021: 6). This is in line with the criticism that 'under the current association framework the EU's capacity to act as an anchor for democratic change is limited' (Delcour, 2022). However, the EU has also been criticised for taking a technical approach within the enlargement framework and neglecting the substance of reforms (Kmezić, 2015). If the EU wants to see its efforts bear fruit in the complex context of the Associated Trio's accession process, such an approach should be abandoned in favour of more context-specific and meaningful engagement with national stakeholders, including with the representatives of civil society.

Now that Georgia has been moved into the enlargement basket, the EU's conditionality becomes more relevant than ever. However, the Western Balkans' accession process has triggered many discussions about the limits of the EU's conditionality. Schimmelfennig and Sedelmeier (2020: 187) discuss conditions under which conditionality is 'more or less likely to be effective': they include 'the size and distance of the EU's rewards, the determinacy of the conditions it sets for obtaining the reward, the credibility of the conditionality, and the size

of the adoption costs for the target government'. Before having real EU membership prospects, Georgia showed signs of resistance to some of the EU's rewards despite being considered a 'poster child' of the EaP. The political crisis in 2020–2021 in Georgia saw high-level involvement from the EU in the form of European Council President Charles Michel's personal efforts to broker a deal between the ruling party and the opposition, who refused to recognise the results of the 2020 parliamentary elections and take up their mandates (Panchulidze and Youngs, 2021). The deal that was initially reached after several rounds of negotiations, known as the 'Charles Michel agreement', which aimed to distribute power more evenly in Parliament as well as commit to much-needed reforms, saw an early end in July 2021 when the ruling party announced that it was withdrawing from the agreement. Later, in August 2021, Georgia announced its decision not to request the second tranche of the EU's macro-financial assistance, which is linked to conditions (Kincha, 2022a). The EU responded that, while they respected this decision, they had also noted the failure on the Georgian side to address EU conditions, especially regarding 'increase the independence, accountability and quality of the judicial system' (European Parliamentary Research Service, 2022: 40).

Furthermore, in late May 2022, just a few days after Georgia submitted the second part of the EU membership questionnaire, the country's court sentenced the director of the opposition TV channel Mtavari TV to three and a half years in prison. The act was widely condemned both within Georgia and internationally.⁴ Concerns were raised regarding media freedom in light of the politicised judiciary system in Georgia. The reality of the 'reward' of EU membership did not compel Georgia's political leadership to mobilise and build a strong case in favour of being granted candidate status in the months leading up to the EU's decision. Consequently, the local political context, alongside other factors, such as cost-benefit calculation and the credibility and determinacy of the EU's conditionality, deserve further attention.

⁴ See, for instance, the results of Georgia's Public Defender's (Ombudsman) examination of judgement in Nika Gvaramia case (available at: <https://ombudsman.ge/eng/akhali-ambebi/sakhalkho-damtsvelis-shemotsmebis-shedegebi-nika-gvaramias-ganachentan-dakavshirebit>) ; EP resolution of 9 June 2022 on violations of media freedom and the safety of journalists in Georgia (available at: https://www.europarl.europa.eu/doceo/document/TA-9-2022-0239_EN.html) ; Amnesty International's statement on Georgia: 'Sentencing of pro-opposition media owner Nika Gvaramia a political motivated silencing of dissenting voice' (available at: <https://www.amnesty.org/en/latest/news/2022/05/georgia-sentencing-of-pro-opposition-media-owner-nika-gvaramia-a-political-motivated-silencing-of-dissenting-voice/>).

Conditionality under the shadow of ‘(de)-oligarchisation’

The Commission has recommended ‘de-oligarchisation’ be applied in all three applicant countries. In Georgia, the dominant position of Bidzina Ivanishvili (the billionaire founder of the ruling party Georgian Dream) and his influence on the ruling party and political institutions undermine the country’s efforts towards democratisation. Some observers characterise Georgia as a ‘captured state’ due to the existence of a clientelistic network and ‘a distortion of accountability mechanisms’ (Aprasidze and Siroky, 2020: 583). Others have warned that ‘current Georgian leadership could lead the country in this [state capture] direction’, which puts Georgia ‘in a vulnerable position vis-à-vis both its commitment to democracy and its foreign policy orientation’ (Konończuk, Cenuşa, and Kakachia, 2017).

The Commission’s recommendation came after the European Parliament’s (EP) critical resolution on Georgia, in which, among other issues, the EP called the Council to consider imposing personal sanctions on Bidzina Ivanishvili ‘for his role in the deterioration of the political process in Georgia’ (EP, 2022). It expressed concerns that ‘Ivanishvili’s exposed personal and business links to the Kremlin’ determines ‘the position of the current Government of Georgia towards sanctions on Russia’ (EP, 2022). It was the first time that the EP acknowledged Ivanishvili’s role in Georgian politics and put the issue of imposing personal sanctions on a political agenda. In response, the Georgian Dream Party Chief, MP Irakli Kobakhidze, ‘downplayed’ the importance of the resolution (Civil Georgia, 2022d), while the Prime Minister of Georgia, Irakli Garibashvili, called the resolution and its content ‘insulting’ (Civil Georgia, 2022g).

The EU’s recommendation on ‘de-oligarchisation’ and some other priorities unveiled by the Commission has been also criticised for lacking clarity and leaving room for misinterpretation (Chkhikvadze, 2022). The condition of determinacy stresses the importance of clarity and detailed specifications from the EU’s side for conditionality to be effective (Schimmelfennig and Sedelmeier, 2020: 817). As of late 2022, in the most recent development, the Parliament of Georgia has passed a second reading of a draft law (which is largely based on the Ukrainian precedent) on ‘de-oligarchization’. The draft law has been criticised by local civil society organisations, which have emphasised the importance of taking into account ‘contextual differences’ between Georgia and Ukraine, while the EU delegation to Georgia has urged Georgian authorities to request the opinion of the Venice Commission before its adoption (Civil Georgia, 2022b). In light of such developments, clarity on requirements and setting specific benchmarks are critical measures to avoid unintended negative consequences of EU conditionality. Richter and Wunsch (2020: 56) emphasise the importance of domestic (mis) usages of EU conditionality and show how, in some instances, EU conditionality ‘enables informal networks to consolidate their power, creating

a dynamic that durably undermines any progress towards sustainable democratisation'. The EU should thus remain vigilant. It should further clarify its requirements and closely follow the developments regarding 'de-oligarchisation law', in order to avoid a 'facade' compliance with the EU's recommendations, which may have a negative effect in the long term.

The shift towards anti-Western rhetoric?

Vested interests that undermine the political will necessary for reforms seem to coincide with the recent shift in the ruling party's rhetoric regarding its international partners: the EU and the United States. It is unclear how polarisation can be reduced in a context where the representatives of the ruling party are increasingly using an anti-Western narrative in their official discourses.⁵ According to one analysis, Kobakhidze, in his statements to the press (from 24 February to 27 July), was most critical of the West and least critical of Russia (Kinch, 2022c). With the start of the war in Ukraine, many representatives of the Georgian Dream have pointed out that some 'forces' would like to see Georgia go to war. Kobakhidze claimed that, like Ukraine, Georgia would have received EU candidate status if the country had gone to war – thus indicating the connection between the two (Civil Georgia, 2022c). The now-former EU Ambassador to Georgia, Carl Hartzell, has also come under criticism from the Georgian Dream leadership and was accused of having had a 'negative' impact on EU–Georgia relations; there have been claims that he 'could have worked better' to help Georgia gain EU candidate status (Radio Free Europe, 2022a). As Nodia (2022) warns, such instances constitute 'a fundamental change' in the Georgian government's narrative.

Suggesting that Georgia's EU application was surrounded by war conspiracy, several MPs formally left the Georgian Dream Party with the aim of exposing 'the truth behind curtains' (Kinch, 2022d). Initially, their rhetoric revolved around EU candidate status, playing down its importance for Georgia (Kakachia and Samkharadze, 2022). Since then, the group has published several open letters, some openly critical of Georgia's Western partners, including the United States and its Ambassador to Georgia. The group recently announced they were forming a public movement, 'People Power', claiming that 'the threat' of Georgia's involvement in the war is 'still relevant' and that 'full mobilisation is needed to protect the country' (Interpressnews, 2022). Even though the group claims they are no longer members of the Georgian Dream, they are still widely perceived to remain associated with the party. Local observers characterise the group's rhetoric as anti-Western and

⁵ One of the recommendations of the EC is reduced political polarization in Georgia.

anti-liberal (Kakachia and Samkharadze, 2022). Such rhetoric from high-profile Georgian authorities or MPs has prompted criticism from many in Georgia, including President Salome Zourabichvili, who accused the government of playing a 'two-faced game' in their pursuit of European integration (Civil Georgia, 2022e). As Jones (2022) points out, 'The language employed by Georgia's politicians today [...] reflects the erosion of the country's democratic institutions.' It may well reflect the erosion of the Georgian authorities' European aspirations. Anti-Western messages from ruling party representatives or associates pose a significant challenge and undermine the progress of the constructive and inclusive process needed to implement the EC's recommendations.

LESSONS AND POLICY RECOMMENDATIONS FOR THE EU

In its recent report, the EC underlined that this is a 'historic moment in EU–Georgia relations', adding that the future of these relations is 'now in the hands of Georgia' (EC, 2022b). While political will from the Georgian authorities is crucial for the reforms to move forward, much depends on the EU. Some observers criticise the formulation of the 12 priorities of the EC and argue that the 'general nature of their phrasing leaves room for interpretation' (Chkhikvadze, 2022). Therefore, more clarity is needed to avoid the priorities becoming 'a moving target' (Chkhikvadze, 2022). In a very recent development, the EP has also recommended providing Georgia with a 'clear roadmap' of requirements necessary to fulfil before receiving candidate status (EP, 2022). Such concern is especially relevant considering some of the EU recommendations have already become a matter of disagreement and political turmoil in Georgia. The EU will need to work to strengthen the determinacy of its recommendations for the country. Furthermore, its credibility is another essential factor influencing the effectiveness of its conditionality process: setting realistic timeframes and ensuring the coherence of EU messages are crucial in this regard.

The developments in recent years show that, in the Georgian case, the EU's conditionality faced strong challenges. Even though the weight of the external incentive has increased, the ruling party's recent actions do not provide much room for optimism. In the context of informal influence, lack of political will, and fragile state institutions, it is debatable how effective the EU conditionality process can be in advancing democratic reforms and moving Georgia from potential to full candidate country status. For the conditionality process to be effective in the Georgian case and also to prevent its misuse by domestic elites, the EU needs to adopt a more context-specific approach, engage with the pro-democracy actors more proactively, and increase support to avoid stalling Georgia's European integration process.

Recommendations for the EU:

- To specify requirements for each of the EC's recommendations, as inspired by Georgia's application to join the EU. Given the turbulent character of the Georgian political landscape, the clarity and precision of the recommendations will play important roles. Further explanation and clarification on each recommendation will also be helpful for non-state stakeholders willing to engage in the process of monitoring and advocating for their effective implementation.
- To move from the technical approach visible in the reform process in the last decade in Georgia to more substantial efforts in pushing forward the reform agenda. The EU's approach within the neighbourhood and the enlargement frameworks has been criticised for being too technical. As we have seen, such an approach sometimes allows reluctant political elites to opt for 'facade reforms'. To avoid this, the EU needs to rethink and reshape its engagement in democratic reforms in countries such as Georgia and beyond. Closely following the implementation of the EC's 12 requirements and stepping up the EU's effort to provide a substantial support for pro-democracy actors in the country will be a crucial step in this direction.
- To follow developments in the Georgian media environment closely and ensure support for independent media outlets.
- To increase financial and political support to civil society actors in Georgia. Supporting bottom-up efforts alongside top-down external pressure for democratisation is crucial to fostering democratic reforms.
- To engage with a wider pool of civil society actors. European integration represents a topic in which broader participation is possible. The EU could encourage such participation by engaging, communicating, and exchanging information with civil society actors beyond the capital or institutionalised organisations.
- To strengthen communication efforts with Georgian society. Strategic communication has become a priority in the context of disinformation campaigns amid Russia's full-scale war against Ukraine and anti-Western messages from some Georgian authorities and political elites.

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Book Reviews

Book Review

Hayek's Analysis of Totalitarianism

Adam Mazik

Friedrich August von Hayek, Road to Serfdom, The Definitive Edition, edited by Bruce Caldwell (The University of Chicago Press, 2007; first edition 1944)

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INTRODUCTION AND EXPLANATIONS

The Road To Serfdom is arguably Hayek's most important book, and certainly the one that has had the most influence. The main thrust of the book is the demonstration that economic planning *in its last consequence* must lead to a totalitarian state.¹ Using both abstract and historical examples, the latter mainly from Germany, Hayek shows the impossibility of a democratic socialist system in which the freedoms and rights of the individual are respected, not without explaining the intellectual roots of the socialist and national-socialist movements. Additionally, the Austrian spends a significant amount of time disproving the notion, commonly believed even today, that fascism and socialism are two opposed ideologies; he argues that, on the contrary, both movements are the children of the same collectivist and illiberal sentiments and ideas. On the positive side, the book is a plea for democracy, the spontaneous forces governing liberal society, and the rule of law.

Especially for listeners vaguely familiar with Hayek and liberal ideas, it is important to state what *The Road to Serfdom* is not. *It is not*, from the point of view of a more purist libertarian, a radical book. It was not the objective of the author to attack the idea of a welfare state or state action per se. Despite partly also arguing against the sorts of regulations found in modern social democratic economies, Hayek uses the term 'socialism' in its *classic sense*: a system of a centrally planned economy in which the means of production are owned collectively.

As Hayek also repeatedly emphasised, the goal of the book was not to draw a naive slippery slope argument and to demonstrate the inevitability of the emergence of totalitarianism through any change in the socialist direction. The Austrian writes that there would be no point in publishing the book if any of the reforms then already under way predestined the course of the future of Britain and other European countries. The text therefore primarily is a refutation of collectivist ideas and a warning to leave the 'road to serfdom', and to return to the 'abandoned road' (Chapter 1), the road to freedom, democracy, and peace.

¹ For the purpose of this summary, some parts of *The Road to Serfdom* (Hayek, 2007) have to be explained very briefly and some omitted completely. If the reader is interested in the role of knowledge in Hayek's economic thinking, his views can be found in his essay 'The Use of Knowledge in Society' (Hayek, 1945). It might also be helpful to read the critiques of socialism by some of Hayek's predecessors from the Austrian School of Economics. I recommend Ludwig von Mises' *Socialism* (1936) as well as Eugen von Böhm-Bawerk's *Karl Marx and the Close of His System* (1898).

THE ROAD TO SERFDOM

Planning and markets

By planning, Hayek refers not to individual plans that private agents make in their daily lives and in competitive free markets, but to 'economic planning' – the deliberate planning of the economic resources and activities of a country by some kind of collective, usually the state.

Hayek explains how many intellectuals on the left and the right at that time believed that the competitive system of free markets was not rational and was at best a step in a steady evolution of humankind. Many people believed that, like the progress of natural sciences, the new knowledge that humanity acquired over the years would let us build a more rational, 'scientific' economic system, in which outcomes aren't determined by chance, luck, and individual talent, but which can be approached from the perspective of certain aims.²

The debate wasn't new in 1944, when Hayek published his book – after all the same debate was also led by another great Austrian economist, Hayek's teacher Ludwig von Mises. However, unlike today, there weren't many examples showing the crushing ineffectiveness of 'planned economies'. Today we know about the horrific effects that economic planning had on the peoples of communist nations – one only has to think about the famine (Holodomor), caused by Stalin in today's Ukraine (where economic planning was used as a tool for genocide),³ or Mao Tse Tung's 'Great Leap Forward'.⁴ Yet in the 1940s there were multiple examples of large European countries that openly embraced planning and totalitarian systems, even though with different aims and supposedly different ideologies.

According to Hayek, the primary goal of the state should not be to plan the economic activity of market agents, but to make planning possible for them. Therefore, he says, the state has to provide a 'carefully thought-out legal framework' that essentially shows the producers and consumers what they can and what they cannot do (Hayek, 2007: 85–86). The goal of the government is to make possible a competitive system that leads to the development of prices and to leave producers

² The point is repeated in various parts of the book, the two most instructive chapters in my opinion are Chapter 4, 'The Inevitability of Planning', and Chapter 13, 'The Totalitarians in Our Midst'.

³ Holodomor was a man-made famine that took place between 1932 in then-Soviet Ukraine, in which 3.5 million people died due to starvation caused by the deliberate actions of the communist regime led by Stalin. For more on the subject, see Applebaum (2017) and Golitsina (2017).

⁴ 'The Great Leap Forward' was a Chinese Communist Party programme executed between 1958 and 1962, resulting in terror and famines that killed up to 55 million Chinese. For more, see Yushi (2014).

and consumers the liberty to use the localised knowledge that only they have, to coordinate their actions accordingly, and to foster competition, or to regulate market sectors in which competition is not possible (ibid.).

The state needs to plan *for competition*,⁵ instead of acting against it. *According to Hayek, the competitive price system is the only way in which we are able to deal with the sheer amount of information that modern markets contain* (ibid.: 96).

HOW PLANNING LEADS TO A TOTALITARIAN STATE

Economic planning can only be achieved through dictatorial, totalitarian means. It isn't possible to devise a plan for the entire economy democratically. People have different values and opinions, and democratic decisions can only be made where there is agreement, which slows down the process of planning and even makes it impossible to reach an agreement in some fields (ibid.: 101–102). This according to Hayek creates dissatisfaction with democratic processes and institutions (ibid.: 104). They are seen as slow and a burden. It follows that an economic plan can only be achieved by giving wide discretions and competencies to a group of experts, a group of authorities, which would decide matters according to the circumstances (ibid.: 107). Democracy as we know it can therefore only be lived and achieved in a system of capitalism, but there can be neither socialist nor fascist democracy (ibid.: 110).

One of the elements of the liberal democratic state is the rule of law. Hayek characterises this as a system in which the government needs to abide by a framework of fixed and general rules (ibid.: 112–113). Those rules are neutral and open-ended, meaning that they do not aim to create certain outcomes in order to favour particular groups or individuals. They are also supposed to work in the long term, meaning that it is impossible to foresee who will ultimately profit from them (ibid.: 114–115). This ensures legal stability. Individuals in the market are able to predict the situations in which the state will intervene – they know what is allowed and what is not. Therefore they are able to plan their actions, taking into account their circumstances (ibid.: 114).

⁵ One of the arguments for the inevitability of planning that Hayek rejects in *The Road to Serfdom* is the assertion that markets lead to the monopolisation of the economy and thus destroy competition. Hayek argues that according to the data at that time, the evidence doesn't suggest the latter to be true and demonstrates that the monopolisation in countries like the US, the UK, and Germany more likely was the result of deliberate government policy. For example, Hayek argues that since the nineteenth century, the German political class followed such a policy. For more on that issue and the history of German antitrust law, see Schmoeckel and Maetschke (2016: 279–308; particularly 281–293 (pro cartel policy) and 301–307 (antitrust policy in the German Federal Republic)).

A system of economic planning has no neutrality. The very point of planning is to not allow individuals to do as they wish, but to coordinate their efforts to reach a higher goal, such as social equality or social justice. The details of an economic plan, therefore, cannot be achieved through general rules, but only by conscious direction. For this reason, very broad terms replace the clear legal rules that provide entrepreneurs with the means to plan their endeavours reliably. Typically, those terms include words and formulations like 'fair', 'common good', 'reasonable', and so on. Through this technique, all economic decision-making is concentrated with the government (ibid.: 116).

Similarly, decisions are no longer taken by producers and consumers. Outcomes aren't determined by the impersonal market process of competition, but the radically personal process of government coercion. Of course, as Hayek and most economists of today argue, the reason why our economic system was able to reach the kind of complexity and advancement it has today (or had in 1944), was the decentralisation of decision-making (ibid.: 87). The processes of the modern economy are so complex and dynamic that no single person or entity can comprehend them in their entirety. The fact that entrepreneurs on the market can use their respective specialised knowledge is what makes the system so effective. Only they are able to understand their fields, the circumstances, and thus the risks and chances that arise by choosing either outcome. No group of experts, no matter how distinguished, no matter how intelligent and selfless, can be a substitute for the decentralised handling of knowledge through free competition and the price system.

By replacing competition with economic planning, the collectivist thus creates a new force, a source of unlimited power. As Hayek says, the combined influence of market actors isn't comparable to the power of the state in a planned economy. In a market, no individual, company, or even a cartel or syndicate can utilise as much power as the totalitarian government (ibid.: 165). Control of the economy via planning gives the government control over the entirety of human lives and aims. The state can control what is produced and how, how many products should be sold and for how much. It can and has to take into account all of the possible individual and collective aims of the people, meaning that it has to choose among their various aims (ibid.: 113). The individual isn't restricted by the price system anymore – instead, their whole life is directed from the rooms of the planning committee. Of course, as production is also controlled, the individual can also no longer choose their occupation according to their dreams and talents (ibid.: 129). If it is a higher goal that determines the outcomes, peoples' efforts need to be coordinated too – this is what was routinely happening in countries such as the German Democratic Republic, Poland, and the Soviet Union just a little more than thirty years ago. Thus it is naive to believe that the

economy can be separated from all the other aspects of our lives – the economy controls our life and those who have the means to control it can control everything that we do (ibid.: 125–129, 132). Hayek repeatedly makes the point, using different words, that the concentration of power makes the absolute amount of power greater, while decentralisation reduces it (for example, ibid.: 165–166, 124–133).

Because the outcomes of the economic game are no longer determined by factors such as talent, ability, and skills, this creates a different kind of incentive than a market economy. The goal is no longer to serve and please the consumers of one's product, but to influence the political powers to direct economic forces in the right direction (ibid.: 143–146). It's not the person that can give other people the greatest products or services who wins the competition now, but the person who has the best connections among government authorities. Naturally, this breeds corruption and disincentivises innovation: if the only way to get rich is to have influential friends, then coming up with new solutions is a waste of time. This aspect is a part of another problem: socialism is supposed to be the government of the proletariat, which in itself proves that the policy is aimed at a specific group. However, the proletariat is not a homogenous group either (ibid.: 143). The needs and interests of workers in one industry might be different, and opposite to the interests of workers in another. A worker in the automobile industry wants high wages, but also wants to be able to buy products, clothes for example, at a low price. This is the complete opposite of the interests of the worker in the textile industry. Everyone's interests cannot be taken into consideration – some have to be given priority over others.

The means that socialists want to use in order to achieve their egalitarian dreams also do not necessarily need to be used to achieve those aims. Hayek argues that it is precisely how national socialism and fascism emerged in Germany and Italy respectively. Instead of the working class, however, the old pauperised middle class took the control of the economy and created an economic plan suited to their interests (ibid.: 144).

WHY TOTALITARIANISM DRIFTS TOWARDS NATIONALISM AND BRUTALITY

Hayek argues that any hopes about a benevolent dictator are naive. In the chapter 'Why the worst get on top', the Austrian elaborates, that the cause of the brutality of the regimes of Hitler and others isn't the character of the dictator, or the people of Italy, Germany, or the Soviet Union. While Hayek acknowledges that there are different kinds of totalitarianisms and that a British totalitarianism might be different from the German version, he also explores some mechanisms that might have led to the

brutality of the Nazi system. According to him, there is a high probability that the reason for the atrocities isn't the character of the Germans or even Hitler.

This is due to the moral values that a totalitarian system creates and promotes – on the one hand, by promoting the qualities that lead to success in a totalitarian society, and on the other, by the tools used for totalitarian government (ibid.: 159). Not only does the promotion of a higher aim require the breaking of general moral rules at some point, something that only a person with a very flexible approach to morality can do, but the entire process relies on personalities and parts of society with questionable motives and beliefs.

Dissatisfaction with democracy often leads to the search for a strong leader, someone who can solve issues in a quick and determined manner (ibid.). As Hayek points out, it is not about a numerical majority: 'What they will seek is somebody with such solid support as to inspire confidence that he can carry out whatever he wants. It is here that the new type of party, organised on military lines, comes in' (ibid.). Essentially, in order to gain the support of society, the leader first needs to gather a group of loyal followers willing to act as his private militia to show strength.

The organisations, according to Hayek, that are needed for the establishment of a totalitarian system would consist of individuals willing to 'submit' to the same kind of totalitarian regime that is proposed for the entire society (ibid.: 160). He points out why it is unlikely that those organisations will consist of the finest and most humanitarian individuals in the society. Hayek states that the higher the level of education, the more differentiated people's values and views become (ibid.).

It is a corollary of this that if we wish to find a high degree of uniformity and similarity of outlook, we have to descend to the regions of lower moral and intellectual standards where the more primitive and 'common' instincts and tastes prevail. (Ibid.)

However the group of the aggressive and tribal isn't enough. Another group of people that totalitarians can build on is the group of 'docile and gullible' (ibid.), people easily manipulated through propaganda. The most important aspect, according to Hayek, however is group-think (ibid.: 161), specifically negative groupthink. Finding a common enemy, unfortunately, has the power to unite individuals under one banner. Hayek names the Jews in the example of Germany and Austria – representatives of the capitalist system who became the scapegoats for the collectivists there.⁶

⁶ Although Hayek does not touch on this, it is an important lesson for those who, in the fight for liberal values, want to employ a version of 'liberal populism'. Populism cannot exist without a certain group mindset and a common enemy. Liberalism, however, is a

Continuing his argument to show the general tendency of all kinds of collectivism to drift towards nationalism and other particularisms, as well as to show 'why the worst get on top', Hayek calls into question whether a collectivist programme can be put through on the international scale, due to the lack of a community aspect. Collectivism cannot be international and cosmopolitan, it needs a certain group loyalty, which can only hardly be achieved across nations.

If the other members of one's group cannot all be personally known, they must at least be of the same kind as those around us, think and talk in the same way and about the same kind of things, in order that we may identify ourselves with them. (Hayek, 2007: 161)

He points out that this technical and moral issue is a problem for all socialists, which is why most of them concentrate only on one country. Even modern socialists and social democrats show how right Hayek was. One only needs to remember Bernie Sanders' critique of open borders:

Sanders: Open borders? No, that's a Koch brothers proposal ... I mean, that's a right-wing proposal, which says 'essentially there is no US'.

Vox: But it would make a lot of the global poor richer, wouldn't it?

Bernie: And it would make everybody in America poorer. Then you're doing away with the concept of a nation-state, and I don't think there is any country in the world, which believes that.⁷

As Hayek argues, there is a contradiction in the collectivist philosophy: 'while basing itself on the humanistic morals which individualism has developed, it is practical only within a relatively small group'(Hayek, 2007: 162). He shows that while people in poorer countries such as India could make the same claims theoretically on the basis of collectivist morals, socialists practically do not invoke the same arguments when they come to power (ibid.). He sums up with one of the most important statements in the book:

Indeed, the very concepts of humanity and therefore of any form of internationalism are entirely products of the individualist view of man, and there can be no place for them in a collectivist system of thought. (Ibid.)

Hayek strengthens his arguments with the historical example of Germany and the Third Reich. One of the misconceptions about the nature of

cosmopolitan and individualist idea. It is the opposite of collectivist populism and does not represent particular interests. We see the same tendencies in modern populist parties.

⁷ See <https://www.youtube.com/watch?v=vf-k6qOfXz0>.

national socialism in Hayek's time, and even in our own, is that 'Nazism' was a reaction against socialism. Interestingly, as the Austrian argues, both ideologies are simply two sides of the same coin. In the chapter 'Socialist roots of Nazism', Hayek elaborates how the national socialist movement and system in fact developed not just with the help, but on the basis of socialist thought. The argument is that while socialists and Nazis seemingly were in opposition to each other, they had a lot in common, especially regarding the ultimate ideological enemy: the liberal and commercialist individualist (ibid.: 183). It is not state control that Nazis opposed. It wasn't socialism and the working man. What Nazis opposed, and oppose to this day, are the liberal values that Hayek urged us to defend in his book. Logically, in the conflict with socialists, it was the liberal elements of socialism that Nazis despised (ibid.: 182).

The examples of esteemed Marxist intellectuals such as Werner Sombart or Johann Plenge arguing in favour of 'organisation' and 'heroism' instead of freedom, painting Germany as a revolutionary, socialist state in the fight against outdated English values such as individualism, commercialism and freedom, and their embrace of national socialist ideas very clearly show the socialist-to-national-socialist pipeline.

The same can be said of the works of the SPD politician Paul Lensch, whom Hayek quotes: 'The state has undergone a process of socialization, and Social Democracy has undergone a process of nationalization' (Lensch, 1918: 210; cited in Hayek, 2007 [1944]: 189).

The extensive examples that Hayek presents, too many to list here, demonstrate quite well how the interplay of socialist and nationalist ideas in Germany created a monster that in the end could not be contained by democratic procedures, institutions, and civil society. I do not add the example of Lensch specifically to denounce the SPD, and I am sure that Hayek didn't either. After all, the party even today, in 2021, remains a part of the democratically elected government. On the contrary – while I disagree with the SPD on many issues today and historically, I regard the party as a symbol of German democracy, at least to the largest part. Just as national-socialist elements were a part of the SPD in the Weimar Republic, today the party struggles with an embarrassing relationship with Russia and its dictator Vladimir Putin, showing clearly that even democratic parties can turn a blind eye to collectivism and totalitarian ideas and that the consequences can be quite surprising and drastic – one of the messages of *The Road to Serfdom*.

In conclusion, Nazism and fascism are not the opposites of socialism. The link between the ideologies is state control in economic matters, which in both cases ultimately has to lead to the control of the entirety of human life and experience. While different in the choice of particular aims, and of enemies, both collectivist and populist movements oppose the liberal and commercialist nature of the capitalist system, as well as the controlling function of democratic institutions such as parliaments

and independent courts that base their rulings on clearly established, precise rules. While in theory, socialists can pretend to be internationalist and cosmopolitan, the practical problems of the collectivist system create a steady drift towards nationalism and groupthink. While communist and fascist elites use different words and enemies to manipulate their respective populations, the outcomes for the individual citizen are surprisingly similar. *In both systems, the individual ends up as a small part of an oppressive and all-encompassing machine that enforces its control with brutal, anti-humanitarian methods, in which only the most morally corrupt and ruthless acquire positions from which change can be effected.*

FINAL THOUGHTS AND CONCLUSION

The Road to Serfdom is not a modern book. It uses a lot of examples only understandable through the lens of the time of its publishing. It aimed to reach the citizens of 1940s Great Britain. Luckily, thanks to the helpful footnotes by Bruce Caldwell, the editor of the definitive edition, I was able to follow and understand many of the examples that Hayek offered, which is why I wholeheartedly recommend the edition to anyone willing to dive a little deeper into this influential book.

While many of the examples of the book stem from the 1940s and the years leading up to the forms of totalitarianism that wreaked destruction in the world at that time, its message and conclusions remain true and timeless. Economic planning might not be as much of a danger as it was back then. Most intellectuals reject at least the state versions of socialism, many of the self-proclaimed socialists do not argue for the implementation of economic planning, instead proposing an extensive and large welfare state with high levels of redistribution and progressive taxation. However, the violations and further dangers to human freedom remain: one of the most pressing issues of our time is continuing and inherently nationalist immigration restrictions, present even in the most liberal of modern states. With Donald Trump, protectionism came back into fashion and the intellectually weakened Democratic party unfortunately reacted by adopting parts of the Republican policy and rhetoric. The two major powers, USA and China, use protectionist measures to lead a conflict of political power, and even Europe doesn't open its borders to workers, products, and services from many countries, leaving them and itself poorer than both have to be.

Populist parties of all sorts are gaining influence around the world, even holding power in countries such as Poland, Hungary, Spain, and Italy. While Viktor Orban or Jarosław Kaczyński aren't fascists, it is not because of strong intellectual differences with collectivist movements, but rather the intensity of their convictions, as well as the civic culture and their dependence on the international order. But like fascists, they

are influenced by a mix of collectivist ideas from both the left and the right. Great liberal countries such as the UK have fallen for the manipulations of nativist and anti-globalist propaganda, leaving the path of multilateralism that led to the progress of the developed world since the early 1990s.

But even the 'hard' collectivists are not gone. The socialist movement is alive and well. Just a few days prior before I completed this article, the German youth organisation of the left party officially came out in favour of a 'planned economy'; they should probably read some Hayek. But even the SPD, a party with many wings and groupings, doesn't have a problem governing in a coalition with the Linke (e.g., in Berlin), a party that openly supported the expropriation of corporations that own apartments. Additionally, radical parts of the Green movement argue for systemic change, stating that climate change cannot be stopped in a capitalist economy. At the other end of the spectrum, the far-right AfD and its supporting organisations eagerly take part in the culture war between the left and right, and it regularly performs in German parliamentary elections on both the state and federal levels. Interestingly, once again the 'liberal' parts of the leftist ideology, for example, general support for freer immigration, seem to create the greatest friction.

This is not to say that the situation in Germany is the same as it was in the 1920s and '30s. It is also not to say that we are necessarily moving in that direction. What I am trying to show is that there are certain parallels and similarities. We must stay vigilant, as there is a lot at play.

In times of relative wealth and peace, it is very easy to become arrogant and self-assured when thinking about possible dangers to the social order. Atrocities like Gulags or concentration camps, and young men losing their lives, limbs, and souls in senseless battles for the higher cause seem like a barbaric and improbable remnant of the past. After all, we have reacted and our societies learned their lessons. We have different constitutions and different values; the world is more connected and the economy is more globalised.

For those who, despite the historical evidence, remain sure about the peacefulness of our times and who blindly believe in the power of written law and institutions, forgetting the influence of ideas and psychopathic dreams of power, I offer a quote from another Austrian, one of my favourite German-speaking authors, Stefan Zweig, who wrote in his autobiography, *The World of Yesterday*, about the generation that lived before the First World War:

Despite the propriety and the modesty of this view of life, there was a grave and dangerous arrogance in this touching confidence that we had barricaded ourselves to the last loophole against any possible invasion of fate. In its liberal idealism, the nineteenth century was honestly convinced that it was on the straight and unfailing path toward

being the best of all worlds. Earlier eras, with their wars, famines, and revolts, were deprecated as times when humankind was still immature and unenlightened. But now it was merely a matter of decades until the last vestige of evil and violence would finally be conquered, and this faith in an uninterrupted and irresistible 'progress' truly had the force of a religion for that generation. One began to believe more in this 'progress' than in the Bible, and its gospel appeared ultimate because of the daily new wonders of science and technology (Zweig, 1943: 2).

Nobody needs to be reminded of what happened in the twentieth century. Stay vigilant, my liberal friends.

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Book Review

Does the State Have the Right to Coerce?

Adam Mazik

Michael Huemer, *The Problem of Political Authority: An Examination of the Right to Coerce and the Duty to Obey* (Palgrave Macmillan, 2013)

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What is political authority? Why is the state allowed to do certain things that no person or organisation can? Is there a logical explanation for this? And if not: what then?

Huemer starts his argumentation with a parable (Huemer, 2013: 3–4). He makes you imagine living in a village with a crime problem – a group steals, loots, and commits violence without anyone’s intervention. At some point, one villager decides to stop the madness and, armed with a gun, sets out to catch the criminals in order to imprison them in his basement for a couple of years. After some time, he goes to his neighbour and demands payment for his services in bringing down the level of crime in the village. Seeing the consternation on the neighbour’s face, he adds that if they refuse to pay the fee, he will treat them as a criminal, and will use his gun to imprison them alongside the looters.

Huemer points out that the protagonist in this example acts like a rudimentary government. Yet, while most would deny him any right to the other villagers’ money, they seem to accept the same thing from the government (ibid.: 4–5).

This example is the ‘Problem of Political Authority’. Why are a government’s actions perceived as legitimate, while the vigilante is seen as an extortionist (ibid.: 5)? And why do we have to obey?

According to Huemer, there are two ways to explain the different perception. One is that the government’s actions are different; the other is that the agent, the government, is for some reason different and therefore has the right to act differently (ibid.: 7–8).

The philosopher rejects the first possibility quickly, going through multiple modifications of the parable (ibid.: 7–8). For example, the situation would not change if the vigilante granted the criminals a fair procedure, like most modern governments do today, or if the vigilante created a publicly known set of rules that he would enact. His actions would still be seen as unjust and be widely rejected. Therefore, why are we treating the state differently than any other individual or entity?

THEORIES LEGITIMISING POLITICAL AUTHORITY

The traditional social contract theory

There are two main versions of the traditional social contract theory, the explicit and implicit social contract. The traditional social contract theories assume that at some point in the past, people agreed to a contract giving away some of their sovereignty to the state and therefore political authority was created through a real agreement. Huemer rejects the theory quickly by pointing out that no government has ever been created in this way (ibid.: 21). The more realistic version is the implicit social contract. Proponents of these theories do not claim that there ever was

a real contract, but assert that an agreement is reached via implicit, conclusive behaviour.¹

According to Huemer, however, none of their arguments can legitimise it, because the general conceptions governing agreements in the society aren't met (Huemer, 2013: 27–35). For one, there is no way to opt out. A contract is not valid if there is no way of refusing to agree to it. Additionally, explicit dissent is not recognised. Even if an individual explicitly states that they do not consent to the agreement, they still have to obey the government. The laws and rules of the government will be imposed, whether the individual objects or not.

Apart from that, many governments, including the US government, do not recognise a mutual obligation – while citizens have certain duties, such as paying taxes, the government does not have a duty to protect individual citizens.

Hypothetical social contract theory

Besides the traditional social contract theories, there are also different forms of hypothetical social contract theories. The basis of such arguments is that while empirically there was never an agreement, explicit or implicit, a hypothetical agreement based on different kinds of assumptions is binding. Huemer points out that, usually, a hypothetical agreement can only be efficacious under extremely narrow conditions, such as if a patient in need of surgery is unconscious and therefore cannot agree to the procedure (ibid.: 37–38). However the same cannot apply to a conscious patient, or to an unconscious patient who has told their doctor that they reject the surgery for religious reasons.

Therefore, according to Huemer, there are generally two conditions for a hypothetical agreement to come into effect: actual consent must be impossible to obtain, and additionally the parties' assumed consent must be consistent with their philosophical beliefs – a hypothetical alteration of their beliefs is impermissible (ibid.: 37–38).

Nevertheless, many theorists still argue for the validity of the agreement. One line of argumentation is to base the validity on the reasonableness of the agreement. Huemer rejects those theories, arguing that there is no guarantee that even reasonable people will reach an agreement (ibid.: 40–43). Additionally, Huemer argues that the mere fact of reasonability does not make the enforcement of a certain agreement permissible (ibid.: 43–45). He compares the social contract to a job offer: an employer might offer a contract with reasonable, fair, and attractive

¹ The first such theory is that one agrees to the social contract by passive consent, i.e., by voluntarily not objecting to something. The second is that one accesses benefits that are attached to the government's existence (consent through acceptance of benefits). The third possible form of agreement is agreement through mere presence. The last is consent by voluntarily participating in the practice of government.

terms. That alone does not make it permissible for them to force potential employees to enter the contract. Reasonableness alone does not establish political authority.

The theory that Huemer subjects to the most detailed analysis is the hypothetical contract of John Rawls, who devises certain principles of justice from a hypothetical agreement (ibid.: 46–56). In Rawls' theory of justice (Rawls, 1999; cited in Huemer, 2013), the contract is reached under a veil of ignorance: the negotiating parties do not know anything about their social stand; they do not know their race, sex, religion, and so on. It is a hypothetical situation in which this knowledge has been removed. This group of people would come up with certain principles of justice, which according to Rawls should be adopted, because they are the result of a fair agreement, without the influence of morally arbitrary aspects. Huemer asks whether the same line of argumentation could be used for political legitimacy. Once again he demonstrates that an agreement is unlikely to be reached (ibid.: 49). According to him, Rawls' mistake lies in a wrong diagnosis of intellectual disagreement – not all of them derive from ignorance and irrationality, and therefore they cannot be avoided through the elimination of certain obstacles (ibid.: 49). Not all disagreements result from the knowledge taken away from the agents under the veil of ignorance. Additionally, he argues that a supposed fairness, or freedom from arbitrariness, does not make a hypothetical agreement obligatory and that it does not entitle one party to enforce the contract against the other (ibid.: 51), just as with the reasonableness argument.

Huemer also attacks the second line of argumentation, the appeal to constraints on reasoning: the condition of being free of morally arbitrary aspects leading to reliable moral reasoning. Huemer states that Rawls' argument can be understood in two ways: either the constraints on moral reasoning (in Rawls' case the veil of ignorance) are a sufficient condition for reliable moral reasoning, or at least a necessary condition (ibid.: 52–56). In the stronger case of the sufficient condition, Huemer argues that when it comes to collectively sufficient conditions, the constraints would need to include a condition of complete and correct values on the part of the negotiating parties, which would make Rawls' theory unusable (ibid.: 52–55). If the conditions are only collectively necessary, Rawls would have to prove that all other political theories do not satisfy those constraints on moral reasoning (ibid.: 56). In simple words: Rawls would have to prove that all but one philosopher are unreasonable.

THE AUTHORITY OF DEMOCRACY

Deliberative democracy

Another way of justifying political authority and obligations is through democracy. Huemer first addresses the more naive thinking of majori-

tarianism (ibid.: 59). He offers the parable: You are a professor, and you invite your students to an evening at a bar to discuss philosophy, network, and have a good time. As you finish up, the group deliberates on how to split the bill. One person suggests dividing the bill equally. You recommend that everyone simply pay for whatever they had. A graduate student says that you should pay for the drinks, but you decline. The student continues to argue and suggests taking a vote. You unanimously lose the vote. Do you have an obligation to pay?

Democracy theorists, of course, do not resort to this kind of naive reasoning. A theory that Huemer analyses, identifies 'deliberation' as the basis of political legitimacy. It stems from the philosopher Joshua Cohen (Cohen, 2002; cited in Huemer, 2013: 60). Deliberative democracy is a hypothetical concept (Huemer, 2013: 60):

1. The participants believe that their deliberation determines the outcomes, without the constraint of any prior norms.
2. The arguments are based on reasoning, with the expectation that reasoning will determine the outcomes.
3. Every participant has an equal voice.
4. The goal is a consensus. If none can be reached, a vote follows.

Huemer criticises this view on many levels. For one, no modern democracy has the features worked out by Joshua Cohen (ibid.: 61–64). Regarding the first condition, there are people with very different philosophical and ethical views. It cannot be assumed that everyone will agree that they are only bound by the results of the deliberation. Regarding the meritocratic argument, political discussion is not based solely on rational and evidence-based arguments. Manipulation, biases, and groupthink influence actors' positions.

It is also untrue that everyone has an equal voice in our societies. Politicians, journalists, experts, influencers, celebrities, and others have a much larger impact on the political discussion than most.

Cohen's last condition too is far from reality. Very often, political discussion is not aimed at consensus – often political parties and commentators argue in order to gain political capital, express their emotions, and articulate their own opinions.

Moreover, these conditions also do not explain why, even in such a theoretically ideal democracy, the use of coercion would be justified – the same would not be justified with private agents (ibid.: 64–65).

Equality

Huemer thoroughly analyses the arguments of Thomas Christiano (Christiano, 2005; cited in Huemer, 2013: 66–79), whose main premise is that we have an obligation to treat others as equals. To do that we need

to obey democratic decisions (ibid.: 65). The disobedience of democratic laws means that we place our judgement over that of others, and therefore treat them as inferiors (ibid.: 67).

Apart from that, in order to treat others as equals, we also need to support the equal advancement of their interests (ibid.). Democracy is crucial to the equal advancement of persons' interests (ibid.). Therefore, one must support democratic laws by obeying them, in order to treat others as equals (ibid.). According to Christiano, individuals' interests can only truly be advanced equally if citizens are *able to see for themselves that they are being treated equally and that democratic decision-making satisfies this 'publicity principle'* (ibid.).

Huemer argues that if the obligation to support others' equal advancement is interpreted restrictively, it leads to an unreasonably strict theory of justice that theorists like Christiano would not support (ibid.: 68). Huemer uses the example of a person who has \$50. They can spend it on themselves, thereby placing their interests over those of others. In order to promote others' interests, they would need to spend the money on something that benefits everyone (ibid.).

This, according to Huemer, could be avoided by limiting the argument to the obligation of creating social institutions that equally promote others' interests. However, Huemer argues, this 'restriction' contradicts the premises of Christiano (ibid.).

Huemer suggests that perhaps the obligation can be "overridden by countervailing reasons, including prudential reasons". This however does not apply to the government, because the government as an institution does not have real prudential reasons. According to Huemer, this leaves a lot of speculation about the extent of the political obligations of individuals. He illustrates it with an example.

In the previous example, a person had to consider whether to spend \$50 on a donation to a highly effective charity organisation, which would use the money to reduce inequality and bring society closer to the equal advancement of all everyone's interests, or whether to use it for their own consumption. As they already spent a lot of money on charity, they decide to spend it on themselves (ibid.: 69). In Huemer's second example, they are forced by law to pay a lot in taxes. They can either pay all their taxes or cheat and spend the \$50 on themselves (assuming that they will not suffer any negative consequences) (ibid.).

Huemer asserts that there is no relevant difference between the two situations, yet almost nobody would defend the practice of cheating on taxes, even though the money would be much better spent by the charity (ibid.: 69–70). The impact of the \$50 in the tax example is much smaller than in the charity example (ibid.: 69–70).

Apart from that, according to Huemer, obedience to democratic laws has virtually no effect on the system itself. While he concedes that if

everyone stopped obeying laws, the system would collapse, the influence of one individual is almost non-existent (ibid.: 70–71).

Another line of argumentation that Huemer attacks is the publicity principle. If the obligation to support equal advancement for everyone in society exists, this will not solve the entire problem: people see equality in different ways – material equality, equality of rights, and so on (ibid.: 71–73). By equality, Christiano means equal influence on the political process. According to Huemer, there are two interpretations of the publicity principle: The weak interpretation is that individuals need to be able to see that they are being treated according to some conception of equality, without knowing whether that conception of equality is correct and essential to justice (ibid.: 7). In the stronger interpretation, individuals need to be able to see that the way they are treated is actually just (ibid.: 71).

The weaker interpretation allows almost any concept of equality, while the stronger interpretation doesn't allow any. Even if we were to assume that democratic equality in decision-making is less controversial, a lot of questions arise: Which kind of democracy meets this requirement? Should everyone have equal opportunity to stand for office? What does that mean?

Huemer concludes that if the publicity principle requires a lack of controversy in the application of a given conception of equality, then democratic equality doesn't meet those expectations (ibid.: 73).

Another point of criticism is the notion that to consider one's own judgement higher than others' is to treat others as inferior. Huemer points out that there are multiple situations in which there are legitimate reasons to think that the judgement of others is wrong. The philosopher brings up data showing the distressing lack of political knowledge among Americans. It is not wrong to assume that others, or even the whole public, is wrong on an issue. There is nothing wrong with treating unequal things unequally. 'Justice does not demand that we refrain from treating other persons as having some characteristic that we justifiably and correctly take them to have' (ibid.: 74).

Additionally, while disobeying a democratic law could be interpreted as treating others as inferior, the use of coercion in order to enforce cooperation is a much stronger violation. Huemer returns to his example of the bar tab: imagine that after you decline to pay, the others threaten to put you in a closed-in room for some time, using force if necessary. 'Who is treating whom as an inferior?' (ibid.: 75). It is the majority that imposes their laws with threats and coercion that treats others without respect and as inferiors. According to Huemer, the principle of treating others as equals contradicts the legitimacy of the actions of the government (ibid.: 76). Therefore, it cannot legitimise political authority, as political authority needs both political obligations and political legitimacy (ibid.).

CONSEQUENTIALISM AND FAIRNESS

Consequentialist arguments are those that focus on the good or bad consequences of an action. They assume that the government protects certain important values and therefore the government needs to be protected (ibid.: 81). Disobeying the government, according to this view, is morally wrong, because it would undermine the government, which diminishes its ability to protect those values.

The main consequentialist arguments in favour of the government regard its tasks as formulated by classical liberals: the defence of individual rights and public order via the police and courts (internal security), military defence from foreign invasions (external security) and the establishment of a clear system of rules and laws for society. In this part of the book, Huemer assumes that we really do need the government to provide those services.

In order for the state to provide those, the consequentialists argue, we have a duty (a political obligation) to abide by the laws of the state. If too many people were to disobey, the government would break down. Huemer argues that while widespread disobedience indeed would destroy the government, individual disobedience has no influence at all (ibid.: 84–85). Laws are disregarded and broken all the time. The marginal influence of one person has no influence on the ability of the government to provide security and law.

Fairness

Another centre of argumentation is fairness: people should abide by the laws of the government because disobedience would be unfair for those who generally obey. Huemer admits that there are cases in which this argument can be upheld.

He presents another example here: Imagine being in a lifeboat with other people. The boat is taking in water, and others are already working on bailing it out. While their efforts are enough to keep the water out, it still seems that, from the point of view of fairness, you should help the others in bailing out the water. Huemer elaborates that there are clear conditions in which that is the case (ibid.: 87–88):

1. A huge benefit is produced by the others – they are saving the boat from sinking. If they did something absurd, like praying to Poseidon, there would be no obligation to help them.
2. The others have to ‘assume the cost’ for the production of the good – they work to keep out the water.
3. You receive a ‘fair share’ of the benefits – in this case, you are prevented from drowning.
4. Your ‘share’ would contribute to the cause – your help would make the job easier and more efficient.

5. The costs have to be reasonable and not much higher than the costs of others – you would do the same things as everyone else.
6. You are not prevented from doing something more important, such as saving the supplies from going bad, for example.

According to Huemer, this argument is used by its proponents to legitimise some laws, such as tax laws. If we need the state to provide the crucial services mentioned above, then, from the perspective of fairness, we will have a political obligation to pay our fair share of taxes for those services (ibid.: 88, 89), and he himself does not deny a certain degree of plausibility in that case.

However many things that the government does do not fulfil the conditions. There are many laws that, following this logic, would not have to be followed, such as drug laws or occupational licensure (ibid.: 89–90).

So Huemer modifies his example: Everyone discusses what to do about the water. The majority, not including you, wants Bob to find a solution. He comes up with a plan wherein passengers have to bail out water from the boat, as well as pray to Poseidon and flagellate themselves with belts 'to prove their seriousness'. Everyone has to pay \$50 to Sally, who helped to elect Bob (ibid.: 90).

In that situation, you are still obliged to help with the water, but not with the other three parts of the plan. This creates a problem, as obligations are supposed to be content independent (ibid.: 91). The argument for fairness does not support political obligations for every kind of law, therefore the condition of content-independence doesn't stand.

Additionally, for Huemer, the state is obligated to uphold social order. If the disobedience of laws threatens social order, then creating laws that are unnecessary to uphold the order would be counterproductive and therefore would actually threaten it (ibid.: 91).

CONSEQUENTIALISM AND LEGITIMACY

So far Huemer mainly analysed the notion of political obligations on the basis of consequentialism. What about political legitimacy? Can the state create and enforce laws on the basis of consequentialist arguments?

As a general rule, violence cannot be justified merely by the positive outcomes of the violence (ibid.: 93–94). Huemer, however, argues that it can be justified in certain emergencies, when the agent using force prevents something far worse from happening. He returns to the lifeboat scenario, with the modification that none of the others wants to bail out water and states that in such situations, the use of violence to coerce them to bail out water would be justified (ibid.: 93–94).

The logical conclusion from this argument, according to Huemer, is that the laws of the state are content dependent, and that there are only

very specific situations in which the state is allowed to use force. Force can be used in order to protect citizens' rights, as well as to provide some public goods, such as police, military defence, or environmental protections (ibid.: 96–97).

However many of the laws that modern states enforce cannot be legitimised this way. Paternalistic laws like drug and substance prohibitions, laws against prostitution and other moralistic laws, any sort of rent-seeking and promotion of certain businesses over others, or laws motivated purely by emotion (like bans on gay marriage or immigration) cannot be justified (ibid.: 97). Huemer concludes that if, factually, the state is entitled only to do a fraction of the things that it is generally thought to be entitled to do, then it does *not* truly have legitimate authority (ibid.: 98).

It is also generally believed that the state has ultimate supremacy. According to Huemer, it is unclear from which consequentialist argument this notion could be derived (ibid., 98). Once again, he returns to the lifeboat example. In this version, two of the passengers have weapons, and the others do not want to bail out the water. If the first armed passenger, Gumby, uses coercion to force them to work, this act doesn't give him any kind of supreme authority that would prevent the second armed passenger, Pokey, from using coercion in a similar situation, or in order to prevent Gumby from doing something unjust, such as harming the others. The situation doesn't differ depending on the moment, whether Gumby already had used legitimate force, or not – the fact that Gumby first used coercion, does not give him the exclusive right to make all the decisions in the future (ibid.: 99).

From this, Huemer concludes that private agents in very limited situations have the right to use force against the state to prevent it from seriously breaching rights or something very bad from happening (ibid.: 99). However, his conditions for that are very restrictive (ibid.: 99). The private agents need to 'have strong justification for believing that the plan they are attempting to implement is correct' (ibid.: 99), that the use of force would indeed succeed and be causal for the implementation of the plan, and that there are no other alternatives that could achieve the benefits 'without at least equally serious rights violations'.

So what follows?

What are the implications of Huemer's arguments? The philosopher formulates logical conclusions of philosophical anarchism for policy, private persons, the state, and other agents. For reasons of brevity, the examples in the text cannot be explained here. However, if the listener is interested in Huemer's line of argumentation, some of the more important conclusions are summarised in the footnotes of the text version, which can be found on the website of the European Liberal Forum.

Starting with some policy implications, Huemer concludes that a great number of laws and regulations are unjust. He explicitly excludes laws

that protect individual rights, such as laws against murder and theft (ibid.: 144–145). However, he considers moralistic laws, such as drug laws and laws prohibiting prostitution, unjust (ibid.: 138). The philosopher goes further, regarding prescription drug laws (ibid.: 140), grants and low-interest loans for education (ibid.: 141), as well as the social security (ibid.: 141) system as unjust. He, like Milton Friedman (Friedman, 2020), also opposes licensing laws (ibid.: 141).

Another typical state-created phenomenon is rent-seeking, for which Huemer uses Tullock's definition: 'behaviour designed to extract wealth from others, especially through the vehicle of the state, without providing compensatory benefits in return' (Tullock, 1987; cited in Huemer, 2013: 141). Huemer takes this to include government subsidies for companies or private persons, laws restricting competition and forcing people into a specific service (like social security), as well as licensing laws (ibid.: 141–142).

Another area of government power that Huemer considers illegitimate is restrictions on immigration. Once again, Huemer shows that in the case of a private citizen, the enforcement of movement restrictions would be indefensible and immoral.

The philosopher also spends a considerable amount of time on taxation. Besides 'Who will build the roads?', the most common argument a libertarian hears is, 'Taxes are the price we pay for living in a civilised society'. The phrase expresses the typical consequentialist argument: taxes might not be great, but we need to pay them so that the social order doesn't collapse.

According to Huemer, that is the case only if a system of voluntary fees used to pay for basic government services proves unworkable. Therefore, taxation might be permissible – but only for the basic functions of government – police, courts, and defence from other states – and only if non-coercive options haven't worked (ibid.: 147–148).

To me, the most interesting part of the argument is Huemer's analysis of the welfare state. The philosopher concludes that even if some kind of coercive welfare programme were permissible, no current welfare programme would satisfy the requirements (ibid.: 154). While there are poor people in developed countries, their struggles are not comparable to those of the global poor. There is a difference between not owning a car and having to use a bus to get to the store, and dying of starvation, a struggle that many people in some parts of the world face every day. Taking into account that resources are finite, we therefore would always be obligated to help the absolutely poor, and not the relatively poor, due to the immediate emergency situation.²

² Huemer discusses the issues of wealth redistribution by using a modified version of the 'drowning child parable' put forward by the famous ethicist Peter Singer. According to Huemer, the best argument for the redistribution of wealth is that some people cannot

Perhaps the most controversial statements in the book are the implications for the agents state. Huemer claims that following his argumentation in this part of the book, the state has no right to commit unjust coercive acts and it cannot force those acts to be executed (ibid.: 161). Accordingly, therefore, the police cannot enforce unjust laws, such as drug laws; soldiers cannot fight in aggressive wars; and judges have the duty to not punish people for breaching unjust laws (ibid.: 161–163).

But aren't the policemen/soldiers etc. just doing their jobs (ibid.: 161)?

Huemer uses another parable here: He has hired a chauffeur who drives him around town. From time to time, he orders him to 'perform unjustified acts of coercion'. One day, seeing some children on the sidewalk he tells the chauffeur to beat up one of the children, warning him that he will be fired if he disobeys. The driver beats the child: 'I am just doing my job. I don't make the rules'. This of course is no justification – furthermore applying the same logic to the case of a policeman enforcing unjust laws, Huemer calls into doubt whether it is generally morally right to be a policeman in general (ibid.: 162).

Thus, according to Huemer, government employees are not allowed to enforce unjust policies and laws.

CONCLUSION

Huemer's book is intellectually engaging, logical, compelling, and well-written. It is an excellent option for anyone starting their adventure into political philosophy. While the conclusions are radical and one surely doesn't have to agree with everything Huemer says, it is a good antidote for the political biases that have been surrounding us all our lives.

Reading the book is an adventure that time after time demonstrates how weak and unsubstantiated our core beliefs are. Whether the reader is a libertarian, a socialist, a conservative, or some form of moderate, Huemer's argumentation will many times cause cognitive dissonance and force them to reflect on their political and moral beliefs.

The book is easy to read and, despite its radicalism, not particularly extreme. This is because of Huemer's technique: while he appeals to

satisfy their most basic needs. Singer's parable asks the reader to imagine they are passing a pond, where they see a drowning child. If they can prevent the child from drowning at a slight cost to themselves, they are obligated to do so. It would be wrong not to. Huemer modifies the parable to make it more applicable to the situation of government help. In his version, the reader is for some reason not able to save the child themselves, but can use a gun to force someone else to do so. In this case, Huemer concludes, the use of coercion is justified. However, he sees a problem: It is unclear whether the social programmes of the state actually are beneficial in sum, so whether they cause more good than harm. There are many arguments from social scientists that some social programmes actually have considerable negative effects and, overall, cause more poverty than they reduce.

rights at times, they are not the centre of his argument. The fundament comprises the beliefs and moral intuitions that almost everyone in the society already accepts. A future classic, I highly recommend this book.

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Book Review

What Made Humanity's Success?

Adam Mazik

Johan Norberg, *Open: The Story of Human Progress: How Collaboration and Curiosity Shaped Humankind* (Atlantic Books, 2021)

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INTRODUCTION: WHAT IS OPEN?

Johan Norberg makes a strong statement: every single time when societies and people have experienced an increase of wealth, innovations, and living standards, the reason was a broadly understood 'openness', of course, relative to the specific time.

By openness, the Swede means openness towards trade, immigration, and the exchange and expression of different ideas. Analysing evidence from the 300,000-year history of *Homo sapiens*, he comes to the conclusion that every time those factors came together, the result was a remarkable explosion of wealth.

The lesson is this: the Western world does not have a patent on economic growth, openness, and tolerance. As Norberg shows, periods of wealth and relative freedom have appeared in different times and different cultures. And for a very long time, Europe has not been a very good example of the values that we today would describe as liberal.

The second lesson is more painful: All those past enrichments ended. Wars, conflicts and political decisions in the past were able to destroy the fundamentals and results of those dynamic populations. Each period of 'openness' and progress gave way to a time of 'closing down' and regress, a return to traditional(-ist) values and isolation from the rest of the world.

Each time ... except ...this time?

The author analyses the reasons for such traditionalist and nativist backlashes and traces them back to our evolution. He explains the mechanisms that make us both cooperative traders and aggressive tribalists, as well as the aspects that amplify those negative parts of our nature. The book, therefore, isn't just an explanation, but also a warning and a roadmap for a better future.

Contrary to the approach in the book, I believe the best way forward for this short summary is to work chronologically and to demonstrate how, according to Norberg, in different times the three different elements of openness have collectively led to periods of progress, wealth, and enlightenment. The book is full of examples and, of course, it won't be possible to explain or even name all of them. Therefore I urge the readers to invest some money and to engage in the open exchange (perhaps by looking for the best possible offer) that Norberg praises, by buying his book. I promise that the transaction will be mutually beneficial for both parties. Additionally, if read with an open mind (pun intended), positive external effects are guaranteed.

OPEN SUCCESS STORIES

The Phoenicians

The first globalists, as the Swedish scholar calls them, arguably were the Phoenicians with their impressive system of merchant cities

(Norberg, 2021: 43–46). After the 'late bronze age collapse' of the twelfth century BC, they were able to establish themselves as the most advanced civilization. Contrary to past dominant cultures, they didn't derive their wealth and power from wars, enslavement, and looting of other peoples, but from ... trade. They became famous for their industry and entrepreneurship, and introduced many innovations into sea travel and trade. They standardised ship-building, making them more spacious and stable, and were the first to use the North Star as a navigation tool. Powered by this, they created a new network of traders across the Mediterranean and the Persian Gulf, with Phoenician city-states in North Africa and in the western Mediterranean regions.

Norberg emphasises that the Phoenicians were not just traders, but also middlemen across different trading cultures. He emphasises their willingness to learn and profit from the inventions of other states and cities, combining them into new innovations: they indeed were the first globalists.

The impact of the Phoenicians cannot be understated. They revolutionised the world with new inventions and openness to ideas that they acquired via trade with their network. They innovated and excelled in all the fields in which they participated, because they were not afraid to try and adopt novelty.

The professional traders had a profound influence on the Greeks and Romans by thoroughly influencing their politics, architecture, and culture. To be able to communicate with others, they further developed writing, making it less complex, which the Greeks and Romans then used to create their alphabets. And even though neither were traders by heart, they soon had to adopt their Middle Eastern predecessors' ways – it was undeniable that trade lead to wealth and progress.

Achaemenid Persians and Greeks

Another great civilisation that Norberg mentions is Achaemenid Persia, founded by Cyrus the Great in the mid-sixth century BC (Norberg, 2021: 86–87, 87–89). According to the author, the reason for the Achaemenid's success was their 'strategic tolerance'. The Persian rulers at that time didn't subject the populations of conquered regions to slavery or try to impose their system of government and values. Instead, they tried to keep the structures of those populations in place, allowing the people to practise their customs and religions.

The Persians were smart enough to understand that through this approach they could profit from different ideas and traditions, as well as from the talents and inventions, of very different cultures and peoples, such as the Phoenicians, Greeks, and Babylonians. Speaking of Babylon, when the Persians conquered the city, their emperor Cyrus displayed a remarkable level of strategic tolerance (and public relations skill), claiming that he triumphed on behalf of the local God 'Marduk' and promising

to bring back religious freedom and peace. Although, as Norberg admits, it is impossible to know how much of this is political propaganda, the 'press release' does display an understanding of the strategic tolerance used by many of the powerful empires used as examples in the book.

Once again however the enlightenment ended. After the fourth century BC, the Persians abandoned this approach, effectively ending the era of Persian dominance.

Nature, however, does not tolerate voids, and the Macedonians, led by Alexander the Great, were ready to take the place of the Persians. Alexander continued the tolerant tradition. After each of his military achievements, he made sure to not only preserve the social structures of the conquered countries, but also adopt many of the customs of the defeated, such as sacrificing to their gods and wearing their clothes. One of the examples that Norberg presents is the mass wedding that the Macedonian emperor organised, in which he and his military leaders married local brides from prominent Persian families. Alexander tried to retain as much of the structure that the Persians had left him, and benefited from all the different national and ethnic groups in the empire: as Norberg writes, Greeks, Phoenicians, Cypriots, and Egyptians were an integral part of Alexander's navy, while Persians, Bactrians, Parthians, and others worked in the cavalry.

After Alexander's early death, however, this cosmopolitan project came to an abrupt end. All but one of his military leaders 'divorced' their Persian wives, showing once again that while immensely beneficial, openness and freedom are very fragile.

Pax Romana

The Hellenistic period influenced another globalist empire: the Romans (ibid.: 47–50, 89–94). Like Alexander, they too continued the Persian example. The polytheist Romans quickly accepted the customs, Gods, and social structures of their conquered provinces, understanding the importance of social order and cooperation. The exceptions, of course, were the monotheistic religions with their different understanding of religion.

As Norberg argues, one of the Romans' political innovations was the more extensive freedom of movement given to immigrants and the defeated, as well as institutional tolerance, which even allowed the conquered to run for public office. The author lists many examples of such successes: Trajan and Hadrian, both emperors, were born close to Seville in Spain; Hadrian's successor, Antoninus Pius, had Gallic origins; Marcus Aurelius, from southern Spain. Pertinax, another emperor, was the son of a freed slave!

Norberg notes how the understanding of the Roman identity was different from others. To be 'Roman' did not mean to be born in Rome; it had nothing to do with the fascist and ethno-chauvinist concept of

'blood and soil'. It was instead a cultural and political identity. Norberg compares this understanding of 'national identity' to the American identity – a uniquely cosmopolitan and inclusive understanding even in today's world. The Romans had an impressively modern approach to the concept of citizenship, using it as a tool for assimilation, granting large groups of people the possibility to take part in political and economic life, thus giving them the chance to prosper, which further facilitated the interplay of cultures, as well as the order and stability of the empire. After the civil war between 91 and 88 BC, every inhabitant who was not a slave became a citizen.

The Roman tolerance and openness to immigrants and difference wasn't the cause of their fall, but rather the reason for their prosperity and glory. Immigrants and different nationalities played an important role in Rome's economic, intellectual, and political life. They became scholars, public servants and merchants; they even served in the Roman military. Immigration and tolerance are what *made* Rome, not what destroyed it.

On the contrary, the beginnings of the deterioration can be traced to Christianity, with its (for that time) exclusive political inclinations. Unfortunately, the persecutions that early Christians had to suffer didn't teach the later ones empathy. As soon as Christianity became the official state religion under Constantine, Christians assumed the role of oppressor.

As Norberg eloquently argues, the abandonment of strategic tolerance dissolved the glue that had held the empire together. The persecutions and intolerance led to riots, wars and conflicts, and created enemies where partnership and cooperation used to rule. The persecuted forged alliances that eventually led to the fall of both the western and eastern empires.

Luckily there is more to the world than Europe

The end of Rome pushed Europe into darkness. The historical evidence shows a disastrous decrease in living standards, trade and technology, and literacy and science, across professions and classes (ibid.: 94). The once economically and culturally dominant Europe, like many other examples in history, chose the path of intolerance and destruction. The evidence is quite drastic: Norberg cites research analysing the pollutant emissions (mainly lead) in the ice core, which indicate economic activity. According to this data, the emissions started to rise around 900 BC, when Phoenicians started to gain momentum. The levels peaked in the first and second centuries of 'Pax Romana'. After the Roman empire fell, the same levels would not be reached for another 500 years (McConnell et al., 2018; Norberg, 2021: 49).

The irrational intolerance of European countries did not end on the issues of immigration and religion. It wasn't just wealth that was destroyed – but the majority of our common human heritage

(Norberg, 2021: 132–135). Works of pagan Greek and Roman philosophers were destroyed, sometimes in a deliberate attempt to enforce the now dominant ideological orthodoxy of the Christian elites in the Church and among the secular authorities, and sometimes simply because of the lack of technology – we had lost the ability to produce paper cheaply and to preserve it. Europeans mainly used animals skins, which were used multiple times. It is impossible to guess how many works have been lost, but the following example should make you shiver: A fifth-century anthology of the best prose and poetry of the ancient world shows 1,430 quotations. Now guess how much of these have been lost. Some 1,115 (Greenbart, 2011: ch.4; Norberg, 2021: 135)! Let that sink in for a second. As Norberg claims, it is estimated that 90 per cent of classical literature has been lost. *Ninety per cent*. The damage to philosophy, natural sciences, medicine, and literature is immeasurable. The Great Vanishing is one of the biggest intellectual tragedies in world history, and Europe has to take the blame (Norberg, 2021: 134–135).

Islam as the teacher of Europe

Humanity, however, was lucky. After Europe decided to cut its wings, other empires were able to uphold civilisation: the Muslim world, the Chinese, and the Mongols. Given the modern political situation, this might come as a surprise to some of the listeners. But it is true: as Norberg explains, between the eighth and twelfth centuries, Islam became Europe's teacher (ibid.: 136–139).

At that point in history, the Muslim world was the most cosmopolitan and open civilisation. Its system allowed the greatest freedom of speech, which facilitated the open exchange of ideas. Relative to other cultures, the Muslim world also allowed a much higher degree of religious freedom. Islamic cities like Baghdad could be compared to today's metropolises such as London or New York. Scholars and merchants of different religions came from all over the world and enriched public discourse, as well as the economic and scientific spheres of the empire. It was the Islamic world that created the first precursors of universities. Norberg names Al-Karaouine in Morocco, which was founded in 859 by a woman from a merchant family – something that would remain impossible in Europe for hundreds of years to come.

The fact that the Islamic world drew from all sorts of different sources is well documented in some terms and expressions of everyday language. The revolutionary introduction of Arabic numerals, according to Norberg, is said to be attributed to Pope Sylvester II, who brought them from Al-Karaouine. However, the system had not originated in the Islamic world: like so many great ideas, it had been imported, in this case from India. This openness and intellectual bravery paid off in other ways too: the Arabic world triumphed and innovated in different scientific fields, such as mathematics, medicine, physics, chemistry, and optics.

Another reason for the world and particularly Europe to be thankful to the Muslim world is the preservation of some of the great works of Greek philosophy. While one of the Abrahamic religions destroyed and persecuted both the ideas and their believers, another one, Islam, didn't abstain from controversy and understood the importance and intellectual value of differing opinions. It is largely due to the work of Muslim scholars from that period that we were able to retain the works of intellectual giants like Aristotle. Philosophers such as Ibn Rushd analysed and used the works of Aristotle in their pursuit of truth. Remarkably, not even religion was spared from the curiosity of that culture. According to Norberg, Ibn Rushd wanted the holy text to be examined using scientific methods. In cases of discrepancy between science and religion, the great Aristotelian argued for the reinterpretation or a metaphorical understanding of the religious text. It is hard to believe that Ibn Rushd lived in the twelfth century.

Sadly, the Islamic enlightenment too did not last forever. Are you starting to see a pattern? Troubled by uprisings and conflicts, such as the one in Muslim Spain from the eleventh century, and the partition of the empire, the culture was hit by a traditionalist (tribalist) backlash. It became more conservative and less tolerant and courageous in relation to different ideas, religions, and people. Additionally, foreign conflicts with Christian crusaders and Reconquistadores, as well as the Mongolian threat from the east weakened and ultimately ended the culture of freedom of the Islamic world. The Mongol army invaded Baghdad on the 13 February 1258, carrying out a bloody massacre, destroying libraries, mosques, and the entire city. This was followed in the fourteenth and fifteenth centuries by a Black Death Epidemic and another invasion, this time from the Turco-Mongol Timur.

The Islamic world did not recover. Conservatism and traditionalism eventually replaced openness and tolerance, tossing Islamic culture into the state that many Muslim countries are in today. The lesson however is a differentiated one: any kind of religious or intellectual orthodoxy can lead to the decline of a civilisation. For a long time, the Muslim world was the shining example of tolerance, openness, and progress. The fundamentalists were sitting in Europe.

Song China

Around the same time (960–1279) another Golden Era was happening in the Far East. Norberg quotes the historian Stephen Davies to demonstrate the shocking differences between medieval Europe and China (ibid.: 169–173). According to Davies, the Europeans did not reach the economic, social, scientific, and intellectual levels of the Song empire until the eighteenth century (Davies, 2019: 85; Norberg, 2021: 170). Yes, you read that right! The Chinese civilisation between the tenth and thirteenth centuries was so shockingly close to modernity that

the Industrial Revolution could very well have happened there, around 600–800 years before the Great Enrichment that we are currently experiencing.

The Song empire was incredibly cosmopolitan and innovative. It had an enormous level of religious and economic freedom, with a relatively small government and an inclusive immigration policy. During that time, the Chinese increased their productivity and level of sophistication in pretty much every noticeable area. The farmers, protected by property rights, invented new solutions to grow and sell their crops. Scientific successes in various fields such as mathematics, astronomy, medicine, and metallurgy facilitated economic and intellectual progress. Although they lost access to the Silk Road, the Chinese did not give up trade; instead, they innovated and prospered in the field of maritime trade, creating larger and better ships.

Neither the emperor nor collusive cartels like the European guilds prevented creative destruction: through innovation in all sectors, the productivity of the economy was rising, forcing many workers to specialise in other fields and to use their abilities and talents more efficiently. They used the minds and hands of people from all around the world: Jews, Muslims, Indian monks, and other groups of people were allowed to prosper, trade, and run for public office. Norberg's example of iron and textile production is the one that impressed me the most. Not only had the Chinese already started to use coal instead of wood for iron production, an innovation in itself, but according to Norberg, tax returns show that the amount of iron produced by the Chinese economy at that time amounted to the combined output of Europe in 1700. We are talking about the late eleventh century! It seems incredible that the Chinese created sophisticated textile machines, text printing, paper production, and even paper money. It is impossible to describe all their amazing achievements without copying the book (buy it).

Some of you might still be a little sceptical, which is understandable, so Norberg provides some numbers. During the time of the Song empire, the Chinese population more than doubled, from around 50 million to more than 100 million. This is impressive enough, but considering that the size had been stable for half a millennium, the remarkable nature of this growth may become clearer.

As Norberg states, Song China indeed was the most advanced civilisation of its time, comparable only to the Islamic world, but economically superior to even the impressive achievements of the Ottoman empire.

The Mongols

The Song empire lasted for a little more than 300 years, ultimately succumbing to the attacks of the Mongol armies in the thirteenth century (Norberg, 2021: 94–97, 173–174). The Mongols are rightly remembered

as vicious warlords and warriors, yet, like all other great empires, they had an understanding of strategic tolerance. After conquering Song China, the Mongols did not continue to enslave and torment the population or attempt to impose their own values and systems. Instead, they continued the cosmopolitan and open politics of the Song dynasty. The two cultures, as well as the ideas and influences that Mongols acquired in other parts of the world, created another (positively) explosive mixture that made further progress inevitable. China was reconnected to the Silk Road and infused with another dose of creative energy through easier and quicker exchange and trade.

This wasn't a sudden change of strategy: since Genghis Khan, the Mongol Empire had been a remarkably open and tolerant superpower. The Mongols were never afraid to use the talents and ideas of other ethnic and cultural circles. They had religious freedom and allowed different groups to practise relatively freely – in stark contrast to the fundamentalism of Europe.

But, you guessed it, even this combination of vicious warlords and tolerant traders wasn't able to survive for eternity. The Mongols created a vast empire based on trade, open minds and strategic tolerance, and a strong army that almost overran Europe and that made other contemporary military powers look like Mike Tyson's opponents in the 1980s.

In the end, an army wasn't enough to defeat them. The bubonic plague and its consequences lead to the establishment of the Ming dynasty in 1368, which, together with its successor – the Manchu Qing dynasty – destroyed the rest of the cosmopolitan foundations of the Song empire. Just as with the other fallen empires, these two dynasties enforced a traditionalist and conservative system, burning books, banning ideas and discourse, forbidding internal movement, and even destroying the technological achievements of the Song and Mongol empires. Ultimately, this stopped the development of arguably the most advanced civilisation of its time. Just like that, the richest and most advanced country on Earth became poor and insignificant again.

How was Europe reborn?

Since leaving the Roman empire, we haven't heard a lot from the European continent (ibid.: 139–147, 177–209). The reason is that, in comparison with the aforementioned empires, there really is simply less to tell. However, just as the Greeks and Romans profited from the Phoenician and Persian civilisations, Europe was lucky to have Islam. As mentioned earlier, scholars like Ibn Rushd preserved the common heritage that in the end started a wave of intellectual, economic, and political revolutions that the European rulers were not able to stop. Aristotelian ideas quickly gained new popularity, spawning whole new intellectual traditions such as the scholastics and the school of Salamanca. Those different thinkers were enlightened by the Greek philosopher and started

to analyse the world using the logical tools that he gave them. Naturally, both the Church and the secular rulers tried to suppress those ideas, but as Norberg shows, luckily for the entire world, they failed. In comparison with the Roman, Persian, Mongol, Chinese, and Ottoman empires, Europe was uniquely decentralised. Additionally, its geography made the persecution of enlightened and therefore dangerous thinkers difficult (ibid.: 151).

One of the most powerful arguments in favour of openness that Norberg presents in his book is the contrast between the Spanish empire and the Dutch Republic (ibid.: 97–106). From the fifteenth century on, the Spanish Reconquistadores followed a policy of exclusion and religious purification, forcing groups like Jews and Muslims to either convert to Christianity or leave the country. As a result, the Spanish lost an incredible amount of intellectual and economic potential. According to the evidence that Norberg quotes, the Spanish GDP in 1750 was lower than it had been 250 years earlier. The Spanish inquisition was used by the Ottoman Empire and Muslim India, and competition in Europe was growing as well.

In 1581, the Dutch provinces declared their independence from the Spanish empire and very quickly introduced the complete opposite of the Spanish model. The Dutch Republic was a state based on openness in trade, immigration, and ideas. Compared with other European countries, it had remarkable religious freedom and became the ‘safe haven’ for the misfits, persecuted, and discriminated against on the European continent. Soon, the Dutch Republic would become the richest country on Earth.

However, what started with Aristotelian ideas continued in different places in Europe. Religious conflicts and the persecutions of innovative thinkers and misfits did not stop. But given its unique decentralisation, the disruptors were able to vote with their feet and simply emigrate to a country that accepted them. Soon, European governments started to compete to attract as many Elon Musks as possible.

If you have watched *Downton Abbey*, you might find it surprising that the Industrial Revolution started in England. This only shows the power of the enlightenment ideas that caused the glorious revolution of 1688, which put the Dutch William of Orange on the throne (ibid.: 185–188). The liberal idea started a process that at that point could hardly be stopped and that eventually lead to the Industrial Revolution in Britain and other European countries (ibid.: 188–199). Innovation and entrepreneurship were now seen as something good, as virtues. The British colony in North America took the ideas of the English and Scottish philosophers even further, and soon created the wealthiest and most powerful country in the history of humankind (ibid.: 199–203). America’s economic and religious freedom, as well as the freedom of movement and immigration, facilitated a great transfer of knowledge,

ability and talent, and an intermingling of cultures and ideas that continues until this day. While some immigration controls started to emerge in the nineteenth century, until World War I, the United States did not impose any strong restrictions on movement from Europe, and it paid off (ibid.: 104).

As Norberg repeatedly emphasises, this doesn't mean that the story of Britain, the United States, and other European countries was some kind of libertarian fairy tale. There was a long way to go, and not everyone was treated fairly from the start. Women and basically anyone who wasn't white were not treated with the same respect or didn't get the same rights as others. Slavery remained a shameful practice until after the civil war, and even after that, systemic discrimination such as Jim Crow laws destroyed the lives and chances of many Americans.

Why do we fight openness?

Nevertheless, the history of Europe and the United States, and subsequently of the majority of the world, is one of progress infused by increasing openness.

As Norberg shows time and time again, open exchange through trade, open doors, and open minds has facilitated and created times of enlightenment, progress, and wealth. Through mutual exchange, different cultures were able to profit from each other's innovations and production, and to specialise in the fields most suitable to their economic realities. Freedom of migration facilitated the interplay of ideas and cultures, creating unique combinations and inventions, and making it possible to use the talent of each mind wherever it can be most productive. The openness of minds enabled us to find truths and to develop in directions that an eighteenth-century human could not even imagine.

And yet, all but one of the enrichments ended. I have summarized the political and perhaps immediate reasons put forward by Norberg briefly above, but the problem is much deeper. It is impossible to go through the entire argument of the second part of the book, however the cause, according to Norberg, is our nature and two opposing sides of it.

Humans have always cooperated and traded, in fact, according to Norberg, the story of trade is as old as the history of humanity itself. *Homo sapiens* is a cooperative species. We work together wherever we can, and have an extraordinary ability to build alliances and partnerships quickly. This is even visible in our facial features – humans have white sclera that makes it possible for others to see what we are looking at, while other animals, including our cousins the chimpanzees, have brown sclera that hide their intentions (Norberg, 2021: 25). We had an evolutionary advantage when other humans knew our fears and intentions.

Norberg quotes Steven Pinker, an evolutionary psychologist according to whom we simultaneously developed three self-reinforcing traits

that increased our tendency towards sociability: intelligence, language, and cooperation (Pinker, 2010; Norberg, 2021: 23).

Additionally the cultural evolution that Karl Popper has diagnosed potentiated and accelerated the process (Popper and Eccles, 1984: 48; Norberg, 2021: 26–30). Our cultural evolution, evolution through language, communication, and observation, is much faster than genetic evolution: we learn from what we hear and what we see, which happens almost instantly, while genetic evolution needs at least one, and in most cases several generations to establish its changes.

This gives us two conclusions: the more people working to solve a problem the better, and it is completely wrong to push certain parts of society down. We don't just harm people and deprive them of their rights and happiness, which alone should be enough to stop such oppression, but we actually deprive society of all the progress and innovation that those groups (such as women, and religious or racial minorities) could have achieved.

Of course this isn't just an argument for population density, but for international trade and migration. Through trade, we learn new solutions to problems that we sometimes didn't even know were available. People from different countries have different outlooks on life, due to their traditions and cultures. Through trade and interaction, we don't just directly monetarily profit from each other, we also gain indirectly, by learning from each other.

However cooperation is not the only side of human nature. For 290,000 years humans lived in a zero-sum world in which their respective groups were the guarantee of survival. Losing the competition against a different tribe was a certain death. In today's modern economy, the gains of the Germans do not harm the Polish. Through open exchange and the division of labour, both can profit at the same time. But for the majority of our history, of which only the last 200 years created the vast majority of wealth and innovation, the story has been different. We did not have the economy. We didn't have the mutual gains. We had to create them.

This, according to Norberg, is why it is so hard to understand and emotionally comprehend the modern world. Our world is in the now, but our brains are in the past. Humans have the ability to forge and create alliances, which makes cooperation possible, but one of the reasons we developed this trait is that we needed it to defeat and kill other humans and groups. This tribalism and irrationality is a part of us and will remain one for a long time to come. It will grow stronger in times of uncertainty and crisis, and will cause problems: Protectionists will destroy the wealth of millions of people. Nationalists will discriminate and hurt 'other' groups for arbitrary reasons. People in poor countries will keep dying because rich countries do not give them the opportunity to enter 'their' terrain.

But we need to resist. We need to understand and fight for the values that created our world. We need to defend human civilisation from our

prehistorical brains and keep working to develop further. The world of today is the best reality in human history – but we can do more. Billions and trillions of dollars can still be made by relatively simple measures, such as multilateral trade agreements and opening up migration. Lives can be saved and diseases can be defeated. We still have a lot of potential.

Let us all read Norberg, and reach for more.

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Book Review

Camus' Ethic of Political Moderation

Luke Hallam

Albert Camus, *The Rebel* (Penguin Classics, 2000)

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INTRODUCTION

With the onset of the COVID-19 pandemic in 2020, thousands of readers turned to the French philosopher Albert Camus' most famous novel, *The Plague*. They were attracted by its portrayal of ordinary people heroically battling pestilence in a daily slog of sacrifice, perseverance, and hope – and with good reason. But as visionary as *The Plague* remains, it is *The Rebel* (1951), the final book-length essay Camus published during his lifetime, that of all his works speaks the most to our politics, especially to anyone concerned with the problem of freedom.

Camus' broad aim was to understand the great events of the twentieth century – a period of wars and genocides, torture and execution, fascism and communism. He wanted to define an alternative political morality, one that would place certain limitations on what one human being can justly do to another and would strive to prevent such atrocities from ever happening again.

Yet, although Camus harboured a fierce commitment to freedom, his politics are difficult to define. He was a member of the French Resistance against wartime Nazi occupation, a committed journalist, and a renowned novelist. Though briefly a member of the Communist Party in the 1930s, by the time *The Rebel* appeared, he had long since become a fervent critic of political idealism, especially Marxism.

Nor was he an 'existentialist', a label that was frequently applied to him in his lifetime, much to his displeasure. Jean-Paul Sartre and other existentialists were sceptical about the idea of human nature, arguing that 'existence precedes essence' (Sartre, 2007: 30). Camus, by contrast, ardently believed that there *is* such a thing as human nature, and that this means that human life, freedom, and dignity are worth protecting (Camus, 2000: 4). He therefore rejected existentialism, and believed that existentialists like Sartre who combined this philosophy with Marxism were too apologetic for the crimes being committed by the Soviet Union.

The argument of *The Rebel* is difficult to follow. It is somewhat meandering, and the book is densely loaded with references to works in continental philosophy and episodes from European history. Yet, in its 248 pages, Camus vividly plumbs the deepest problems of modernity, concluding with an electrifying call for freedom in opposition to the ideologues and fanatics who were responsible for so many of the horrors he witnessed in his lifetime.

THE DEATH OF GOD

Camus' philosophy can best be approached through one of his greatest influences, the nineteenth-century German philosopher Friedrich Nietzsche.

In the 1880s, Nietzsche famously declared that 'God is dead', by which he meant that the course of modernisation in Europe since the eighteenth century has been accompanied by a slow but firm process of secularisation (Nietzsche, 1974: 167). Rather than believing that all meaning ultimately derives from God, and that the Church represents God's will on Earth, Europeans increasingly question received religious and moral dogma, and Nietzsche believed that politics changes to reflect this.

This is the starting point of *The Rebel*. Camus starts by describing someone who asks deep questions about our fundamental values as being in a state of 'rebellion'. Such a person refuses to bow down before dogma; or, more accurately, they are *unable* to take comfort in the old religions and old certainties. As such, they find themselves in a peculiarly modern predicament: they have come face to face with what Camus elsewhere calls 'the absurd' (Camus, 2005: 26). This is the realisation that the universe is a place of infinite complexity and mystery, and the answers to the deepest questions have not yet been satisfactorily answered. Among the rebel's realisations is the fact that human beings are alone, clinging to values and certainties that they themselves have created, while being ultimately responsible for their own actions and fate. Camus writes that 'the first step for a mind overwhelmed by the strangeness of things is to realize that this feeling of strangeness is shared with all men' (Camus, 2000: 10).

For his part, Nietzsche feared that the death of God would have other far-reaching consequences. It seemed to him that once we question God and morality, *nothing* is immune from the piercing eye of doubt and revision. Why, for instance, should anything be considered 'good' or 'bad'? Surely nothing is forbidden, even murder, theft, rape, and genocide. As the Russian writer Fyodor Dostoevsky, one of Camus' greatest influences, put it in his novel *The Brothers Karamazov*: in a world without objective moral laws, must we not conclude that 'all is permitted' (quoted in *ibid.*: 33)?

While we're at it, Nietzsche asked, why not also do away with the idea of truth? Knowledge is relative, after all. There is no supreme metaphysical glue holding everything together – we only have our human minds to work with. And human minds are diseased by prejudice and distortions, many of which we inherited from religion. Perhaps we invented the idea of 'truth'?

These questions pose particular problems for liberals. After all, a world without morality or truth will probably not be a liberal world. The events Camus witnessed during his lifetime confirmed this fact: horrors such as the Holocaust, Stalin's purges, ethnic cleansing, torture, and the atom bomb announced themselves as inherent features of a modernity in which morality had been replaced by the ruthless logic of power and violence. As a member of the French Resistance under Nazi occupation,

Camus in the pages of the newspaper *Combat* aptly described his age as 'the century of fear' (Camus, 2006: 257).

From here, Camus advances towards his main point: circumscribing the role of violence and coercion in political life. He refuses to believe that the USSR or Nazi Germany represented the logical endpoint of a world without God. Even if there is no ultimate metaphysical structure in the universe and human beings are condemned to a life of endless questioning, it should not follow that 'all is permitted'. Camus was determined to make space for values such as mercy, love, and freedom.

IDEOLOGY AND TOTALITARIANISM

The Rebel deals at length with the ideologues and fanatics who used the death of God as a springboard from which to draw appalling political conclusions.

First, Camus describes the phenomenon of nineteenth-century Russian nihilism – the emergence of young radicals in the cities of the Russian empire around the 1860s convinced that God was an illusion and that it was the duty of human beings to create a paradise for themselves on Earth. The new revolutionary organisations engineered a spate of political assassinations targeting dignitaries, soldiers, and royalty. In a case from 1869 that shook the empire, a terrorist cell murdered one of their own, a student, for a perceived betrayal, and dumped his body in a lake. Some of the radicals ultimately went mad, declaring that nothing mattered and that everyone must follow their animal instincts (Camus, 2000: 105). Others believed that the application of human reason alone was enough to create on Earth the eternal utopia that religion had promised in heaven.

Varied as these incidents were across many decades, Camus believes that the nihilists were united by the same basic assumption: the world was unjust and false, and humankind has the right to destroy it. Camus says they waged a 'war on philosophy, on art ... on erroneous ethics, on religion, and even on customs and good manners' (ibid.). This nihilism takes many forms – at its most extreme, it represents the rejection of any sort of ethics whatsoever, of any course of action that doesn't involve following your instincts. The assassins and revolutionaries truly acted according to the principle that 'all is permitted'.

Yet such an attitude is difficult to sustain for long. *The Rebel* portrays those who seek to cast off morality as caught in a vicious cycle of contradiction. For they are still human beings, and therefore unable to stomach the total renunciation of all value and all morality. Camus lists various terrorists who were wracked by scruples: Ivan Kaliayev, whose plan to assassinate a Grand Duke was delayed because he wouldn't risk harming the children riding in the Duke's carriage, is one example; Boris Savinkov, who balked at murdering a Russian admiral on a train because

of the civilians who would likely be harmed, is another. These are individuals who, 'while recognizing the inevitability of violence, nevertheless admitted to themselves that it is unjustifiable' (ibid.: 119). In their desire to prove that everything is permitted, they ran up against a very human kernel of conscience and empathy that they nevertheless tried to negate.

At the same time, their innate need for some sort of value and meaning has simply been transplanted, most often into the promise of a glorious future. They cling to the image of utopia, despite everything, and in their monomania they cast the future (without realising it) in terms of the divine. 'The terrorists' real mission', Camus says, 'is to create a Church from whence will one day spring the new God' (ibid.: 116). They wanted to coronate humankind with God's crown by granting humanity's most enlightened leaders the authority to remake the world from scratch. By this logic, any amount of human sacrifice (murder, torture, theft, manipulation) is justified by ends to be achieved.

In the twentieth century, nihilism was translated upwards into the awesome destructive power of the state. No longer were the European upper classes haunted by isolated terrorist cells plotting political assassinations. With Soviet Russia and Mao's China, the belief arose that the future could be only vouchsafed by a revolutionary vanguard class of purists. Under such regimes, individuals' wills must be subjugated to the will of a central committee or a revolutionary party.

Fascism too elevated the principle of terror above any scruples of morality. Camus believed that Mussolini and Hitler constructed their states 'on the concept that everything was meaningless and that history was only written in terms of the hazards of force' (ibid.: 128). That is, the only important principles in a fascist regime are action and victory. When a state is organised for the purpose of waging war, the thing that matters most is military victory. Camus warns that 'he who rejects the entire past ... condemns himself to finding justification only in the future and, in the meantime, to entrusting the police with the task of justifying the provisional state of affairs' (ibid.: 110).

Twentieth-century authoritarianism was built on one supreme ambition: to impose a new ethical system on a Europe left disoriented by the decline of the old faith. It was justified by a nihilistic belief in the right of a leader to reconstitute the ethnic or moral fabric of society while appealing cynically to fantasies of an authentic nationhood, whose goals were more important than any limits imposed by morality or law. Modern defectors from North Korea, whose rulers presents themselves as gods on earth, would no doubt find this description familiar (Boyd, 2020).

Ultimately, Camus feared that in the wake of the death of God, political fanatics had commenced 'an attempt to found a Church on nothingness' (Camus, 2000: 134). It is clear why Camus felt his was an era without morality, humanity, or sense: all around him, states perpetuated terror and bloodshed under the marching orders of fanatic strongmen.

CAMUS' HUMANISM

Why did this happen? Why did so many people become willing accomplices to the terror of the modern totalitarian state? And if those who committed the atrocities were, as Camus thought, mistaken – if it is *not* the case that we can simply cast aside morality, rights, empathy and justice, and decide these things for ourselves – then how *should* we act?

First, Camus reminds us that rebellion properly understood starts as a striving for freedom and truth (ibid.: 99). It means freedom to pursue the truth beyond the confines of the old religion, a liberation from the suffocation of traditional moralities and hierarchies. The problem is that far too many people in the twentieth century rejected this fact. They were blindly led back towards servitude: 'hardly was [man] free ... when he created new and utterly intolerable chains' (ibid.: 221). In other words, through domination, through totalitarianism, ideologues made the solution (totalitarianism) worse than the problem (the death of God) had ever been.

Not only was it worse; it is also inconsistent. Rebellious thought begins by announcing that humankind is alone in an indifferent universe – but this necessarily suggests that there is something common to human experience. To recognise your own isolation ought to mean recognising something of yourself in others. As we've already seen, at the beginning of *The Rebel*, Camus says that 'the first step for a mind overwhelmed by the strangeness of things is to realize that this feeling of strangeness is shared with all men'. There is something common about human experience.

And, crucially, there is such a thing as human nature. This is a point Camus stressed throughout his writing. The French existentialists believed there was no such thing as human nature, that human beings are endlessly malleable creatures, whose every act is an act of self-creation. Camus rejected this. He preferred the philosophy of those ancient Greeks who knew that there *is* a human nature common to all people, even if we can't describe its contours scientifically. It is only a small step from denying the existence of human nature, Camus warned, to denying the moral importance of human dignity; from there, you give fodder to tyrants who claim for themselves the right to sacrifice human beings to aid the state or a political ideology.

But this doesn't yet give us a blueprint for how to act. We can find one buried halfway through *The Rebel*, where Camus gives us two metaphors. Like certain Russian nihilists, we can react to our existential predicament through 'blind combat, dimly groping on the sands, like crabs which finally come to grips in a fight to the death' (ibid.: 111–112). But those who claim that violence is the *only* solution – that nothing matters apart from power, force, and personal gain – are mistaken. Camus gives us his second metaphor, of:

beams of light painfully searching for each other in the night and finally focusing together in a blaze of illumination. Those who love, friends or lovers, know that love is not only a blinding flash, but also a long and painful struggle in the darkness. (Ibid.: 112)

This is the path he thinks we should choose. In fact, this is the only path that is faithful to the central truth that humans all share the same basic condition. There is a 'mutual complicity among men, a common texture, the solidarity of chains, a communication between human being and human being which makes men similar and united' (ibid.: 223).

Some might raise the objection that this talk of solidarity in chains sounds too radical, perhaps an echo of Marx and Engels' prophecies in *The Communist Manifesto* (Marx and Engels, 2002). But unlike Camus, Marx and Engels believed they had discovered a fundamental truth about the nature of historical progress. They claimed that history, driven by capitalism's inherent contradictions, is on an inevitable track towards a future utopia in which class distinctions would be abolished and property would fall under common ownership.

Camus knew better. In order to understand the human condition, he believed, you have to understand our intellectual limits. We do not know what ultimate path history is on – indeed, we have no reason to believe that any such path exists, especially not the path envisaged by communist theorists. He rejected political messianism and the tyranny it often devolves into.

Several consequences follow. First, nobody is justified in committing murder in the name of some future good. This is what Camus means when he says that true rebellion recognises certain 'limits' which we must not cross (Camus, 2000: 1). An ideologue cannot start a rebellion in the name of humanity by negating the human condition. Once we recognise our limitations, we cannot believe we know enough to commit systematic murder in the name of justice.

This does not mean that Camus was a pacifist. To refuse violence at all costs, he thought, is simply another form of nihilism. In extraordinary times, refusing to intervene for fear of getting your hands dirty means you have simply resigned yourself to the horrors around you. Camus' philosophy was more pragmatic than this. He believed that violence has to be used with both a sense of 'personal responsibility' and 'immediate risk' (ibid.: 233). Violence must always be provisional, and never an end in itself. And whoever uses it must, above all, be realistic. Violence is a terrible thing because it negates human life. It might sometimes be a necessary tool in dire situations, as Camus believed it was when he joined the French Resistance; but violence cannot be a *method*, and it must never be an *end*.

Camus also believed in the importance of freedom of speech. This theme is underdeveloped in *The Rebel*, but his description of it

as an 'absolute' right suggests how important it was to his worldview (ibid.: 232). Camus believed our inherent intellectual limitations mean we can only approach truth haphazardly, through dialogue and experimentation. If you are so certain that your understanding of justice is the correct one, you might think it worthwhile to censor your opponents and stop them from speaking. For Camus, this is a travesty, and ignores the inherent limitations of human knowledge. No person or faction possesses the illusory key to human harmony and flourishing. With his warning against 'the comforts of dogma', Camus urges us to recognise our limitations, and to remember that questions in politics and morality cannot be settled with any degree of finality (ibid.: 121).

CAMUS TODAY

Much has changed since Camus' time. The world wars have receded further into the past; the Iron Curtain no longer divides East from West; the threat of nuclear apocalypse is not so immediate.

And yet certain fundamental problems remain. Our world is even more secular than Camus', and more nails have been hammered into God's coffin. At the same time, Western nations feel even more divided within themselves than ever before. It's clear that we too must be on guard against the fallacies of thought and action that led to the twentieth century's greatest atrocities, and that many of the same nihilistic impulses against which Camus warned – terrorism, insurrection, and dogma – still loom. It's vitally important to build a politics that accepts the complexity and mystery of the world without being led down a path that gives self-elected vanguards of utopia the right to undermine the dignity of others.

Albert Camus is not to be found on most lists of twentieth-century liberal philosophers. But by confronting our deepest spiritual and philosophical problems, he carved out a set of ideas that place limits on what human beings should expect from the modern state and each other. Lives must not be sacrificed for ideological goals; a world without God is not a world without morality; violence and cruelty corrupt and weaken political life and should be avoided where possible; and we cannot, no matter how fraught our politics become, delude ourselves that 'all is permitted'.

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Book Review

Defending Truth in the Twenty-First Century

Luke Hallam

Jonathan Rauch, *The Constitution of Knowledge: A Defense of Truth* (Brookings Institution Press, 2021)

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INTRODUCTION

'As there is a degree of depravity in mankind which requires a certain degree of circumspection and distrust, so there are other qualities in human nature which justify a certain portion of esteem and confidence' (Rauch, 2021: 112). So wrote James Madison, the father of the United States Constitution, in 1788.

Madison's spirit permeates an important new book by the journalist Jonathan Rauch that seeks to make sense of the threats facing liberal societies today – threats including the destructive convulsions of Donald Trump and his Make American Great Again movement, a global army of social media trolls, and the emboldened attacks against liberal cornerstones such as expertise, free speech, and diversity of opinion. Like Madison, Rauch is no pessimist. But he is clear-eyed about the crises we face, and *The Constitution of Knowledge* provides an authoritative and crisp account of those challenges.

Over the past five years, plenty of writers have sent up flares about our so-called post-truth age. Yet the term 'post-truth' is refreshingly absent from *The Constitution of Knowledge*. This is because Rauch's book, which is subtitled 'A Defense of Truth', is not an epigraph to something we have supposedly 'lost'. Rather, it is a call to arms. Ultimately, he argues, truth isn't lost; we have simply forgotten what it looks like, and we have permitted its enemies to exploit our confusion. The result is authoritarian politics, the erosion of democratic norms, 'cancel culture', and the depressing sense that 'truth' itself might be an illusion. But none of these problems is insurmountable.

Rauch aims to describe the contours of these threats and to motivate us to adopt realistic solutions. At its most original, his book describes how the enemies of what he calls the 'Constitution of Knowledge' systematically exploit biases and quirks in human thinking in order to disrupt our collective ability to make sense of the world. And although it deals almost exclusively with American politics and society, *The Constitution of Knowledge: A Defense of Truth* provides a blueprint for understanding all contemporary attacks on truth-seeking, wherever they take place.

CREATING KNOWLEDGE

Madison's constitution embodied political liberalism. It is predicated on a mixture of checks and balances, individual rights, and institutional accountability. Other liberal systems differ in the specifics, but they all share these basic principles. In much the same way, liberal economic systems facilitate transactions within a regulatory framework that allows millions of diverse actors to participate in the market. Each acts as a check upon the others, and each is guaranteed a certain level of protection against the predation of competitors.

Rauch's topic is a third type of liberalism: *epistemic* liberalism. This is the liberalism of knowledge-creation. Of the three (political, economic, and epistemic), the liberalism of knowledge-creation can feel like the most abstract. But without it, Rauch argues, liberal societies flounder hopelessly amid uncertainty, coercion, and manipulation, with citizens committed to incommensurable versions of reality, lacking any shared understanding of what truth and knowledge should look like. The name he gives to the system designed to overcome this is the Constitution of Knowledge.

Unlike the US Constitution, the Constitution of Knowledge transcends borders. It encompasses all manner of truth-seeking institutions: universities, news outlets, governments, courts. To participate means you have joined what Rauch calls the 'reality-based community' (ibid.: 4). Anyone who has been edited, fact-checked, peer-reviewed, or audited knows what it is like to participate in the reality-based community. Its institutions 'propagate and enforce norms and rules, evaluate and certify credentials, set agendas and direct resources, enforce accountability, and train future generations to do all of those [things], and more' (ibid.: 16).

At the same time, the reality-based community is supported by certain specific virtues: honesty, humility, and openness. Above all, it relies on people treating knowledge-creation as a *collective enterprise*. Whether it's checking a breaking news report against multiple sources of information before publication, or designing government policy with input from experts, the underlying principle is the same: no single individual or faction possesses the whole truth, and generating public knowledge requires the input of others.

In the real world, our institutions frequently fall short of this aspiration. Nevertheless, they have sustained themselves over the generations by refining a system that, for the most part, prevents any one faction or perspective from dominating the process of knowledge creation. Even when it fails, the system mostly permits dissenters to point out institutional blind spots, unlike authoritarian and one-party states.

Two important principles guide the reality-based community. Rauch summarises them as the principles of 'no final say' and 'no personal authority' (ibid. 15). 'No final say' means that something is only established as knowledge when it can, in principle, be debunked. As Rauch puts it: 'No ideologue, moralist, or authority can claim the last word. All anyone can do is participate in the conversation, like everyone else' (ibid.: 89). 'No personal authority', meanwhile, ensures that the reality-based community only admits something as knowledge when it can (again, in principle) be verified by another person. The truth of a proposition should exist independent of the existence of any given individual.

Rauch argues that this does not make claims of authority or expertise meaningless. In fact, individuals gain the rank of 'expert' precisely because they have built their reputations on work that can be

independently verified. Nor does it mean you cannot 'try to understand where people are coming from': As long as propositions that rely on an individual's personal perspective do not dominate the conversation, they are admissible in the reality-based community (ibid.: 91).

Together, these principles comprise the two horns of 'liberal science' (ibid.: 15). And you need only look around at the world today to see the importance of liberal science as Rauch describes it: a world in which scientists shared information across continents in order to create, in a matter of months, a vaccine to protect against a frightening new virus – one with the potential to take millions more lives than it ultimately did, thanks to their quick and accountable work.

HUMAN ERROR

In chapters two and three of the book, Rauch explores some of the common errors in human reasoning that make the Constitution of Knowledge necessary in the first place.

Recall that the reality-based community assumes both fallibility (that anyone might be wrong) and empiricism (that all claims must be open to vetting by others). The problem, according to Rauch, is that human beings are not naturally open, impersonal, rational creatures. Empiricism and fallibility do not come easy. The idea that multiple perspectives should be tolerated, and that seeking truth is an impersonal and collective endeavour (the *sine qua non* of epistemic liberalism), is deeply counterintuitive – in fact, Rauch calls it 'the single most counterintuitive social principle in all of human history' (ibid.: 18–19).

The reason for this lies in human evolution. Summarising findings from cognitive psychology, Rauch gives a whistle-stop tour of the various biases of human cognition that emerged during the low-information environment of early humanity, when such shortcuts and heuristics were useful for the survival of the species.

For instance, there is the availability bias: our tendency to overestimate the likelihood of events that are particularly memorable. There is also the framing effect: the fact that we are influenced by the manner in which information is presented to us. Then there is the familiarity bias: the fact that we are more likely to believe information when it is repeated to us (ibid.: 26). As Rauch notes, this last bias is exploited to great effect by master propagandists (ibid.: 28), who may wish to convince wide swathes of the electorate that, for example, Joe Biden lost the 2020 US presidential election.

Human beings suffer from many other cognitive blind spots. But the most consequential, the ones that arguably do the most damage to our politics, are the *confirmation bias* and the *conformity bias* (ibid.: 28).

Confirmation bias is our tendency to seek out information that supports our point of view. This explains how so many people end up in

online bubbles that systematically filter out opposing viewpoints — or at least, opposing viewpoints that don't confirm our prior opinion of our opponents' ignorance or depravity. The conformity bias, meanwhile, speaks to humanity's inherently tribal nature. Drawing on important recent research in cognitive psychology, Rauch argues that human beings are finely tuned to conform our opinions to match those of our tribe. Certain arguments, ways of reasoning, or community values become so fundamental to our sense of self, and experience such a degree of reinforcement when we are embedded within a social structure, that entire groups can spiral off into self-referential ideological bubbles of conspiracy quackery or radical partisanship.

Rauch does not specialise in neuroscience, and he draws heavily on the results of classic twentieth-century experiments in the field, as well as more recent breakthroughs. But *The Constitution of Knowledge* draws innovative links between the insights of academic psychology and our current truth deficit.

Take the internet. Rauch argues that the modern web – aided and abetted by our biases – is designed to perform the *opposite* function to the Constitution of Knowledge:

Suppose some mischievous demon were to hack into the control centre [of the Constitution of Knowledge] one night and reverse the pumps and filters. Instead of straining out error, they pass it along. In fact, instead of slowing down the dissemination of false and misleading claims, they accelerate it ... Instead of trafficking in communication, they traffic in display. Instead of identifying sources, they disguise them. Instead of rewarding people who persuade others, they reward those who publicize themselves. (Ibid.: 124)

Platforms are incentivised to maximise clicks in order to increase advertising revenue. Their goal is not to facilitate the flow of truth, but simply to make information and content accessible to a passive audience.

That being said, Rauch argues that social media companies have actually done the most in recent years (compared with other institutions) to tamp down the worst excesses of epistemic anarchy. Twitter has developed new community feedback tools; Facebook employs a steadily increasing number of content checkers, learning from its mistakes during the 2016 presidential election, when misleading information was permitted to circulate freely.

A promising start. But it might be noted that creating a healthier online environment *without* sacrificing important values like freedom and privacy, while not a challenge that falls within the scope of *The Constitution of Knowledge*, is one of the most daunting tasks facing liberal democracies today.

TROLLS AND THE THREAT FROM THE RIGHT

In the second half of the book, Rauch examines the actors responsible for perpetuating our current illiberal rut. He is clear about which group has done the most damage: the illiberal right.

Europe has seen its fair share of right-wing attacks on the reality-based community in recent years. In the lead-up to the 2016 Brexit referendum, Britain's Michael Gove infamously claimed that the British public had 'had enough of experts'.¹ In 2019, to list just one instance of the growing threat from Viktor Orbán, the Hungarian government passed a law to seize control of over forty scientific institutions (Abbott, 2019). And numerous countries continue to roll back hard-won gains: in 2021, Reporters Without Borders declared a 'press freedom state of emergency' in Poland.²

Yet it is hard to read *The Constitution of Knowledge* without concluding that the United States – more so than Europe – faces a truly unique set of challenges in the epistemic realm.

It began with the internet trolls of the early 2010s – hackers, baiters, and shitposters of all stripes. Rauch takes us through what he calls 'troll epistemology' (Rauch, 2021: 155), citing a 'style manual' created by the white supremacist website *The Daily Stormer* (ibid.: 158). The manual advises prospective trolls to weaponise the addictive nature of outrage, and unleash a stream of falsehood in order to provoke their opponents. As George Orwell knew, the inability to recognise truth from falsehood – indeed, the exhaustion we feel in the face of a media environment saturated by amoral dissemblers – is a key cause of demoralisation. Trolls out to 'own the libs' use what Rauch identifies as 'asymmetric information warfare': 'ambushes, swarms, anonymous raids, disruptive strikes', and other tactics designed to spread chaos and cynicism on internet forums and social media (ibid.: 185).

And because 'demoralization is demobilization', Rauch reminds us, state actors too have refined these tactics to get ahead in our nihilistic information age (ibid.: 166). Russia's efforts to sow discord in the 2016 and 2020 US presidential elections involved not only employing troll-farms to corrupt the flow of truthful information, but also purposefully exacerbating political polarisation in America. In one bizarre instance, Russia supported both anti-Islam demonstrators and pro-Islam counter-demonstrators at a rally in Houston, Texas, in 2016.

Their activities, of course, extend well beyond American elections. The cover-up of the poisoning of Sergei Skripal in Britain in 2018 involved

¹ 'Britain has had enough of experts, says Gove', *Financial Times*, 3 June 2016, [ft.com/content/3be49734-29cb-11e6-83e4-abc22d5d108c](https://www.ft.com/content/3be49734-29cb-11e6-83e4-abc22d5d108c).

² 'RSF declares "press freedom state of emergency" in Poland', *Reporters sans frontières*, 13 September 2021, <https://rsf.org/en/news/rsf-declares-press-freedom-state-emergency-poland>.

Russian media posting numerous contradictory explanations for the poisoning on television and digital media. The goal was not to popularise a single plausible falsehood – it was to disorient international observers with so much information that they wouldn't know what to believe.

In fact, Rauch's key thesis is that Trump adopted similar disinformation tactics in his campaign against Hillary Clinton in 2016 and Biden in 2020. Trump has long expressed admiration for the art of the political lie: in 2004, he declared that a falsehood spread by Vice President Dick Cheney about a political opponent was 'a terrible statement ... *unless he gets away with it*' (ibid.: 8). Rauch takes this phrase for the title of the first chapter of *The Constitution of Knowledge*. Admittedly, all politicians lie, more or less. But Rauch emphasises just how deep Trump's mendacity ran. Trump lied pathologically, about everything from the size of the crowd at his inauguration to the trajectory of Hurricane Dorian in 2019.

Crucially, he and his acolytes deliberately employed troll tactics in order to win elections. Strategist Steve Bannon famously told a reporter in 2018: 'The real opposition is the media. And the way to deal with them is to flood the zone with shit' (ibid.: 163). Flooding the zone with shit – drowning out truth with a flood of information in the hopes of degrading the information environment – is what Rauch (borrowing a term from the RAND Corporation) refers to as a 'firehose of falsehood' (ibid.).

This is a particularly effective tactic in an age where the knowledge economy has been transformed into the marketplace of attention. Russia's Skripal cover-up is a notable example, as is Trump's legal team's attempt to saturate American courts with spurious lawsuits challenging the 2020 election result. Concerned citizens in Europe might also recognise this technique – it is commonly believed among British pundits, for example, that the UK government makes regular use of the so-called 'dead cat' strategy, a technique to minimise negative news coverage by producing a salacious or sensational non-story that distracts the attention of the press.³

It is far from clear that Trump always *believed* he was lying. But time and time again he deliberately attacked the reality-based community, exploiting social media and human fallibility to undermine both liberal science and liberal democracy.

MORALISTS AND THE THREAT FROM THE LEFT

Rauch argues that the threat doesn't just emanate from the political right. Some on the left are also undermining our open society and the search for truth, even as they claim to be seeking justice and equality.

³ 'Boris Johnson bets on a "dead cat" strategy to get him out of trouble', *Financial Times*, 8 December 2021, <https://www.ft.com/content/12713c27-0105-4b0a-91d6-8a6f79bd572e>.

Speakers are cancelled from university campuses. Social media users who post unwisely are subjected to pile-ons that can tank their entire careers, not to mention their social and family relationships. Rauch writes:

As different as their methods and politics may be, [the right's] dis-information and [the left's] coercive conformity are both forms of information warfare. Cancelers and trolls share the goal of dominating the information space by demoralising their human targets: confusing them, isolating them, drowning them out, de-platforming them, shaming them, or overwhelming them so that they give up on pushing back. (Rauch, 2021: 246–247)

There are many notable instances of a chill being cast over free speech. In October 2021, after *The Constitution of Knowledge* was published, a prominent geophysicist was disinvited from giving a lecture at MIT about the atmospheres of far-flung planets. The reason? He had previously co-written an article criticising the diversity, equality, and inclusion policies enacted by many administrators at American universities (Egli, 2021). This is just one example among many, and cancellations don't exclusively come from the left: according to the Foundation for Individual Rights in Education, 35% of attempts to get American professors fired in recent years have come from the right (Haidt and Lukianoff, 2021).

That being said, Rauch is often keen to blame censoriousness on what he calls 'postmodern professors' (Rauch, 2021: 87). This is understandable – postmodernism as a method in social science tends to question the idea that there can be such a thing as 'objective truth'. But, as Rauch himself notes, we don't all have to agree on whether there *is* objective truth in order to participate in the reality-based community; we simply have to agree that for the purposes of public knowledge we must adhere to certain standards of fallibility and empiricism. Postmodernists in the academy are not all in favour of cancellations and conformism. As methods among others, 'deconstructionism' or 'critical theory' (to give two broad areas of what can loosely be called academic postmodern philosophy) surely have their place within the humanities and furnish valuable and exciting insights. True, by their very nature they question key elements of liberal science. But if the reality-based community cannot accommodate methods of enquiry such as these (as long as their proponents do not promote a culture of censoriousness), arguably the *Constitution of Knowledge* is trending a little on the conservative side.

But that is a small point. Ultimately, the phenomenon Rauch describes goes well beyond firings or disinvitations, postmodernism or deconstructionism. It has taken hold of the business world as well.

Entire corporations have recently begun to release public statements of apology following pressure from social media, often because of the

words or actions of a single employee. One early example Rauch gives is that of Brendan Eich, a chief executive at Mozilla who was fired in 2014 under pressure from activists because he had donated \$1000 to a ballot initiative to overturn same-sex marriage in California in 2008. After his firing, the company released a statement saying: 'We're sorry. We must do better' (ibid.: 209). Rauch, an LGBT activist who in 2004 published a well-received book advocating for same-sex marriage, criticises the company for firing someone because of 'personal political actions he took at a time when a majority of the American public shared his view' (ibid.). He defends the idea that in our reputation-obsessed age, we have allowed social media to enforce conformity, putting us all at the mercy of an (often anonymous) jury of outraged moralists. To be clear: it doesn't matter that Eich was *deeply wrong* to oppose same-sex marriage in 2008 – the point is that that was no reason to suddenly fire him six years later because of the caprice of a crowd.

Across numerous examples, Rauch's focus is on the United States. But his discussion of the contemporary left poses important questions for liberals across the world. If an act of speech is incorrect, unwise, or even just flippant, does that mean it must be publicly denounced? Must the speaker be fired? The likelihood that an idea will be labelled as 'dangerous' simply because it relates to diversity policy has certainly increased over the past few years – but is this a reasonable understanding of danger and harm? Meanwhile, social media encourages pile-ons and grandstanding, which activate our conformity bias – but what about the chilling effect this has on free expression and individuality? And, most worryingly of all, is it possible that liberals have been too willing to go along with these new trends, for the simple fact that we believe we too (just as much as the cancellers) seek justice and progress?

Liberals across the world are starting to reckon with this new moralism. Too often, those who fight for progress have forgotten the most counterintuitive principle of all: that it is *better* for society if bad opinions are permitted to circulate; that there is nothing to be gained (and much to be lost) from radicalising our definition of 'violence' to encompass what is sometimes perfectly innocuous speech; that the search for truth is *threatened*, not aided, by the frenzied language games being indulged in across campuses and corporations by a small but vocal group of individuals. These are just some of the questions raised by *The Constitution of Knowledge*, and they are well worth attending to.

DEFENDING TRUTH

In the end, Rauch observes, decent people everywhere feel demoralised, downtrodden, and exhausted. The enemies of an open society appear 'ten feet tall' (ibid.: 185), with resurgent authoritarianism in Europe, the

ever-present threat of trolls, increasing social media outrage, and the prospect that Trump will again run for president in 2024.

But it is equally the case that the institutions and norms that together comprise the Constitution of Knowledge are among the most robust social achievements in human history. They have been painstakingly erected over the course of generations, and encompass literally billions of people across all continents. Nobody who has been paying attention should expect them to fail overnight – not in the United States, not in Europe, not anywhere.

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Book Review

The Age of Imitation: An Explanation of Today's Political Phenomena

Mara Pepine

Ivan Krastev and Stephen Holmes, *The Light That Failed: A Reckoning* (Penguin, 2019)

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GROWING ANTI-LIBERALISM

The title of this book, *The Light That Failed: A Reckoning*, is directly inspired by the novel *The Light That Failed* written by Rudyard Kipling in 1891, depicting a tragic unrequited love story. What Stephen Holmes and Ivan Krastev hope to achieve is to explain how liberalism became a victim instead of the victor it was purported to be after the Cold War (Kipling, 1891). A preliminary look will highlight certain events of the last thirty years as underlying causes of the decline of liberalism: 9/11, the second Iraq War, the 2008 financial crisis, the annexation of Crimea, the Syrian War, the 2015 migration crisis, the Brexit referendum, and the 2016 American elections, all evolving against the background of China's economic miracle and growing influence. With the most border enforcement since the end of the Cold War, and with decreasing public faith in the systems of democracy, the question this book aims to answer is the famous quote from Ben Rhodes 'What if we were wrong?', referring to the possibility that liberals might have gravely misread the post-Cold War situation.

The authors, Stephen Holmes and Ivan Krastev – one American, the other Bulgarian – were both born at the advent of the Cold War and their political thinking was profoundly marked by the Berlin Wall and later by its absence, and as such, they seek to unravel the causes and mechanisms of the illusion of a liberalism-as-absolute-champion that they themselves harboured.

At the end of the Cold War, Western liberal democracy was crowned the victor in the ideological war that spanned half a century. Since Western liberal democracy was considered infallible and the pinnacle of political evolution, as Francis Fukuyama famously claimed, what was left to be done was to extend the geographical reach of Western liberalism to encompass the entire world (Fukuyama, 1989: 5).

The year 1989 marked the beginning of a new era, one that Holmes and Krastev named 'the Age of Imitation', which lasted 30 years. The main argument of this book is that imitation politics is the reason for the declining acceptance of liberalism. The way the authors see it, Western domination made liberalism seem the best moral idea, one that could bear no competition from any alternative, and this imposed 'choice' is what spurred the anti-liberal, anti-Western sentiment in post-communist countries, more so than the allure of an authoritarian past. Since choice, or even the mere illusion of it, is essential, people revolted against the imposition of the model of Western liberal democracy and turned to the nationalist xenophobia that marks Central and Eastern European politics today and that has also gripped other parts of the world.

THE REASON IMITATION POLITICS FAIL

To support their argument that the politics of imitation spurred anti-liberal sentiments, the authors turn to two personalities: the Polish philosopher and conservative member of the European Parliament Ryszard Legutko, who laments the lack of alternatives to liberal democracy, and the Hungarian historian Maria Schmidt, a close adviser of Viktor Órban, who believes that the Hungarians are sick of the 'imitation politics'. Holmes and Krastev highlight that anti-Western sentiment is not just a way for non-Western leaders to shift the blame for their own failed policies, but rather the most prominent reaction to liberalism's abandonment of pluralism. After the Cold War, the split in the geopolitical world was no longer between the communists and the democrats, but rather between the established democracies and the societies struggling to imitate them. No matter the name given to 'imitation politics', the authors point out, the mechanisms at play are always imitation – integration through assimilation. The liberal West became a model of morality and the East was left to imperfectly imitate their values, institutions, and political mechanisms, creating a moral asymmetry.

Next, Holmes and Krastev explain why exactly imitation politics are detrimental: there are four main issues with the way imitation politics are expected to unfold that illuminate why they are so despised by the imitators. First, the imitated are acknowledged as morally superior to the imitators. Second, Western liberal democracy claims to have eliminated all viable alternatives. Third, the imitation is expected to be unconditional, not adapted to local traditions. Finally, the imitated countries (considered morally superior) presume to have the right to oversee and monitor the progress of the imitators' process of imitation on an ongoing basis. The authors draw a thought-provoking parallel to the elections of the Soviet era, which were marked by the illusion of choice as opposed to an actual opportunity to choose between political candidates.

In order to better make their point, Holmes and Krastev, first establish two distinctions: between the supervised imitation of an orthodox model and the ordinary 'copying' process through which countries profit from each other's learnings, and between the 'imitation of means and the imitation of goals', with the authors calling the first of these merely 'borrowing'. The borrowing of means does not in any way modify a nation's identity, whereas the imitation of moral goals can end up having profound transformative effects. The difference between imitating just the means or both the means *and* the goals can be observed by contrasting China with Eastern Europe.

DISILLUSIONMENT WITH WESTERN LIBERALISM

However, especially for Central and Eastern Europe, imitating the Western liberal ideal has proved a damaging contradiction in that the West demands to be imitated, but Western ideals hail originality as a core value. The attitudes of the West during the EU integration process for Central and Eastern European countries such as Poland and Hungary proved to also be quite infantilising: they were told to emphasise self-governance but were made to follow direct instructions on what laws and policies to enact from Brussels. The oppressive influence of the USSR seemed to be replaced rather than removed. In this context, the authors refer back to Kipling, noting that in such a situation, elections appear to be a 'trap for fools' (Kipling, 1891).

The attempt to internalise the imitation of values and goals of the West proved extremely detrimental to the East's sense of identity. While political imitation is by no means a product of the twenty-first century, it had never before occurred to this extent. The innumerable earlier cases of mimicry served to empower the weak, but never threatened their sense of identity. The authors emphasise the distinction between superficial mimicry and deep-rooted imitation, which turned the 'Imitation Imperative' into an oppressive force and has brought forth fears of the annihilation of the imitators' cultural identity. While the politicians of Central and Eastern Europe could champion the imitation of Western values as a return to those countries' authentic Europeaness, the same could not be achieved in Russia, where the communist regime had always been inherently autochthonous.

However, regardless of their original outlook on the Western model, more and more eastern imitators began to be disillusioned and dissatisfied with the model, mostly because it became increasingly hard for the imitated to deny their sense of superiority over the imitators and also to champion an ideology as the only alternative when it had already started to show signs of internal failure. With the advent of the 2008 financial crisis, Western liberal democracy lost all claims to its previous mythological levels of regard.

The concept of imitation has not been widely studied in sociology, but the French philosopher René Girard has paid special attention to it and the damage it can spark (Girard, 1976, 1979, 2009, 2012). Girard has concentrated especially on the conditions where imitation leads to social conflict, which he identified as the moment when the model starts impeding the self-realisation of the imitator. The type of imitation most likely to engender such a result is the imitation of goals. The authors thus argue that is this type of imitation of goals that is at the root of the anti-liberal sentiment currently permeating European societies.

POLITICAL IMITATION – WHAT DOES IT MEAN?

The goal of the book is not to offer a comprehensive picture of the causes of the contemporary anti-liberal sentiment, but rather to concentrate and shed light on a particular matter that the authors feel has not been discussed enough. To highlight the concept of political imitation (whose formulation they admit to be far from definitive) they have chosen three case studies.

The first is the communitarianism of Central European populists, especially in Poland and Hungary – they seek to explain how the rise of these illiberal populists was a direct response to the abrupt transition from Soviet-era communism devoid of alternatives to the Western liberalism devoid of alternatives, but they also explicitly claim that this is in no way an excuse, or worse an endorsement of such political opinions.

The second study is of Russia after 1991. First, it installed a façade of democracy without too much fuss, having already been used to upholding a façade of communism. Then, this mimicry having outlived its usefulness by the early 2010s, the new Kremlin adopted the tactic of ‘mirroring’, which takes the worst facets of what it is imitating and reflects them back as a form of vengeance. What the authors find interesting about this is that the Kremlin seems to be pursuing this vengeance through mirroring as a goal in itself, often to the detriment of the country. Russia is no longer interested in parroting Western democracies; instead, it prefers to confront the Americans with the West’s own failings and abuses of power, exposing their unfounded sense of superiority.

The last case study turns to just that part of the world, analysing the 2016 American elections and the reasons the Americans preferred a candidate whose platform championed no longer being the model for imitators. This seems counterintuitive, given the widespread opinion in Central and Eastern Europe and in Russia that while imitation is indeed detrimental to the imitators, it ultimately profits the imitated. Indeed, the authors explain that the reason for the American resentment of the imitators is the fear of being replaced as the model, with the source of this apprehension being immigrants and China. Donald Trump had been a proponent of the idea of America being at the mercy of its imitators since the 1980s, but only recently did people become sympathetic to it. The reason for this change of heart lies with the economic miracle that put China on the map as a much more important economic competitor than other countries had been. The increasingly widespread fear of China stealing jobs and technology from honest American citizens and businesses are what ultimately gave plausibility to Trump’s idea of vulnerability.

This newfound sentiment against a liberal world order in the unlikely-est of places supports the author’s theory that the politics of imitation

ultimately harms everyone involved, not only the imitators. It is natural that China permeated these discussions, as its increasing importance marks the end of the Age of Imitation. While the budding conflict between America and China will undoubtedly reach great proportions, it will not occur in an arena of moral ideology; instead, it will be exclusively preoccupied with how best to amass the necessary amount of power and influence to serve their own interests. This is the reason the authors reject the label of a 'new Cold War' – there is no ideological basis to it.

THE ANTI-LIBERAL SENTIMENT OF CENTRAL AND EASTERN EUROPE

The book is structured in four parts: the introduction, followed by a comprehensive chapter each for the three case studies. The first of these is 'the Copy Cat Mind'. As previously stated, the first case study focuses on the anti-liberal sentiment of Central and Eastern Europe. It states, in the words of the American John Feffer, who wrote a more or less anecdotal account of the sentiment pervading the former Eastern Bloc in 1990 and in 2015, that while for the Second World War generation communism had been the disappointing ideology, 'For the current generation in the region, liberalism is the god that failed' (Feffer, 2017: 34; quoted in Krastev and Holmes, 2019: 75–76). After the events of 1989, the spread of democracy was imagined as an awakening of a silenced majority that wholeheartedly supported liberalism. No one anticipated the resentment that would only grow after twenty years of imitation politics, which ultimately gave birth to illiberal populist movements, some of which would even reach power, such as in Poland and Hungary. The idealised version of liberalism that lived in the minds of Central and Eastern Europeans in the 1990s soon became synonymous with inequality, corruption, and a process of redistribution (this time from public to private) that was just as unjust as that practised by the communist regimes.

The 2008 financial crisis only increased this resentment, and it was too late for the image of liberalism to recover, as it suddenly dawned on Central and Eastern Europeans that Western leaders were far less in control than anyone had suspected. Proponents of liberalism might still say: 'Yes, liberalism might not be the infallible system we thought it was but it still is superior to the abusive authoritarian regimes from before', but people have forgotten the gravity of the injustices perpetrated by those regimes, which has only given more impetus to the new illiberal politicians. The authors feel the need to again highlight that their explanation of the anxieties and the subsequent response from Central and Eastern Europe is in no way an endorsement of the anti-liberal policies implemented by those in power, particularly in Poland and Hungary,

especially as they often parade their distaste of Western influence as a way to mask their own corruption and abuses of power.

POST-SOVIET RUSSIA

The chapter 'Imitation as Retaliation' focuses on the second case study, that of Russia after 1991, revisiting the idea of imitation politics also being used in the form of vindictive measures. The end of the Cold War with the fall of the USSR in 1991 suddenly saw the West with its liberal democracy devoid of any viable ideological competition. This gave the West the illusion that Russia would embrace their values and institutions and embark upon its own politics of imitation in the hope of emulating Western liberalism. However, what Western leaders failed to realise is that Russia would adopt an attitude focused on revenge more than anything else.

Russia indeed uses imitation, but its approach is very different from that of other post-communist countries. While most countries of the Eastern Bloc imitate the West in an effort to assimilate, Russia mimics the worst parts of the West in a 'mirroring' process, meant to reveal to the West, with its superiority complex, all its own failings. An example of this attitude is the involvement of Russian trolls in the 2016 election, which more than ensuring the election of Russia's favourite candidate were meant to wake Americans up to the realities of foreign intervention in the country's most important electoral process.

To rehash the last thirty years, the authors explain that Russia's imitation politics followed a tripartite course: first, in the 1990s, the Yeltsin regime simulated democracy in a way that drew the West's attention away from the creation of the nowadays famous Russian oligarchs. The second part coincided with Putin coming to power and was marked by ever-looser simulations of democratic processes. The third part, whose beginning can be dated to 2011–2012, is characterised by mirroring politics targeting Western, especially American liberalism. Russia publicly shed its flimsy simulation of Western ideals in 2007 with Putin's famous Munich speech. The reason imitation politics didn't take root in Russia as they did in other post-communist countries is that, what others experienced as a liberation, Russia experienced as a traumatic loss. The severe instability of the 1990s affected even the life expectancy of its citizens. 'In the early 1990s, in the immediate aftermath of the communist collapse, the life expectancy in the former Soviet Union and Eastern Europe fell precipitously' (Krastev and Holmes, 2019: 297–298). The trauma of losing their country, their identity and, for most, their livelihood, was compounded by the ease with which the regime change took place, without violence and without upsetting the position of most people in power. The authors highlight that that was perceived as a humiliation by the Russian people and the refusal to accept such a reality led to the

prevalence of conspiracy theories. This phenomenon, together with the rise of communist China after the collapse of communism in Europe, consolidated the idea for these Russians that it was not that communism as a political ideology failed, but that a series of incompetent or malicious decisions led to the dissolution of the USSR. This is why Putin's public acknowledgement of Russia being the loser of the Cold War garnered a lot of sympathy from those who resented the unfounded Western sense of superiority.

THE 2016 AMERICAN ELECTIONS

The final chapter, 'Imitation as Dispossession', presents the third case study, that of the 2016 American elections. It seeks to show the multi-faceted results and consequences of the Age of Imitation. At first glance, Trump's presidency has aligned itself with the programme of destroying the liberal world order that the United States itself had put a lot of effort into establishing. The authors claim that the American example can be fruitfully contrasted with the Eastern European ones that came before, because they all centre on the pervasive disappointment in Western liberalism brought forth by the Age of Imitation.

Obviously, the difference between the different case studies is glaring and the authors do not shy away from it; rather, they consider it particularly relevant. While they find no issue in explaining the resentment of the imitators towards the imitated, the fact that the opposite phenomenon is also an important political reality is what requires in-depth analysis. Trump's rejection of American exceptionalism, in line with Putin's own views on the matter, is very telling of the new illiberal trend in American politics. The authors claim that that rejection of the previous exemplary status of the USA is not at all incompatible with the 'America First' slogan: the slogan implies a necessity for America to 'win' at all costs, abandoning the pretence of being a superior country that leads by example.

The most important idea underlining Trump's platform, and ultimately one of the keys to his success, was stripping America of its proselytising imperative, transforming it into a 'normal' country, a country that doesn't see itself as fundamentally better than all other nations.

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Book Review

John Milton against the Paternalism of the Seventeenth Century

Mara Pepine

John Milton, *Areopagitica: A Speech of Mr. John Milton for the Liberty of Unlicenc'd Printing, to the Parliament of England* (Arc Manor, 2008)

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A BIT OF HISTORY

The early half of the seventeenth century in England was marked by Charles I's rule, the English Civil War, and following it the Cromwellian regime. The English Civil War had its roots in a religious war between Catholics and Protestants, a conflict that defines much of English history. Once the Protestants came into power, they abolished the monarchy and replaced it with parliamentary rule.

During its dismantling of the English monarchy, the Protestant Parliament also went about dismantling the Star Chamber. The Star Chamber was an English court founded in the late fifteenth century whose original goal was that of supplementing the activities of other courts by targeting powerful individuals who might be able to intimidate the rest of the system into not prosecuting them. However, it soon morphed into an organ of the state responsible for abuses of power, e.g. imposing excessive punishments, which prompted the passage of the Habeas Corpus Act. Its abolition in 1641 was a very important step towards eliminating the unjust rule of the monarchy. However, the passage of the Licensing Order of 1643 showed that the Parliament was more interested in a transfer of power rather than in eliminating the abusive structures themselves. The law ensured the pre-publication censorship of books in England. As a response to the Licensing Order, in November 1644, the English poet and intellectual John Milton, who was a big supporter of and a key actor in the Cromwellian regime, published *Areopagitica: A Speech of Mr. John Milton for the Liberty of Unlicenc'd Printing, to the Parliament of England*. His speech, which addresses the Protestant-led Parliament directly, is an open criticism of the Licensing Order and the paternalistic approach of the legislative body. The title *Areopagitica* also refers to this: an Areopagite was a member of the Areopagus, the judicial council of ancient Athens.

OPENING REMARKS

Milton, an admirer of ancient Greek society, opens his speech with a quote from Euripides, stating that true freedom can only be achieved in the presence of freedom of speech. He goes on to assure his intended audience that he is not brazenly addressing them out of entitlement; he is more than aware of the risks his endeavour involves but he feels so passionately about the topic of freedom that he considers it his duty towards the betterment of his society. Liberty, in his words is after all not the absence of problems in a certain regime, but the ability to point out those problems and swiftly solve them.

In order to cushion what might have been seen as a blow to the authority of the newly established Parliament, Milton continues with a

brief exposition of what constitutes praise, laying out three criteria: the object of praise must be worthy of praise, it must truly show the positive aspect that makes it praiseworthy, and the one praising it must avoid empty flattery. He concludes that offering advice is a much higher form of praise than flattery, and as such the Parliament should receive his speech as praise rather than criticism. By accepting and paying attention to what he has to say, Milton assures the Parliament, it would distance itself even more from the corrupt monarchy that craved flattery, and instead emulate the ancient Greeks who took into consideration the insights of learned people.

After taking these precautions, Milton brings up the topic of his speech: the Licensing Order of 1643. He chooses to err on the side of caution rather than risk being misunderstood and angering the stern Members of Parliament. As such, he explains that he finds certain clauses of the Licensing Order appropriate, indicating those that preserve the copyrights of authors and publishers and that aim to ensure that poorer people have access to literature. His only real problem lies with the clause that enforces pre-publication censorship, carried out directly under the supervision of Parliament.

Milton's next outlines his argument, meant to prevent the lawmakers – whom he asserts he holds in high regard – from making a mistake. He breaks it down into four points: The first is that censorship of the written word is an essentially papist invention and as such should be automatically repulsive to the Protestant Members of Parliament. Milton's second point concerns why exactly people engage with texts. Third, the Licensing Order would not actually affect those works it was meant to target. Finally, enforcing such an order would stop all learning and discovery in their tracks, and ultimately obscure the truth itself.

CENSORSHIP: AN INSTRUMENT OF THE POPE

As an introduction to his first point, Milton explains why he finds the idea of eliminating books so despicable by presenting his own opinion that destroying a book is tantamount to or even worse than killing a human being, as it entails eradicating not a living thing, but 'an immortality', 'reason itself' and as such is a direct attack on God (Milton, 2008: 12).

Milton calls the licensing of books a 'Spanish' idea, referring to its roots (in his opinion) in the institution of the Inquisition. In order to prove his point that the licensing of books is an inherently inquisitorial practice that deserves condemnation, he reviews the state of censorship of the written word throughout history, starting from ancient Athens. He notes that works were only banned because they were considered either blasphemous or libellous. In all other matters, the leaders of Athens and even Sparta didn't interfere and allowed authors essentially unlimited freedom of expression.

Milton's distaste for Roman society is apparent – he doesn't shy away from calling them uncultured and overly focused on military matters. However, even they, Milton says, only bothered to ban books that were explicitly libellous. Even after the Roman Emperors converted to Christianity, of the Roman Emperors the lax attitude continued, with the state only banning outright the works of the 'grand heretics' and pagan authors who wrote explicitly against Christianity.

Disregarding the already numerous examples of books that were indeed banned in ancient times, Milton states that censorship only came about with the creation of the – primarily political and only then religious – institution of the papacy in 800 AD. He says that censorship only affected heretical works at first, but soon also started to target Reformist books that criticised the corruption surrounding the Papal seat and the Catholic Church in general. Milton brings up the Council of Trent (considered the Catholic Church's prime counter-reformation measure) and the Inquisition, which compiled lists of banned books that not just contained heretical ideas but anything that didn't strike their fancy.

Turning his attention next to the licensing practised subsequently by the Catholic Church, he mentions the practice of writing an *imprimatur* – Latin for 'approval for printing' – claiming that the word is untranslatable in English as it is incompatible with the language's propensity for freedom. He again mentions how, before the Catholic Church became an important political player in Europe, the 'birthing' of books was as unregulated as that of children and likens pre-publishing censorship to the judgement of a soul before its birth.

As Milton concludes his first point, he seems to again remember whom he is addressing and takes further measures to protect himself from any potential offence that the Members of Parliament might take. He claims that the proposal and passage of the Licensing Order did not imply any malicious intent on their part. He even offers a counterargument in favour of those who might still uphold the idea of licensing books, despite the practice's tyrannical past. Sure, he agrees, bad people can have good ideas. However, licensing is not a very complex concept and, historically speaking, societies that avoided such measures flourished, while those that relied heavily on them were particularly oppressive.

THE PURSUIT OF KNOWLEDGE SHOULD BE UNIMPEDED

In his second point, Milton seeks to show that reading what the Parliament might consider 'undesirable' books isn't necessarily detrimental. He cites the examples of various figures in Christian history to show that while God endorses acquainting oneself with all manner of knowledge, it is the devil's wish to deprive people of it. He offers as a parallel the perspective on eating meat in Christianity: essentially God leaves it to the discretion of people to decide what meat to consume, overriding the rules imposed

in the Old Testament. Milton claims that this gives people the opportunity to practice Christian virtues by not overindulging, and that the same applies to the pursuit of knowledge. He even humorously adds that had God wanted people to only have access to a certain type of books, He would have compiled a list.

To support his argument, Milton recalls the forbidden fruit of the Garden of Eden, which endowed people with the knowledge of good and evil. Milton highlights that in the human world, good and evil do not exist as separate entities, but are always inextricably linked. He stresses that virtue in a vacuum, not tested by temptation, is superficial – not true virtue but a pale copy. True virtue comes not from isolation in a protective bubble, but from confronting and surpassing the temptation of sins and vices. It is an excellent argument against paternalism from a Christian perspective and can be applied in other contexts as well. Milton goes so far as to say that only by engaging with all manner of books can one truly exercise virtue.

Milton takes the time to anticipate and pre-emptively refute potential counterarguments. The first such concern is the possibility of moral corruption that ‘unsanctioned’ books bring with them. Milton responds to this by reminding his audience that the Bible itself contains numerous examples of unvirtuous behaviour and problematic language, and asserts that the arbitrary criteria imposed by the censorship office are so strict as to be ridiculous.

Regarding books written in English, in particular, Milton points out that the ones that pose the biggest problem – those about religious controversy – have the greatest destructive potential mainly target educated people. He adds that banning books in English would be absolutely useless in a fight against evil and dangerous ideas, as these ideas can cross borders and can originate in the minds and hearts of evil people even without access to books. Pointing out that those with more education, and as such more contact with books that might need to be banned, are the ones most susceptible to disseminate those dangerous ideas among the masses, Milton poses a question to his audience: could the Members of Parliament trust the licensers, who would have unlimited access to every written work in the country?

Milton stresses that wisdom and virtue on one hand and foolishness and vice on the other exist as such even in the absence of books, so any censorship in the effort to hinder the spread of evil would be ultimately useless. Addressing the famous example of censorship in Plato’s *Republic* that encourages the censorship of fictional works for the purpose of instilling virtue in the hearts and minds of the youth, Milton argues that the *Republic* is a work of fiction depicting a utopia and that Plato himself did not support the idea of censorship in real life.

FREEDOM OF CHOICE VERSUS PATERNALISM

Milton continues the argument that vice and virtue are not affected by the censorship of books, pointing out other areas of daily life where virtue and temptation intersect and where the intervention of the Parliament would be at best ineffectual and at worst laughable: music, dance, indulging in food and drink in private homes or establishments, or fashion. Milton claims that while many vices do exist in such realms, the sign of a great regime is the ability to draw the line between areas in which legislation is necessary and those where it would be futile.

Returning to paternalism, Milton argues that if all areas of life where temptation can appear are so tightly regulated that people live in absolute and perpetual virtue, that would not be real virtue and the people not praiseworthy as would have done no more than be led like cattle. Milton stresses the freedom of choice, dismissing those who misunderstand (deliberately or not) the reason God let Adam and Eve taste the forbidden fruit of the Garden of Eden. Without the choice between good and evil, people have no occasion to show virtue and resist temptation. The removal of free choice is as such a direct act against God and the Licensing Order of 1643, to Milton, falls into this category.

Milton also offers some contemporary examples and points out to the Members of Parliament the failure of the Licensing Order to stop pro-monarchy underground publications. He adds that in order for censorship to achieve its desired effect, it would have to be much more discerning and occasionally censor only parts of books. The next logical step would be to take control of all printing presses, which, Milton reminds his audience, would be uncomfortably reminiscent of the Inquisition and the counter-reformation measures of the Catholic Church. In fact, to continue with it would undermine the Licensing Act's purported objective of discouraging schismatic behaviour in the Protestant Church of England, as many religious minorities preferred to transmit their traditions orally. He also claims that in order to fully achieve what the Parliament had in mind, the licensers would have to be exceptional intellectuals, but such people would be uninterested in the role. Milton excludes those occupying that position at the time from that narrative, suggesting that they accepted the position as a sign of allegiance to the Protestant regime.

COUNTER-INTUITIVE CONSEQUENCES

Milton's final point is that introducing pre-publishing censure will discourage learning and the pursuit of knowledge. He addresses the clergy's claim that if their resources were cut by the state, learning would suffer, pointing out that those who learn out of pure love of knowledge are the best intellectuals and that for those carrying out God's will to censor such people would be an unforgivable offence.

Censorship, Milton argues, destroys critical thinking and intellectual inclinations. When interacting with a text, the intellectual thoroughly uses their critical thinking skills and consults with those who know the subject in a way that the licenser. Furthermore, pre-publishing censorship stifles the revision process in which a writer might want to engage and would result in books of poorer quality. Licensing would diminish the authority of writers, marking them as puppets of those in power, unable to express what they really think. And any censorship of the works of dead authors would destroy their legacy, while living authors have to contend with the sad prospect of eventually being subjected to the same treatment.

Milton also expresses the opinion that censorship in the form of licensing isn't detrimental only to a few intellectuals but to the entire English nation, as a limited number of licensers couldn't possibly begin to have a comprehensive overview of the knowledge possessed by all its citizens. Even those who aren't well enough educated to be writers themselves would suffer from being denied the freedom to choose their own reading material. In fact, to treat those people as incapable of reading 'unacceptable' literature could be considered a slight against the clergy, as it would imply that the ministers were incapable of instilling proper virtues in the public.

When the measures used by tyrannical regimes are applied, Milton declares, no one can claim that there are good intentions behind them. He cites examples of other countries where censorship flourished and intellectual life declined severely. He mentions having visited Galileo during his imprisonment and laments that he hadn't expected to see those oppressive measures being taken in his own country, especially after having the monarchy was toppled. He adds that his view is shared by all scholars. Furthermore, he fears the unintended consequence of differences of opinion emerging among the clergymen and of a Church built on fear and mistrust, which would only bring the Protestants closer to the dreaded Catholic model.

Milton notes that virtues are like muscles; they require exercise. Holding a belief just because it is endorsed by those in power and not as a result of one's own judgement, even if it is the correct and righteous belief, is still an act of heresy. Licensing would lead to a stagnant society in which the flow of truth would be impeded. After the ascension of Christ, Milton says, truth was split into innumerable pieces by 'a wicked race of deceivers'. Those who wish to behold the truth's glorious form (as would behave any good Christian) must constantly sift through the masses of content produced by humanity in search of the little nuggets of truth that may be hiding in them.

Milton ends his speech by reminding his audience that by having achieved the feat of overthrowing the abusive monarchy, they now have a responsibility to other nations to lead by example. He also reminds them of the methods that the Protestants had used to reach this enviable

John Milton against the Paternalism of the Seventeenth Century

political situation: acting expressly against the licensing rules put in place by Charles I. Finally, Milton concludes that the Members of Parliament, being wise, would hear his appeal and regift to the English nation its freedom of speech.

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Book Review

Empathy as a Pillar of Liberalism

Patrick Van Schie

Adam Smith, *The Theory of Moral Sentiments*, edited by
D. D. Raphael and A. L. Macfie (Liberty Fund, 1982)

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The Theory of Moral Sentiments is not Adam Smith's best-known work among the general public – that, of course, would be his economic analysis, *The Wealth of Nations*, whose (abbreviated) title many know, even if they are unfamiliar with its contents – but it is certainly a standard liberal work (Smith, 1982a). Although Smith owes his enduring fame to *The Wealth of Nations* – it is thanks to this book that he is considered the founder of (classical liberal) economics – he considered *The Theory of Moral Sentiments* to be his best work.

The irony goes even further: Smith is remembered as an important economist, which he certainly was, but his bread and butter was moral philosophy. Between 1752 and 1764, he was Professor of Moral Philosophy at Glasgow University. It was during this period that he produced the first edition of *The Theory of Moral Sentiments*, which was published in 1759. Five more editions would follow.

The Theory of Moral Sentiments and *The Wealth of Nations* are the first two instalments of a trilogy that Smith had intended to publish. In the first part – *The Theory of Moral Sentiments* – he laid down the foundation of his vision of humanity and society. In the second – *The Wealth of Nations* – he elaborated on the virtue of prudence, which for him meant the relations between people in the private sphere of the economy. It was his plan to further elaborate on the virtue of justice in the third book. In the sixth edition of *The Theory of Moral Sentiments*, Smith announced that, despite his advanced age, he hoped to get around to writing a book on 'the general principles of law and government, and of the different revolutions undergone in the different ages and periods of society'. Smith worked hard on it and had already amassed sixteen notebooks full of text. However, a few days before his death, he ordered a friend to burn them. Unfortunately for us, his friend kept his promise. In the course of the nineteenth century, fragments of Smith's ideas on this subject did surface in the form of notes taken by students during his lectures, which were published as *Lectures on Jurisprudence* (Smith, 1982b).

The fact that *The Theory of Moral Sentiments* is relatively unknown cannot be explained by the style in which the book is written. Today's readers, who may expect this more than 260-year-old philosophical work to be hard going, will be pleasantly struck by both the fluent use of language and the avoidance of woolly or lofty jargon. Smith, in fact, had an aversion to grandiloquence, as shown in the book's passages on vanity.

The theme of this book concerns feelings to a large extent. Smith was a typical representative of the Scottish Enlightenment. Like some English philosophers such as John Locke, this branch of the Enlightenment attempted to comprehensively map the emotions to which people are subject, as well as how these emotions relate to each other and how they can be classified. At first glance, this would seem to explain the low level of interest shown by liberals today in *The Theory of Moral Sentiments*.

After all, from a liberal perspective, politics should steer well clear of such extremely personal matters as feelings. But the work is not a mere inventory of feelings. Instead, Smith links these feelings to the emergence of moral judgements. If he had to market his work now, he might have given it a title along the lines of 'Where do our values and norms come from?'.

His book caters to a certain long-held need, as it offers a fitting liberal rebuttal to Christian thinkers, church leaders, and politicians. After all, their answer to the question of the origin of morality is that it comes from above, given to us by God. For Adam Smith, however, morality does not come from above. People form their own opinions about good and evil. If there is a god, then he has at least not decreed a moral system for us. According to Smith, morality is a product of social intercourse between people. As was typical for a Scottish Enlightenment thinker, Smith preferred to take observable reality as his philosophical point of departure and was not looking for a prescription of how people should live. Rather, he was trying to find out where people actually got their system of values and norms from. This is also an important distinction from Christian – and many other contemporary – thinkers on morality.

'SYMPATHY'

Smith's analysis rests on the concept of what he calls 'sympathy'. He uses the word in the sense of our ability to put ourselves in another person's shoes and feel what they feel. In this sense, the fact that we empathise with someone does not necessarily mean that we have warm feelings for them. An example that Smith himself uses to illustrate the concept of sympathy makes this clear. Many people feel an itch when they see a homeless person covered with sores. This is because they put themselves in the other person's shoes and makes the connection between their physical condition and feeling itchy. Thus, a sense of affection is not necessarily part of our experience. The feeling of itching could just as well be accompanied by a feeling of dislike or even contempt.

In the British empiricist tradition of Newton, Locke, and Hume, Smith tends to espouse the conviction that we can only acquire knowledge through our senses. I can, he begins, sympathise with the pain my brother endures when he lies on the rack, but only after I have seen him lying on the rack; as long as I remain ignorant of his situation, I do not feel his pain. We can sympathise with certain emotions just by seeing them expressed. This is the case with pain, sadness, and joy. With other emotions, perception is not enough. When we see that someone is angry, we do not spontaneously feel anger growing in ourselves. We might first try to find out why that person is angry. If we know the cause and judge the anger to be justified, we approve of it and feel anger rising in us as well, but if we deem it to be misplaced, we do not.

The degree to which we sympathise never actually keeps pace with the feelings of the person we are observing. On the one hand, our capacity for sympathy can go so far that a person's behaviour, or the situation they are in, can evoke a feeling that even the person themselves do not experience. For example, it is possible to be ashamed of the behaviour of someone, even if that person is not even aware of how indecently they are behaving. On the other hand, when we as observers experience a feeling vicariously, we usually feel it less strongly than the person we are observing does. We are least able to share in the physical pleasure or pain of another: we do not feel the intense pleasure of a delicious meal if we do not eat it ourselves. We can empathise more with mental pleasure and suffering, and to a greater extent the more fully the pleasure or suffering is a product of the imagination. Smith gives the example of a man in love. We cannot go along with the feeling of the infatuation itself, even if we are warmly disposed toward the phenomenon. This is because when we look at the woman with whom he is smitten, we might not see in her the resplendent beauty that he apparently sees and so we deem his attentions to be out of proportion. In general, however, we can go a long way to understanding his romantic feelings, because we can imagine the happiness born of a loving relationship with a woman.

Perceiving and empathising with the other is the first stage of the process from which our morality arises. Our appreciation or disapproval arises from the comparison between the other person's feelings and our own. When we share the other's feelings to a great extent, our judgement is that they are acting correctly, while when there is a vast difference between our feelings and the other's, our judgement is that they are acting wrongly.

The second stage in the process originates not in our perception of others, but in the realisation that we ourselves are also being perceived. Just as I have 'sympathy' with another person, which informs my judgement of them, so they have 'sympathy' with me and judge my behaviour. Once we realise this, we adapt our behaviour accordingly. When I am sad, I moderate my expressions of this in the hope that those around me will then be able to understand my sadness more easily. If I were to express my pain loudly after stubbing my toe, those around me might think I was merely posturing. However, if I were to lose a loved one, I would automatically evoke pity and – paradoxically – the more I manage to pull myself together, the more pity I would evoke. Furthermore, I would try to hide my grief more from strangers than from friends, because I can count on less sympathy from strangers.

The third stage in the emergence of our morality is born of the realisation that the other person does not always know what lies behind our emotions and may therefore judge us wrongly. Here, we imagine what an imaginary, impartial observer would think – impartial except that they are familiar with the underlying reasons for our behaviour.

We divide ourselves, as it were, into two persons: our actual self – the acting self – and an imaginary self who resides within us and, in the role of judge, decides whether our actions are good or bad. This is the ‘supposed impartial and well-informed spectator, [...] the man within our breast, the great judge and arbiter’ of our own behaviour. This voice from within teaches us not only to exhibit behaviour for which we are actually praised, but more importantly, to exhibit behaviour worthy of praise, regardless of whether praise will actually be given.

‘THE WEALTH OF NATIONS’ CONTRADICTED?

It was long held that Smith himself embodied not only the duality he described – the acting person versus the impartial observer who resides within us – but also the duality of being the author of two great works that were considered diametrically opposed to each other. *The Theory of Moral Sentiments* was seen as the work of a social, dare I say sympathetic Smith, while *The Wealth of Nations* was thought of as the output of an egotistical Smith, who would condone selfishness as beneficial to the common good (thanks to an ‘invisible hand’) (as cited and contested by Raphael and Macfie in Smith, 1982c: 20–22). This view, however, cannot be maintained by anyone who has read and properly understood Smith’s works. Firstly, self-interest, which indeed occupies a central place in *The Wealth of Nations* as the driving force behind human action, should not be confused with egotism. Secondly, self-interest also figures prominently in *The Theory of Moral Sentiments* as one of the motives behind human action (alongside benevolence, for example). And thirdly, in *The Theory of Moral Sentiments*, Smith does not identify ‘sympathy’ as the major driving force behind human action, but as the source of our moral judgements.

Smith’s explanation of the origins of our morality may suggest that the ‘sympathy’ we feel for others is essentially based on self-interest. After all, why do people put themselves in others’ shoes? Because they want to know how they are perceived by others. This allows them to adjust their behaviour in the hope that in the future they will be judged more favourably. Another reason is that, in the conversation with the impartial observer within, they like to hear the inner voice declare that they are acting correctly, or even better, that they are good. In this way, it can be argued that behind all acts of compassion and self-sacrifice lies the desire to feel good about oneself; all altruism can then be reduced to self-interest.

Smith himself rejects such reasoning, however, giving the example of men who feel ‘sympathy’ when seeing the pain of a woman giving birth. It is quite clear that they will never themselves have to suffer the same pain. So what such men imagine is not the pain they would suffer if they were to give birth; rather, they put themselves in the woman’s shoes and

imagine that they are she, occupying the same position in which they perceive her. Such sympathy is aimed at identification with the other person and is therefore anything but selfish.

SMITH ON WEALTH AND VANITY

The Wealth of Nations also gave Smith a reputation for sanctioning the pursuit of wealth. Drawing from Smith's economic classic, an entrepreneur would no longer have to feel inhibited in satisfying their thirst for wealth as they could justify their behaviour by asserting that the whole nation would benefit from their actions. This is yet another thought that is based not on what Smith actually wrote but on what has been misattributed to him. This idea is undermined not only by *The Wealth of Nations*, but also by *The Theory of Moral Sentiments*.

Why does one strive for wealth, according to Smith? The advantage it affords over the comfortable but not lavish standard of living already enjoyed by the average citizen (in eighteenth-century Scotland, but all the more today in the West) is not primarily the additional material resources or opportunities for consumption. The real motivation underlying the desire for wealth is the desire to gain the admiration of others. People are inclined to admire the rich and powerful, and even to assume that because they are rich and powerful, they are wise and virtuous.

It is worth emphasising once again that when Smith writes that wealth evokes admiration, this is not a normative statement but a descriptive one. *The Theory of Moral Sentiments* clearly shows that Smith sees this human tendency to admire the rich as foolish. Smith also finds it preferable to live a virtuous life in peace as opposed to a vain life. It is better to be a thoughtful person who studies in order to understand rather than to display their knowledge, and who derives their (unsought) reputation from the substance of their knowledge and abilities: 'he does not always think of cultivating the favour of those little clubs and cabals, who, in the superior arts and sciences, so often erect themselves into the supreme judges of merit; and who make it their business to celebrate the talents and virtues of one another, and to decry whatever can come in competition with them'.

CONTEMPORARY IMPORTANCE

Apart from the pleasure and insights to be derived from reading such descriptions of human characteristics and motives, how can *The Theory of Moral Sentiments* be of any use to us liberals in the twenty-first century?

First of all, a reading of *The Theory of Moral Sentiments* serves to debunk the supposition that liberalism promotes an 'atomistic' view of humanity – a base accusation often made by socialists and Christian

democrats. In this view, liberals are seen as lacking solidarity, as liable to drift apart as grains of sand are. Such individuals would not care about others unless they could use them to their own advantage, often at the others' expense. This is a misrepresentation. Smith's liberal theory illustrates this well; it is a social theory par excellence of individuals who relate to each other and empathise with each other's positions, all the while keeping their own interests at heart.

Secondly, *The Theory of Moral Sentiments* counters the Christian claim that values and norms given by a 'higher' power (god) or source (the Bible) should be imposed on society and enforced on people to prevent moral derailment. Smith offers a liberal alternative in the form of his 'impartial observer', which leaves much room for individuals to live virtuously with each other based on their own sense of responsibility.

Thirdly, on a related note, *The Theory of Moral Sentiments* contains several explicit warnings against moralists of all kinds. Many of these moralists would have us feel as much for others as we do for ourselves. Not only does this go against human nature, but Smith also questions the point of being miserable all the time simply because some people in the world are miserable. 'Does it help?' he asks. Smith has even less regard for those who seek to prescribe exactly how we should or should not behave in particular scenarios.

Fourthly, Smith strongly opposes systems thinkers who wallow so much in satisfaction with the supposed beauty of the system of government they have designed that they cannot tolerate any deviation from it. Such a person 'seems to imagine that he can arrange the different members of society with as much ease as the hand arranges the different pieces upon a chess-board'. However, such systems thinkers ignore the fact that in real life every 'chess piece' has its own principle of locomotion, its own will.

OBJECTION

For all the appreciation Smith still deserves for his work today, it should not pass without criticism, either. My main doubt concerns the supposed universal presence of the 'great inmate of our breast', the impartial observer. Smith, being an Enlightenment thinker, optimistically claims that such an impartial observer lies in every human being. But the question remains as to whether this 'judge' is always so impartial. In his book, Smith gives examples of a tendency to self-deception that is often present, by which we, as acting individuals, try to deceive the impartial observer. In such cases, the judgement of the 'impartial observer' may become coloured, distorted. That we are thus encouraged to go deeper to find out whether this 'impartial observer' always fulfils its role perfectly is perhaps as much a merit as it is a shortcoming of *The Theory of Moral Sentiments*.

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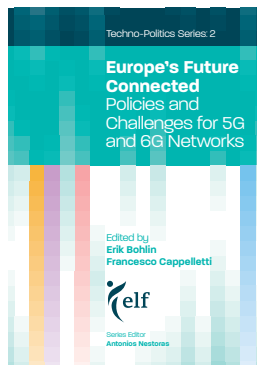
Policies and Challenges for 5G and 6G Networks

Edited by Erik Bohlin, Francesco Cappelletti

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This volume, a bridge between academia and policymakers, represents an important step towards a new way of thinking that sees policymaking as a tool to support our future. 5G and 6G are excellent platforms from which to reconsider how Europe can and should organise its relationship with technology. The complex technological processes discussed presage growth in terms of research, development, new technologies and applications in various fields, from smart cities to medical instruments, from financial markets to autonomous driving. The study argues that embedding techno-politics in our societies is the way to make Europe ready for its digital future.





European Cybersecurity in Context

A Policy-Oriented Comparative Analysis

Edited by Luigi Martino, Nada Gamal

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The pervasiveness of digitalisation has made cybersecurity no longer only a matter of concern for computer scientists but a central factor in securitising our future digital society. Recently, both the Covid-19-related rise in the use of digital tools and the conflict in Ukraine have raised questions about the security of cyberspace and how the European Union should deal with it. This study uses a multidisciplinary and holistic approach to clarify how best to regulate the future, enable Member States to keep up with the challenges of cyberspace, and to define the role of the European Union in this dynamic and constantly changing world of cyberspace.



Smart Parliaments

Data-Driven Democracy



Edited by Fotios Fitsilis, George Mikros

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Parliaments are democracy's supreme representative institutions, but they rarely get the attention they deserve. This book places them at the forefront of innovation. Strengthening the institution can be achieved by several means and for most there is a common denominator: data. Using the European Parliament as one example of innovation and the implementation of digital solutions, the volume offers politicians the tools with which to harness the immense power of data and outlines a path to enable them to design more efficient, inclusive, and resilient institutions that will stand the test of time. The question is, will we dare to use them?



Recommended Readings from Our Network

For a free cannabis market in France: Fight the black market, protect consumers

Kevin Brookes and Édouard Hesse

GenerationLibre is a think-tank founded in 2013 by the philosopher Gaspard Koenig. It is funded through the generosity of its members, the only guarantee of its freedom of speech and independence. It does not accept public funding and provides no advisory services.



Experience in Dealing with Migrants/ Refugees: From Emergency to the Joint Future Process

Prof. M. Murat Erdoğan

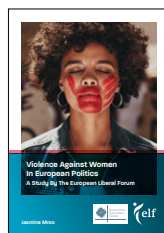
The Friedrich Naumann Foundation for Freedom is based on the principles of liberalism, encourages active involvement in political affairs and supports talented young students with scholarships. Founded in 1958, since 2007, the words 'for freedom' have become an established part of the foundation's name. Headquartered in Potsdam, the foundation has offices in over 60 countries around the world.



Violence against Women in European Politics: A Study by the European Liberal Forum

Jasmina Mrso

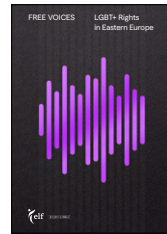
International Educational Center (IEC) is a liberal, non-governmental foundation that provides political education programmes and training and capacity building assistance to liberal organisations in the region. The IEC is a member organization of the European Liberal Forum and the European Network of Political Foundations.



Free Voices: LGBT + Rights in Eastern Europe

Miłosz Hodun

Projekt: Polska is a group of people who dream of a modern, open, and liberal Poland. Those, to whom a democratic, effective and citizenfriendly government is a key goal, and who help accomplish this goal while enjoying themselves, forming new friendships, and furthering their own interests.



Political, Social and Economic Consequences of Digitalisation During the COVID-19 Pandemic

Dániel Mikecz

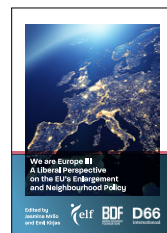
Republikon Foundation for Science, Education and Research (Republikon Foundation) is a liberal think-tank based in Budapest. Independent from any political party, but committed to liberal values, it analyses Hungarian and international politics, formulating policy recommendations and initiating projects that contribute to a more open, democratic and free society.



We are Europe III: A Liberal Perspective on the EU's Enlargement and Neighbourhood Policy

Jasmina Mršo and Emil Kirjas

The Boris Divković Foundation was established in 2013 with the aim of advancing political science and political practice in Bosnia and Herzegovina and the whole of the Western Balkans. The Foundation's goal is to promotes conditions in the political space favourable to responsible political processes, based on the principles of equality, coexistence and solidarity.



A Free Market for All

Roelof Salomons, Maartje Schulz and Ruben Oude Engberink

TeldersStichting is a Dutch liberal foundation, founded in 1954, affiliated with the VVD party (People's Party for Freedom and Democracy). It aims to research issues of social importance, in particular those of a political, social, economic or legal nature, in an objective manner, with liberal principles as a starting point.



Business Future under EU Green Taxonomy

Gian Marco Bovenzi and Francesco Cappelletti

The Luigi Einaudi Foundation, founded in 1962 by Giovanni Malagodi, promotes liberalism and encourages engagement with current issues related to globalisation and technological evolution, with the goal of fostering. It aims to foster individual liberties, diversity, and economic prosperity, conditions enabling people thrive as human beings.



Reforms to Support the European Green Deal

Šárka Prát and Zinaida Zlatanova

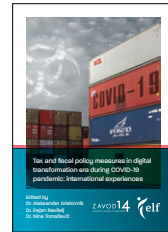
LIPA is a Bulgarian non-governmental organisation, a think-tank, with the non-profit purposes of promoting the expansion of liberal democracy and active civil society in Bulgaria, supporting the integration of Bulgaria within the EU, contributing to EU cohesion and strengthening European citizenship and identity on the merits of freedom, personal responsibility and the rule of law.



Tax and Fiscal Policy Measures in Digital Transformation Era during COVID-19 Pandemic

Dr. Aleksander Aristovnik, Dr. Dejan Ravšelj and
Dr. Nina Tomažević

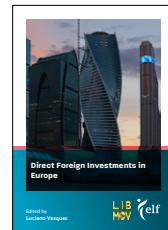
Zavod 14, zavod za sožitje in napredek is a non-profit organisation headquartered in Ljubljana, Slovenia. It promotes and aims to safeguard social liberal values such as democracy, the rule of law, social development, and good governance, all the while balancing individual liberty and social justice.



Direct Foreign Investments in Europe

Luciano Vasques

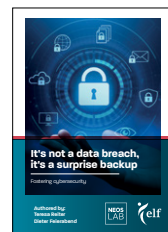
LibMov is a new think-tank, formed by Italian ALDE associate members, to promote liberalism in Italy and collaborate with all Italian Liberals who believe it is high time for their renewed presence in the Italian public debate and in the Italian political system.



It's not a Data Breach, It's a Surprise Backup

Teresa Reiter and Dieter Feierabend

NEOS Lab is the political academy of the liberal grass-roots movement NEOS and an open laboratory for new politics. Its main objective is to contribute to enhancing political education in Austria by providing a platform for knowledge exchange and liberal political thinking on key contemporary challenges, with particular emphasis on education, entrepreneurship, sustainable welfare systems, and democratic innovation.



Lonely Europeans

Milosz Hodun

The problem of loneliness is recognised by European liberals, who seek solutions in the spirit of European cooperation, respect for freedom, paying special attention to young people and believing that technology is not only part of the problem but also the key to its solution in modern Europe.



The Ease of Doing Business in EU's Startups

Marina Zanatta and Nicole Larotonda

This research study on five major European startup hubs in Berlin, Milan, Lisbon, Dublin and London analyzes the success factors for attracting and enabling entrepreneurship on the local level and shows how to promote entrepreneurship and innovation successfully, focusing on the comparison of different startups ecosystems in order to elaborate policy suggestions to increase the number and quality of European startups.




NextGenerationEU: Taking Stock

Gian Marco Bovenzi and Olga Łabendowicz

With its social and economic consequences, the COVID-19 crisis has posed an enormous challenge for all Member States of the European Union (EU). Accordingly, at the end of 2020, the EU launched **NextGenerationEU**, an extensive development tool to support rapid recovery.





The EU Policy Review is a collection of papers published by the European Liberal Forum in the course of the past year. It 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.

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.

The EU Policy Review presents a summary of ELF's work as a liberal think tank and outlines the current landscape of liberal debates and strategies for shaping the European project and liberalism itself. 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 unfolding 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 2023 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.

