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○ **COMPARATIVE PERSPECTIVES IN INTERNATIONAL  
RELATIONS AND POLITICS OF THE 21<sup>ST</sup> CENTURY**

Getnet TAMENE

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○ **(DIS)TRUST IN POLITICAL INSTITUTIONS: COMPARISONS  
BETWEEN NEW DEMOCRACIES OF CENTRAL AND  
EASTERN EUROPE**

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○ **CONSTITUTIONAL 'TRINITY' FOR AN EU MEMBER STATE  
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○ **INTERNATIONAL LIBERALIZATION POLICY. POLITICAL-  
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## COMPARATIVE PERSPECTIVES IN INTERNATIONAL RELATIONS AND POLITICS OF THE 21<sup>ST</sup> CENTURY

Getnet TAMENE<sup>1</sup>

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*Contrary to the bygone centuries, the twenty-first century tends to provide a unique pattern of development to the human polity. It not only offers the news about the frequent downfall of authoritarian regimes here and there, but most importantly, it heralds that the unstinting current trend of empires itself is on the death bed in contemporary international relations. This sheds light on the possibility of a new and amiable way of decision making in international politics. The arriving trend is thus different than the pattern hitherto known to mankind, the imperial orthodoxy, where the whole actors are doomed to accept decisions that are being imposed on them from a single inner centre. This one way street has approached to disrupt due to new developments in international relations. At present, the international system displays a uni-multipolar system, which is a unilateralist multipolar system. The realities on the ground reflect incompatibleness of this system to the 21<sup>st</sup> century. Discernibly, this has generated desperate needs of causing a compatible multi-multipolar system, which is a multilateralist multipolar perspective, as a choice. All cultures-friendly order sounds to emerge.*

**Key words:** uni-multipolar system, multi-multipolar system, orders, systems, deflection.

### 1 INTRODUCTION

Issues related with international orders and systems have long been the focus of scholarly discussions. Different studies of world orders, systems, international relations and politics have attempted to paint different pictures of the international environment whose order they venture to probe. Among

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others, scholars like Robert Keohane have largely covered industrial England and the United States, over the last two hundred years, as cases of hegemony. Immanuel Wallerstein goes as far back as five hundred years to start his analysis about empires with imperial Spain. Modelski and Thompson venture as far back as the turn of the millennium and show how the European Renaissance orders may have been affected by impulses from Sung China.<sup>2</sup> Scholars like Alker, Bierster, Amin, Inoguchi and many others have emphasized the benefit of all inclusive global order than attempting to universalize solely one single Western character.<sup>3</sup> In his critical discussion of the warlike character of the Cold War leaders, Galtung describes “those on top of the world order” as willing to defend it: “the elite of any country, sitting on top of suppressed races, stateless nations and real misery, recognize their own situation in others and will try to stop revolution elsewhere lest it hit themselves”.<sup>4</sup> All of the authors above and several others have chosen what they thought to be the most significant world order debates within a globally conceived inter-discipline of International Relations. As the present article attests, in the post-Cold War Era, when worlds can no longer be consensually enumerated, the sharing, synthesis, interpenetration and contestation of ideas can become more productive within today’s post-Cold War world of similarities and differences.

The present study is a contribution to this ongoing discussion. It focuses on multidisciplinary exploration of global issues, particularly those related to international development, in the areas of human rights, international security and cooperation. It tries to offer a comparative analysis and coherent picture of International system development, which promotes reflection, debate, and scholarship in the vast and controversial field of international relations and politics.

The study addresses, in a nut-shell, how international power distribution is changing and the effect it will have on political, social, economic, security and environmental areas in local, national, and international contexts. The study embarks on presenting critical and innovative analytical perspectives that challenge prevailing orthodoxies. It is based on original research that has an ambition of encompassing all regions of the world and is open to all theoretical and methodological approaches.

Major areas of investigation concentrate on the current development and the future of international relations and politics, while slightly touching political and state institutions, the effects of a changing international economy, political-economic models of growth and distribution, and the transformation of social structure and culture. As stated above, it is a contribution to ongoing debates of social science research regarding international relations and politics. The paper reflects more generally on the content and focus of International Studies as a global inter-discipline. It reviews the concept of world orders and the further development of international political system. While narrating this in view of profoundly original perspectives different from the classical orthodoxy, the paper attempts to enrich intellectual debates that favour the multi-cultural world order that associates with various world orders

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<sup>2</sup> Torbjorn L. Knutsen, *The Rise and fall of World Orders* (Manchester, Manchester University Press, 1999), 1–12.

<sup>3</sup> Hayward R. Alker and Thomas J. Biersteker, “The Dialectics of World Order: Notes for a Future Archaeologist of International Savoir Faire,” *International Studies Quarterly*, 28, 2 (1984), 123.

<sup>4</sup> Johan Galtung, *Peace by Peaceful Means: Peace and Conflict, Development and Civilization* (London: Sage, 1996), 52.



debate, which Alker et al<sup>5</sup> have reported twelve of them. In the interest of a globalized definition of International Studies, this study supports the Alker et al approach, which offers a more robust delineation than related discussion of about four “great debates” narration seen one-sidedly by many Anglo-American scholars as central to the history of professional International Relations. As Alker and Biersteker in their work indicated, “it is the sharing, the interpenetration and the principled opposition of these often antagonistic approaches in the First, Second and remaining ‘Worlds’ that truly constitute the global inter-discipline of International Relations”.<sup>6</sup>

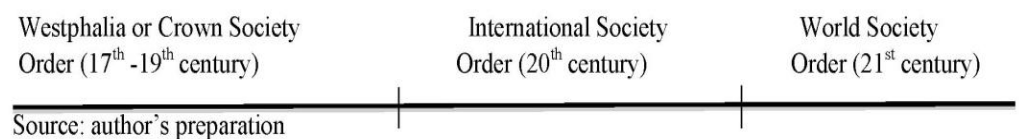
### 1.1 The landscape of international politics today

We live in a transformed post-Cold War world. The political landscapes of this post-Cold War world in which actors interact include among others: an unprecedented global financial crisis, multi-polarity without multilateralism, rapidly increasing technological threat to international ecosystem, the evolving of new rules governing the use of force, a dominant hegemonic power, as well as, the rise of ‘others’, a declining Western influence, sporadically rising social conflicts, which have dramatic implications on the post-Cold War actors and the whole human polity alike. This article will highlight how various endogenous and exogenous factors try to shape international relations and politics of the 21<sup>st</sup> century, as it is unfolding. It proceeds by elaborating orders; international political systems; the current hegemonic system; possible scenarios and further developments of international political system; as well as, the end of hegemony.

## 2 INTERNATIONAL POLITICAL ORDERS IN PERSPECTIVE

Since Westphalia,<sup>7</sup> modern human history has recorded nearly three large political orders each of which contain various systems. These orders include: the Westphalia or Crown Society Order, the International Society Order, and the emerging World Society Order.

FIGURE 1: WORLD ORDERS



On the subject of system transformation and international orders, among others, Robert M. Cutler offers an insightful material.<sup>8</sup> According to his

<sup>5</sup> The authors Hayward R. Alker, Tahir Amin, Thomas J. Biersteker, and Takashi Inoguchi, are associated respectively with the University of Southern California, Cambridge University and The Institute of Policy Studies in Islamabad, Brown University, and the University of Tokyo. Available at <http://isanet.ccit.arizona.edu/archive/worldorder.html>.

<sup>6</sup> Hayward R. Alker and Thomas J. Biersteker, “The Dialectics of World Order: Notes for a Future Archaeologist of International Savoir Faire,” *International Studies Quarterly*, 28, 2 (1984), 123.

<sup>7</sup> The Peace Treaty of Westphalia of 1648 established European international system; it also dominated states from the rest of the world by imposing on them, for over three hundred years, the rules to which they were not parties.

<sup>8</sup> On this subject see Robert M. Cutler, “The Complex Evolution of International Orders and the Current International Transition,” *Interjournal*, 255 (1999); reprinted in *Unifying Themes in Complex Systems*, eds. Y. Bar-Yam and A. Minai (Boulder: Westview Press, 2004), 515–522. See also Getnet Tamene, *Teórie medzinárodných vzťahov a svetová politika: stručný prehľad* (Bratislava: Iura Edition. 2010), 89–103.

analysis, the breakdown of the Westphalia or Crowned Society Order<sup>9</sup> into bipolarity in the two decades preceding WW I prefigured the bipolarity of the "International Society Order". The latter began in the early 1920s, marked notably by the beginning of the end of the British Empire through the London Conference of 1925.<sup>10</sup> Nevertheless, it is unclear whether the present international transition, which began in 1989/1991, marks the end of this International Society Order's the "Short Twentieth Century System" or whether it marks the transition to another international system within that order located as the "Long Twentieth Century System". If the former applies, then we are entering a new order (the World Society Order) that will be characterized by a tension between uni-polarity and multi-polarity over time across its constituent systems; if the latter applies, then we are entering another mainly bipolar international system within the same order, i.e. International Society Order.<sup>11</sup> Here, the Cold War (CW) bipolarity "degenerated" into what may be called *Multilateral Interdependence* towards the end of the twentieth century. In this case, the coordinative and collaborative aspects of *Multilateral Interdependence* are what will carry over into the next international order, which we may call the "World Society Order".<sup>12</sup> Otherwise, we may be experiencing a continued bipolarity referred to as Long twentieth Century System within the same International Society Order.

From what has been discussed above, we can identify that the International Society Order (Twentieth Century Order) comprises two systems: 1) the interwar system, and 2) the CW system. The *first international system* of this order, though apparently shorter, is the *Interwar System* from the early 1920s to 1941. The coordinative aspects of the system are represented in the military coalition against the Axis powers. The collaborative aspects emerge in the creation of the United Nations Organization (UN) on the basis of the League of Nations, plus an ideological collaboration on two sides,<sup>13</sup> West and East.

As indicated above, the *second international system* of the "International Society Order", which is relatively longer, is the *Cold War System*, from 1946/47 to 1991. Cutler outlines that this second system could be divided into two moments: 1946/47–1973/74 and 1979/80–1991. It is possible though that the years 1974/75–1979/80 mark a mini-transition between the

<sup>9</sup> This refers to the fact that the Westphalia actors were solely royal sovereigns or monarchs, whereas actors in international society are states and international organizations; when it comes to world society the notion of actors improve to agents that do not confine to one border, or includes networks.

<sup>10</sup> See The Dawes report and the London conference (1924). Editorial research reports 1924 (Vol. II). Washington, DC: CQ Press. Available also at <http://library.cqpress.com/cqresearcher/cqresre1924082200>. On November 30, 1925, the Reparation Commission invited a Committee of Experts, since known as the Dawes Committee, to "Consider the means of balancing the budget and the measures to be taken to stabilize the currency of Germany". The Committee commenced its work on January 14, 1924, and submitted its Report on April 9, 1924. See also Alfred Rosmer, "British Imperialism and French Imperialism after the London Conference," *The Labour Monthly*, 6, 9 (1924), 535–543. With this Conference the US domination has underway.

<sup>11</sup> Robert M. Cutler, "The Complex Evolution of International Orders and the Current International Transition," *Interjournal*, 255 (1999). See also Getnet Tamene, *Teórie medzinárodných vzťahov a svetová politika: stručný prehľad* (Bratislava: Iura Edition, 2010), 89–103.

<sup>12</sup> The world society order sees actors based on the phenomenologist model different from the realist model. It never confines actor to a limited boundary. On this see John W. Meyer, *World Society, Institutional Theories, and the Actor* (San Francisco: Stanford University, 2010). On the subject of system transformation, see Robert M. Cutler, "The Complex Evolution of International Orders and the Current International Transition," *Interjournal*, 255 (1999). See also Getnet Tamene, *Teórie medzinárodných vzťahov a svetová politika: stručný prehľad* (Bratislava: Iura Edition, 2010), 89–103.

<sup>13</sup> Robert M. Cutler, "The Complex Evolution of International Orders and the Current International Transition," *Interjournal*, 255 (1999).

two moments of the CW System.<sup>14</sup> Thus the years 1946/47–1973/74 represent the system's tight bipolar moment, and the years 1979/80–1991 represent its loose bipolar moment.<sup>15</sup> According to this reasoning, such mini-transitions shown above, and the years following them, are susceptible to two interpretations. They may introduce a new international order, as did years 1894–1914 after the mini-transition within the *third international system* of the Westphalia or Crowned Society Order. If this is so, then just as unipolar/multipolar tension degenerated into bipolarity, we may suppose that CW bipolarity "degenerated" into what may be called *Multilateral Interdependence* towards the end of the twentieth century.<sup>16</sup>

Scholars have observed that International system transformation respects certain regularities. The whole process of transition since Westphalia or crown society order, displays, two regularities: Firstly, the length of an international transition is roughly one-quarter the length of the international system it succeeds. On this basis, it is possible to conclude that the present international transition, which started in 1991, has ended during the first half of the first decade of the twenty-first century, i.e. 2005. Secondly, the last international system of each international order splits into two "moments" by an interim mini-transition that is about one-quarter the length of the first moment. Of those two "moments," the second contains the seeds of the normative essence of the succeeding international order.<sup>17</sup>

If the years afterwards, up until the end of the CW system in 1991, are designated to be a separate and multilateral "moment" of that system, say, for example, the *Multilateral Interdependence moment*, then this represents the breakdown of Short Twentieth Century bipolarity and the transition to a new international order, referred to as the World Society Order, that will be characterized by the tension between multi-polarity and uni-polarity. However, if the current international transition, which began in 1991, inaugurates only another bilateral system, then there is no new international order, there will be just a Long Twentieth Century.<sup>18</sup>

The multilateral "moment" did not endure, thus the whole process of transition drifted somehow, towards the tension between US unilateralism and multi-polarism of the rest. Current controversies between US unilateralism and other actors' multilateralism, reflects the major disagreements that lie in the new uni-multipolar, initial system of the World Society Order. The uni-polar system sounds incompatible with current phase of the human polity's development and with the World Society's Order in general. As empirical observations of current events of international environment show the United States (US), as a hegemonic power does not hesitate to adapt newly proposed international norms, such as, "the law of humanitarian intervention in civil conflict", this is to let others know that the system is predominantly unipolar, and that the US is the only (unilateral) decision maker. Thus it tries to act assertively, by enacting norms that justify a unipolar system in favour of its own particular influence or to impose its interests, unilaterally, on the rest of the actors. This approach fails, however, to produce cooperation, harmony, stability, peace and prosperity. That is why it is incompatible with the current level of human development. Contrary to

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<sup>14</sup> These years are significant because they mark the decline and fall of SU-US détente, from Angola to Afghanistan. The biennium 1973/74 also marks the oil embargo that irrevocably changed post-1945 international politics and economics.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.



this are cases like Chechnya and Tatarstan in Russia, and Tibet and Uighuristan (Xinjiang) in China, these provide a determination for domestic political-control, which explains why Russia and China oppose the new norms the US is unilaterally trying to impose. They oppose a new normative basis in favour of seeking to conserve the old one, which is expressed through the bipolarity of the Twentieth Century Order. This is why we currently observe a unique development of the status quo power, the US, becoming the innovator of norms unilaterally for the new international order.<sup>19</sup> The implication is the US would do all it can, in order to maintain its dominance in the new international political order, which it is trying to shape solely in accordance with its own interest and vision of governance.

Thus, if currently, emerging uni-multipolar system of the "World Society Order" emerges successfully; it could be an initial reflection of the new international order. By previous reasoning, the new order's first international system would be characterized by a tension between multi-polarity and uni-polarity. The consensus of a wide variety of "long-cycle" and "world-systems" research in political science, all with different assumptions assert, system-wide struggle over the structure of the international system will occur, whether peacefully or otherwise, around 2030–2050, supports the prediction<sup>20</sup> that the next system of the world society order will emerge at the end of the multi-polar and uni-polar tension. Presumably, this next system shall be multilateral multipolarism. The world society order of this new century and its institutions should not necessarily depend solely on the tradition of the single West, or on Western institutions that work in favour of advancing exclusively Western interests, nor would it rely on the set of Western norms alone, which are being dictated on others, without those others becoming part of the process of making those norms or institutions. The next system would be able to serve as a two-way-street for all centers of power in the available system of multilateral multipolarism. Only new institutions and norms, whose process of making involve the will of all actors would be able to underlie appropriately the 21<sup>st</sup> century world society order. This change is essential, in order, it to work effectively in the interests of all involved actors of all regions, or in the interests of human polity at large.

### 3 THE US HEGEMONY AND THE WORLD BEYOND

Currently, we are witnessing fundamental changes in the climate of international relations, due primarily to the obvious hegemony of the US, economically, culturally, and militarily. The history of human polity has seen series of empires among which Pax Britannica was one, currently Pax Americana thinks it is the 'end of history';<sup>21</sup> others, (for instance, China, India, Russia) are carefully observing the pattern, while queuing in line to take turn at one point of time. Empire is a vicious circle, which takes turn in the human history; however, a non-imperial, non-hegemonic constellation is not unthinkable in this century.

According to the hegemonic theory of international politics,<sup>22</sup> the principal role of authority and government in the world is held by a single state. This

<sup>19</sup> Ibid.

<sup>20</sup> Robert A. Denemark, "World System History: From Traditional International Politics to the Study of Global Relations," *International Studies Review*, 1, 2 (1999), 43–75.

<sup>21</sup> See Report of the Project for the New American Century, available at [www.newamericancentury.org](http://www.newamericancentury.org).

<sup>22</sup> A synthetic list of the major analysts of this school includes: Robert Gilpin, *War and Change in World Politics* (Cambridge: Cambridge University Press, 1981); Paul Kennedy, *The Rise and Fall of the Great Powers: Economic Change and Military Conflict from 1500 to 2000* (New York: Random House, 1987);

role (named by political scientists in different ways such as global power, world power, global leader, hegemonic power, and even empire) is undertaken by a state after a general war in which it led to victory a coalition of states.<sup>23</sup> This pretty relates with the behaviour of the US.

The US seems to have one main reason for maintaining its membership in international alliances: such collective organizations provide a vehicle for the US to exercise its predominant influence in the world. In addition, its continued membership offers the possibility that the burden and cost of maintaining a worldwide order of solely its own vision can be spread widely over many countries.

Several authors thus suggest that the TAA in which the US holds a core position is just a toolbox to advance the imperial interest of the US hegemony. For instance, authors like N. Ferguson, and G. Tamene,<sup>24</sup> have indicated the current correlation of the trend as an attempt of enhancing neoliberalism based 'democratic colonization' or 'liberal democratic empire' or unimpeded action of constructing the global neoliberal order<sup>25</sup> rather than an option directed to end the vicious circle of empires or repressive systems in which, as Modelski's study attests, super powers take turn.<sup>26</sup> Relations of a hegemon and its allies with others are coloured with various types of domination and intervention.

During the CW period, questions of human rights were routinely treated as subjects for inter-bloc wrangling between the US, the Western hegemon and the Soviet Union (SU), the Eastern hegemon. The current hegemon and its allies' relations with those others, mainly, since the end of CW, have used the West's declared adherence to human rights in a way it simply was not possible previously.<sup>27</sup> Contemporary relations are thus, where the West forcibly intervenes into domestic affairs of those who are beyond the West. Western interventions have largely being conducted under pretence of human rights and humanitarian intervention in non-Western entities.

Would the US hegemony based Western initiative thus act in favour of reversing the redundant course of imperial systems and cause an all-inclusive and more creative global political system? Historical experiences do not provide affirmative responses to these enquiries; however, we should not refrain ourselves from searching for any possible options available. Averting the stereotypical vicious circle of empire or super power based hegemonic

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George Modelski, "Long Cycles of World Leadership," in *Contending Approaches to World System Analysis*, ed. William R. Thompson (London: Sage, 1983), 115–140; Joseph S. Nye, *Bound to Lead: The Changing Nature of American Power* (New York: Basic Books, 1990); and Karen Rasler and William R. Thompson, *The Great Powers and Global Struggle, 1490–1990*. (Lexington: Kentucky University Press, 1994).

<sup>23</sup> Fulvio Attina, "Transatlantic Relations under Stress: European and American Attitudes towards Intervention and Prevention," *Romanian Journal of European Affairs*, 5, 2, (2005), 5–20.

<sup>24</sup> Getnet Tamene, Bruno S. Sergi, William T. Bagatelas and David Reichardt, *Studies in Contemporary International Relations and Politics: New Europe and Beyond* (Opladen: Budrich UniPress, 2010), 22.

<sup>25</sup> See David Kotz, "Socialism and Global Neoliberal Capitalism," available at [www.nodo50.org/cubasigloXXI/congreso/kotz\\_10abr03.pdf](http://www.nodo50.org/cubasigloXXI/congreso/kotz_10abr03.pdf) (March 2013).

<sup>26</sup> On this issue Modelski has studied the evolutionary mechanisms of global politics of the past millennium, but his analysis of the long cycles of global power competition and succession of global leaders covers only the last five centuries. During these centuries, Portugal (1516–1609), the Dutch Republic (1609–1714), Great Britain (1714–1815 and 1815–1945) and the United States (1945–...) exercised global leadership. Each one of them was selected in the global warfare phase, and was gifted with the attributes (lead economy, open or democratic society, organization for global reach, and responsiveness to global problems) that fit to the role of the global leader for a cycle of world politics. See George Modelski, "From Leadership to Organization: the Evolution of Global Politics," in *The Future of Global Conflict*, eds. Volker Bornschier and Chris Chase-Dunn (London: Sage, 1999); see also George Modelski, "Evolutionary World Politics: Problems of Scope and Method," in *Evolutionary Interpretations of World Politics*, ed. William R. Thompson (London: Routledge, 2001).

<sup>27</sup> Chris Brown, *Understanding International Relations*, 2<sup>nd</sup> ed. (London: Palgrave, 2001), 245–246.

systems and replacing it with a more productive and inclusive one, workable to most of humanity, is at the heart of international politics of this century. Super powers impose their wills in all hitherto types of systems of human history; this vicious pattern of empire which is favoured by the main stream must disrupt; leaving space to a system that will end patterns of domination.<sup>28</sup>

Today, hegemonic nature of the structure of government of the world system will last until a new pact on the foundation and autonomy of the supreme political authority is introduced in the world's institutional structure.<sup>29</sup>

In the contemporary international system, i.e. a uni-multipolar system, the consent of the followers and the legitimacy of the authority of the global leader depend to a great extent on exercising hegemony within multilateral institutions, such as the UN and the most important international economic regimes. Framing actions within multilateralism brings consent and additional resources to the global leader, and prevents its own exhaustion. Consent decreases, instead, when the global leader neglects multilateralism and violates long-standing procedures of the world political institutions.<sup>30</sup> For instance, the Bush administration used the war in Iraq to change the structure of international system by introducing the principle of intervention against those autocratic regimes, who defy the Western system, and also to give to the UN the role of *Post-facto legitimizer or a rubber stamp* of the preventive/pre-emptive action of the global leader or hegemon.<sup>31</sup>

#### 4 HEGEMONIC POWER AND EXPANSIONIST INTERVENTIONS

The hegemon, with support of its allies, or even without their support implements the policy of intervention in the face of non-Western entities in contemporary world politics. There are at least three categories of interventions: first, intervention for humanitarian purposes. That is, for either containing the consequences of civil wars and violent clashes between domestic groups or restraining the action of governments responsible for humanitarian crises. In various cases, though, domestic clashes are provoked from outside for the sake of intervention. Nevertheless, consent on this form of intervention has been increasing over the recent past. Several international law experts seem to agree quickly on this new doctrine of intervention for humanitarian purposes, and military intervention for humanitarian purposes has been rapidly accepted as legitimate international action on condition that it is multilateral action. The West invokes this form of intervention, as an effective tool, to control the non-Western others in an attempt of converting them into liberal democratic system whether the

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<sup>28</sup> Main stream surveys may confirm the vicious pattern of empires, for instance, Kissinger in his book *Diplomacy*, mentions that "almost as if according to some natural law, in every century there seems to emerge a country with the power, the will, and the intellectual and moral impetus to shape the entire international system in accordance with its own values". He, of course, tries to defend this course lifting it somewhat closer to natural law. But the author of this work points out that this vicious pattern must disrupt, in order, to maintain systems that never cultivate and reproduce patterns of domination. Asserting that world political system will constantly destabilize unless a superpower permanently controls it, or advocating for a superpower's tutelage or policing, inclines towards fostering an everlasting domination of few actors in international political system. This notion supports a dictatorial tendency of tiny and well organized number of actors, race or economic groups over other majority. It misuses common-sense in order to impose its will on those others, suppressing principles of democratic practice, the belief in an ever-growing human capacity, and the search for alternative system. See Henry Kissinger, *Diplomacy* (New York: Simon & Schuster, 1994), 17.

<sup>29</sup> Fulvio Attina, "Transatlantic Relations under Stress: European and American Attitudes towards Intervention and Prevention," *Romanian Journal of European Affairs*, 5, 2, (2005), 6.

<sup>30</sup> Ibid, 6–7.

<sup>31</sup> Ibid.

entities prefer the forceful conversion or not.<sup>32</sup> Furthermore, the logic of threat is fraudulently used to maintain a unipolar empire.

The second type external intervention targets those referred to as inefficient and irresponsible governments who provoke problems, such as mass migration and transnational crime that destabilize mainly Western countries and the whole system of international relations. Putting an end to domestic humanitarian crises and preventing the external diffusion of related problems pushed Western countries and international organizations to intervene with actions of different nature such as economic assistance programs, technical support programs (for instance, assistance to local police) and also military operations, in countries that are considered repressive, inefficient and corrupt, or tyrant regimes were responsible of the explosion of local and trans-border problems. These actions are carried out by means of bilateral and multilateral agreements that usually involve the government of the target state and the hegemonic power, who sees to shape the whole international system according to its own vision. Thus via implementing these forms of intervention in the domestic affairs of the target states, the hegemon, systematically, contractually or compulsorily reduce the authority of the governments of the target states. These actions are seen as intervention and preventive actions at the same time. Although protectorates and other forms of external assistance and interference were used by states in the past, the double nature (prevention and intervention) of these actions is seen as specific of contemporary world politics, with wider Western support and less opposition.<sup>33</sup>

The third type of intervention relates with the rise of global terrorism, mainly with its culmination since 9/11 attacks on the US. The attacks put on the agenda of the world political system the issue of robust reaction to terrorist movements and against regimes that harbour them. Contrary to the larger consent on intervention for humanitarian purposes, and the increasing consent on actions to prevent the spread of problems from inefficient states to the international system, consent on carrying out military actions of prevention or pre-emption nature has indorsed less support even within the major Western bloc the transatlantic alliance (TAA) itself. There is a deepening rift within the TAA as a result of lack of consensus on this and various other issues. The US wants wider and stronger approval also of these preventive or pre-emptive actions, including military actions against *rogue states*. Europe is divided on the matter of the political legitimacy of the doctrine of prevention but, generally speaking, European governments remain faithful to the legal concept of preventive war. According to this concept, recourse to armed intervention is illegitimate action when urgency to protect a country from an explicit threat of aggression is missing. The dissention between the US and EU in the TAA on this topic is one of defining the best strategy to cope with the present situation.<sup>34</sup> This refers to the disagreement of a fraudulent use of the logic of threat, which has been imposed by the hegemon, in order, to maintain a unipolar empire.

Even though the putative emergence in 1990s of an embryonic doctrine of 'humanitarian intervention' – the forcible intervention of one state, or a group of states, in the internal affairs of another, conducted mainly, in the interests of the inhabitants of the latter was seen as significant, it raises the issue

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<sup>32</sup> Compare with Fulvio Attina, "Transatlantic Relations under Stress: European and American Attitudes towards Intervention and Prevention," *Romanian Journal of European Affairs*, 5, 2, (2005), 14–15.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

whether this has assured the international protection of human rights. Each examples that relate with interventions since 1990 suggest that the notion of humanitarian intervention is highly controversial. In each case the humanitarian motives of the interveners have been questioned; this is hardly surprising since, whatever else is involved, forcible humanitarian action involves the domination of the weak by the strong. It is not clear how humanitarian action can be legitimized. Actions appear to be arbitrary. It is by no means clear that most humanitarian actions have actually produced the intended results. There is no well-developed legal norm that approves humanitarian interventions; to the contrary, the UN Charter, explicitly, forbids intervention in the domestic jurisdiction of states (Article 2(7)), and virtually all states have stoutly resisted the idea that others ought to possess any kind of right to intervene in their internal affairs.<sup>35</sup> It is understood as very much self-serving or a pretext for the West's lust of waging imperial wars to control those non-Western entities, located beyond it.

There is no plausible ground, thus, to assume that the current hegemonic wars, in their troubled form could deliver, as writes Tamene, despite the claim of some elites, who rigidly insist "nothing better could be ever envisioned beyond the global neo-liberal democratic empire". He goes on writing, that "under empire, obviously, democracy will suffer from impediments even in the 21<sup>st</sup> century, thus there is a need for its re-exploration. In the absence of increased citizen participation and mounting elite domination, 'the least bad system' seems to have been growing to unprecedented 'worst' and moribund one'.<sup>36</sup>

Furthermore, the logic of threat that the realist school has provided to consolidate the hegemonic power and its allies is not often understood as a genuine threat but as a pretext for waging imperial wars. An external threat of a certain kind that has solidified Western alliances, in the past condition, for instance, during the CW period, is not necessarily relevant to the present objective condition. In order to avoid legitimate and natural internal and external differences intending to invent ranges of un-established threats, as pretext to war, sounds absurd and self-serving. In contemporary international politics, the idea that cooperation is not possible without external threat<sup>37</sup> would likely induce unethical tendencies, manipulation with power, knowledge, and turning the public into a strategic domain, a position in which they are encouraged to support unstinting policies of the hegemon and its allies. This will cause difficulty of making sense of democracy and its genuine substances.

"Nevertheless, one shouldn't forget that people, whatever atomized they are, overall they possess enormous potential for bringing change to their surroundings, through effective institutions, including the taming or outwitting of a socio-political system."<sup>38</sup> It is also possible that a counterbalancing ally, against the hegemon can emerge. Today, the US along with its transatlantic alliance is, probably, the most capable structure that demonstrates its ambition of shaping international system. Whether its active roles will meet

<sup>35</sup> Chris Brown, *Understanding International Relations*, 2<sup>nd</sup> ed. (London: Palgrave, 2001), 245–248.

<sup>36</sup> Getnet Tamene, Bruno S. Sergi, William T. Bagatelas and David Reichardt, *Studies in Contemporary International Relations and Politics: New Europe and Beyond* (Opladen: Budrich UniPress, 2010), 61.

<sup>37</sup> Realist and neorealist scholars hold onto the idea that in the absence of an external threat defensive realism takes over. For example, Kenneth N. Waltz put it, "In international politics, overwhelming power repels and leads other states to balance it." In short, states will balance against a hegemonic member. See: Kenneth N. Waltz, "America as a Model for the World? A Foreign Policy Perspective," *PS: Political Science and Politics*, 24, 4 (1991), 662.

<sup>38</sup> Getnet Tamene, Bruno S. Sergi, William T. Bagatelas and David Reichardt, *Studies in Contemporary International Relations and Politics: New Europe and Beyond* (Opladen: Budrich UniPress, 2010).



expectations of the human polity, or whether it is a self-serving goal remains very open for closer examination.

In short, actors of international politics will not give up the effort of balancing against a hegemonic member. After the end of the CW the US government recognized this problem immediately and stated that the US "must account sufficiently for the interests of the large industrial nations to discourage them from challenging our leadership or seeking to overturn the established political or economic order."<sup>39</sup> France, for instance, seems to perceive itself as a counterweight to the US in Europe, as the French minister of foreign affairs, Hubert Védrine, in 1998 stressed that "we cannot accept a unipolar political world and therefore we will fight for a multipolar world."<sup>40</sup> To reach this goal France will attempt to influence and infuse its special domestic interests into the EU's security and defence policies.<sup>41</sup> It is possible that other international actors too, will organize effort to counter balance the US unilateralist behaviour in international politics.

The World society order's subsequently emerging system is empire free. It is not based on the domination of one sole power centre; it is an inclusive system that relies on the cooperation of various apparently autonomous centres. It is not where interests of one hegemon or few actors dominate all; to the contrary it is where all interests meet and get fair treatment. In this case the policy of a hegemon or few actors is not being imposed on other actors, to the contrary policies are shaped and decisions are made with participation of all actors, who live up to their common standards and also meet their responsibilities on the global stage.

## 5 THE CURRENT HEGEMONIC POWER AND DYNAMIC OF CHANGE

As it has been indicated earlier, the hegemonic government of the rebuilt world system persists as far as the global leader has the backing of *important* states. These states control key resources and the most important economic regimes and public policies of the system. The role of the global leader is firm on condition that it fairly respects the rules, institutions and procedures of the world system. These were either taken from the past international system and adapted to the new conditions, or agreed upon by the global leader coalition, and instituted after the global war.<sup>42</sup> In short, the present hegemonic world system, or as some scholars call it, the unimultipolar system<sup>43</sup> invokes, above all, the UN and the international organizations of the world economic regimes. Thus, the structure of government of the hegemonic world political system consists of, institutions and procedures by which authoritative decisions are made and put into action to govern the world system.

Unlike the structures of governments of individual state political systems, the structure of government of the world political system is not founded upon a constitutional pact formally agreed and recognized by its members. Under

<sup>39</sup> Patrick Tyler, "U.S. Strategy Plans for Insuring No Rivals Develop A One-Superpower World," *New York Times* (March 8, 1992).

<sup>40</sup> Matthias Rüb, *Der Atlantische Graben: Amerika und Europa auf Getrennten Wegen* (Wien: Paul Zsolnay Verlag, 2004), 49.

<sup>41</sup> Carsten H. Jahnelt, *Transatlantic Relations – Are Alliances a Function of an External Threat?* (Monterey: Naval Postgraduate School, 2005), 91.

<sup>42</sup> See Fulvio Attina, "Transatlantic Relations under Stress: European and American Attitudes towards Intervention and Prevention," *Romanian Journal of European Affairs*, 5, 2, (2005), 6.

<sup>43</sup> Robert M. Cutler, "The Complex Evolution of International Orders and the Current International Transition," *Interjournal*, 255 (1999).

hegemony, the importance of multilateralism is loosely acknowledged, thus the hegemon can evade the multilateral institutions at times of its desire. The term *hegemonic* structure of government points out that currently the leading role of government in the international system is exercised with the consent of allies, although not universal and uncritical consent. In particular, in the contemporary international system, the consent of the followers and the legitimacy of the authority of the global leader, i.e. the hegemonic power depends, to a great extent, on exercising hegemony within multilateral institutions, such as the UN and the most important international economic regimes. Framing actions within multilateralism brings consent and additional resources to the global leader, and prevents its own exhaustion. Consent decreases, instead, when the global leader neglects multilateralism and violates the procedures of the world political institutions.<sup>44</sup> The US, as current hegemon, with its strong unilateral tendencies would hardly endorse an enduring consent of a large coalition of important states on such important changes of the world government strategy. This would, as hints Tamene,<sup>45</sup> most probably lead to the formation of other coalition with ambition of creating a different system in which power is fairly distributed around the globe.

In fact, the UN rules and procedures, display a loose multilateral structure, nevertheless, they are fundamental to the structure of governance of the current world system. To be able to function well, the UN and their rules and procedures have to correspond with practice of member states mainly with the hegemonic state. Reform of the United Nations is possible only when great changes radically transform international relations and the world structure, eventually making the US abandon the role of global leader. As to now, there are times when the US has attempted to change the UN, informally (or *de facto*), without revising the Charter. The US has done this in its own favour, in order, to reinforce its global dominance, in other words to utilize the UN as a toolbox to impose its own interests on other actors.

As it stands today, a loose-multilateralism underlies the structure of government of the world political system, this is characterized by several downsides, two of which are: 1) a very low level of institutional differentiation and no meaningful judicial and enforcement institutions to take care of the international legal order. Due to this character, the world political system remains in sharp contrast with the states that developed their political systems in the liberal constitutionalism tradition. On this regard, the role of warden of international order or world police that the hegemonic power has self-appointed itself to in world politics shall remain active until a strong diversified institutional structure with judicial institutions, fully operational and independent from the states, is formed in the world system. 2) the hegemonic nature of the structure of today's government of the world system that will last until a new pact on the foundation and autonomy of the supreme political authority is introduced in the world institutional structure.<sup>46</sup> Hegemonic or imperial cycles could be deflected.

Thus there is a possibility for a different system to emerge that will end the hegemonic cycle (empires). At least a quadruplet-polar version of multipolar

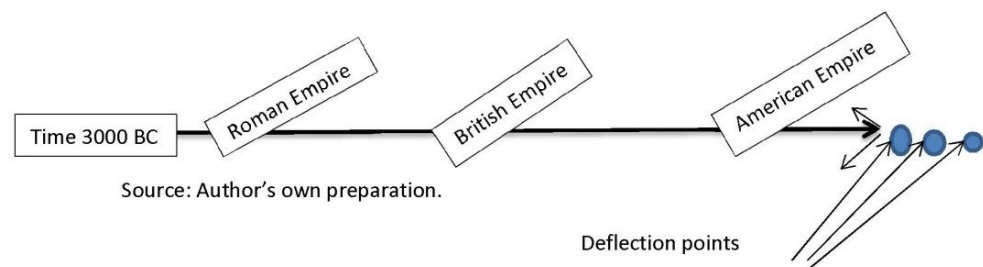
<sup>44</sup> See Fulvio Attina, "Transatlantic Relations under Stress: European and American Attitudes towards Intervention and Prevention," *Romanian Journal of European Affairs*, 5, 2, (2005), 6–7.

<sup>45</sup> Getnet Tamene, "The International Relations of Diplomacy," in *Economics and Politics: Has 9/11 Changed Anything?*, eds. Bruno S. Sergi and William T. Bagatelas (Bratislava: Iura Edition, 2004), 61–67.

<sup>46</sup> See Fulvio Attina, "Transatlantic Relations under Stress: European and American Attitudes towards Intervention and Prevention," *Romanian Journal of European Affairs*, 5, 2, (2005), 6–7.

international system of power sharing, which is based on mixture of both liberal and illiberal democracies will get stronger and disrupt the ambition of building liberal democratic empire by force, and ultimately lead to disrupting the succession of empires (see Figure 2). With this assumption put on action, traditional method of polarity and power conflict, suggested by Waltz and Huntington, will decline, since war will lose the sense of being a permanent condition in a system which is less conducive to waging wars. The world beyond the hegemon will largely prefer this peace friendly system to the war mongering hegemonic one.

FIGURE 2: DEPICTS THE POSSIBILITY OF DISRUPTING THE LINEAR PATH OF EMPIRES AND A NON-EMPIRE OPTION OF FUTURE DEVELOPMENT



In the forecast analysis of the formation of the antagonist coalition, it is worth remarking that a wide alignment of discontented actors would consist of countries that oppose the *status quo* in the Asia-Pacific, the states and non-state actors that are frustrated by the current economic globalization process, the countries ruled by classes that fear the consequences of the current democratization process, and all those actors that incline toward cultural clash and fundamentalism. According to Modelski and Thompson, “such a counter coalition could increasingly comprise global public or even secret organizations focused on aspects of global politics, such as antiforeigner movements or groups attacking the American position in world affairs. A confrontation between such forces involving East Asia, Southeast Asia, or the Middle East could conceivably spark a larger conflict and a wider conflagration, especially if and when linked to a major power challenger.”<sup>47</sup> Tamene<sup>48</sup> seem to confirm that such are attributes of the turbulent contemporary international system that need to change to a multilateral multipolarism, which is more friendly system, as discussed above. The American empire may head to the end of imperial systems not in the sense that it shall be the hugest empire ever, but in the sense that a history of non-imperial systems shall start after it.

## 6 POSSIBLE SCENARIOS OF INTERNATIONAL POLITICAL SYSTEM

In connection with international political system as a whole, given current loose, but complex economic and political inter-dependence at least two primary scenarios of the future of international system are predictable: 1) the attempt of perpetuating imperial tendency will generate ranges of empires and a rising clout towards uninterrupted ambition of domination. According to this scenario an imperial cycle of world politics, a hegemonic global leader,

<sup>47</sup> George Modelski and William R. Thompson, “The long and the Short of Global Politics in the Twenty-First Century: An Evolutionary Approach,” *International Studies Review*, 1, 2 (1999), 134.

<sup>48</sup> Getnet Tamene, “The International Relations of Diplomacy,” in *Economics and Politics: Has 9/11 Changed Anything?*, eds. Bruno S. Sergi and William T. Bagatelas (Bratislava: Iura Edition, 2004), 43–86.

and wars are permanent conditions, and no change will avoid this pattern. 2) at least a quadruplet-polar version of multipolar international system of power sharing, which is based on mixture of both liberal and illiberal democracies will get stronger and disrupt the forceful ambition of building liberal democratic empire. According to this scenario, a real system of mutual cooperation<sup>49</sup> will open, in which the domination of a single power, the cycle of empires and related wars become irrelevant and avoidable. Many scholars, who have conducted research about world political system and its transformation, such as Modelski, Attina, and Cutler, contrary to political scientists who pay more attention to domestic politics, emphasize the evolutionary process of world politics, and point out a possibility of major system change at global political system level in foreseeable future.

## 7 CONCLUSIONS

The attempt of defining international politics and economics in terms of the US vision alone sounds incomplete and pretty self-serving approach, some dare to call it 'a new world disorder' as indicated below:

"...Military overreach and serial economic crises have bequeathed us a generation of small leaders who battle with events that outsize them. They have stopped trying to fashion them, but appeal instead to a defensive desire. Protectionism not internationalism rules the day. The Middle East has been transformed from a zone of allies to one in which Washington has been reduced to the role of spectator. It is now largely a taker of Middle Eastern policy, not one of its makers. There are other parts of the globe where US power projection finds natural allies, such as the Pacific, where China's rise is feared. So the paradox is that while US military power retains global reach (it is working on supersonic cruise missiles and long-range drones) its stewardship as world leader, as a generator of the next big idea, is gradually ending. There may come a time when international institutions are rebuilt to fill this vacuum. But that time is not yet. Until then, a new world disorder would be nearer the mark."

The world society order of this new century and its institutions should not necessarily depend on just the tradition of the single West, or it should not depend solely on institutions like the TAA that works in favour of advancing exclusively Western interests, or it should not rely only on the set of Western norms, which are being dictated upon others, and which those others are not part of the process of making these norms or institutions. Only new institutions and norms, whose process of making involve the will of all actors would be able to underlie appropriately the 21<sup>st</sup> century world society order. This change is essential, in order, it to work effectively in the interests of all involved actors, or in the interests of human polity at large.

Whether globalization itself, as it is currently practiced by Western corporations and nations, is feasible and moral long-term strategy is under critical scrutiny. For instance, the International Monetary Fund (IMF), while seeming outwardly committed to free-trade values and open governance has been upholding a system which one commentator referred to as, "a game of one-way strip poker", where the IMF insists that developing nations abandon trade barriers, while failing to mention that the barriers are erected by the Western nations in an attempt to slow the flow of cheap consumer goods.<sup>50</sup>

<sup>49</sup> Ibid., 61–70.

<sup>50</sup> See Naomi Klein, "Sacrificial Wolfie," *The Nation*, 2007, available at <http://www.naomiklein.org/articles/all?page=11> (27 November, 2012).

The new subsequent system of the world society order is capable enough to overcome such double standards and hypocrisy, because it will enhance a two-way cooperation contrary to the current uni-multipolar system.

The debates identified in this study have tried to address the partial world order perspectives and emphasized the need of linking experiences of other regions in ways comparable to North American and European debates, in order, to tell they are truly global. Otherwise, they are not different from exclusive foreign concerns, whose history is irrelevant to determine how trajectories for 21<sup>st</sup> Century prospects of human polity are being defined. While admitting we are all still students in the field, regardless of our present levels of learning or academic rank, International Studies scholars from all national and regional groups may need to renegotiate and redefine these debates as part of a truly inclusive global field of inquiry.

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## (DIS)TRUST IN POLITICAL INSTITUTIONS: COMPARISONS BETWEEN NEW DEMOCRACIES OF CENTRAL AND EASTERN EUROPE

Simona KUKOVIČ<sup>1</sup>

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*After the collapse of the non-democratic regimes in the late 1980s and early 1990s, new democratic states emerged in Central and Eastern Europe and began their state building on the wave of democratic enthusiasm by the general public. Majority of those countries entered into European Union a decade ago as consolidated well-working democracies, although public trust in democratic political institutions has been on the slow decline since gaining independence, only to drop substantially more after global economic crisis hit countries of Central and Eastern Europe in 2009. Authors are analysing trends in (dis)trust levels in key political institutions in Central and Eastern European EU member countries, and comparing the results with other EU member states.*

**Key words:** democratisation, trust, politics, institutions, Central and Eastern Europe.

### 1 INTRODUCTION

In all post-socialist countries, democratisation was a process that resulted in the establishment of a democratic political system similar to that of Western European countries. It is a process of changing the regime from the beginning to the end and includes the concepts of transition and consolidation. The consolidation of democracy is a process that encompasses the complete establishment of new democratic institutions, the adoption of democratic rules and procedures, and the general acceptance of democratic values. Political changes that stem from the top can also play an important role in accelerating democratic processes, yet they can also repress the political socialisation of citizens.

For countries in transition, transforming the political institutions is particularly important, because the positive outcome of the whole democratisation effort largely depends on how these institutions are seen to be successful in the

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eyes of the public. The transition itself is a unique process. For a successful transition towards a more effective society, every country first has to define two elements and then define a third one. Since every country has its own tradition, the realisation of its success lies, on the one hand, on the starting point of its development and the development of its surroundings and, on the other hand, on the capacity to understand the development of the society. The understanding and steering of these 'society flows' lies within the competence of public administration systems that are, in comparison to the established systems, under greater stress, since they have to adapt and reorganise the public administration institutions.<sup>2</sup>

When thinking of the legitimacy of democratic systems, we cannot avoid a discussion regarding the trust in political institutions. Since they focus on the institutionalisation of society's actions – which become more efficient, stable, and predictable under their influence – they represent the core foundations of society. Citizens rely on political institutions since there is a belief that not all of our fellow citizens can be trusted. Institutions act as mediators that, within the legal framework, force all citizens to respect certain legal and ethical norms, which consequently results in a higher level of trust. The greatest threat to the trust established between institutions and citizens is the systematic misuse of democratic principles. According to Sztompka,<sup>3</sup> citizens who live in a democracy develop trust in democracy that is the highest form possible for the system. When this basic trust is misused, the level of trust in all other ideals connected to democracy decreases. Our standpoint is that trust in political institutions and the legitimacy of the democratic system are closely dependent on each other.

Elster, Offe, and Preuss<sup>4</sup> point out that the concept of democratic consolidation is not identical to economic success, because economic effectiveness is also possible in non-consolidated democracies or even in non-democracies. Political scientists therefore focus above all on political indexes of democratic consolidation. Gasiorowski and Power<sup>5</sup> offer three basic criteria of successful democratic consolidation: successful execution of second parliamentary elections, successful swap of the executive branch with the usage of constitutional means (peaceful exchange of political power), and successful survival of the democratic system for twelve straight years. Additional criteria are frequently added: for instance, the relationship of citizens with democratic institutions, wide concordance on the rules of the political game, and trust in democratic political institutions and political elites.<sup>6</sup> We will emphasise the latter in this paper, locating new democracies of Central and Eastern Europe among older, well-established EU democracies from Western and Northern Europe according to public opinion surveys concerning public (dis)trust in key political institutions. This will allow the authors to assess Central and Eastern European new democracies' position on the scale of the relationship of the dimensions of societal trust in political power.

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<sup>2</sup> Marjan Brezovšek, "Uprava in demokratični prehod," in *Demokratični prehodi I*, eds. Danica Fink Hafner and Miro Haček (Ljubljana: Založba FDV, 2000), 239.

<sup>3</sup> Piotr Sztompka, *Trust: a sociological theory* (Cambridge, New York, Melbourne: Cambridge University Press, 1999).

<sup>4</sup> Jon Elster, Claus Offe and Ulrich K. Preuss, *Institutional Design in Post-communist Societies* (Cambridge: Cambridge University Press, 1998), 307.

<sup>5</sup> Mark J. Gasiorowski and Timothy J. Power, "The Structural Determinants of Democratic Consolidation," *Comparative Political Studies*, 31, 6 (1998), 740–771.

<sup>6</sup> Danica Fink Hafner, "Teoretske premise proučevanja demokratičnih prehodov," in *Demokratični prehodi I*, eds. Danica Fink Hafner and Miro Haček (Ljubljana: Založba FDV, 2000), 13–14.

## 2 POLITICAL INSTITUTIONS AS MEDIATORS OF TRUST

Political institutions should act as the representatives of certain values of society or, what is more, they sometimes even create a new set of norms and values. According to Offe,<sup>7</sup> the trust we have in others also generates the trust we have in institutions. He defines values that generate trust in institutions through two parameters: truth and justice. Consequent actions of both are categorised by their use: passive or active (see Table 1). Institutions generate trust based on interactive truth-telling, which means that the institutions create an assumption that they express only the truth (in contacts with citizens). When reacting actively, institutions change the truth-telling into promise-keeping, which is most profoundly expressed through jurisdiction or by realising a political programme. If we observe the role of institutions as representatives of justice in society, then institutions passively express justice when treating all individuals equally (fairness) and actively when they express some solidarity to marginalised individuals.<sup>8</sup>

TABLE 1: VALUES THAT GENERATE TRUST IN INSTITUTIONS

	TRUTH	JUSTICE
PASSIVE	truth-telling	fairness
ACTIVE	promise-keeping	solidarity

Source: Mark E. Warren (ed.), *Democracy and Trust* (Cambridge: Cambridge University Press, 1999), 73.

If trust is generated through the trust we have in individuals who work in an institution, there are two options: either we trust every individual working for the institution that they will act according to the preset rules of the institution and in accordance with the law, or we trust that the rules and procedures within the institution will, in a way, force all employees (especially those in high ranking positions) to be trustworthy. None of the abovementioned options is possible in the trust relationship between citizens and modern administrative and political institutions. The complexity and number of employees in the institutions is too big for the first possibility, while the other option would require individuals' great knowledge of all administrative structures, their procedural rules and sub-structures, which is highly unlikely. The only legitimate reason for the citizens' systematic mistrust is evidence of the misuse of administrative power in institutions. When institutions are deliberately misusing their power or merely overseeing malfunctions in the administrative process, one can conclude that they are unable to fulfil their mission and are consequently not trustworthy.<sup>9</sup> Trust is closely linked to the phenomenon of (political) responsibility.

No government in the world enjoys the absolute trust of its citizens. Since the power of every government dwarfs that of any individual citizen, even the most benevolent government represents a threat to individual freedom and welfare. Still, for a government to operate effectively, it must enjoy a minimum of public confidence.<sup>10</sup> Gamson<sup>11</sup> argues that trust in political and administrative institutions is important, because it serves as the "creator of collective power," enabling government to make decisions and commit resources without having to resort to coercion or obtain the specific approval of citizens for every decision. When trust is extensive, governments "are able

<sup>7</sup> Mark E. Warren (ed.), *Democracy and Trust* (Cambridge: Cambridge University Press, 1999), 71.

<sup>8</sup> Ibid., 73.

<sup>9</sup> Ibid., 75.

<sup>10</sup> William Mishler and Richard Rose, "Trust, Distrust and Scepticism: Popular Evaluations of Civil and Political Institutions in Post-Communist Societies," *The Journal of Politics*, 59, 2 (1997), 418–419.

<sup>11</sup> William A. Gamson, *Power and Discontent* (Homewood: The Dorsey Press, 1968), 42.

to make new commitments on the basis of it and, if successful, increase support even more",<sup>12</sup> creating, in effect, a virtuous spiral. When trust is low, governments cannot govern effectively, trust is further undermined, and a vicious cycle is created.<sup>13</sup> Trust is especially important for democratic governments because they cannot rely on coercion to the same extent as other regimes and because trust is essential to the representative relationship.<sup>14</sup> In modern democracies, where citizens exercise control over government through representative institutions, it is trust that gives representatives the leeway to postpone short-term constituency concerns while pursuing long-term national interests.<sup>15</sup> For example, when inflation is severe, citizens must have sufficient trust in economic and political institutions to accept temporary economic pain in return for the promise of better economic conditions at some uncertain future date.<sup>16</sup> Trust is necessary so that individuals may participate voluntarily in collective institutions, whether in political institutions or in civil society's institutions. Trust in civil institutions does not diminish democracy but completes it, enhancing the effectiveness of political institutions, creating what Dahl<sup>17</sup> refers to as the "social separation of powers," which checks the emergence of an overly strong state. Trust, however, is double-edged sword. Democracy requires trust but also presupposes an active and vigilant citizenry with a healthy scepticism of government and a willingness, should the need arise, to suspend trust and assert control over government by replacing the government of the day.<sup>18</sup>

### 3 (DIS)TRUST IN POLITICAL INSTITUTIONS IN CEE

In the post-communist countries of Central and Eastern Europe, excessive trust was never a real concern. The immediate problem is overcoming the abiding cynicism and distrust that are the legacies of the half-century long non-democratic rule. Citizens in Central and Eastern Europe have good reason to distrust political and social institutions. Most have lived their entire lives under authoritarian regimes, some more totalitarian than others, but all inclined to subjugate individual interests to those of the Communist Party.<sup>19</sup> The communist system created a variety of civil institutions, but as Shlapentokh<sup>20</sup> has emphasized, "such organizations as the trade unions, the Young Communists' League could be regarded as pertaining to civil society, but in fact they are parts of the state apparatus".<sup>21</sup> Instead of voluntary participation, citizens in CEE were forced to make a hypocritical show of involvement or at least compliance.<sup>22</sup> The consequence was massive

<sup>12</sup> Ibid., 45–46.

<sup>13</sup> Edward N. Muller and Thomas O. Jukam, "On the Meaning of Political Support," *The American Political Science Review*, 71, 4 (1977), 1561–1577.

<sup>14</sup> William T. Bianco, *Trust: Representatives and Constituents* (Ann Arbor: University of Michigan Press, 1994).

<sup>15</sup> William Mishler and Richard Rose, "Trust, Distrust and Scepticism: Popular Evaluations of Civil and Political Institutions in Post-Communist Societies," *The Journal of Politics*, 59, 2 (1997), 419.

<sup>16</sup> Stephen M. Weatherford, "Political Economy and Political Legitimacy: The Link Between Economic Policy and Trust," in *Economic Decline and Political Change*, eds. Harold D. Clarke, Marianne C. Steward and Gary Zuk (Pittsburgh: University of Pittsburgh Press, 1984).

<sup>17</sup> Robert A. Dahl, *A Preface to Democratic Theory* (Chicago: University of Chicago Press, 1956), 83.

<sup>18</sup> William Mishler and Richard Rose, "Trust, Distrust and Scepticism: Popular Evaluations of Civil and Political Institutions in Post-Communist Societies," *The Journal of Politics*, 59, 2 (1997), 419.

<sup>19</sup> John Clark and Aaron B. Wildavsky, *The Moral Collapse of Communism: Poland as a Cautionary Tale* (San Francisco: ICS Press, 1990).

<sup>20</sup> Vladimir Shlapentokh, *Public and Private Life of the Soviet People* (New York: Oxford University Press, 1989), 9.

<sup>21</sup> See also Giovanni Sartori, "Totalitarianism, Model Mania and Learning from Error," *Journal of Theoretical Politics*, 5, 1 (1993), 5–22.

<sup>22</sup> William Mishler and Richard Rose, "Trust, Distrust and Scepticism: Popular Evaluations of Civil and Political Institutions in Post-Communist Societies," *The Journal of Politics*, 59, 2 (1997), 420.



alienation and distrust of the communist regime and a lingering cynicism toward both political and civil institutions.

The new democratic regimes of Central and Eastern Europe have not existed long, but they have existed long enough for many citizens to differentiate contemporary institutions from those of the past and to form at least preliminary judgments about the differences. This, by itself, can create a measure of trust or, at least, a tempering of distrust. In the short term, popular trust in government may be inherited. In the longer term, however, trust must be earned; it must be performance-based. The extent of public trust in the post-communist regimes of Central and Eastern Europe is clearly important for democratic consolidation. It also is an empirical question, about which the supply of speculation greatly exceeds that of systematic research. Even less is known about the sources of trust and distrust in post-communist societies, although an understanding of underlying causes is vital for assessing the prospects for establishing civil society and consolidating stable democratic rule.<sup>23</sup> This paper draws upon survey data from the European Social Survey and Eurobarometer to examine the structure and determinants of public trust in Central and Eastern Europe and in older EU member states.

In European Union, the most periodical public opinion survey, that includes all EU member states, is the Eurobarometer. The research focuses on opinions on the work of different political institutions as well as on general assessments of the quality of life in the each EU member state. In connection to this, the main goal of the Eurobarometer is to present average assessments of the satisfaction of citizens with democratic institutions, personal finances, and economic conditions in the EU member country and averagely in the whole EU. If we compare the surveys over the years, then, some changes in satisfaction with democracy in each individual EU member state can be detected. In general, one of the most common observations is that in all new democratic systems there is a high level of dissatisfaction with democracy itself. Similarly, in Central and Eastern European member states, more than half the citizens are not satisfied with democracy in the country (see Table 2). We can also observe negative trends in each of ten CEE countries over the last eight years. In 2012 not even one of the ten CEE countries managed to reach the majority of citizens, satisfied with democracy; admittedly, even more dramatic effect can be observed in southern EU member states (Italy, Spain, Greece, Portugal), where world economic crisis had most dramatic effects over the last few years. The question remains as to how much of such dissatisfaction fragile post-socialist regime can withstand before this dissatisfaction changes into a denial of the legitimacy of the whole political system and legitimacy of various political and administrative institutions.

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<sup>23</sup> Ibid.

TABLE 2: SATISFACTION WITH DEMOCRACY IN THE EU MEMBER STATES (TOTAL SATISFIED; IN PERCENT)

EU Member State	2004	2005	2006	2007	2009	2010	2011	2012
AUSTRIA	71	68	75	80	76	78	73	70
BELGIUM	70	65	68	66	62	56	61	57
BULGARIA	/	/	/	26	21	25	27	24
CYPRUS	63	68	63	61	60	54	44	33
CZECH REP.	45	48	58	51	48	45	31	30
DENMARK	91	92	93	94	91	92	92	90
ESTONIA	45	44	43	53	41	45	46	38
FINLAND	83	77	78	77	69	69	77	78
FRANCE	57	53	45	65	51	54	53	60
GERMANY	61	53	55	66	68	62	68	70
GREECE	68	53	55	63	49	31	17	11
HUNGARY	37	27	46	24	23	35	30	29
IRELAND	77	71	75	69	56	57	57	50
ITALY	46	44	53	40	44	47	34	27
LATVIA	45	44	41	43	21	32	38	42
LITHUANIA	34	24	23	24	18	17	23	21
LUXEMBURG	83	82	83	73	90	83	88	84
MALTA	48	48	48	53	49	45	50	49
NETHERLANDS	71	71	75	80	72	75	75	75
POLAND	30	29	38	48	44	54	59	48
PORTUGAL	39	41	30	36	40	29	29	25
ROMANIA	/	/	/	36	18	20	22	13
SLOVAKIA	25	26	25	35	40	36	33	29
SLOVENIA	57	56	54	48	37	38	31	26
SPAIN	64	67	71	77	58	53	45	32
SWEDEN	76	71	74	80	81	84	87	86
UNITED KINGDOM	63	60	60	62	58	59	60	60
<b>EU 25/27 AVERAGE</b>	<b>58</b>	<b>55</b>	<b>57</b>	<b>57</b>	<b>51</b>	<b>51</b>	<b>50</b>	<b>47</b>

Sources: *Table of results. Standard Eurobarometer 62 (Autumn 2004)*. Public opinion in the European Union. Available at [http://ec.europa.eu/public\\_opinion/archives/eb/eb62/eb62\\_en.htm](http://ec.europa.eu/public_opinion/archives/eb/eb62/eb62_en.htm) (February 2013); *Table of results. Standard Eurobarometer 63 (September 2005)*. Public opinion in the European Union. Available at [http://ec.europa.eu/public\\_opinion/archives/eb/eb63/eb63\\_en.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb63/eb63_en.pdf) (February 2013); *Table of results. Standard Eurobarometer 65 (January 2007)*. Public opinion in the European Union. Available at [http://ec.europa.eu/public\\_opinion/archives/eb/eb65/eb65\\_en.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb65/eb65_en.pdf) (February 2013); *Table of results. Standard Eurobarometer 68 (May 2008)*. Public opinion in the European Union. Available at [http://ec.europa.eu/public\\_opinion/archives/eb/eb68/eb68\\_en.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb68/eb68_en.pdf) (February 2013); *Table of results. Standard Eurobarometer 72 (Autumn 2009)*. Public opinion in the European Union. Available at [http://ec.europa.eu/public\\_opinion/archives/eb/eb72/eb72\\_anx\\_vol1.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb72/eb72_anx_vol1.pdf) (February 2013); *Table of results. Standard Eurobarometer 73 (November 2010)*. Public opinion in the European Union. Available at [http://ec.europa.eu/public\\_opinion/archives/eb/eb73/eb73\\_anx\\_full.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb73/eb73_anx_full.pdf) (February 2013); *Table of results. Standard Eurobarometer 76 (December 2011)*. Public opinion in the European Union. Available at [http://ec.europa.eu/public\\_opinion/archives/eb/eb76/eb76\\_anx\\_en.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb76/eb76_anx_en.pdf) (February 2013); *Table of results. Standard Eurobarometer 78 (November 2012)*. Public opinion in the European Union. Available at [http://ec.europa.eu/public\\_opinion/archives/eb/eb78/eb78\\_anx\\_en.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb78/eb78_anx_en.pdf) (February 2013).

Nevertheless, this dissatisfaction could also be connected to the outcomes of the democratic transition and consolidation processes and not democracy as a type of social-political relations itself. In this case, dissatisfaction can also be expressed through the existing mechanisms like elections, referendums and so forth. As we see in *Table 2* from 2004, when we can already speak of the consolidated democratic systems in CEE, the trust in democracy never reached levels comparable to older, established EU democracies; the highest levels were noted in Slovenia in 2004 (57 percent) and Czech Republic in 2006 (58 percent). After global economic crisis hit Europe in 2008/2009, dissatisfaction with democracy has been growing steadily, peaking in 2011 and 2012.

Sometimes, the distrust does not apply solely to the democratic system but the personification of democracy – the key political institutions (parliament, government, and political parties). Besides dissatisfaction with political institutions, another very important factor is the economic climate in the

country. After the end of socialism, the safety net of social care has more or less been deteriorating, leaving many marginalised. However, in some CEE countries like Slovenia, economic stability prevented any greater dissatisfaction with democracy all the way until 2009, when consequences of the global economic crisis hit the country and the safety net of social care started to crack.

General trust in politics is also reflected in the trust in major political institutions (Table 3). We can observe that the levels of trust in three major political institutions are very low across the whole EU, with the partial exception of northern EU member states. The lowest levels of trust can be in all five measurements observed towards the political parties, where EU average from 2004 to 2012 sits between 17 and 24 percent; the highest levels of trust can be observed in national parliaments, where EU average from 2004 to 2012 sits between 29 and 42 percent. There is some minor deviation in the measurements between the years, but it is not very significant all the way until 2010–2012, when the level of trust in all three major political institutions drop even further. However, if we observe average levels of trust in ten CEE member states, we can quite clearly see that those levels are lower at every single measurement compared to average levels in EU 25/27. The drop of public trust in all three political institutions we can notice in 2010 and 2012, is not so dramatic compared with previously analysed distrust in democracy, but still clearly visible, especially in certain CEE countries (Slovakia, Slovenia, Czech Republic) and southern EU member states (Greece, Spain, Portugal, Italy).

TABLE 3: TRUST IN POLITICAL INSTITUTIONS (TEND TO TRUST; IN PERCENT)

EU MEMBER STATE	POLITICAL PARTIES					NATIONAL GOVERNMENT					NATIONAL PARLIAMENT				
	2004	2006	2008	2010	2012	2004	2006	2008	2010	2012	2004	2006	2008	2010	2012
AUSTRIA	23	38	38	40	33	45	55	50	54	49	51	56	54	52	50
BELGIUM	23	29	25	20	23	38	47	36	22	38	46	50	40	28	40
BULGARIA	/	/	7	15	14	/	/	15	43	25	/	/	8	25	18
CYPRUS	26	20	29	23	9	65	56	65	43	16	63	44	63	40	15
CZECH REPUBLIC	10	15	12	12	8	27	34	20	32	11	18	22	16	12	9
DENMARK	39	49	54	49	36	56	56	60	50	42	70	75	75	72	63
ESTONIA	17	21	19	20	16	47	54	48	53	35	41	41	37	39	29
FINLAND	26	36	36	30	36	67	65	68	49	62	68	69	71	55	66
FRANCE	13	10	13	14	12	29	20	31	25	30	38	31	36	36	32
GERMANY	13	22	22	19	21	33	39	42	32	41	39	40	41	39	46
GREECE	17	25	14	9	5	50	43	23	25	7	61	56	32	23	9
HUNGARY	18	29	8	29	18	40	48	16	40	27	38	47	16	41	29
IRELAND	18	32	23	17	12	39	42	33	21	18	40	44	36	22	18
ITALY	20	26	16	18	8	28	34	26	25	17	31	40	27	26	11
LATVIA	6	6	5	4	6	26	25	16	13	17	21	21	9	6	13
LITHUANIA	16	10	10	6	13	38	21	16	13	21	23	14	11	7	13
LUXEMBURG	35	41	39	40	22	67	65	60	66	57	64	58	56	52	48
MALTA	28	25	34	25	20	46	38	50	33	34	44	40	57	33	29
NETHERLANDS	34	42	51	45	33	38	42	66	47	47	49	55	64	54	53
POLAND	5	9	7	15	17	13	22	20	28	23	8	13	13	24	20
PORTUGAL	17	19	17	15	17	27	34	31	20	22	43	41	38	28	23
ROMANIA	/	/	14	10	9	/	/	25	12	20	/	/	19	10	13
SLOVAKIA	9	10	16	25	19	22	21	46	38	32	25	27	41	38	30
SLOVENIA	17	19	17	11	9	35	38	36	27	15	36	37	34	23	12
SPAIN	28	31	30	14	6	51	44	44	20	11	48	41	40	21	9
SWEDEN	24	23	34	37	35	41	36	56	57	59	56	56	64	66	68
UNITED KINGDOM	15	18	18	18	12	32	30	29	26	25	37	36	30	24	26
EU 25/27 AVERAGE	20	24	23	21	17	40	40	38	34	30	42	42	38	33	29
CEE 8/10 AVERAGE	12	16	12	15	13	31	33	26	30	23	26	28	20	23	19

Sources: *Table of results. Standard Eurobarometer 62 (Autumn 2004)*. Public opinion in the European Union. Available at [http://ec.europa.eu/public\\_opinion/archives/eb/eb62/eb62\\_en.htm](http://ec.europa.eu/public_opinion/archives/eb/eb62/eb62_en.htm) (February 2013); *Table of results. Standard Eurobarometer 65 (January 2007)*. Public opinion in the European Union. Available at [http://ec.europa.eu/public\\_opinion/archives/eb/eb65/eb65\\_en.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb65/eb65_en.pdf) (February 2013); *Table of results. Standard Eurobarometer 70 (Autumn 2008)*. Public opinion in the European Union. Available at [http://ec.europa.eu/public\\_opinion/archives/eb/eb70/eb70\\_full\\_annex.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb70/eb70_full_annex.pdf) (February 2013); *Table of results. Standard Eurobarometer 73 (November 2010)*. Public opinion in the

European Union. Available at [http://ec.europa.eu/public\\_opinion/archives/eb/eb73/eb73\\_anx\\_full.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb73/eb73_anx_full.pdf) (February 2013); *Table of results. Standard Eurobarometer 78 (November 2012)*. Public opinion in the European Union. Available at [http://ec.europa.eu/public\\_opinion/archives/eb/eb78/eb78\\_anx\\_en.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb78/eb78_anx_en.pdf) (February 2013).

If we compare public trust in institutions measured in selected European countries in 1995 and 2010 in European Social Survey research, the conclusion is that the level of trust is much lower in new democracies of CEE than the level of trust in established democracies of Western Europe. The survey covered a range of questions, and in *Table 4* we can see the level of trust in national parliaments, political parties, and politicians in all of the observed countries. Even among CEE countries, there is a significant difference in levels of trust. In Slovenia, for example, the level of trust is among the lowest in the region. This indicates that the variations in levels of trust show how different the political systems are and that the level of trust in the region is much lower than in other Western European countries, probably because of the change in the regime.<sup>24</sup>

If we compare trust levels in the national parliament from data sets of 1995 and 2010, we can clearly ascertain that levels of trust have fallen quite significantly, except in Norway, Sweden, and the Netherlands, where trust in the national parliament was actually higher in 2010 than in 1995. The average level of trust was 4.63 in 1995 and 4.32 in 2010; the level of trust was measured on a scale from 1 to 10. Only two of the observed countries' parliaments scored a lower level of trust in 1995 than in Slovenia (Poland and the Czech Republic), with two such examples again in 2010 (Bulgaria and Portugal). Besides that, we can see that the Scandinavian countries, on average, have a much higher level of trust, which could also be linked to their high levels of social capital that could play some role in their relatively high trust levels in general.

TABLE 4: TRUST IN POLITICIANS, POLITICAL PARTIES, AND NATIONAL PARLIAMENTS IN EUROPE (1995 AND 2010)

COUNTRY	TRUST IN POLITICIANS (2010)	TRUST IN POLITICAL PARTIES (2010)	TRUST IN THE NATIONAL PARLIAMENT (2010)	TRUST IN THE NATIONAL PARLIAMENT (1995)
BELGIUM	3,86	3,85	4,46	5,0
DENMARK	5,04	5,17	5,83	6,2
FINLAND	4,43	4,54	5,38	5,8
FRANCE	3,19	3,07	4,15	4,5
GERMANY	3,29	3,26	4,18	4,5
ISRAEL	2,95	2,95	3,64	4,7
NEDERLANDS	5,22	5,23	5,34	5,2
NORWAY	4,96	4,93	6,03	5,7
PORTUGAL	2,01	2,02	2,91	4,4
SPAIN	2,72	2,70	4,30	4,8
SWEDEN	5,04	5,11	6,28	5,9
SWITZERLAND	5,01	4,81	5,81	5,8
UNITED KINGDOM	3,40	3,50	4,05	4,7
BULGARIA	1,99	2,01	2,38	-
CZECH REPUBLIC	2,63	2,69	3,27	3,6
ESTONIA	3,62	3,43	4,24	4,4
HUNGARY	3,12	3,14	4,22	5,0
POLAND	2,66	2,55	3,44	3,5
SLOVENIA	2,25	2,24	2,98	4,0

Source: *European Social Survey*. Available at <http://www.europeansocialsurvey.org> (January 2012). The question was as follows: "Tell me on a scale from 0 to 10 how much you personally trust each of the institutions. 0 means you do not trust institution at all, and 10 means you have complete trust."

<sup>24</sup> Max Kaase, Kenneth Newton and Niko Toš, *Zaupanje v vlado* (Ljubljana: Liberalna akademija, 1999).

TABLE 5: VOTER TURNOUT DATA (IN PERCENT)<sup>25</sup> FOR EU MEMBER STATES –PARLIAMENTARY ELECTIONS

EU MEMBER STATE	YEAR	PERCENT	DIFFERENCE
AUSTRIA	1990	86.14	- 4,43
	2008	81.71	
BELGIUM	1991	92.71	- 3,49
	2010	89.22	
BULGARIA	1991	83.87	- 23,23
	2009	60.64	
CYPRUS	1991	94.31	- 15,51
	2011	78.80	
CZECH REPUBLIC	1990	96.33	- 33,73
	2010	62.60	
DENMARK	1990	82.85	+ 4,89
	2011	87.74	
ESTONIA	1990	78.20	- 14,67
	2011	63.53	
FINLAND	1991	68.39	- 1,02
	2011	67.37	
FRANCE	1993	68.93	- 13,53
	2012	55.40	
GERMANY	1990	77.76	- 6,98
	2009	70.78	
GREECE	1993	82.95	- 20,48
	2012	62.47	
HUNGARY	1990	44.14	+ 2,52
	2010	46.66	
IRELAND	1992	68.49	+ 1,56
	2011	70.05	
ITALY	1992	87.44	- 6,90
	2008	80.54	
LATVIA	1990	81.20	- 21,71
	2011	59.49	
LITHUANIA	1992	75.22	- 39,31
	2012	35.91	
LUXEMBURG	1994	88.30	+ 2,63
	2009	90.93	
MALTA	1992	96.04	- 2,74
	2008	93.30	
NETHERLANDS	1994	78.75	- 4,19
	2012	74.56	
POLAND	1991	43.20	+ 5,72
	2011	48.92	
PORTUGAL	1991	68.18	- 10,15
	2011	58.03	
ROMANIA	1992	76.29	- 34,53
	2012	41.76	
SLOVAKIA	1990	96.33	- 37,22
	2012	59.11	
SLOVENIA	1992	85.90	- 20,30
	2011	65.60	
SPAIN	1993	77.05	- 8,11
	2011	68.94	
SWEDEN	1991	86.74	- 2,11
	2010	84.63	
UNITED KINGDOM	1992	77.83	- 12,06
	2010	65.77	

Source: *Idea*. Country view. Available at <http://www.idea.int/vt/countryview.cfm?id=-1> (February 2013).

One additional indicator of public trust in politics and political institutions is voter turnout at general elections to the representative assembly. Given the

<sup>25</sup> The voter turnout (of the only or final round) as defined as the percentage of registered voters who actually voted.



fact that most of EU member states are parliamentary democracies with national parliament as the most important decision-making body, we have analysed and compared voter turnout at the parliamentary elections in all EU-27 member states at the first parliamentary elections in 1990s, when democratic changes in most CEE countries took place, and most recent parliamentary elections.<sup>26</sup> Our goal was to compare the beginning of 1990s, the period of most intensive democratic movement and the highest levels of public enthusiasm towards democracy as the new societal system in large part of Europe at the time, and most recent period of deep global economic crisis, where public enthusiasm towards reigning democratic political system is certainly not on the highest point. In *table 5* we can observe the differences between voter turnout in older, more established democracies of Western, Southern and Northern Europe, and new democracies of Central and Eastern Europe. We can see that in none of the older established democracies of the EU voter turnout at the parliamentary elections is below 50 percent, but in new democracies there are quite some figures below 50 percent. Second ascertainment is that negative difference between voter turnout at both analysed parliamentary elections is much higher in new democracies of CEE compared to older EU democracies, in some countries difference is almost 40 percent; only in five out of 27 EU member states the difference between both analysed parliamentary elections is positive, and two out of those five cases are Poland and Hungary, with very low (below 50) turnout already in the beginning of 1990s. All findings are just another indirect indicator that levels of trust in political institutions, especially in the CEE, are currently on much lower scale compared to the beginning of 1990s, when democratic awakening took place.

#### 4 CONCLUDING THOUGHTS

The definite answer to the question of why trust in political institutions is decreasing in modern democratic systems, and especially in new democracies of the Central and Eastern Europe, remains elusive, although we can search for at least partial answers in the recent events, above all in the global economic crisis and its impacts in the EU. One can also wonder if this means that trust in democratic values, in general, is not seen as important as it once used to be. Instead of an answer, we can offer the opinion of Ronald Inglehard, who claims on the basis of empirical research that societies that are increasingly critical of hierarchical authorities are at the same time more participative and claim a more active role in the policy-making process. Political leaders are interacting with ever more active and more informed and educated citizens, who are simultaneously more critical of their actions. An alternative approach reveals that sympathy does not necessarily mean trust, but it can also be interpreted as some sort of obvious predictability, meaning that citizens do not *a priori* trust the political institution but, since we can foresee its reactions and behaviour in the future, which should be consistent with those in the past, we trust the bureaucratic processes instead. The dimensions of trust between citizens and political institutions cannot be measured only through the parameter of trust–mistrust, but at best as a relationship of “inductive anticipation”.<sup>27</sup> We can conclude that the legitimacy of the system increases with the level of trust in political institutions. However, is complete trust in favour of democracy, or could it be

<sup>26</sup> We are quite aware, that different EU member states have different political systems with different electoral systems used for parliamentary election, some even with obligatory voter turnout. The comparisons presented are therefore for reference only and not absolute in terms.

<sup>27</sup> Mark E. Warren (ed.), *Democracy and Trust* (Cambridge: Cambridge University Press, 1999).

that a constant ongoing critique and sober judgment of the everyday actions of administrative and political bodies is, in fact, in the best interests of a consolidated democracy?

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## CONSTITUTIONAL 'TRINITY' FOR AN EU MEMBER STATE STOPS AT THE GATES OF NATIONAL SOVEREIGNTY

Mart SUSI<sup>1</sup>

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*This article will focus on the relationship on treaty interpretation between constitutional courts and the international courts established by the respective treaty. Acceptance of the European Court of Justice's and European Court of Human Rights' jurisprudence on the domestic level has two main aspects. From one side, both courts have assumed almost absolute authority in treaty interpretation and require that member states follow their case-law principles 'hard compliance'. From the other side, there is some flexibility which the European courts are willing to give to the member states in complying with individual judgments 'soft compliance'. The Estonian Supreme Court is not in a dialogue with the European courts. It sometimes credits the ECtHR with positions it does not have and has found in the jurisprudence of the European courts an instrument which can be used quite flexibly to substantiate its conclusions with a referral to an 'outside higher authority'.*

**Key words:** compliance, European Court of Human Rights, national sovereignty, international adjudication, national court.

### 1 INTRODUCTION

Sophisticated systems have a tendency to develop towards further sophistication – both in immaterial and material world. In legal sphere an example of development towards sophistication (which may sometimes coincide with the term complication) is the co-existence of several constitutional review mechanisms for any EU member state. There are two supranational regional courts – the European Court of Justice (ECJ) and the European Court of Human Rights (the ECtHR) which, as this article will demonstrate, have both undergone an evolution from modest interference into domestic legal affairs towards an institution which has assumed the

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authority to review whether domestic legislation of member states<sup>2</sup> corresponds to international treaties and obligations.<sup>3</sup> Such powers are characteristic of a constitutional court. But both regional courts have developed further – they have assumed the authority to request legislative changes in order to bring domestic legislation into accord with the country's international (European) obligations. Surprisingly both regional courts exhibit similar patterns in their development while assuming further powers as a 'constitutional' court. This article will discuss some of these patterns. Both regional courts seem to face similar problems (or challenges) due to the changing nature of their status vis-a-vis the member states and their national highest courts. Two of these challenges deserve special attention in the context of this article. First, whether the respective regional court has the final authority in treaty interpretation? Secondly, how to resolve the challenge of securing compliance of member states with the regional court's jurisprudence. It seems, that when facing the first challenge the regional courts take a hard line and in the second a much softer one. The aspect of national sovereignty – when applicable in the context of the question on the table – is a further and perhaps decisive consideration.

Simultaneously constitutional protection within the EU member states is also provided by the domestic courts – either by the specialized constitutional court or the highest court of the country. Thus citizens of an EU member state may rely on the 'trinity' of constitutional protection – perhaps an unknown phenomenon anywhere else in the world. In this context one can look at the interaction between domestic highest courts and the two regional ones. Are domestic highest courts merely an instrument in the hands of these two regional courts for implementing the European legal orders or is there some room for dialogue or even 'domestic interpretation' of the European courts' jurisprudence?<sup>4</sup> At what point do the domestic highest courts stop listening to the European courts? This article will explore these questions on the example of the case-law of the Supreme Court of Estonia, which acts both as the court of cassation and the constitutional review court.

## 2 THE CONTEXT OF THE EUROPEAN COURTS' ADJUDICATION: EXPANSION OF AUTHORITY

Whenever a country joins an international treaty imposing upon it some long-term obligations, it yields some of its sovereignty. There is a difference between being bound by treaty provisions from one side and having to alter the state of its internal affairs as dictated by an outside body (treaty organ) from the other side. Nowadays the question of reasons into complying with international obligations is researched by many scholars. Some scientists argue, that the reasons are short-term for political stakeholders – namely to stabilize the democratic form of government and minimize threats from the

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<sup>2</sup> In the context of the ECJ jurisprudence the author refers to the member states of the European Union and in the context of the ECtHR jurisprudence the author refers to the member states of the Council of Europe.

<sup>3</sup> Respectively the EU primary and secondary legislation and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

<sup>4</sup> This research question seems to become more and more relevant. For example, Oreste Pollicino has asked the question, how to move the research trends from a retrospective dimension towards a prospective and dynamic one in order to answer the research questions that have to do with the judicial interaction between the national constitutional dimension and the European dimension before and after the enlargement of Europe. Oreste Pollicino, "The New Relationship between National and the European Courts after the Enlargement of Europe: Towards a Unitary Theory of Jurisprudential Supranational Law?," *Yearbook of European Law*, 29, 1 (2004), 66.

extreme right and left.<sup>5</sup> Others argue that it is simply because most states recognize fair and just rules and wish to embrace them.<sup>6</sup> Political “pressure” on minor powers by the major political powers cannot be excluded.<sup>7</sup> If an international treaty has created an institution to interpret the provisions of this treaty, this can mean further limitations upon the national sovereignty via removing the treaty interpretation from the hands of the member state and placing it upon the treaty institution – usually the court. The question in this context is the degree of autonomy which the treaty institution affords to the member states for dialogue.

There seem obvious similarities in the evolution of powers of both regional courts in Europe – starting from almost unnoticed institutions with no intent to interfere into domestic affairs into strong ‘constitutional courts’. In the other words, judicial sovereignty of the member states has gradually become subject to limitations through this development.

Regarding the ECJ has been argued, that initially the influence of its judgments upon member states’ politics was indirect, since it was inevitable for the member states to follow the political ‘path chosen’ by the community.<sup>8</sup> The matter of integration was more a political than a judicial question. One can observe the situation of “notice but not punish” on behalf of the ECJ. It has been generalized, that in the 1960s and 1970s the ECJ made “doctrinally important rulings..., but is refrained from applying those rulings in ways that provoked controversy”.<sup>9</sup>

The same is true of the initial ‘position’ of the ECtHR. At least for almost 50 years – starting from the time when the Court was established in the late 1950s – there is on the table of legal scholars and practitioners a dogmatic proposition that the ECtHR does not have the power to nullify national legislation or national decisions.<sup>10</sup> Even in 2005 it has been argued, that the Court takes “a reactive rather than a proactive stance, deciding *post hoc* whether a certain national measure is compatible with the Convention, rather than stating in advance exactly which requirements the Convention entails”.<sup>11</sup> The reluctance of the Court to order remedial measures other than compensatory has been noted by many authors.<sup>12</sup> If respondent governments through the implementation of the general measures need to adopt actions plans, these can be criticized for their non-binding nature.<sup>13</sup> Legislative action on behalf of the member states was until recently

<sup>5</sup> Andrew Moravcsik, “The paradox of U.S. Human Rights Policy,” in *American Exceptionalism and Human Rights*, ed. Michael Ignatieff (Princeton, New Jersey: Princeton University Press, 2005), 173.

<sup>6</sup> Mark Sægleben, *Human Rights Treaties: Considering Patterns of Participation, 1948–2000 (Studies in International Relations)* (London: Routledge Series, 2005), 154.

<sup>7</sup> It may be interesting in this context to note, that political action clearly was visible at the time when the former socialist bloc countries wished to join the Council of Europe. The countries had to go through the so-called compatibility study of their national legislation and implement changes recommended by an expert group prior to being admitted into the Council. It is suggested, that the creation of constitutional courts in the former socialist bloc countries served partly the purpose of securing compliance with human rights obligations. See for context: Martins Mits, *European Convention on Human Rights in Latvia: Impact on Legal Doctrine and Application of Legal Norms* (Lund: Media Tryck, 2012), 70–71.

<sup>8</sup> Anne Marie Burley and Walter Mattli, “Europe Before the Court: A Political Theory of Legal Integration,” *International Organization*, 47, 1 (1993), 51.

<sup>9</sup> Karen J. Alter, Laurence R. Helfer and Osvaldo Saldias, “Transplanting the European Court of Justice: The Experience of the Andean Tribunal of Justice,” *The American Journal of Comparative Law*, 60, 4 (2012), 630.

<sup>10</sup> Janneke Gerards, “Judicial Deliberations in the European Court of Human Rights,” *East European Human Rights Review*, 17, 1 (2011), 19.

<sup>11</sup> *Ibid.*, 35 - with reference to the ECtHR 06 October 2005 Judgment *Hirst vs UK*, § 84.

<sup>12</sup> Costas Paraskeva, “Returning the Protection of Human Rights Where They Belong, At Home,” *International Journal of Human Rights*, 12, 3 (2008), 431.

<sup>13</sup> Maria Suchkova, “An analysis of the institutional arrangements within the Council of Europe and within certain Member States for securing the enforcement of judgments,” *European Human Rights Law Review*, 4 (2011), 451.



understood as a measure which was brought about by the respondent government itself in co-operation with the Council of Ministers. The Court itself did not request specific general measures.<sup>14</sup> For example, Martin Scheinin has formulated it as follows: "...the necessary legislative or other measures to be taken by the State in question in order to prevent further violations of the ECHR must be derived from the reasoning of the Court".<sup>15</sup> As late as in the mid-1990s another major textbook argued, that "...constant refusal by the Court to widen its jurisdiction to embrace the making of consequential orders has been re-affirmed in more than 30 judgments".<sup>16</sup>

But the legal realities in Europe are different now regarding the adjudicative powers of the two regional supranational courts. Let us review some general points.

Bobek has shown that the ECJ not only has established principles not written into the Community legal order, but it has also expanded their meaning and scope without an express consent of the member states.<sup>17</sup> It has been argued, that the ECJ has fashioned its powers by internal evolution and has shaped a constitutional framework for a federal-type structure in Europe.<sup>18</sup> This is an achievement of bold judicial creativity on behalf of the ECJ itself.<sup>19</sup>

It can be generalized, that the ECJ has never been expressly authorized by the member states to expand its powers. An interesting explanation to the possible rise of ECJ's authority is the 'immunity' of this court from political influences. When the member states in principle can 'threaten' the ECJ with treaty amendment – Mark Pollack calls this a 'nuclear option', and then in reality this threat is minimal – due to the need of unanimity requirement for respective treaty changes.<sup>20</sup> Similar 'immunity' from the 'nuclear option' can be seen regarding the operation of the ECtHR.<sup>21</sup> Legal scholars from outside of Europe take it for granted that the ECJ can interfere into domestic legislation<sup>22</sup> by demanding adoption of certain regulations or even creation of

<sup>14</sup> Ibid., 458.

<sup>15</sup> Martin Scheinin, "Mechanisms and Procedures for Implementation," in *An Introduction to the International Protection of Human Rights*, ed. Raja Hanski and Markku Suksi (Turku/Lbo: Institute for Human Rights, Lbu Academi University, 1999), 443.

<sup>16</sup> David Harris, Michael O'Boyle and Colin Warbrick, *Law of the European Convention on Human Rights* (London: Butterworths, 1995), 700.

<sup>17</sup> Michal Bobek, "Learning to Talk: Preliminary Rulings, the Courts of the New Member States and the Court of Justice," *Common Market Law Review*, 45, 6 (2008), 1613. However, he also reminds the reader that the instrument of referrals to the Court signifies the autonomous functioning of the national courts (p 1623), but this topic remains outside of this article.

<sup>18</sup> Hjalte Rasmussen, "Between Self Restraint and Activism: A Judicial Policy for the European Court," *European Law Review*, 13, 1 (1988), 28.

<sup>19</sup> Oreste Pollicino, "Legal Reasoning of the Court of Justice in the Context of the Principle of Equality Between Judicial Activism and Self-restraint," *German Law Journal*, 5, 3 (2004), 284.

<sup>20</sup> Mark Pollack, *The Engines of European Integration: Delegation, Agency, and Agenda Setting in the EU* (Oxford: Oxford University Press, 2003), 172.

<sup>21</sup> There have not been any amendments to the Convention via protocols which would limit or increase the powers of the ECtHR. Protocol 14 - which directly addresses the organization of the work of the Court - has the goal of making Strasbourg jurisprudence more effective in terms of response-time to individual applications. It does not say anything about the Court's ability to interfere into domestic jurisprudence.

<sup>22</sup> For comparative purposes let us note, that it is not a new phenomenon in the judicial realm for the highest court of a country to take upon itself the power to annul laws and review the constitutionality of legislation. It is well known to students of legal history that in the USA the judicial power by the Supreme Court to review acts of the Congress resulted from the case *Marbury vs Madison* from 1803. There was nothing in the US Constitution which directly authorized the Supreme Court to rule on the legislation. Nowadays this power remains unquestioned. Stephen M. Griffin has written that by placing the decision over the interpretation of fundamental rights in the hands of the judiciary, citizens are deprived of their basic right to participate in this decision-making. This raises the question, whether the rights promoted by the judiciary are more important than the rights of the citizens to participate in decision-making [see: Stephen M. Griffin, *American Constitutionalism* (Princeton, New Jersey: Princeton University Press, 1996), 123]. In the international level the question can be re-formulated: whether the fundamental rights promoted by the international judges are more important than the right of the member countries to participate in the decision-making process about the scope of fundamental rights in the European legal space.

new institutions.<sup>23</sup> As legal practitioners might argue – there is no dispute over the fact of *de facto* expansion of the ECJ authority *vis-a-vis* the domestic courts.

Legal realities are also different regarding the authority of the ECtHR. Today the ECtHR has in its “arsenal” the capacity to adopt “pilot-judgments”. The ECtHR has assumed this right itself by applying to its advantage Convention articles 1<sup>24</sup> and 46<sup>25</sup> in their conjunction, since starting from the adoption of the Convention no additional protocols were passed which *expressis verbis* would give to the ECtHR the authority for adopting pilot-judgments. The ECtHR passes a pilot-judgment when it establishes a structural problem in the respondent state either in connection with a wording of a law or legal provision, through their application in administrative or court practice or through the absence of legal regulation.<sup>26</sup> This practice can be established if a considerable number of individual complaints on similar matter have already been submitted to the ECtHR or if the submission of such complaints is highly probable due to the nature of the situation. Together with the principle of pilot-judgment a new direction has opened in the jurisprudence of the ECtHR which necessarily does not mean the adoption of a pilot-judgment. This direction is to establish in the legal system or in the administrative or court practice of the Member State a problem of structural nature and give directions to this Member State for resolving the problem, sometimes accompanied with concrete conditions. These conditions may be quite specific and contain the requirement to change laws or adopt new legal regulations. This change itself is sometimes referred to as a structural change in the ECtHR jurisprudence.<sup>27</sup>

Certainly there may be good reasons for the courts to expand their authority. There may be a need to fulfil a vacuum of treaty interpretation or answer questions which otherwise might remain unanswered. It has been argued, that sometimes the ECJ may have the task of providing a creative answer to questions where there is no obvious answer.<sup>28</sup> As early as in 1990s the ECJ has departed from the idea that it first needs to look at the scope of the directive and then find out how some principle applies within – there may be a need to read a directive in the light of some principle.<sup>29</sup>

The increasing powers of the European courts are referred to as judicial activism. This in turn can lead to conflicts between these supranational courts and domestic constitutional courts. In a recent conference at the faculty of Law of Maastricht University addressing the judicial activism at the Court of Justice, one of the underlying assumptions was the risk that a decline in the authority of European Courts will be matched with the increasing unwillingness of either national courts or national governments to

<sup>23</sup> Bruno De Witte, “New Institutions for Promoting Equality in Europe: Legal Transfers, National Bricolage and European Governance,” *The American Journal of Comparative Law*, 60, 1 (2012), 49–50.

<sup>24</sup> According to the Convention article 1 each Member State undertakes to guarantee to anyone under its jurisdiction the rights and freedoms provided in the Convention.

<sup>25</sup> According to the Convention article 46 the Member States have the obligation to abide by the ECtHR judgments where they are a party.

<sup>26</sup> For context see: Steven D. Roper and Lillian A. Barrie, “Judgments of the European Court of Human Rights: A Test Case for Enforcement and Managerial Theories of State Compliance,” *Annual Meeting of the American Political Science Association* (September 1–4, 2011).

<sup>27</sup> Laurence R. Heifer, “Redesigning the European Court of Human Rights: Embeddedness as a Deep Structural Principle of the European Court of Human Rights Regime,” *European Journal of International Law*, 19, 1 (2008), 125–129.

<sup>28</sup> Charles David Keelang, “In Praise of Judicial Activism, but What Does It Mean? And has the European Court of Justice even Practiced It?” in *Scritti in Onore di G.F. Mancini*, ed. Curti Gialdino (Milano: Giuffrè, 1996), 512.

<sup>29</sup> Leo Flynn, “Case C-13/94, P. v. S. and Cornwall Council, Judgement of the Full Court of 30 April 1996.” *Common Market Law Review*, 34, 2 (1997), 384.

apply the Court's rulings.<sup>30</sup> From the above one can generalize that indeed for a citizen of an EU member state there is 'trinity' of constitutionalism. This does not increase constitutional protection of fundamental rights. Quite to the contrary – this creates legal uncertainty as to where to seek redress and justice. Perhaps too much constitutional protection leaves the subject of this protection unnoticed. We will now proceed to look at the issues of compliance with international obligations on behalf of the member states.

### 3 COMPLIANCE

Compliance with international obligations can be secured both via domestic and international court judgments. Wojciech Sadurksi has demonstrated that after the end of World War II, many countries have seen the emergence of strong constitutional courts with the power to strike down legislation under constitutional charters of rights.<sup>31</sup> The theoretical basis of this approach is that the views of the legislature on the understanding of constitutional rights are replaced with the one of a constitutional tribunal. For the purposes of this article one can ask the question whether the views of the domestic constitutional tribunals on certain fundamental matters are replaced by the ones of the supranational (semi-constitutional) courts.

Compliance starts with the acceptance of views and ends when reality corresponds to these views. In between are measures needed to implement the views? One needs to agree with the statement of Nihal Jayawickrama, that by being bound by the provisions of an international treaty or agreement, the contracting parties also are bound by the interpretation given to these treaty norms by a respective treaty organ.<sup>32</sup> Thus the role of courts is instrumental in securing compliance with treaty obligations. Are domestic courts – including highest courts and constitutional courts – bound by the interpretation of the respective international court established by the treaty, or is there room for dialogue and interpretation? This question has both a theoretical and a practical side. In the other words, should the views of an international court replace the ones of the highest court of a member state when the latter starts to interpret the provisions of an international treaty? And if the response is yes, can we test this proposition in reality via analyzing the case-law of some country's highest court.

Domestic courts – and especially the highest courts – have an important role in securing compliance with international courts' jurisprudence and the principles advanced from their case-law. From one side it can be argued, that "...the Court /ECJ – author/ effectively influences integration only when the legislator incorporates judicial considerations in policy-making".<sup>33</sup> From the other side one can argue that the world of judiciary has the power itself to secure compliance with international courts' views and does not need to rely on the will of the legislator. This is so because the national courts can incorporate the principles advanced by the regional supranational courts into their jurisprudence and thereby influence the policy-making in the respective

<sup>30</sup> Conference at the Maastricht faculty of law, *Background paper* (Maastricht, October 10–11, 2011), 1.

<sup>31</sup> There seems little doubt in legal theory that judges exercise legislative power by applying laws in creative manner – see Kenneth Diplock, "The Courts as Legislators," in *The Lawyer and Justice*, ed. Brian W. Harvey (London: Sweet and Maxwell, 1978), 263.

<sup>32</sup> Nihal Jayawickrama, *The Judicial Application of Human Rights Law* (Cambridge: Cambridge University Press, 2002), 167–170.

<sup>33</sup> Fabio Wasserfallen, "The Judiciary as Legislator? How the European Court of Justice shapes Policy-Making in the European Union," Paper presented at the *Annual Meeting of the Swiss Political Science Association St.Gallen* (January 8–9, 2009), 10.

member state. For example, it has been argued that international judicial interpretations are addressed to other judges, lawyers and law professors.<sup>34</sup> These actors can turn into 'domestic' instruments in the implementation process of European law – both in terms of the EU primary and secondary law and the Human Rights Convention norms.

At the centre of most discussions regarding state compliance with their international obligations is the question what instruments do respective treaties provide for securing observation with the obligations. Dinah Shelton has argued, that international instruments do not clarify what are considered to be 'effective' remedies.<sup>35</sup> Fabio Wasserfallen has argued that the ECJ case law impacts integration process effectively only as long as the Council incorporates judicial considerations into policy-making. When this is not the case, the implementation process remains uncertain.<sup>36</sup> The European Court of Human Rights from its side is increasingly paying attention to the need to achieve general measures which would put an end to the possibility of repetition.

In the European context the traditional approach towards the European Court of Human Rights is that case-law is formally limited to the concrete circumstances of the single case decided. It has been argued, that if a state refuses to accept a judgment or interpretation given in a case to which it was not a party, there are no means to force the state to accept it.<sup>37</sup> The Court itself has already in the 1960s formulated a principle, that "the national authorities remain free to choose the measures which they consider appropriate in those matters which are governed by the Convention".<sup>38</sup> According to this well-established position, the judgments of the ECtHR are mainly declarative by their nature. This European court has now assumed the authority of 'hard' measures to implement its case-law.<sup>39</sup> The same is true of the ECJ. The judgments have abandoned the initial declarative nature and have assumed the role of direct interference into domestic affairs of respective member countries. Hartley has argued, that the judgments of the ECJ are constitutive-legislative rather than just declaratory.<sup>40</sup> Pollicino has argued that the role of the judges of the ECJ as constitutional adjudicators has been under valued.<sup>41</sup>

Sometimes governments may be more willing to accept an international court judgment regarding the concrete case and not see 'the forest behind the tree'. Lisa Conant has written about this phenomenon regarding the EU law

<sup>34</sup> Martin Shapiro and Alec Stone, "The New Constitutional Politics of Europe," *Comparative Political Studies*, 26, 4 (1994), 414.

<sup>35</sup> Dinah Shelton, *Remedies in International Human Rights Law*, 2nd edition (Oxford: Oxford University Press, 2005). In page 173 she writes: "Nor do they /international treaties – author/ indicate what remedies should be made available through international procedures in the event a state fails to afford the necessary redress. It is thus necessary to look at the theory and practice of international courts to determine what constitutes an effective remedy. ... international remedies that have been afforded thus far are increasingly imaginative ..."

<sup>36</sup> Ibid 32, 3.

<sup>37</sup> See for the *erga omnes* effect of the ECtHR interpretations: Georg Ress, "The Effect of Decisions and Judgments of the European Court of Human Rights in the Domestic Legal Order," *Texas International Law Journal*, 40, 3 (2005), 374; Saša Beljin, "Bundesverfassungsgericht on the Status of the European Convention of Human Rights and ECHR Decisions in the German Legal Order. Decision of 14 October 2004," *European Constitutional Law Review*, 1, 3 (2005), 558–559.

<sup>38</sup> ECHR, *Belgian Linguistics vs Belgium*, Judgment of 23 July 1968, Series A, 6, § 31.

<sup>39</sup> We can call the declarative judgments as representing 'soft' enforcement and judgments imposing certain measures as 'hard' enforcement.

<sup>40</sup> Trevor C. Hartley, *Constitutional Problems of the European Union* (Oxford: Oxford University Press, 1999), 41.

<sup>41</sup> Oreste Pollicino, "Legal Reasoning of the Court of Justice in the Context of the Principle of Equality Between Judicial Activism and Self-restraint," *German Law Journal*, 5, 3 (2004), 304.

as ‘contained compliance’<sup>42</sup> – meaning, that governments can respect individual decisions and neglect the need to initiate general measures which would be a logical consequence of the individual decision. An equally probable explanation along these lines is that respect for an international court and its judgments is something that constantly needs to be catered. The court needs to have in its arsenal ‘weapons’ that can do more than just make the respective member state pay financial damages. An international court needs to remind the audience continuously of this in order to achieve a deterrent effect.

Be as it may, it seems that the shift from the previous *modus operandi* of both European courts is manifest in their belief that only they are authorized to interpret the respective treaty and its principles, whereas the member states are given some latitude in choosing measures of implementation. The dual nature of both the ECJ and ECtHR powers has been noted by many scholars. For example, Andreas Obermaier has argued, that the ECJ has been an activist in applying basic freedoms against the unified interests of the member states in the sphere of services and goods of health care. At the same time, “...when it came to the actual design of this intrusion into the domestic sphere of social protection, the Court exercised considerable self-restraint by limiting the impact of its decisions...”<sup>43</sup> In the recent decade the ECtHR has positioned itself as the sole interpreter of the Convention norms and is requiring the domestic courts not only to apply directly the Convention, but to apply it in accordance with the Court’s interpretation. To give just one example of the hundreds, in the Grand Chamber judgment about the suitability to use vulgar language and caricatures in professional work relationships, there is the principle which directly sets out the requirement to follow the Court’s interpretation: “If the reasoning of the domestic courts’ decisions concerning the limits of freedom of expression in cases involving a person’s reputation is sufficient and consistent with the criteria established by the Court’s case-law, the Court would require strong reasons to substitute its view for that of the domestic courts”.<sup>44</sup>

Therefore it seems that both European courts are at the moment requesting more or less absolute reliance upon their own treaty interpretation – which the member states and especially their courts need to abide by - and at the same time are giving more ‘freedoms’ in implementing the concrete measures in individual cases.<sup>45</sup> This would mean that the constitutional courts of EU member states – whose task is not so much to achieve individual justice but guarantee justice for the many – need to abide in addition to the national constitutions also by the case-law of two European courts. One can ask the question, whether this is an open-ended obligation. The review of the recent case-law of the Estonian Supreme Court will provide one possible answer.

<sup>42</sup> Lisa Conant, *Justice Contained. Law and Politics in the European Union* (Ithaca: Cornell University Press, 2002), 187.

<sup>43</sup> Andreas J. Obermaier, “Models of Judicial Politics Revisited: the ECJ’s Judicial Activism and Self-Restraint,” *Paper for ECPR Conference* (Riga, 2008), 13.

<sup>44</sup> ECHR, *Palomo Sanchez et al vs Spain*, Grand Chamber Judgment of 12 September 2011, application no 28955/06, § 57. It is interesting to note, that from the dissenting opinion of five judges one can conclude the concern, that a state can avoid scrutiny by the international court if its highest court has relied in its argumentation heavily on the ECtHR case-law.

<sup>45</sup> Both European courts are willing to accept change of their jurisprudence once a consensus among the member states or shift of opinion has been demonstrated.



#### 4 EU MEMBER STATES' CONSTITUTIONAL COURTS VIS-A-VIS EUROPEAN REGIONAL COURTS

The question about the impact of the European courts upon the constitutional jurisprudence of the member states political and judicial developments has been addressed in scholarly discourse since the founding of these courts.<sup>46</sup> Legal scholars have argued that the shift in the expansion of powers of the European regional courts may have to do with the expansion of Europe – a mere logical statement. For example, Rasmussen has argued that the expansion has without the question influenced the working methods and authority of the courts.<sup>47</sup> There seems to be a consensus, that acceptance into the European structures has also significantly shaped the adjudication by national constitutional courts in the former socialist bloc countries.<sup>48</sup> Most approaches accept the possibility of constitutional conflicts between the 'actors' – both between the two European regional courts and also in their relations to domestic constitutional courts. In reference to the former socialist bloc countries has been argued, that the newly created constitutions are superior over all other sources of law, including international treaties and that all constitutional courts have the power of preliminary review of the constitutionality of international treaties.<sup>49</sup> Pollicino has noted differences in the approaches of the two regional courts towards the 'independence' on national constitutional courts. He writes that at the time when the ECtHR centralizes its adjudication powers after the enlargement, the ECJ on the other hand seems to appraise the national constitutional values.<sup>50</sup> At the same time, the ECJ has not departed from the principle of claiming authority over national courts in its case-law<sup>51</sup> in the questions of international treaty interpretation.<sup>52</sup>

We have seen from the modest reflections above that the two European courts do not seem to doubt the legitimacy of their supreme powers and demand 'obedience' from the member states when it comes to adjudicating on issues which belong to the international treaty provisions. National highest courts may disagree though. It has been argued for example regarding Germany that in situations of real conflict between a Strasbourg interpretation of the Convention and one of the rights guaranteed by the Basic Law, the latter will prevail.<sup>53</sup>

<sup>46</sup> For reference one needs to note, that the concept of constitutional review as such emerged and spread after World War II, which coincides with the establishment of the two regional European Courts. See for context: Martin Shapiro and Alec Stone, "The New Constitutional Politics of Europe," *Comparative Political Studies*, 26, 4 (1994). The initiation of constitutional review coincided with the individual entering the arena of international law. For comprehensive coverage about the gradual development of international law and legal thought about the individual entering the scene of international law see: Scott Davidson, *Human Rights* (Maidenhead, Berkshire: Open University Press, 1993), chapter 1: Historical development of Human Rights.

<sup>47</sup> Hjalte Rasmussen, "Present and future judicial problems after Enlargements and the post 2004 ideological revolt," *Common Market Review*, 44 (2006), 1661.

<sup>48</sup> Carl Baudembacher and Henrik Bull (eds.), *European Integration through Interaction of Legal Regimes* (Oslo: University of Oslo, Universitetsforlaget, 2007).

<sup>49</sup> Wojciech Sadursky, "Accession's Democracy Dividend: the impact of the EU Enlargement upon Democracy in the New Member States of Central and Eastern Europe," *European Law Review*, 10, 4 (2004), 392.

<sup>50</sup> Oreste Pollicino, "The New Relationship between National and the European Courts after the Enlargement of Europe: Towards a Unitary Theory of Jurisprudential Supranational Law?" *Yearbook of European Law* 29, 1 (2010), 86.

<sup>51</sup> The principle of subordination to the ECJ comes from the case C-106/77, 21: "Every national Court must in a case within its jurisdiction, apply Community law in its entirety and protect rights which the latter confers on individuals and must accordingly set aside any provision of national law which may conflict with Community law, whether prior or subsequent to the Community rule".

<sup>52</sup> Clifford Carruba, Matthew Gabel and Charles Torsten, "Judicial Behaviour Under Political Constraints: Evidence From the European Court of Justice," *American Political Science Review*, 102, 4 (2008), 435.

<sup>53</sup> Janneke Gerards, "Judicial Deliberations in the European Court of Human Rights," *East European Human Rights Review*, 17, 1 (2011), 7.

A. Sajo has introduced the term 'imposed obedience' as opposed to 'voluntary obedience' when writing about the adjudication by many constitutional courts during the period of accession.<sup>54</sup> From another and perhaps more theoretical perspective, Weiler has argued that 'constitutional actors' in the EU member states accept European constitutional discipline not because of legal doctrine, which continuously has to be renewed by each instance of subordination. "When acceptance and subordination is voluntary, it constitutes an act of true liberty and emancipation from collective self-arrogance and constitutional fetishism..."<sup>55</sup> The effect of such subordination may be destructive to certain nationally highly esteemed values or traditions.<sup>56</sup> Sometimes the truth is revealed in extraordinary situations – what has been hidden away intentionally or unintentionally comes to the spotlight. In European constitutional adjudication it can mean a situation where the questions on the table of the courts concern fundamental rights of every country for self-determination and acceptable restrictions to its sovereignty.<sup>57</sup>

The decisive role may be indeed in the hands of the domestic constitutional courts in shaping the degree and intensity of 'constitutional conflicts' in the European legal space.<sup>58</sup> There can be situations where the domestic courts simply refuse to listen to the jurisprudence from the supranational courts. If highly theoretically the consequence of not listening is the expulsion from the European legal family – which thus would have a significant impact upon the country's sovereignty and self-determination issues, but the question on the table of the national constitutional court is connected with these matters anyhow, where is the difference?

In ordinary circumstances of administration of justice there is a need to listen and enter into dialogue. The desirability of a dialogue between the member states of the EU and the ECJ on the question of possible constitutional conflicts has been emphasized by the ECJ itself. For example, there is a view of the Advocate General in the case C-303/05: "The ECJ must participate in that debate by embracing the prominent role assigned to it, with a view to situating the interpretation of the values and principles which form the foundation of the Community legal system within parameters comparable to the ones which prevail in national systems".<sup>59</sup> The ECJ advances an approach of objectively identifying the best solutions through comparative analysis to fulfil the ideals underlying legal practice in the European Union

<sup>54</sup> Andras Sajo, "Learning Co-Operative Constitutionalism the Hard Way: the Hungarian Constitutional Court Shying Away from EU Supremacy," *Zeitschrift für Staats- und Europawissenschaft*, 2, 3 (2004), 351.

<sup>55</sup> Joseph Weiler, "Federalism and Constitutionalism: Europe's Sinderweg," *Harvard Jean Monnet Paper* (October, 2000), 13.

<sup>56</sup> Matej Avbelj, "European Court of Justice and the Question of Value Choices: Fundamental human rights as an exception to the freedom of movement of goods," *Jean Monnet Working Paper* (October 12, 2004).

<sup>57</sup> Regarding Estonia it has been argued, that the underlying idea of the judicial system is the sovereignty of the country. Raul Narits, "The Republic of Estonia Constitution on the Concept and Value of Law," *Juridica International VII* (2002), 10–16.

<sup>58</sup> One can note the efforts to minimize the chance of judicial conflicts when accepting new member states into the European structures. When the former socialist bloc countries applied to join the European structures, there was a monitoring period for the stability of the newly created institutions, as well as the compatibility exercise of the legislation from the perspective of respect to human rights issues. See: Andrew Williams, "Enlargement of the Union and Human rights conditionality: a policy of distinction," *European Law Review*, 25, 6 (2000), 616. Such compatibility exercise may have 'discovered' that the new constitutions indeed were written bearing in mind the existing consensual views on some fundamental rights. The following observation is of no surprise: "There is a high degree of congruence between the structure of constitutional rights in the post-communist countries of central and eastern Europe and the structure of the rights as displayed in the EU Charter". See: Wojciech Sadurski, "Charter and Enlargement," *European Law Journal*, 8, 3 (2002), 348.

<sup>59</sup> ECJ case 303/05, § 8

and its Member States.<sup>60</sup> Likewise the ECtHR advances the theory of European consensus before making any far-reaching changes in its jurisprudence. There are cases where the ECtHR leaves the member states certain margin of appreciation. The width of the margin depends on the existence or absence of a European consensus on the respective matter. It is for the Court to conduct comparative research of the member states' legislation and to conclude, if the consensus does exist and consequently the margin of appreciation is narrowed down. For example a case where the domestic courts had held criminally liable siblings due to incest. The Court established that there is no European-wide consensus whether incest between siblings should be criminally sanctioned and thus Germany had discretion to apply criminal sanctions.<sup>61</sup>

The author wishes to end this subchapter with a reflection that scholarly rhetoric quite often uses extreme formulations when speaking about the developments in the jurisprudence of the European courts. The change in the practice of the ECtHR to start demanding immediate individual measures from the member state has been named a considerable breakthrough in its jurisprudence.<sup>62</sup> The duty of adherence to the principle of supremacy of the EU law has been called a breakthrough in the international legal community with no previous precedents in international law.<sup>63</sup> The development in the ECtHR jurisprudence which allows the Court to request legislative changes is sometimes referred to as a structural change in the ECtHR jurisprudence.<sup>64</sup> Maybe this praise is over killing. Paraphrasing J.D. Salinger, if the roof beams are raised too high, there may be a temptation to cross underneath. Comparative research could show whether this has been the case in some European judicial system.

## 5 RELIANCE ON THE JURISPRUDENCE OF THE EUROPEAN COURTS IN THE ESTONIAN SUPREME COURT'S RECENT CASE-LAW

The question of supremacy of the European courts' jurisprudence over domestic adjudication of Estonian courts and especially of the Estonian Supreme Court has been scarcely addressed in the Estonian legal literature. There are articles which have addressed the matter or preliminary rulings from the ECJ – especially to guide the judges having to resolve the requests from the parties in a concrete case.<sup>65</sup> However, the matter of interactions between the national and supranational courts has not been unnoticed and there are several articles in the only Estonian English-language legal publication – *Juridica International* – on this subject, although more in an

<sup>60</sup> Mattias Kumm, "The jurisprudence of Constitutional conflict: constitutional Supremacy in Europe before and After the Constitutional Treaty," *European Law Review*, 11, 3 (2005), 286.

<sup>61</sup> ECHR, *Stübing vs Germany*, Judgment of 12 April 2012, application no 43547/08, § 61.

<sup>62</sup> Dinah Shelton, *Remedies in International Human Rights Law*, 2nd edition (Oxford: Oxford University Press, 2005), 284. The first judgment where the ECtHR applied direct individual measure was the case of *Assanidze vs Georgia*, (Grand Chamber judgment of 08 April 2004, application 71503/01). This is to what Dinah Shelton referred. The newest judgment at the time of writing this article where the ECtHR has given a directive to a specific individual measure is in the case of *Oleksandr Volkov vs Ukraine*, where the applicant was removed from the position of the judge of the Ukrainian Supreme Court via unfair procedure and the Court ordered his immediate reinstatement – ECHR, *Oleksandr Volkov vs Ukraine*, Judgment of 09 January 2013, application 21722/11.

<sup>63</sup> Paul Craig and Grainne de Burca, *EC Law Text, Cases and Materials* (Oxford: Oxford University Press, 1998), 220.

<sup>64</sup> Laurence R. Heifer, "Redesigning the European Court of Human Rights: Embeddedness as a Deep Structural Principle of the European Court of Human Rights Regime," *European Journal of International Law*, 19, 1 (2008), 125–129.

<sup>65</sup> Since these are in the Estonian language, the author will not provide references

abstract level than evaluating the concrete positions of the Estonian Supreme Court.

Just to provide some examples the author notes the following. Jasper Doomen has argued that "...if a relatively powerful state acknowledges the authority of the International Court of Justice, it does so because this yields more favorable results, economically or politically, than does the alternative of not acknowledging its authority".<sup>66</sup> Walter van Gerven has pointed to "...mutual learning, which is typical of courts of law, both between the two European courts, the European Court of Human Rights (ECtHR) and the European Court of Justice (ECJ), and between the Member States' courts".<sup>67</sup> Dr. Julia Laffranque, the current judge from Estonia to the European Court of Human Rights, has likewise stressed the importance of dialogue between the courts and pointed out, that "Estonia could consider taking the initiative in introducing the publication of the dissenting opinions of the judges of the European Court of Justice", thus contributing to the process of democratization of the European Union.<sup>68</sup>

The question of the impact of the Strasbourg Court case-law upon the Estonian Supreme Court's adjudication was addressed by the author of this article jointly with Professor Kalle Merusk, the former Dean of the Law Faculty of the University of Tartu. For the time period from 2000 to 2005 summer we noted, that the Grand Chamber (General Collegium) rendered altogether 26 judgments and 11 of them cited specific ECtHR case-law.<sup>69</sup> Our conclusion was the following: "We believe that at the present stage, the goal is to secure an understanding among the Estonian judiciary that the Convention is self-executing international treaty and can be invoked before all Estonian courts. The application of the Convention does not require additional acts by the legislature...".<sup>70</sup>

Judicial realities in Europe have developed to the stage where the control over the community in fundamental aspects is more and more exercised by the courts – and not so much by the supranational, but the national highest courts. Thomas Giegerich has formulated this eloquently: "Being the 'masters' of those treaties /the European treaties – author/, they /the national governments – author/ have the power to overrule the EU institutions, including the ECJ, by making amendments to the treaties, if they all agree these to be necessary. Now, this external control is vested in the national courts and in Germany it is monopolized by the Federal Constitutional Court...".<sup>71</sup> This may be a cornerstone aspect when assessing the willingness of national highest courts to accept the jurisprudence of the European courts as well – the national courts will abide, but ultimately they do not have to. The same logic was recently confirmed by the judgment of the Estonian Supreme Court's Grand Chamber when it was given the task upon the application of the Estonian Chancellor of Justice to review the constitutionality of article 4 § 4 of the European stability mechanism treaty (ESM)<sup>72</sup> signed in Brussels on 02 February 2012.<sup>73</sup>

<sup>66</sup> Jasper Doomen, "International Legal Norms," *Juridica International*, XIX (2012), 115–116.

<sup>67</sup> Walter Van Gerven, "The Open Method of Convergence," *Juridica International*, XIV (2008), 36.

<sup>68</sup> Julia Laffranque, "Dissenting Opinion in the European Court of Justice – Estonia's Possible Contribution to the Democratization of the European Union Judicial System," *Juridica International*, IX (2004), 23.

<sup>69</sup> Kalle Merusk and Mart Susi, "The Years After Ratification – The ECHR and Its Impact on Estonia," *German Yearbook of International Law*, 48 (2005), 350.

<sup>70</sup> *Ibid.*, 353.

<sup>71</sup> Thomas Giegerich, "The Federal Constitutional Court's Judgment in the Treaty of Lisbon," *German Yearbook of International Law*, 52 (2009), 26–27.

<sup>72</sup> Article 4 § 4 of the ESM provides the so-called emergency voting procedure.

<sup>73</sup> Estonian Supreme Court Grand Chamber judgment of 12 July 2012 in case no 3-4-1-6-12.

The Estonian Supreme Court's Grand Chamber concluded that the ESM was compatible with the Estonian Constitution.<sup>74</sup> The Grand Chamber was of the opinion, that although the ESM can restrict the country's sovereignty, this is proportionate due to the need to protect fundamental rights and freedoms<sup>75</sup> - in the other words, protect the country's membership in the EU and thus guarantee its political sovereignty. It is noteworthy, however, that the Grand Chamber warned in the final part of the judgment – with the heading “About Estonia Belonging into the European Union”, that if it appears that new basic agreements of the EU will mean further yield of national sovereignty to the EU and thereby more intensive restrictions of the Constitution, it is necessary to ask for the consent from the people and probably make amendments to the Constitution.<sup>76</sup> The Grand Chamber reached its conclusion with votes 10:9. The judges who were of the dissenting opinion stated, that the application of the Chancellor of Justice should have been satisfied. In their view the national sovereignty is more important than protecting hypothetical European solidarity. The Grand Chamber did not refer to a single ECJ judgment. This seems to verify the proposition that when the fundamental questions related to national sovereignty are at stake, the national highest court will forget about international case-law and will exercise autonomous constitutional powers.

In the period of 2011 and 2012, the Grand Chamber rendered 23 judgments and in 9 of these cited the ECtHR case-law. Thus the proportion of the ECtHR case-law in the judgments of the highest body of the Estonian Supreme Court has remained almost unchanged.<sup>77</sup> When it comes to these judgments citing ECJ case-law, then the number is 2! Here is a significant difference in the proportions.<sup>78</sup> Perhaps the reasons will become apparent in the course of the following short analysis.

If to generalize from the judgments of the Supreme Court's Grand Chamber that refer to the ECtHR jurisprudence, then it is obvious that references are made in cases which concern unconstitutionality of some legal provision or the absence of legal regulation. All these are questions related to fundamental rights protected under the European Convention of Human Rights and Fundamental Freedoms. If to generalize further – the Supreme Court treats the ECtHR case-law rather carelessly but nevertheless substantiates the unconstitutionality with the help of supranational jurisprudence. This statement calls for the following examples.

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<sup>74</sup> The Chancellor of Justice had asked to declare that article 4 § 4 of the ESM is not compatible with the following provisions of the Estonian Constitution: § 1. Estonia is an independent and sovereign democratic republic wherein supreme political authority is vested in the people. § 10. The rights, freedoms and duties set out in this chapter do not preclude other rights, freedoms and duties which arise from the spirit of the Constitution or are in accordance therewith, and which are in conformity with the principles of human dignity, social justice and democratic government founded on the rule of law. § 65. The *Riigikogu* (the Parliament – author): 10) acting on a proposal of the Government of the Republic, decides whether to authorise government borrowing or the assumption of other financial obligations; § 115. For each year the *Riigikogu* passes a law which contains a budget that sets out all items of government revenue and expenditure. The Government of the Republic must submit a Bill for the budget to the *Riigikogu* not later than three months before the beginning of the financial year. On the proposal of the Government of the Republic, the *Riigikogu* may, during the financial year, pass a supplementary budget.

<sup>75</sup> Estonian Supreme Court Grand Chamber 12 July 2012 judgment § 209.

<sup>76</sup> *Ibid.*, § 223.

<sup>77</sup> In the period of 2000 to 2005 summer the proportion was 42 % and in the period of 2011 to 2012 the proportion is 39 %.

<sup>78</sup> For comparison it is interesting to note that the Constitutional Review Chamber declared during 2012 in 14 judgments some provisions of legal acts unconstitutional. It did not rely in any judgments on the case-law of the ECtHR or the ECJ. This may be non-sufficient period to draw any conclusions though.



In the judgment from 03 July 2012 in case no 3-3-1-44-11 the Supreme Court's Grand Chamber analysed the question about the absence of discretion of an administrative body when reviewing an application for temporary alien's residence permit. The respective provisions of the Law of Aliens were declared unconstitutional – retroactively towards the regulation in force until 01 October 2010. The Grand Chamber uses four principles from the ECtHR case-law with references to respective judgments:

- The matter of expulsion of aliens needs to be analyzed from the perspective of both the right to family and private life<sup>79</sup> - with reference to the ECtHR Grand Chamber judgment *Slivenko vs Latvia*.<sup>80</sup> The Estonian Supreme Court makes an error in respective reference, since in the referred section the ECtHR does not mention the aspect of private life;<sup>81</sup>
- The Convention does not guarantee to the alien the right to enter a state and establish his residence there<sup>82</sup> - with reference to the ECtHR judgment *Boultif vs Switzerland*;<sup>83</sup>
- The question about the violation of the right to privacy of an alien may emerge then, when the authorities have the decision to expel him from the country where reside members of his family<sup>84</sup> - with reference to the ECtHR Grand Chamber judgment *Slivenko vs Latvia*;<sup>85</sup>
- Relations between adult children and their parents are protected under Convention article 8 in the event of additional circumstances of dependency<sup>86</sup> - with reference to the ECtHR judgment *Shevanova vs Latvia*.<sup>87</sup> The Supreme Court refers to the Chamber judgment and does not note that in the following year the Grand Chamber accepted that the applicant had lost the "victim" status and the case was struck off the list.<sup>88</sup>

Out of the three ECtHR cases referred to in the judgment when setting the legal basis for the judgment,<sup>89</sup> the Grand Chamber has made an error in one instance and in one instance has not given the complete overview of the case in the ECtHR. We also note that the Supreme Court does not refer to the newest ECtHR cases – some judgments are more than 10 years "old", although the question of the expulsion of aliens is consistently on the ECtHR's table.<sup>90</sup>

<sup>79</sup> § 61 of the Estonian Grand Chamber judgment 3-3-1-44-11.

<sup>80</sup> ECHR, *Slivenko vs Latvia*, Grand Chamber judgment of 09 October 2003, application no 48321/99, § 94.

<sup>81</sup> *Slivenko vs Latvia* judgment § 94 is the following: In the Convention case-law relating to expulsion and extradition measures, the main emphasis has consistently been placed on the "family life" aspect, which has been interpreted as encompassing the effective "family life" established in the territory of a Contracting State by aliens lawfully resident there, it being understood that "family life" in this sense is normally limited to the core family (see, mutatis mutandis, *Marckx v. Belgium*, judgment of 13 June 1979, Series A no. 31, p. 21, § 45; see also, *X v. Germany*, no. 3110/67, Commission decision of 19 July 1968, Collection of decisions 27, pp. 77-96). The Court has, however, also held that the Convention includes no right, as such, to establish one's family life in a particular country (see, inter alia, *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, judgment of 28 May 1985, Series A no. 94, p. 34, § 68; *Gül v. Switzerland*, judgment of 19 February 1996, Reports of Judgments and Decisions 1996-I, pp. 174-75, § 38; and *Boultif v. Switzerland*, no. 54273/00, § 39, ECHR 2001-IX).

<sup>82</sup> § 61 of Estonian SC Grand Chamber judgment 3-3-1-44-11.

<sup>83</sup> ECHR, *Boultif vs Switzerland*, Judgment of 02 August 2001, application no 54223/00, § 39.

<sup>84</sup> § 61 of Estonian SC Grand Chamber judgment 3-3-1-44-11.

<sup>85</sup> *Slivenko vs Latvia*, § 94.

<sup>86</sup> § 63 of Estonian SC Grand Chamber judgment 3-3-1-44-11.

<sup>87</sup> ECHR, *Shevanova vs Latvia*, Judgment of 15 June 2006, application no 58822/00, § 67.

<sup>88</sup> ECHR, *Shevanova vs Latvia*, Grand Chamber judgment 07 December 2007 (struck off the list), reasoning in § 44.

<sup>89</sup> The Grand Chamber also refers to some decisions against Estonia on admissibility.

<sup>90</sup> The Estonian Supreme Court did not rely in its 2012 Grand Chamber judgment on the question of guaranteeing the respect for private and family life to aliens on the European Court of Human Rights judgment which by the international court itself is currently viewed as the basis for applicable principles. This is 18 October 2006 Grand Chamber judgment *Üner vs the Netherlands* (application no 46410/99). The ECtHR is continuously referring to it as the source of principles to be followed by member states in deciding expulsion matters. The Grand Chamber judgment lists a number of factors to be taken into account when balancing different interests. The author does not believe that the Estonian Supreme

The Estonian Supreme Court's Grand Chamber declared in 2011 unconstitutional the legal norm in the Penal Code which provided for preventive detention.<sup>91</sup> The Supreme Court refers to the ECtHR judgment which provides the theoretical considerations for regulating preventive detention – *M. vs Germany*.<sup>92</sup> However, the Supreme Court refers only to one paragraph from this judgment which stipulates that the object of Convention article 5 is to ensure that no one should be dispossessed of his liberty in an arbitrary fashion.<sup>93</sup> The ECtHR in fact recapitulates the relevant principles in paragraphs 86 – 89 in the respective judgment. Among these principles is the proposition that there must be a sufficient causal connection between the conviction and the deprivation of liberty.<sup>94</sup> We cannot conclude that the Estonian Supreme Court's Grand Chamber deliberately did not present the full picture from the ECtHR case-law towards preventive detention. But the fact remains, that when the ECtHR has not established that preventive detention *per se* is against the Convention principles, the Estonian Supreme Court declared respective provisions of the Penal Code unconstitutional. This was done despite the fact that according to the provisions of the Penal Code preventive detention was to be determined at the time of sentencing, which in the context of ECtHR seems justifiable. It can be concluded that the Supreme Court did not present the ECtHR's full position containing preventive detention. The domestic conclusion was based on the international principles which do not exist – namely that preventive detention means arbitrary deprivation of liberty.

In 22 March 2011 judgment the Supreme Court's Grand Chamber declared partially unconstitutional the State Liability Act, since it did not contain a legal provision for compensating moral damages due to unreasonable length of criminal proceedings.<sup>95</sup> The judgment contains references to the ECtHR 'classical' judgments, which have set the tone for understanding the obligations of member states in providing an effective remedy against unreasonable length of proceedings, as well as the main elements to be taken into account when evaluating whether the reasonable length requirements has been violated.<sup>96</sup> This judgment from the perspective of application of ECtHR jurisprudence is not noteworthy for what it contains, but for what it does not contain – it remains silent of the fact that the ECtHR has substantive case-law (relatively speaking) about this matter against Estonia.<sup>97</sup>

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Court would have reached as different conclusion when using the *Üner* judgment. The author simply notes that the Supreme Court has not followed the most recent case-law.

<sup>91</sup> Estonian Supreme Court Grand Chamber 21 June 2011 judgment in case 3-4-1-16-10.

<sup>92</sup> ECHR, *M. vs Germany*, Judgment of 17 December 2009, application no 19359/04 – referred to in Estonian Supreme Court 21 June 2011 judgment 3-4-1-16-16 § 87. The fact that *M. vs Germany* judgment is until the present moment the basis for understanding ECtHR approach towards preventive detention is expressly stated in many judgments – see for example ECHR, *B. vs Germany*, Judgment of 05 May 2012, application no 61272/09, § 66.

<sup>93</sup> *M. vs Germany*, § 89.

<sup>94</sup> *M. vs Germany*, § 88.

<sup>95</sup> Estonian SC Grand Chamber 22 March 2011 judgment in case 3-3-1-85-09.

<sup>96</sup> Estonian SC Grand Chamber 22 March judgment 3-3-1-85-09, §-s 75, 78, 84 – 85 and 130. The cases referred to are the ones often cited by the ECtHR itself in its judgments regarding Convention articles 6 (1) and 13 violations due to the violation of reasonable length requirement and absence of an effective domestic remedy – for example ECHR, *Kudła vs Poland*, Judgment of 26 October 2000 (Grand Chamber), application no 30210/96 and ECHR, *Pellissier and Sassi vs France*, Judgment of 25 March 1999 (Grand Chamber), application no 25444/94.

<sup>97</sup> The ECtHR has made five substantive judgments towards Estonia regarding the complaint about the unreasonable length of proceedings and three judgments establishing Article 13 violation due to the absence of an effective remedy against the unreasonable length of proceedings – ECHR, *Saarekallas OÜ vs. Estonia*, Judgment of 08 January 2007, application no 11548/04; ECHR, *Missenjov vs. Estonia*, Judgment of 29 January 2009, application no 43276/06, and most recently ECHR, *Raudsepp vs Estonia*, Judgment of 08 November 2011, application no 54191/07. In the latter three the ECtHR has continuously repeated the position that such an effective remedy was missing from the Estonian legal

In the judgment from 12 April 2011 - in case 3-2-1-62-10 – the Supreme Court declared partially unconstitutional the State Fees Act and the Code of Civil Procedure. The first unconstitutional aspect was the amount of state fees – 3 % from claims over 10 million Estonian kroons,<sup>98</sup> but not to exceed the state fee amount of 1.5 million kroons.<sup>99</sup> The second unconstitutional aspect was in the prohibition under legal norms to grant aid to judicial entities for paying court fees. In the second aspect the Supreme Court relied on the ECJ and the ECtHR case-law. The Supreme Court refers to the hypothetical nature of the assumption, that a commercial entity, unless it had been declared insolvent, should have sufficient means to pay a court fee.<sup>100</sup> The Supreme Court refers to the ECJ and the ECtHR positions that the courts can in principle request the owners of judicial entities to make additional payments of state fees from their own sources.<sup>101</sup>

The second referral to an ECJ case-law is in 07 June 2011 judgment in case 3-4-1-12-10 where the Grand Chamber declared partially unconstitutional the Health Insurance Act. The Supreme Court stated, that the European Charter of Fundamental Rights Article 21 § 1 prohibits discrimination on the basis of age. The Supreme Court refers to the ECJ 22 November 2005 judgment in case C-144/04 *W. Mangold vs R. Helm*, § 75. The author cannot speculate whether the Grand Chamber would have reached a different conclusion if there was no direct requirement of non-discrimination based on age from the ECJ. At the same time, the Grand Chamber does not indicate why it has relied on the ECJ and not the ECtHR case-law which has likewise extensive jurisprudence on anti-discrimination matters.

In sum, during the period of 2011 and 2012 the Grand Chamber of the Estonian Supreme Court has established partial unconstitutionality of a legal norm or the absence of legal regulation in 13 cases. In 5 of these judgments the Grand Chamber relies exclusively on the ECtHR case-law, in 1 it relies on the ECJ case-law only and in 1 on the case-law of both European courts. The reliance on European jurisprudence is in more than 50 % of the judgments. It seems obvious, that in matters on constitutionality of fundamental rights issues the Supreme Court relies mainly on the ECtHR jurisprudence.

## 6 CONCLUSIONS

This article addresses a theoretical question, if domestic courts are – including highest courts and constitutional courts – bound by the interpretations of the international courts established by the treaty in the

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system. By the time of the 22 March 2011 Supreme Court judgment the ECtHR had established Convention article 13 violation in two cases. It is not clear, why in a situation where the international court has specifically and in several judgments addressed the question which the Supreme Court is adjudicating the latter is completely silent of these international cases. One would at least have expected recognition of their existence. Again it seems, that the Supreme Court has avoided presenting the full picture.

<sup>98</sup> Approximately 640 000 euro.

<sup>99</sup> Approximately 96 000 euro.

<sup>100</sup> Estonian SC Grand Chamber case 3-2-1-62-10 § 57.3 in reference to ECHR, *Paykar Yev Haghtanak LTD vs Armenia*, Judgment of 20 December 2007, application no 21638/03, § 49 and ECJ 22 December 2010 judgment in C-279/09 *DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH vs. Bundesrepublik Deutschland*

<sup>101</sup> Estonian SC Grand Chamber case 3-2-1-62-10 § 62.2 in reference to ECHR, *Teltronic-Catv vs Poland*, Judgment of 10 January 2006, application no 48140/99, § 59 and ECJ 22 December 2012 judgment in case C-279/09 *DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH vs. Bundesrepublik Deutschland*.

matters of that treaty, or is there room for a dialogue and interpretation? Currently the citizens of an EU member state are under 'trinity' constitutional protection (at least theoretically speaking) – their own constitutional or highest court, the European Court of Justice and the European Court of Human Rights. The article has shown that the acceptance of the European Court of Justice and European Court of Human Right jurisprudence on the domestic level has two main aspects.

The first is the authority which the European courts have regarding substantive interpretation of the provisions of European law (respectively the EU norms and European Convention for the Protection of Human Rights and Fundamental Freedoms). Both courts have assumed almost absolute authority in treaty interpretation and require that member states follow their case-law principles. Both courts have assumed this authority via internal and evolutive interpretations of treaty provisions. At the same time, the European courts are willing to listen to the member states' if there is established a consensus among the member states on the regulation of certain questions. Both European courts are exhibiting the so-called judicial activism. They require 'hard compliance' from the member states with treaty interpretation.

The second is the degree of flexibility the European courts are willing to give to the member states in complying with individual judgments. Both courts leave to the member states freedom to choose specific measures to implement the principles from their judgments. This approach can be called 'soft compliance'. The possibility of constitutional conflicts cannot be excluded regarding both aspects of compliance.

This article has analyzed whether the practice of the Grand Chamber of the Estonian Supreme Court enables one to make any conclusions about how one member state to the EU and Council of Europe is handling these questions. The article had a hypothesis that there may be either a dialogue or silent acceptance of the case-law of the European courts. The review of the cases decided by the Estonian Supreme Court's Grand Chamber in the period of 2011–2012 does not appear to support either of the hypothesis presented at the start of this article. The Supreme Court's Grand Chamber is not in a dialogue with the European courts. This is evident from the fact that the Supreme Court does not analyze the developments in the European courts' case law, it does not compare different approaches, nor does it point to different interpretations possible. At the same time, the Supreme Court does not accept the European courts' case-law in a blindfolded manner either. This is because in most of the major cases decided in 2012 which relied in substantive part on the ECtHR case-law, the Supreme Court's referrals were deficient. The Estonian Supreme Court credits the ECtHR with positions it does not have. Referrals to the ECJ case-law are scarce and do not seem to be decisive for the outcome of the case. The Supreme Court has found in the jurisprudence of the European courts an instrument which can be used quite flexibly to substantiate its conclusions with a referral to an 'outside higher authority'.

On the matter of national sovereignty the Supreme Court does not refer to international case-law at all. This confirms the idea that there are certain questions where the dialogue between the courts ends. The author does not argue that the quality of adjudication in Estonia is deficient due to the findings above. It just seems that in Estonia the 'trinity' constitutional protection under three courts is somewhat of an illusion.

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## RUSHING INTO GENDER QUOTAS? EDUCATION AND POLITICAL PARTICIPATION OF WOMEN IN USA AND SLOVENIA

Irena BAČLIJA<sup>1</sup>

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*Women as “political minors” are subjected to numerous equal opportunity policies. The so called gender equality in modern societies was established not long ago and consolidation of equal rights is a work in progress. Legal barriers to the ballot are mostly removed and women have de iure equal opportunity to participate in politics as men. However female representatives are greatly outnumbered by male representatives, virtually on all levels of politics. The article examines women’s political (under)representation through the lenses of often tested hypothesis that education is the predictor of political participation. This causality is tested on two compared societies; USA and post-communist Slovenia. Since the role of women in political structures varies greatly due to social standing emerging from broader cultural systems of gender, socio-economic class, and political history, the similarities in final output (number of female representatives) in both countries are to be observed.*

**Key words:** equal opportunity, gender quotas, political participation, political representation.

### 1 INTRODUCTION: ASSOCIATION BETWEEN FEMALE EDUCATION AND POLITICAL PARTICIPATION

Education (for men and women) is an ‘especially powerful predictor of political participation’.<sup>2</sup> There is a range of direct and indirect effects that formal education has upon political participation. Its direct effects include the acquisition of the knowledge and communication skills useful for public

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<sup>2</sup> Nancy Burns, Kay Schlozman Lehman and Sidney Verba, *The Private Roots of Public Action: Gender, Equality, and Political Participation* (Cambridge: Harvard University Press, 2001), 286.

debate, and direct training in political analysis through courses with current events content. Its indirect effects are many and include the benefits of voluntary engagement in school government, clubs, sports, and school newspapers; these arenas provide young people with exercising leadership, developing civic skills of cooperation and negotiation, and acquiring bureaucratic and organizational skills useful for political activity. Education enhances other factors supporting political engagement, such as access to high-income jobs that provide the resources and contacts for political activity, and access to non-political associations such as charitable organizations or religious establishments that can be a recruitment ground for political activity.<sup>3</sup>

However this causal relation is not so (or at all) evident when we observe female and male association between education and political participation. Female participation in politics does not appear to increase with their educational status in comparison with men. Women's educational attainments in developed countries now equal those of men, yet the persistently low numbers of women in representative positions suggest that there may be something specific to political institutions that discourages female participation. On the other hand this might only be a transitional phase, since education not long ago was a commodity reserved only for men. "It isn't an accident that women won the right to be educated nearly 100 years before they embarked on the campaign for suffrage".<sup>4</sup> Early nineteenth century Enlightenment theorists believed that education was crucial to developing the ability to reason and for attaining full citizenship.<sup>5</sup> Access to education for women expanded in US throughout the 1800s, when first "college" for women was opened. But the first major piece of legislation to address women's right to education was not passed until 1972, when Title IX, also known as the Educational Amendments of 1972 was adopted. The legislation banned sex discrimination in education at all levels of formal education. In Slovenia first obligatory primary education for both sexes was introduced in 1774 by Maria Theresa, but gender equality in secondary education was not introduced until 1848.<sup>6</sup> At the beginnings education for women was limited to "training focused on building moral character and developing the necessary submissive nature and skills to maintain a marriage, run a household, and supervise children".<sup>7</sup> We can somehow still talk about male and female fields of studies (e.g. females: education, psychology; e.g. males: business, computer science). Although the concentration of females in some fields traditionally characterized as having high proportions of females has decreased, whereas the concentration of females in some areas that had formerly been mostly male has increased. There is some evidence that the pattern of fields of degrees awarded to females is beginning to more closely resemble that of males.<sup>8</sup> The educational effects on female political participation levels might be belated, however until so far there is no evidence that this will occur.

There is a wide variation between countries, however, the United States, which outranks other industrialized democracies in terms of the numbers of women in higher education (and in the work force, and in professional

<sup>3</sup> Ibid., 141–142.

<sup>4</sup> Lynne E. Ford, *Women and Politics: The Pursuit of Equality* (Boston: Charles Hartford, 2006), 189.

<sup>5</sup> Ibid., 191–193.

<sup>6</sup> Aleksandra Serše, *Učne ure naših babic: Izobraževanje in zaposlovanje žensk nekoč in danes* (Ljubljana: Zgodovinski arhiv Ptuj in Urad za žensko politiko pri Vladi Republike Slovenije, 2000).

<sup>7</sup> Lynne E. Ford, *Women and Politics: The Pursuit of Equality* (Boston: Charles Hartford, 2006), 190.

<sup>8</sup> National Centre for the Education statistics, *Trends in educational equality for Girls and women* (Washington: National Centre for the Education statistics, 2012).

positions), has seen persistently low numbers of women in formal politics, reaching the highest in 2013 with just 18.3 % of Congress representatives being women.<sup>9</sup> Uganda, Rwanda, and Mozambique, among the poorest countries in the world with female adult literacy levels of just 41, 60.2 and 28.7 percent respectively, have parliaments in which between 25 to 30 percent of legislators are women. This contrast suggests that the connection between education and engagement in formal representative politics is not directly observable, and invites us to explore the nature of the relationship between women's education and political participation.

The aim of the article is twofold. First to present formal educational attainment levels of females and female political representation in two selected countries, USA and Slovenia.<sup>10</sup> While the general pattern of gender-differences in participation observed by Burns et al<sup>11</sup> may well hold for many other nations, there are no cross-national studies of gender-based variations in the kinds of political activities they measure, mainly because of a lack of consistent data on gender differences in voting behaviour, protest activity, voluntary community activity and so on. Explorations and explanations of gender gaps in political activity in other cultures must be sensitive to differing opportunities available for political participation given variations in political institutions and cultures. Given the difficulties of measuring the quantity and nature of women's political participation cross-nationally, we fall back upon the number of women in office, currently the only consistent and comparable source of data showing variations in women's engagement in politics. Though far from an ideal indicator of levels of women's political engagement, it is not entirely unrelated to the question of women's relative political effectiveness in any particular country. Secondly, article is focused on discussing how both countries have addressed the under representativeness of women or so called "democratic deficit".

## 2 WOMEN IN EDUCATIONAL SYSTEMS: USA AND SLOVENIA COMPARED

Although the correlation between female education and political participation seems to be missing, there still could be some indirect linkage. Higher educational levels attain for higher economic standard, which in turn positively correlate with political participation. For females to have the same opportunities as males in postsecondary education and in the labour market, it is important for them to be equally well prepared academically.

US National Centre for Education Statistics report in 2012<sup>12</sup> stated that women played a major role in the increase of collage enrolment between 1990 and 2000. The enrolment of women in college increased from 7.5 million in 1990 to 8.6 million in 2000, a 14 percent increase over the period. Enrolment of women increased to 10.1 million by 2012, an increase of 18

<sup>9</sup> See Centre for Voting and Democracy, *Database*, available at <http://www.representation2020.com/us-representation.html> (9 May 2013).

<sup>10</sup> This article is an output of Slovenian-American bilateral research project "The consequences of social exclusion of women from the education system to the women's inclusion in politics". As the aim of the project was to examine women's political action and involvement in Slovenia and the Midwestern region of the United States in relation to the social exclusion of young women into the educational system in both countries, this resulted in choosing these two countries as case studies for this article. For more information on the bilateral project see <http://www.cpu.si/bilateral-cooperation>.

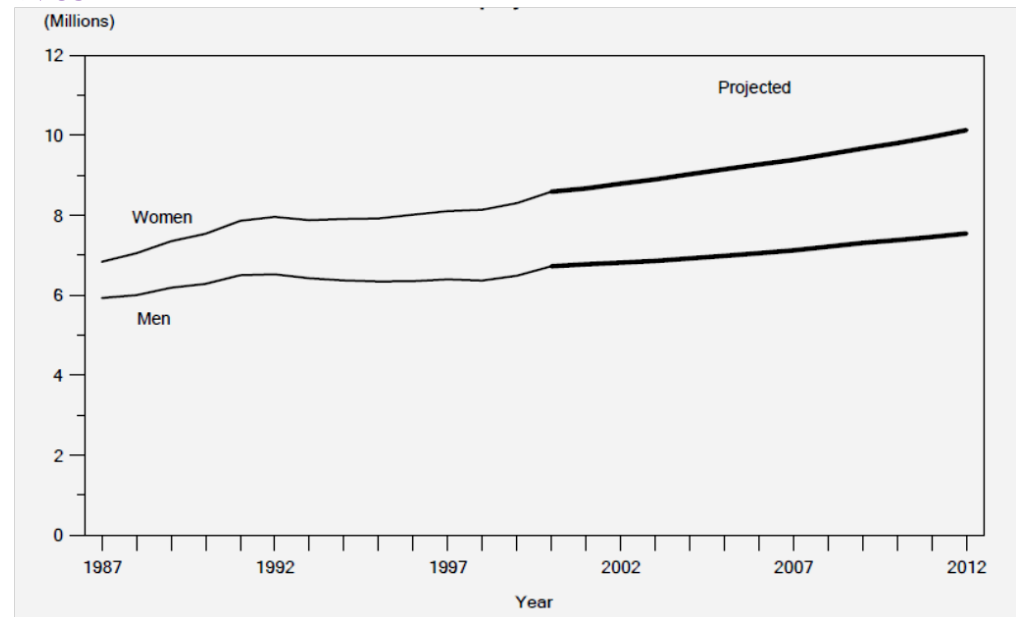
<sup>11</sup> Nancy Burns, Kay Lehman Schlozman and Sidney Verba, *The Private Roots of Public Action: Gender, Equality, and Political Participation* (Cambridge: Harvard University Press, 2001).

<sup>12</sup> National Centre for the Education statistics, *Trends in educational equality for Girls and women* (Washington: National Centre for the Education statistics, 2012).



percent from 2000. Historical growth in enrolment in degree-granting institutions has led to a substantial increase in the number of earned degrees conferred. Just as the unprecedented rise in female enrolment contributed to the increased number of college students, so too has it boosted the number of degrees conferred. Between 1986–87 and 1999–2000, the number of degrees awarded to women rose at all levels. In 1999–2000, women earned the majority of associate's, bachelors, and master's degrees, 44 percent of doctor's degrees, and 45 percent of first-professional degrees. By 2011–12, the number of degrees awarded increased across all levels.

FIGURE 1: ENROLMENT IN DEGREE-GRANTING INSTITUTIONS BY SEX IN USA



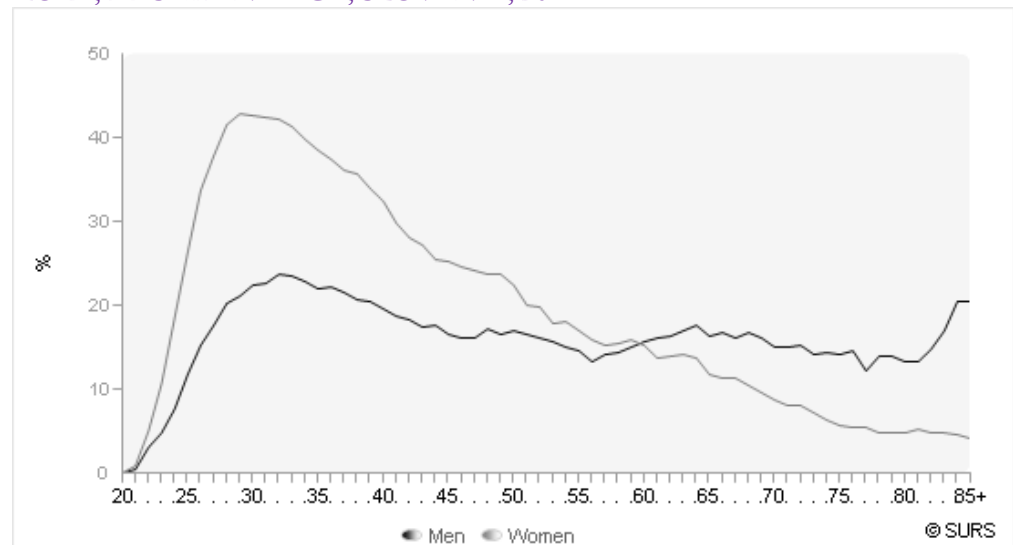
Source: National Centre for the Education statistics.

In Slovenia the paradox of highly educated but politically passive females is also evident. On average women in Slovenia are better educated than men<sup>13</sup> and the highest difference is observed among those with a university degree (12.5 % of employed women and 10.4 % of men). Since 1995 there were constantly about 10 % more women graduates at universities and independent higher education institutions. Like in US women predominate in higher education and at faculties devoted to areas of health and social work, economy, social sciences, pharmacy and medicine.<sup>14</sup> There is also increasing rate of women who complete postgraduate studies. In 1995 only 37 % of doctors of science were women, while in 2003 their share was already slightly less than 50 %.

<sup>13</sup> Measured by the average school years of employed people.

<sup>14</sup> See Statistični urad Republike Slovenije (SURS), *Dan žensk*, available at [https://www.stat.si/novica\\_prikazi.aspx?id=4548](https://www.stat.si/novica_prikazi.aspx?id=4548) (3 May 2013).

FIGURE 2: POPULATION WITH TERTIARY EDUCATION, AGED 20 OR MORE, BY SEX AND AGE, SLOVENIA, 2011



Source: Statistični urad Republike Slovenije (SURS).

The trend of increasing women educational levels in comparison to men is well observed in Figure 2. Male population didn't experience major changes in educational levels as 30 year old man is approximately as educated as his 85 years old senior. Female population on the contrary is today almost ten times more likely to be highly educated then eighty years ago. According to UNESCO report<sup>15</sup> this is a global phenomenon. Although access to higher education remains problematic in many countries, the last four decades have brought a major expansion of higher education in every region of the world, and women have been the principal beneficiaries in all regions. Female enrolment at the tertiary level has grown almost twice as fast as that of men over the last four decades for reasons that include social mobility, enhanced income potential and international pressure to narrow the gender gap. Nevertheless, enhanced access to higher education by women has not always translated into enhanced career opportunities, including the opportunity to use their doctorates in the field of research.<sup>16</sup>

### 3 PARTICIPATION OF WOMEN IN POLITICS

The extent of women's participation in politics and women's access to decision-making can be seen as the key indicators of gender equality in a society. Gender equality in decision-making is to be viewed in the context of whether women are in the position to make or influence public decisions on the same footing as men. This is why for the purpose of this article we focus solely on the number of female representatives in elected bodies as opposed to more elaborate understanding of female political participation. Measuring political participation with the positions of public office to which women have been elected is extremely crude. We can hardly discuss political *participation* with these measures, but more likely about political *representation*. Numbers of women in representative politics are not the best indicator of the extent and intensity of women's political participation because there is no necessary

<sup>15</sup> See UNESCO, *World Atlas of Gender Equality in Education*, <http://www.uis.unesco.org/Education/Documents/unesco-world-atlas-gender-education-2012.pdf> (12 April 2013).

<sup>16</sup> Ibid.

relationship between the two.<sup>17</sup> At our own peril we analyzed the number of female office holders and tried to test can serve as an indicator to discuss the second goal of the article, that is how successful are both countries in overcoming “democratic deficit”.

The most common reforms in innovations in political participation have been provisions for increased representation of women.<sup>18</sup> Most of these provisions take the form of quota policies for enhancing inclusion of women in the politics. There are different types of quotas that can be categorized in three groups: reserved seats, party quotas and legislative quotas.<sup>19</sup> Reserved seats appear primarily in Africa, Asia and the Middle East.<sup>20</sup> These types of policies create separate electoral rolls for women, female candidates have special electoral districts, or seats for women are redistributed as a party's proportion of the popular vote. This type of policy is different as it guarantees women representation,<sup>21</sup> while other two “only” guarantee a percentage of women among political candidates (thus they might not be elected). Party quotas are the most common type of gender quota and can exist alongside the presence of other types of quotas to promote women's representation.<sup>22</sup> Party quotas are adopted voluntarily by individual parties. Legislative quotas are similar to party quotas in that they address party selection processes, but they are not voluntary by nature. The national legislation requires that all parties nominate a certain proportion of female candidates. These policies take important steps to recognize “gender” as a political identity. The prominent feature of legislative quotas is that their status as a law enables sanctions for noncompliance and is a subject to oversight from external bodies.

Although globally implemented this policy remains controversial. Promoters of women quotas emphasize that quotas compensate for actual barriers that prevent women from their fair share of the political seats that women's experiences are needed in political life and that quotas may only be temporary measure until we overcome »democratic deficit«. Those that are opposed explain that quotas are against the principle of equal opportunity for all, since women are given preference over men, that quotas are undemocratic, because voters should be able to decide who is elected and that quotas imply that politicians are elected because of their gender, not because of their qualifications and that more qualified candidates are pushed aside. According to pros and cons of the gender quotas there are different implementation solutions depending on countries' political climate, historical background and external pressures (e.g. EU directives for EU member states). Below we present case of Slovenian gender quotas and USA lack of

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<sup>17</sup> Relatively large numbers of women were found in politics in socialist countries in periods when women's independent civil society activity was suppressed under single-party governments. See Maxine Molyneux, “Women's Rights and the International Context: Some reflections on the post-communist states,” *Millennium*, 23, 2 (1994), 301. More systematic study of other types of political participation by women, such as voting behavior, lobbying activity, associational activity, and membership of political parties, is needed to illuminate the factors promoting higher rates of women's engagement in these activities.

<sup>18</sup> Mona Lena Krook, *Quotas for Women in Politics: Gender and Candidate Selection Reform Worldwide* (New York: Oxford University Press, 2009).

<sup>19</sup> See e.g. Pippa Norris, *Electoral Engineering: Voting results and political behaviour* (New York: Cambridge University Press, 2004).

<sup>20</sup> Mona Lena Krook, “Gender Quotas as a global phenomenon: Actors and Strategies in Quota Adoption,” *European Political Science*, 3, 3 (2004), 60.

<sup>21</sup> These measures often provide for low levels of female representation, usually between 1 and 10 per cent of all elected representatives. See Mona Lena Krook, *Quotas for Women in Politics: Gender and Candidate Selection Reform Worldwide* (New York: Oxford University Press, 2009).

<sup>22</sup> Petra Meier, “The Mutual Contagion Effect on Legal and Party Quotas: A Belgian Perspective,” *Party Politics*, 10, 5 (2004), 583–600.

them and how this mechanism (or the lack of it) has influenced inclusion of women in politics.

### Slovenia

Since gaining independence in 1991 there were some major changes in gender equality policies in Slovenia. The new Constitution guarantees equality for both sexes in electoral processes, additionally provisions on gender equality in politics is stipulated in legislation.<sup>23</sup> Thus Slovenia has legislative quotas for females. These legislative quotas were introduced after the accession in EU and as a consequence of adopting *acquis communautaire*. There is 40 % for European Parliament elections since 2004, 40 % for local elections (20 % for the first election after adoption) since 2005 and 35 % for the National Assembly (25 % for the first election after adoption) in 2006.

TABLE 1: INTRODUCTION OF LEGAL QUOTAS IN SLOVENIA

YEAR	ELECTION LEVEL	IMPLEMENTATION
2004	European	All parties respected the 40 % quota – 42 of 91 candidates (46 %) were women.
2006	Local	All parties more than respected the 20 % quota - just under 33 % of the 26,721 candidates were women compared to 21 % at the previous (pre-quota) elections in 2002.
2008	National Assembly	All parties respected the 25 % quota – around a third (33 %) of nearly 1200 candidates were women compared to a quarter (25 %) in the 2004 election.

Source: European Commission.

However the results have not wholly lived up to expectation. The 2004 European elections, which were the first held in Slovenia, were successful in terms of the numbers of women candidates put forward and subsequently elected. The law stipulates that for European elections at least one of each gender is in the first half of each list (for 7 seats). Nevertheless, of the thirteen party candidate lists, a woman was at the top of only three and these were all lists of smaller parties that actually won no seats. All the women that did get elected therefore came from lower positions on the list and could have missed out had the party won fewer votes.

The first local elections subject to the legislative quota resulted in a significant increase in the numbers of women councillors elected compared to the previous elections but still there are more or less four male councillors for every one woman. Again, the law requires at least one of each gender in

<sup>23</sup> Act on Equal Opportunities for Women and Men, that obliges the government to respect the principle of balanced representation of women and men. To encourage political parties to develop strategies or special methods to increase the likelihood of women being elected the Act on Equal Opportunities for Women and Men stipulates that all registered political parties in Slovenia shall adopt, every four year, a plan for the promotion of a more balanced representation of women and men within the bodies of the party and on candidate lists for all elections. Second legal incentives were the amendments to the Act on elections to European Parliament, which were adopted in March 2004. The amendment to the article on candidate list introduced the 40 % representation of both sexes on a candidate list and an obligation that at least one candidate of both sexes must be placed in the upper half of the list. The enactment of this so called 40 % quota rule was backed up by the forthcoming adoption of an amendment to the Constitution which would oblige Parliament to pass electoral legislation providing for positive measures. The last normative change aimed to tackle the under-representation of women in elected representative bodies was the change of the Article 43 on »Right to vote« of the Constitution of the Republic of Slovenia. The Slovenian parliament proclaimed this change in 2004. By it a new paragraph was added to the Article 43, which confers on the law the responsibility of defining measures for the promotion of equal opportunities for women and men in standing as candidates in elections to state bodies and bodies of local communities.

the first half of each party list but the fact that the share of women elected (22 %) did not come closer to the share of candidates (33 %) tends to suggest that they were not often put in the highest positions. The number of female mayors does not rise as the number of local councillors. Most probably since there are no quotas for female candidates (candidates are elected by majority, not proportional system), although the body of mayor is very strong in local-government system and thus an important figure.

**TABLE 2: SHARE OF ELECTED FEMALES ON LOCAL, NATIONAL AND EUROPEAN LEVEL**

YEAR OF ELECTIONS	LOCAL LEVEL		NATIONAL LEVEL National Assembly deputies	EUROPEAN LEVEL European deputies
	Mayor	Local councillor		
1990			27 (11.3 %)	
1992			12 (12.3 %)	
1994	5 (3.4 %)	299 (10.6 %)		
1996			7 (7.8 %)	
1998	8 (4.2 %)	365 (11.7 %)		
2000			12 (13.3 %)	
2001	12 (6.2 %)	423 (13 %)		
2004			11 (12.2 %)	3 (42.8 %)
2006	7 (3.3 %)	721 (21.5 %)		
2008			12 (13.3 %)	2 (28.7 %)
2010	10 (4.80 %)	730 (21.91 %)		

Source: Milica Antić Gaber, "Slovenska politika – dobro zastražena moška trdnjava," in *Ženske na robovih politike*, ed. Milica Antić Gaber (Ljubljana: Založba Sophia, 2011), 236.

Finally, in the recent national elections, despite a substantial improvement in the number of women candidates, just one additional woman was elected to the National Assembly and the share of 13 % keeps Slovenia firmly in the lowest tier amongst EU Member States (23 out of 27). The reason, as all too often, was simply that women candidates were not placed in winnable constituencies.

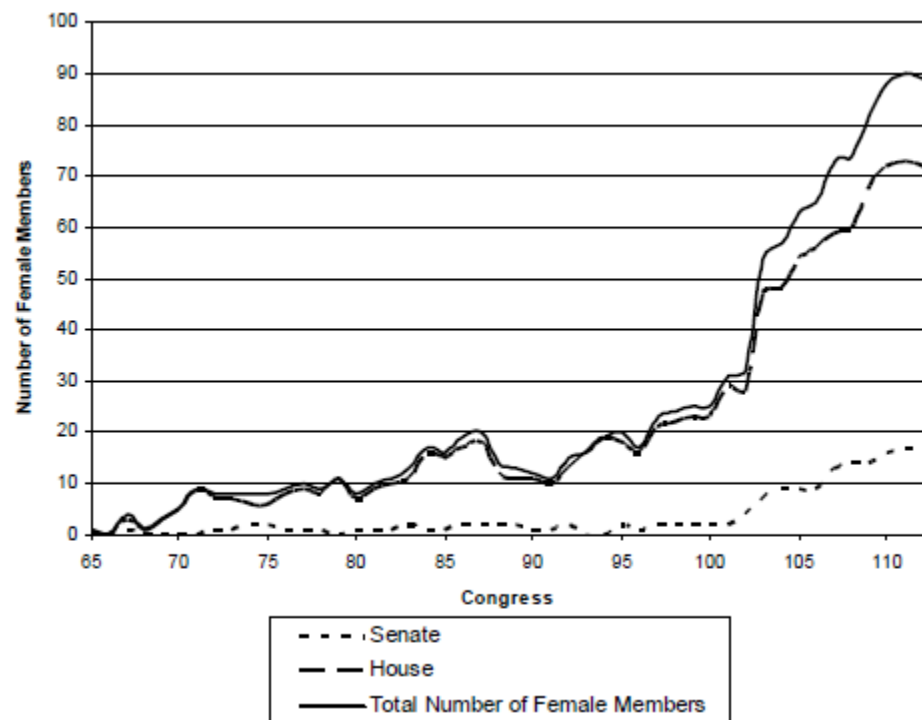
## USA

USA does not apply gender quotas. As of the 1970s, women occupied almost no major elective positions in U.S. political institutions. Ella Grasso, a Democrat from Connecticut, and Dixie Lee Ray, a Democrat from Washington, served as the only two women elected governor throughout the decade. Not until 1978 did Kansas Republican Nancy Kassebaum become the first woman elected to the U.S. Senate in her own right. By 1979, women comprised fewer than five percent of the seats in the U.S. House of Representatives, and only about ten percent of state legislative positions across the country.<sup>24</sup>

<sup>24</sup> See e.g. Lynne E. Ford, *Women and Politics: The Pursuit of Equality* (Boston: Charles Hartford, 2006).



FIGURE 3: NUMBER OF WOMEN IN CONGRESS (1917–2011)



Source: Congressional research service.

As explained in the figure 3, women are becoming rising force in politics in USA. Thirty years ago, women held a mere 10 % of all state legislative seats in the country, today they hold 24 % of 7,383 seats nationwide. Currently 20 women currently serve in the US Senate and 98 serve in the US House of Representatives, while 76 women hold state-wide elective office including 5 state governorships.

However women are still under-represented. Large gender disparities are also evident at the state and local levels, where more than three-quarters of state-wide elected officials and state legislators are men. Further, men occupy the governor's mansion in 44 of the 50 states, and men run City Hall in 92 of the 100 largest cities across the country. Of the 320 state-wide elected executive offices across the country women hold **23.4 %** (76) offices.<sup>25</sup> The number of women serving as mayors, on city councils, and as county commissioners and supervisors is on the rise. As a result of the large number of offices held at the local level, data is still being compiled, however key statistics include: a) Among the 100 largest cities in the country, 12 have women mayors, b) Of the 252 mayors of U.S. cities with populations of 100,000 and over, **17.6 %** (44) are women and c) Of the 1,248 mayors of U.S. cities with populations of 30,000 and above, **17.4 %** (217) are women.<sup>26</sup>

In light of the importance of women's presence in politics, it is critical to understand why so few women hold public office in the United States. Somewhat surprisingly, it is not because of discrimination against female candidates. In fact, women perform as well as men when they run for

<sup>25</sup> Governors – 5; Lieutenant Governors – 11; Attorneys General – 8; Secretaries of State – 12.

<sup>26</sup> See Congressional research service, *Women in the United States Congress: 1917–2012*, available at [www.fas.org/sfp/crs/misc/RL30261.pdf](http://www.fas.org/sfp/crs/misc/RL30261.pdf) (29 April 2013).

office.<sup>27</sup> In terms of fundraising and vote totals, the consensus among researchers is the absence of overt gender bias on Election Day. When women run for office – regardless of the position they seek – they are just as likely as their male counterparts to win their races. The fundamental reason for women's under-representation is that they do not run for office. There is a substantial gender gap in political ambition; men tend to have it, and women don't. And the gender gap in ambition is persistent and unchanging.

#### 4 CONCLUSION

This paper set out to review evidence about the relationship between women's education and political participation, with a view to assessing whether more education for women can be seen to shift their levels of engagement in politics. Given the evidence above, it is difficult to assert conclusively that more and better education makes women more active in politics. In both presented countries women are better educated than men. On the other in both countries women in politics are under-represented. Surprisingly Slovenia despite employing gender quotas has slightly lower share of women in politics (legislative branch). However altogether Slovenia ranks 23<sup>rd</sup>, USA 78<sup>th</sup> on the list of share of women in politics.<sup>28</sup>

Qualitative studies suggest that cultural variables are more significant than education in shaping the rate and nature of women's participation in politics.<sup>29</sup> Galligan, Clavero and Calloni believe that west and east (thus western and eastern societies) have different recent historical approaches to the notion and practice of gender equality.<sup>30</sup> Liberal democracies were oriented towards gender equality as a complex range of diversities and differences experiencing social marginalization and inequality and seeking inclusion and equality in policy outcomes. Gender equality was conceptualized differently in socialistic countries. It was a component of a political ideology that based on ending the social inequalities among human beings. While liberal democracies have posed challenges for the inclusion of a gendered perspective in politics, the ideology of communism was based on presumption of equality among all.

Aside differences in historical background other factors substantially influence share of women in politics. The proportional representation is the electoral system that returns the highest proportion of women to parliament. Parliaments using proportional representation elected 22.6 % women deputies, compared with 18.1 % using the plurality-majority electoral system, and 19.1 % using a mixed system.<sup>31</sup> Where women were appointed to a chamber in 2011, they represented, on average, 15.2 % of members. Under proportional representation, voters cast their votes by party, and in some cases also by individual, and seats in parliament are allotted in proportion to the votes each party receives. This system provides an incentive for parties to broaden their appeal by adding women to their party lists. In some cases, where parties mandate the percentage of women to be included on lists – as in the rule of “every second seat a woman” – the results can be significant.

<sup>27</sup> Lynne E. Ford, *Women and Politics: The Pursuit of Equality* (Boston: Charles Hartford, 2006).

<sup>28</sup> See Inter Parliamentary Union, *Database*, available at <http://www.ipu.org/english/home.htm> (30 April 2013).

<sup>29</sup> Lynne E. Ford, *Women and Politics: The Pursuit of Equality* (Boston: Charles Hartford, 2006).

<sup>30</sup> Yvonne Galligan, Sara Clavero and Marina Calloni, *Gender politics and democracy in post-socialist Europe* (Leverkusen Opladen: Barbara Budrich Publishers, 2007).

<sup>31</sup> Inter Parliamentary Union, *Women in Parliament in 2011: The Year in Perspective* (Geneva: Inter Parliamentary Union, 2011).

Inversely, a plurality-majority system sees women compete directly with men in single-member constituencies. In the absence of a cultural acceptance of women parliamentarians, this can prove a difficult race for women.

Irrespective of the electoral system and use of quotas, across the globe, there are insufficient numbers of women candidates running for national parliaments. Challenges for women candidates include insufficient funds to run a campaign, high expectations from the electorate and the antagonistic nature of competitive political parties. In addition, women tend to have fewer resources at their disposal, less experience in running for office and in public speaking, and a lack of support from spouses and family. Women also have multiple roles, and balancing them all can be very difficult.

The future is not bright for women in politics. The continuing financial crisis dramatically impacted not only on the economies but also on women's participation in national parliaments. Women lost ground in Cyprus, Estonia, Portugal and Spain, where "electoral realignments" – or the replacement of a dominant coalition of parties by another – occurred. In such cases, a large number of incumbent seats are lost (typically, those more 'marginally' held by women), and are not always replaced by women from the incoming party or coalition of parties.

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## INTERNATIONAL LIBERALIZATION POLICY. POLITICAL-SCIENTIFIC FACTORS IMPACTING THE PROCESS OF DENATIONALIZATION

Markus REINERS<sup>1</sup>

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*Since the 1980s almost all OECD and EU states have implemented policies of liberalization and denationalization. This study offers a model for explaining this phenomenon by regarding it as a process of policy convergence. The determinants and causal mechanisms driving the proliferation of privatization policy are identified with the help of convergence mechanisms proposed by the sciences and then analytically evaluated and interpreted with regression analyses of two independent, quantitative studies. The results identify independent problem-solving, peer pressure and international harmonization as the most important causal mechanisms. Membership of the EU is shown to be a strong privatization factor, and on the OECD level, party affiliation of the government is identified as an important intervening variable.*

**Key words:** liberalization, privatization, denationalization, policy convergence, OECD, European Union.

### 1 BACKGROUND, RESEARCH DESIGN AND RESEARCH QUESTION

In the years after World War II the economic theories of John Maynard Keynes took hold, which apportioned the sovereign state a role as active participant in the economy.<sup>2</sup> In most industrial countries the state was the dominant economic actor and assumed a protagonistic role as employment cushion and engine for demand. However, this trend slowly reversed, and early in the 1980s it had turned around completely.<sup>3</sup> In most countries high national debt levels and the decline in employment which accompanied it, made it essential to embrace new perspectives and develop new strategies. The state saw in liberalization and privatization measures the opportunity to

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<sup>2</sup> John M. Keynes, *The General Theory of Employment, Interest and Money* (Cambridge: Macmillan Cambridge University Press, 1936); John C. Wood (ed.), *John Maynard Keynes: Critical Assessments* (London: Routledge, 1994).

<sup>3</sup> Florian Mayer, *Vom Niedergang des unternehmerisch tätigen Staates: Privatisierungspolitik in Großbritannien, Frankreich, Italien und Deutschland* (Wiesbaden: VS-Verlag, 2006).



get financial and organizational relief. These measures gradually took the task of economic coordination out of state hands and passed it to the market. The process is explained by the new theories of neo-classical and supply-side economists, such as Milton Friedman,<sup>4</sup> and was introduced and promoted by influential politicians, such as Margaret Thatcher (she took office in 1979) in Great-Britain, and Ronald Reagan (he took office in 1981) in the United States of America (USA).<sup>5</sup>

In the narrow sense of the word, privatization refers to the conversion of public assets into private assets. In the broader sense, privatization is understood as the transfer of state activities to the private sector. In many cases privatization is also directly linked to deregulation policy. However, different interpretations given to the concepts make the linking of privatization and deregulation highly controversial in scientific literature. Some see in regulation market-limiting state interference, and nationalization.<sup>6</sup> Others understand it as state control, best described with the term governance, for introducing market-based competition to economic structures, which have, for instance, been monopolistic before.<sup>7</sup>

Absolutely certain is, however, that privatization complies with the demands of liberalism, namely that own-accountability and autonomy of the individual in economic processes should be the foundation of the economic system. Already classic economic liberalism and the neo-liberalism of the 1930s and 1940s demanded the withdrawal of the state from the economic process to a large extent. Although neo-liberal ideas featured in the concept of the social market economy as foundation of the economic system, as applied in, for instance, the Federal Republic of Germany, no consistent privatization theory had at that time been developed. As a result of this, only a few, small public assets were privatized in the 1950s and 1960s in the Federal Republic of Germany, but also in other industrial states. The first comprehensive privatization policy was developed in the 1980s in Great-Britain and the USA, with the liberal economic ideas of Friedman and a few other representatives of the Chicago School as theoretical foundation.<sup>8</sup> This liberalization and privatization trend has been spreading throughout the entire industrial world since the 1980s and was interpreted by many scientists as a withdrawal by the state.<sup>9</sup> A clear and sustained trend to privatize public infrastructure was in place from the middle of the 1980s. If one looks beyond the year 2000, one sees this trend is still largely intact today.<sup>10</sup> In this connection the public infrastructure ratio shows the percentage of the infrastructure in an OECD economy which is state-owned infrastructure.

With a manageable set of independent variables, the research contribution explains how and why the liberalization and privatization policy spread, by

<sup>4</sup> Milton Friedman, *Price Theory* (New York: Aldine de Gruyter, 1976).

<sup>5</sup> Volker Schneider and Mark Tenbücken, *Der Staat auf dem Rückzug: Die Privatisierung öffentlicher Infrastruktur* (Frankfurt am Main/New York: Campus, 2004), 15–16.

<sup>6</sup> Rainer Klump, *Wirtschaftspolitik: Instrumente, Ziele und Institutionen* (München: Pearson Studium, 2011), 80.

<sup>7</sup> Martin Bullinger, *Regulierung von Wirtschaft und Medien: Analysen ihrer Entwicklung* (Tübingen: Mohr Siebeck, 2008), 121.

<sup>8</sup> Fritz Rittner and Meinrad Dreher, *Europäisches und deutsches Wirtschaftsrecht: Eine systematische Darstellung* (Heidelberg: C.F. Müller, 2007), 194.

<sup>9</sup> Thomas Clarke and Christos Pitelis (eds.), *The Political Economy of Privatisation* (London/New York: Routledge, 1995); William L. Megginson and Jeffry M. Netter, "From state to market: A survey of empirical studies on privatization," *Journal of Economic Literature*, 39, 2 (2001), 321–389; Roger L. Kemp, *Privatization: The Provision of Public Services by the Private Sector* (London: McFarland & Co., Jefferson, 2007); Anne Karrass, *Die EU und der Rückzug des Staates: Eine Genealogie der Neoliberalisierung der europäischen Integration* (Bielefeld: transcript Verlag, 2009).

<sup>10</sup> Volker Schneider and Frank M. Häge, "Europeanization and the retreat of the state," *Journal of European Public Policy*, 15, 1 (2008), 3.

viewing the process as one of policy convergence. With the help of convergence mechanisms identified in scientific literature,<sup>11</sup> the determinants which promote the adoption and spread of the policy are extracted, analyzed and reviewed precisely. In the end, a detailed picture should emerge of the causal mechanisms and determinants responsible for the spread and convergence of the liberalization and privatization trends. The y-centred research design tries to identify the independent variables leading to liberalization and privatization as extensively and comprehensively as possible. Thus, the design explains the phenomenon of the dependent variable in detail. The knowledge gain is based on the analytical evaluation and interpretation of two independent, quantitative studies that have already investigated the determinants of liberalization exhaustively. On the one hand we have the study „Selling off the family silver“,<sup>12</sup> and on the other hand the study „Europeanization and the retreat of the state“.<sup>13</sup> Also decisive for the knowledge gain is, that the two studies pose the same research question, but neither view privatization policy from the perspective of policy convergence.

In summary, this contribution answers the research question, namely which of the causal mechanisms suggested by policy convergence literature, and which determinants, lead to the proliferation of liberalization and privatization policy in the Organization for Economic Co-operation and Development (OECD) and European Union (EU) in the 1980s and especially up to the year 2000.

## 2 THEORETICAL CONTEXT, VARIABLES AND HYPOTHESIS GENERATION

The section narrows down and illuminates the most important theoretical concepts accompanying the study. The dependent variable liberalization and privatization, more exactly, the inclination of privatization policy to proliferate in the OECD and EU states, is explained, as well as its theoretical foundations, policy convergence and hypothesis of party difference, also referred to as partisan theory. From the explanation the theoretical framework and hypotheses are derived for examination.

### Liberalization and privatization

The wide-ranging research on privatization is not based on a uniform definition of the privatization concept. Three basic forms of privatization are distinguished in the scientific literature, namely the material, formal and functional variants. In the case of material privatization, public enterprises are fully or partially disposed of, resulting in the transfer of commonly owned assets to private ownership. On the other hand, formal privatization only changes the legal form of an enterprise. In this case the aim usually is to rid the particular enterprises from specific public or administrative ties. Lastly, the concept functional privatization means public duties are financed by private entities, or carried out by them.<sup>14</sup> This also includes, for instance, the

<sup>11</sup> Katharina Holzinger, Helge Jörgens and Christoph Knill, "Transfer, Diffusion und Konvergenz: Konzepte und Kausalmechanismen," *Politische Vierteljahresschrift*, 38 (2007), 11–35.

<sup>12</sup> Reimut Zohlhöfer and Herbert Obinger, "Selling off the 'Family Silver': The Politics of Privatization Proceeds in the EU and the OECD 1990–2000," *World Political Science Review*, 2, 1 (2006), 30–52.

<sup>13</sup> Volker Schneider and Frank M. Häge, "Europeanization and the retreat of the state," *Journal of European Public Policy*, 15, 1 (2008), 1–19.

<sup>14</sup> Reimut Zohlhöfer and Herbert Obinger, "Selling off the 'Family Silver': The Politics of Privatization Proceeds in the EU and the OECD 1990–2000," *World Political Science Review*, 2, 1 (2006), 30–52; Florian Mayer, *Vom Niedergang des unternehmerisch tätigen Staates: Privatisierungspolitik in Großbritannien, Frankreich, Italien und Deutschland* (Wiesbaden: VS-Verlag, 2006), 19–20.

concept public private partnership (PPP), which recently became popular.

According to Mayer,<sup>15</sup> material privatization, also called asset privatization, is focused on public enterprises, or other asset types (for example immovable property). Formal privatization, also called organization privatization, also concentrates on public enterprises, apart from other forms. The functional form of privatization may be described as service model, cooperation, private finance or mixed model. This investigation concentrates mostly on this variety of material privatization as dependent variable, since it can be quantified and measured very well as infrastructure sales or privatization proceeds, and secondly, it is also the most striking and most discussed form of privatization.

### Policy convergence

The ever stronger convergence of cultures, structures, institutions and policies (material politics, policies and so forth) has increasingly been scrutinized by the political and social sciences in recent years. Against this background it seems reasonable to view the international proliferation of liberalization and privatization policy as a case of policy convergence. Circumstances allow the citing and testing of general convergence mechanisms in attempts to explain the phenomenon. The study relies on existing research, which also helps to better fit the eventual results into the research context. It refers back to a well-motivated meta-analysis of convergence research, which reconstructs and demarcates the theoretical concepts and causal mechanisms of the research field). The following enumeration lists the causes of a policy convergence, with causal mechanisms and intervening factors that are both country- and policy-related.<sup>16</sup>

Causal mechanisms: independent problem-solving, peer pressure / conditionality, international harmonization, international competition, transnational communication and learning. Intervening factors: policy type / policy matter, policy dimension / level of definition (both policy-linked), geographic proximity, cultural likeness, institutional likeness, socio-economic likeness (all four country-linked).

How can the concept policy convergence be described more closely? Policy convergence is, for instance, defined as the „tendency of policies to grow more alike, in the form of increasing similarity of structures, processes, and performances“.<sup>17</sup> Generally, the growing interconnectivity of national state and community can be viewed as the basis of this policy convergence. Furthermore, for the concept of political convergence the result, that is, the extent to which national policies grow similar over time, stands in the foreground. In this regard, policy transfer and policy diffusion are processes that may, under specific circumstances, lead to policy convergence.<sup>18</sup> In this context, Benz, Lütz, Schimank and Simonis give an overview of the mechanisms, preconditions and results of dynamic processes in the development and proliferation of policies. The questions on policy

<sup>15</sup> Ibid., 19.

<sup>16</sup> Katharina Holzinger, Helge Jörgens and Christoph Knill, "Transfer, Diffusion und Konvergenz: Konzepte und Kausalmechanismen," *Politische Vierteljahresschrift*, 38 (2007), 25; Katharina Holzinger, Christoph Knill and Thomas Sommerer, "Environmental Policy Convergence? The Impact of International Harmonization, Transnational Communication and Regulatory Competition," *International Organization*, 62, 4 (2008), 553–587.

<sup>17</sup> Daniel W. Drezner, "Globalization and Policy Convergence," *International Studies Review*, 3, 1 (2001), 55.

<sup>18</sup> Katharina Holzinger, Helge Jörgens and Christoph Knill, "Transfer, Diffusion und Konvergenz: Konzepte und Kausalmechanismen," *Politische Vierteljahresschrift*, 38 (2007), 16.

proliferation and policy transfer concern themselves mainly with the structures of interdependency organization of individuals, corporates, collective actors, organizational interconnectivity and political systems. Here the analytical perspective is often to identify the pattern and problems of the way hierarchical and non-hierarchical coordination mechanisms cooperate, which can help to manage interdependence.<sup>19</sup>

For the investigation at hand, the five causal mechanisms most quoted in the literature can, firstly, be counted as convergence-promoting or -obstructing factors. These are discussed in more detail below. But, also the intervening factors, impacting the speed and extent of convergence processes, can be counted as such.<sup>20</sup> The five causal mechanisms to be analyzed here are „independent problem-solving“, „peer pressure / conditionality“, „international harmonization“, „international competition“, and lastly the issue of „transnational communication and learning“.

*Independent problem-solving:* International policy convergence can be viewed as the product of independent reactions of nation states to similar problem pressures.<sup>21</sup> That means, different sovereign states respond to problems and pressures from their environments in the same way, alone for the reason that the environmental pressures may be the same internationally. The mechanism is known from the natural science biology, where it is called analog development.<sup>22</sup>

Transferred to the liberalization and privatization policy discussed here, it can be argued that industrial states, which in the 1980s faced unsatisfactory growth performances and excessive state debt inherited from the Keynesian era, found refuge in the suggestions of supply-oriented economists and their ideas about privatization. This new economic approach promised new impulses for economic and employment growth will result from pushing back the tax and welfare state (privatization).<sup>23</sup> As far as the investigation is concerned, the growing debt burden of states and weak economic growth could have played a decisive role. Looking at the possible interdependencies, primarily two hypotheses can be generated or derived:

- a. The higher the level of new indebtedness of a state, the higher the level of privatization will be.
- b. The lower the economic growth of a state, the higher the level of privatization will be.

*Peer pressure and conditionality:* As explained, policy convergence can also result in other ways. Convergence can, for instance, be produced with a mechanism of pressure, in which case asymmetric power plays a major part. The dominating power can force its policies onto an underdog by offering any of a number of incentives or sanctions. That is, for instance, how the USA proceeded against Japan and Europe when the telecommunication sector was liberalized.<sup>24</sup> On the other hand, mandatory laws can also be deployed

<sup>19</sup> Arthur Benz, Susanne Lütz, Uwe Schimank and Georg Simonis (eds.), *Handbuch Governance: Theoretische Grundlagen und empirische Anwendungsfelder* (Wiesbaden: VS-Verlag, 2007).

<sup>20</sup> Katharina Holzinger, Helge Jörgens and Christoph Knill, „Transfer, Diffusion und Konvergenz: Konzepte und Kausalmechanismen,“ *Politische Vierteljahresschrift*, 38 (2007), 11–35.

<sup>21</sup> Ibid., 25.

<sup>22</sup> Volker Schneider and Mark Tenbücken, *Der Staat auf dem Rückzug: Die Privatisierung öffentlicher Infrastruktur* (Frankfurt a.M./New York: Campus, 2004).

<sup>23</sup> Reimut Zohlnhöfer and Herbert Obinger, „Selling off the ‘Family Silver’: The Politics of Privatization Proceeds in the EU and the OECD 1990–2000,“ *World Political Science Review*, 2, 1 (2006), 30–52.

<sup>24</sup> Volker Schneider and Mark Tenbücken, *Der Staat auf dem Rückzug: Die Privatisierung öffentlicher Infrastruktur* (Frankfurt a.M./New York: Campus, 2004).

in a community of states, or federation of countries, which move the member states to implement certain policies. This mechanism can currently be witnessed in the course of Europeanization in different policy areas. In the context of the EU, peer pressure to converge is certainly a mechanism that promoted the acceptance of liberalization trends and privatization policies.

To substantiate this, the paradigm shift to supply-side economics can be mentioned, which occurred in the EU at the end of the twentieth century. The shift found its way into the laws of the EU quickly and effectively, and influenced the political-economic behaviour of member states decisively.<sup>25</sup> The Single European Act of 1987 started the policy process off by liberalizing the internal market and thereby forcing the convergence of the economic policies of all EU states. Other legally relevant acts followed, such as the Maastricht Treaty (1992), Amsterdam (1997) and the Growth and Stability Pact (1997). With their legislation they all brought a trend reversal about in favour of a more slender state.

In this respect, the important aspect is the convergence criteria which accompanied the process, such as the uniform guidelines for fiscal policy aimed at braking new indebtedness (for EU members the upper limit was set at 3 percent of gross domestic product) (GDP). This legislation forced the entire EU zone to reduce its debt and, as a next step, to prevent new indebtedness. An effective instrument for meeting these goals was the privatization of state assets, which reduced debt and so kept the state budget slender. Consequently, it can be said the Monetary Union introduced an element of peer pressure for convergence on the field of economic policy, which lead to an Europe-wide privatization policy.<sup>26</sup> The following hypothesis can be derived from the facts as presented:

- c. Membership of the European Monetary Union leads to a higher level of privatization.

*International harmonization:* The convergence mechanism consider international or supranational law, which means a group of sovereign states commits itself legally to implement on the national level a collectively negotiated program. International harmonization can, but does not necessarily, have to lead to convergence, since international law is provided with substantial implementation leeway.<sup>27</sup>

The EU is a prime example of a well-advanced, deep regional integration. Therefore, it should also come to a stronger legislative harmonization in this community of states than between states of other organizations. This mechanism is narrowly related to the mentioned mechanism of peer pressure. Since legislative harmonization is only achieved where non-compliance of a legal rule is threatened with consequences, it can also be viewed as part of the peer pressure mechanism.

For the EU the binding legal accord does, therefore, not only mean peer pressure to formulate similar policies, but also a transmission belt of international harmonization, which can lead to policy convergence. This manifests itself especially where potential candidates for membership accept

<sup>25</sup> Anne Karrass, *Die EU und der Rückzug des Staates: Eine Genealogie der Neoliberalisierung der europäischen Integration* (Bielefeld: transcript Verlag, 2009), 228.

<sup>26</sup> Reimut Zohlhöfer and Herbert Obinger, "Selling off the 'Family Silver': The Politics of Privatization Proceeds in the EU and the OECD 1990–2000," *World Political Science Review*, 2, 1 (2006), 30–52.

<sup>27</sup> Katharina Holzinger, Helge Jörgens and Christoph Knill, "Transfer, Diffusion und Konvergenz: Konzepte und Kausalmechanismen," *Politische Vierteljahresschrift*, 38 (2007), 26.



policies of established members already beforehand, to align themselves with community states and so increase their chances of membership. It is, for instance, required of candidates for accession to the EU to have functioning market economies and the abilities to overtake the responsibilities and goals arising from candidature and membership.<sup>28</sup> With the pressure to implement specific policies, the EU can influence the transformation process in the states. To implement the steps demanded also requires efficient and well-structured political supervision.<sup>29</sup>

Regarding the privatization policy of the EU the following hypothesis can be derived:

- c.1 Membership and potential candidature of the EU leads to a higher level of privatization.

*International competition:* When the international economic system becomes more open a process which can generally be described as globalization, world-wide competition for resources breaks out, which may lead to reciprocal adaptation of national policies.<sup>30</sup> The term globalization describes the process whereby all areas of life are increasingly interlinked worldwide. The compacting of relationships occurs on a variety of levels, between individuals and entire communities, structures, institutions and states. One example is the competition raging between tax regimes around the globe, whereby states try to attract capital and company head offices with low taxation. In the complex network of determining and opposing causal mechanisms, this can force any number of states to prevent an exodus of their own economic actors by cutting their taxes.<sup>31</sup>

If this idea is transferred to liberalization and privatization policy, it can be said that individual states are virtually forced by international economic competition to lower taxes and interventions in the private economy to remain competitive. Almost inevitably this leads to increased pressure to privatize, which is most evident in open economies exposed to international competition.<sup>32</sup> The assumption leads to the following hypothesis:

- d. The more an economy is exposed to international competition, the higher the level of privatization tends to be.

Since the European Union's internal market liberalization makes international competition especially tough, a similar hypothesis can be formulated for the EU:

- c.2 Membership of the European economic region leads to a higher degree of privatization (compare hypothesis c. and c.1).

<sup>28</sup> Peter Haensch and Everhard Holtmann, "Die öffentliche Verwaltung der EU-Staaten," in *Die EU-Staaten im Vergleich: Strukturen, Prozesse, Politikinhalt*, eds. Oskar W. Gabriel and Sabine Kropp (Wiesbaden: VS-Verlag, 2008), 610–611.

<sup>29</sup> Frank Schimmelfennig and Ulrich Sedelmeier, "Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe," *Journal of European Public Policy*, 11, 4 (2004), 672.

<sup>30</sup> Katharina Holzinger, Helge Jörgens and Christoph Knill, "Transfer, Diffusion und Konvergenz: Konzepte und Kausalmechanismen," *Politische Vierteljahresschrift*, 38 (2007), 27.

<sup>31</sup> Philipp Genschel, "Globalization, Tax Competition, and the Welfare State," *Politics & Society*, 30, 2 (2002), 245–275; Philipp Genschel, "Globalization and the welfare state: A retrospective," *Journal of European Public Policy*, 11, 4 (2004), 613–636.

<sup>32</sup> Reimut Zöllnhöfer and Herbert Obinger, "Selling off the 'Family Silver': The Politics of Privatization Proceeds in the EU and the OECD 1990–2000," *World Political Science Review*, 2, 1 (2006), 30–52.

*Transnational communication and learning:* Apart from the mechanisms mentioned, there is a last determinant. This convergence mechanism is described as a soft factor in the convergence theory and describes the learning and assumption of policies via communication and the inter-state exchange of information (policy learning via the channels of international organizations and structures). In this context learning is understood to be a collective process, in the course of which forms of social cooperation and conflict resolution are learned and the required cognitive, relational and organizational skills are acquired. With collective processes the participants mobilize or create the necessary resources and skills for the configuration of innovations. The application of these innovations enables the entire system to control and re-orientate itself as if it were a human entity. As a rule, collective learning is initiated when a better skill starts to prove itself.<sup>33</sup>

This mechanism is, however, not discussed here. Admittedly, these soft factors are generally said to possess high explanatory power, but they are much more difficult to measure than the previously mentioned hard factors.<sup>34</sup> As prescribed by quantitative paradigms, only clearly quantifiable factors will be used in this investigation.

#### Intervening factor: hypothesis of party difference

Geographic proximity counts as intervening variable, cultural, institutional and socio-economic likeness as country-based intervening factors and policy type, policy matter, policy dimension and definition level as policy-based intervening factors. In the study the spotlight falls predominantly on the party affiliation of government, which is also seen as influencing the adoption of liberalization and privatization policy. In political science this is a highly-regarded approach to explaining. It is also called the hypothesis of party difference. In this connection it must, however, be remembered that (neo-) institutional theories sometimes relativize these factors. Scharpf poses the question: „Do institutions matter?“<sup>35</sup> To be provocative, it may well also be asked: „Do parties matter?“ In opposition to the hypothesis of party difference it could certainly be mentioned that basic, institutional framework conditions often have a decisive influence on processes and not the party affiliation of a government, also when one views party affiliation, party program and party decisions and so forth to be institutional determinants. Still, hypothesis of party difference is viewed as an important determinant when explaining how policies come about, and often features in scientific investigations.

Important is, for example, in actor-centred institutionalism, that the institutional conditions form the action preferences and that they are not predetermined exogenously. In this way the environment moulds the goals and the choice of agent for achieving the goal without determining them, because between institution and action lies the observation and interpretation of the actors. Here explanations of institutional cooperation, actor actions and policy results stand in the centre. Overall, the shaping power of institutional factors is decisive. These factors provide a stimulating and enabling, but also restricting, context for actions, thereby making them responsible for developments and results. The institutional framework thus

<sup>33</sup> Michel Crozier and Erhard Friedberg, *L'acteur et le système: Les contraintes de l'action collective* (Frankfurt a.M.: Hain, 1993).

<sup>34</sup> Katharina Holzinger, Helge Jörgens and Christoph Knill, "Transfer, Diffusion und Konvergenz: Konzepte und Kausalmechanismen," *Politische Vierteljahresschrift*, 38 (2007), 26.

<sup>35</sup> Fritz W. Scharpf, "Policy Failure and Institutional Reform: Why Should Form Follow Function?," *International Social Science Journal*, 108 (1986), 179–180.

moulds important aspects of every action situation without, however, including and determining all types of action-relevant factors. Such aspects come in view when the attention is turned from the institutional framework to the actors acting in them. So, the strategic impact of the actors on the institutional conditions and strategic and tactical autonomy in the action corridor is also important.<sup>36</sup>

The hypothesis of party differences is a theoretical approach which suggests the party which is governing is decisive for public policy formulation.<sup>37</sup> For supporters of the party-difference model the key determinants of public policy are the party-political composition of government and opposition. It certainly cannot be denied that bigger policy differences can be expected between left-leaning party governments on the one hand and liberal or secular-conservative market-oriented governments on the other hand.<sup>38</sup>

In fact, the relationship to state and market traditionally and often is the main reason for gaps between left-leaning and centrist parties. Governments built by centrist parties should, therefore, be more likely to privatize state assets, since they have more confidence in the market mechanism than their left-leaning opponents.<sup>39</sup> The goal of a lean state, as demanded by liberal politicians, can only be reached when duties are delegated to the private economy. In contrast, supporters of left-leaning parties have for a long time had no confidence in the private sector. So they nationalized key industries and used the public businesses as job cushions in times of economic recession.<sup>40</sup> The following hypothesis can be derived:

- e. States with left-leaning governments have lower privatization levels.

### Hypotheses

For the sake of clarity, all nomological if-then phrases are listed below. Here the hypotheses to do with EU membership (c, c.1, c.2) are combined into a single hypothesis (hypothesis c).

- a. The higher the level of new debt of a state, the higher its level of privatization.
- b. The lower the rate of growth of a state, the higher its level of privatization.

<sup>36</sup> James G. March and Johan P. Olsen, *Rediscovering Institutions: The Organizational Basis of Politics* (New York: The Free Press, 1989); Paul J. DiMaggio and Walter W. Powell, "Introduction," in *The New Institutionalism in Organization Analysis*, eds. Walter W. Powell and Paul J. DiMaggio (Chicago: University of Chicago Press, 1991), 1–38; Roger Friedland and Robert R. Alford, "Bringing Society Back In: Symbols, Practices, and Institutional Contradictions," in *The New Institutionalism in Organizational Analysis*, eds. Walter W. Powell and Paul J. DiMaggio (Chicago: University of Chicago Press, 1991), 232–263; Ronald L. Jepperson, "Institutions, institutional effects, and institutionalization," in *The New Institutionalism in Organizational Analysis*, eds. Walter W. Powell and Paul J. DiMaggio (Chicago: University of Chicago Press, 1991), 143–163; Renate Mayntz and Fritz W. Scharpf, "Der Ansatz des akteurszentrierten Institutionalismus," in *Gesellschaftliche Selbstregulierung und politische Steuerung*, eds. Renate Mayntz and Fritz W. Scharpf (Frankfurt a.M.: Campus, 1995), 39–72; Fritz W. Scharpf, *Interaktionsformen: Akteurszentrierter Institutionalismus in der Politikforschung* (Opladen: UTB, 2000); Markus Reiners, "Regierungsbezirke im Vergleich: Voraussetzungen umfassenden organisatorischen Wandels: Diverse Paradigmen, strukturelle Anpassungsleistungen und differierende Handlungsspektren in den deutschen Gliedstaaten," *Zeitschrift für Vergleichende Politikwissenschaft, Comparative Governance and Politics*, 4, 1 (2010), 123–125.

<sup>37</sup> Douglas Hibbs, "Political Parties and Macroeconomic Policy," *American Political Science Review*, 71, 4 (1977), 1467–1487.

<sup>38</sup> Manfred G. Schmidt, "Die sozialpolitischen Nachzüglerstaaten und die Theorien der vergleichenden Staatstätigkeitsforschung," in *Der gezügelte Wohlfahrtsstaat: Sozialpolitik in reichen Industrienationen*, eds. Herbert Obinger and Uwe Wagschal (Frankfurt a.M./New York: Campus, 2002a), 26–27.

<sup>39</sup> Klaus Beyme, *Parteien im Wandel: Von den Volksparteien zu den professionalisierten Wählerparteien* (Wiesbaden: VS-Verlag, 2000), 89.

<sup>40</sup> Reimut Zöllnhöfer and Herbert Obinger, "Selling off the 'Family Silver': The Politics of Privatization Proceeds in the EU and the OECD 1990–2000," *World Political Science Review*, 2, 1 (2006), 30–52.

- c. Membership of the EU leads to a higher level of privatization.
- d. The more an economy is exposed to international competition, the higher the level of privatization.
- e. States governed by left-leaning governments tend to have lower levels of privatization.

### 3 METHOD AND OPERATIONALIZATION

To test the five hypotheses, two studies are drawn upon which pose similar research questions, but do not view privatization policy from the perspective of policy convergence. On the one hand, there is the study „Selling off the family silver“ done by Zohlnhöfer and Obinger in 2006, and on the other hand, there is the study „Europeanization and the retreat of the state“ done by Schneider and Häge in 2008.<sup>41</sup> Both are quantitative y-centred studies, explaining as comprehensively as possible the extent of privatization with ordinary least squares (OLS) regression. Both studies measure many more independent variables than used in this test. These variables can, however, be ignored since they cannot be linked to the theory on which this study is based, and therefore do not add any value to the hypotheses test. Furthermore, as far as the operationalization and data collection of the two studies are concerned, they should be treated as independent studies. The following section briefly looks at the methods and operationalization of the two studies.

#### Study: Selling off the family silver

Here national privatization proceeds as a percentage of GDP in 20 OECD states between 1990 and 2000 is used as dependent variable. The percentage shares of cabinet seats occupied by left-leaning and middle-class parties between 1989 and 2000 are used as independent variable „party affiliation“. The data on new debt are sourced from the Economic Outlook Database of the OECD, and measure both the absolute level of debt and the size of the budget deficit. The number of times which the deficit of a state exceeded the 3-percent barrier (the convergence rule of the EU) between 1990 and 1995 are also included. The deviation from the OECD growth mean is calculated from the annual positive or negative economic growth rates. The trade ratio is calculated (imports plus exports as a percentage of GDP) and used as a measure of state involvement in international competition. The authors draw on two different models. Firstly, they measure all variables for the 20 OECD countries and 14 EU member states as a cross-sectional model with average values over all the years. Secondly, they work with a panel analysis for each of three different periods.

#### Study: Europeanization and the retreat of the state

Here the public infrastructure ratio, which measures the share of state-owned assets in the public infrastructure in 20 OECD countries from 1983 to 2000, is the dependent variable. The study uses the average change of this ratio over the entire period to determine the strength of privatization. The independent variables trade dependence and mobility of capital measure the influence of international competitive pressure emanating from hypothesis d. Here trade dependence is again calculated as the percentage share of trade (import plus export) in GDP and mobility of capital is linked to Quinn's Index

<sup>41</sup> Ibid.; Volker Schneider and Frank M. Häge, „Europeanization and the retreat of the state,“ *Journal of European Public Policy*, 15, 1 (2008).

of Deregulation (1997).<sup>42</sup> The measure for party-affiliation (government ideology) is the percentual share of cabinet seats held by left-leaning governments over the period and also the state debt. Here the highest level of state debt reached in the period is the measure. In addition, an EU dummy is integrated in the model, to capture the influence of EU membership.

#### 4 RESULTS

The following section summarizes the main results of the regression analyses in the two independent investigations mentioned above, then submits the results to an in-depth test, interprets them and comes to a conclusion.

##### Study: Selling off the family silver

Table 1 presents the results for the determinants of privatization proceeds in the fourteen EU countries. In a nutshell, it is evident privatization proceeds are higher in the cross-sectional model between 1990 and 2000 in the EU countries; the more often a government exceeded the 3 percent new debt border. In this model all other variables of interest to the study remain insignificant and most are therefore not mentioned (economic openness, foreign trade and economic growth). Especially interesting is that although party affiliation often has no significant influence, it at least still points in the theoretically expected direction, which supports the aforementioned limiting remarks made about neo-institutional theories. Furthermore, a conditional party effect can be assumed, which gets stronger, the more control variables are included in the model. The percentage share of cabinet seats held by middle-class parties only has a significant influence between 1998 and 2000. The panel analysis, estimated for the sake of validation, largely confirmed the findings.

Table 2 shows the results for the determinants of privatization proceeds in the OECD. These only comply with the findings of the EU when the outlier Australia is excluded. The Australian Labour Party chose a special direction insofar it embarked on a radically liberal path with the economy, in response to the major crisis in Australia at the start of the 1980s. Especially striking is the strong and significant party effects, that haven't yet emerged in the EU sample. For the OECD comparison that means governments of centrist parties are bigger privatizers than left-leaning governments. In contrast to the finding of the previous model, below-average economic performance is another strong influence on privatization proceeds. That means OECD countries with below-average economic performances between 1985 and 1995 privatized stronger than those with above-average performances. Apart from that result, the OECD comparison produced the same picture as the EU comparison. The positive correlation between high new indebtedness and privatization features yet again. All the remaining variables remain insignificant.

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<sup>42</sup> Dennis Quinn, „The correlates of change in international financial regulation,“ *American Political Science Review*, 91, 3 (1997), 531-551.



TABLE 1: DETERMINANTS OF PRIVATIZATION PROCEEDS IN 14 EU STATES

	Cross section (1990–2000)			Cross section (1998–2000)	Panel (1990–1994, 1995–1997, 1998–2000)	
	(1)	(2)	(3)	(4)	(5)	(6)
<b>Constant</b>	6.96 (1.80)	47.41*** (4.15)	35.82*** (5.46)	3.02*** (2.65)	1.84 (1.35)	2.99** (2.37)
<b>Size of public sector at start of research period</b>	0.32** [0.45] (2.32)	0.20 [0.28] (1.68)	0.21** [0.29] (3.29)	0.37*** [0.54] (4.79)	0.12* [0.26] (1.94)	0.11* [0.26] (1.93)
<b>Centrist parties' share of cabinet seats</b>	0.0009 [0.04] (0.22)		0.038 [0.17] (1.66)	0.037*** [0.47] (3.32)	0.0091 [0.13] (0.94)	
<b>Bicameralism and federalism</b>	-5.25** [-0.58] (2.98)		-4.36*** [-0.48] (4.91)	-5.06*** [0.73] (6.95)	-2.46*** [-0.52] (3.94)	-2.56*** [-0.55] (-4.16)
<b>New debt &gt; 3% of GDP</b>		0.41 [0.21] (1.36)	0.65** [0.34] (3.46)	0.38 [0.15] (1.28)	0.39** [0.31] (2.33)	0.37** [0.29] (2.30)
<b>Regulation density 1990</b>		-5.52*** [-0.86] (4.27)	-3.91*** [0.60] (5.10)			
<b>Strike intensity</b>		-0.006** [-0.50] (2.70)	-0.006*** [-0.52] (5.12)		-0.002** [-0.34] (2.56)	-0.0023** [-0.34] (-2.59)
<b>Left-leaning parties' share of cabinet seats</b>						-0.013 [-0.20] (-1.45)
<b>Dummy period (1995–1997)</b>					0.057 [0.01] (0.082)	0.12 [0.03] (0.17)
<b>Dummy period (1995–1997)</b>					2.15*** [0.50] (2.91)	2.24*** [0.52] (3.14)
<b>R<sup>2</sup></b>	0.66	0.80	0.96	0.89	0.54	0.56
<b>Adj. R<sup>2</sup></b>	0.56	0.71	0.92	0.89	0.44	0.46
<b>N</b>	14	14	14	14	39	39

Source: Zohlnhöfer and Obinger 2006; Privatization proceeds: OECD Financial Market Trends No. 82 2002; Size of the public sector: CEEP 2000; Shares of cabinet seats: Schmidt 2000a; New indebtedness: OECD Economic Outlook Database; Specifications: dependent variable - privatization proceeds as a percentage of GDP (period average); Non-standardized regression coefficients, standardized regression coefficients in angular brackets, t-values in brackets; \*p≤0.10, \*\*p≤0.05, \*\*\*p≤0.01; the t-value is based on the more restrictive OLS standard faults, while heterogeneity of variance robust standard faults are more permissive and support the hypotheses even stronger (White 1980); Average - shares of cabinet seats of parties = average 1989–2000; Strike intensity = average 1989–2000; New indebtedness = number of years between 1990–1995 in which the 3-percent rule was broken.

TABLE 2: DETERMINANTS OF PRIVATIZATION PROCEEDS IN 20 OECD COUNTRIES

	(7)	(8)	(9)	(10)	(11)	(12)
<b>Constant</b>	45.54** (2.60)	58.66*** (3.78)	51.33*** (3.60)	51.86*** (3.17)	77.55*** (4.69)	43.35*** (4.80)
<b>Size of the public sector 1990</b>	0.23 [0.36] (1.48)	0.09 [0.14] (0.70)	0.15 [0.23] (1.14)	0.15 [0.23] (1.01)		0.16* [0.24] (1.91)
<b>Regulation density 1990</b>	-6.11** (-0.73) (2.89)	-5.86*** [-0.70] (3.14)	-7.19*** [-0.86] (4.02)	-6.79*** [-0.81] (3.54)	-9.28*** [-1.12] (4.36)	-5.04*** [-0.60] (4.56)
<b>Centrist parties' share of cabinet seats (1989-2000)</b>	0.14** [0.67] (2.42)		0.16** [0.76] (3.02)	0.13** [0.65] (2.43)	0.11** [0.51] (2.63)	0.084** [0.39] (2.79)
<b>Bicameralism and federalism</b>	-4.90* [-0.51] (1.91)					-6.70*** [-0.69] (4.93)
<b>New debt &gt; 3% of GDP (1990-1995)</b>	0.78* [0.32] (1.78)	0.87* [0.36] (1.87)	1.09** [0.46] (2.50)	1.02* [0.43] (2.16)	0.65* [0.29] (1.80)	0.77*** [0.32] (3.24)
<b>Strike intensity (1989-2000)</b>	-0.008** [-0.46] (2.26)	-0.008** [-0.44] (2.17)	-0.009** [-0.49] (2.59)	-0.01** [-0.53] (2.53)	-0.012*** [-0.63] (3.02)	-0.008*** [-0.46] (4.39)
<b>Left-leaning parties' share of cabinet seats (1989-2000)</b>		-0.13** [-0.57] (2.30)				
<b>Index of institutional pluralism (Colomer index)</b>		-1.81** [-0.58] (2.23)	-1.86** [-0.59] (2.56)	-1.75** [-0.56] (2.22)	-0.98 [-0.34] (1.69)	
<b>Number of governing parties</b>			1.01 [0.24] (1.46)			
<b>Openness (1989-2000)</b>				-0.003 [-0.02] (0.095)		
<b>Economic growth 1985-1995 (Deviation from OECD mean)</b>					-2.08* [-0.39] (2.08)	
<b>Australian dummy</b>						18.57*** [0.81] (7.60)
<b>R<sup>2</sup></b>	0.66	0.66	0.74	0.69	0.70	0.92
<b>Adj. R<sup>2</sup></b>	0.50	0.51	0.58	0.51	0.57	0.87
<b>N</b>	20	20	20	20	20	20

Source: Zohlnhöfer and Obinger 2006; Privatization proceeds: OECD Financial Market Trends No. 82 2002; Size of the public sector: Gwartney and Lawson 2000; Regulation density: Gwartney and Lawson 2000; Shares of cabinet seats: Schmidt 2000a; Bicameralism / Federalism: Lijphart 1999; New indebtedness: OECD Economic Outlook Database; Strike intensity: Armingeon and Beyeler 2004; Colomer Index: Schmidt 2000b, 352; Number of government parties: Schmidt 2000a; Openness: Armingeon and Beyeler 2004; Economic growth: Maddison 2003; Specifications: dependent variable - privatization proceeds as a percentage of GDP average in period 1990–2000; Non-standardized regression coefficients, standardized regression coefficients in angular brackets, t-values in brackets; \*p≤0.10, \*\*p≤0.05, \*\*\*p≤0.01.

### Study: Europeanization and the retreat of the state

Table 3 shows the determinants for the privatization of infrastructure in 20 OECD countries. Also from this investigation it is evident that openness and international competitive pressure, as measured by the variables financial market deregulation and trade dependence, have no significant influence on infrastructure privatization. In model one, which includes all variables, party affiliation also does not seem to have a significant influence. However, this changes drastically in other models, with fewer variables in test. In the models measuring only government ideology and EU membership, party allegiance has an especially strong influence. Across all the models EU membership has the strongest influence. All in all, it can be diagnosed that infrastructure privatization is especially pronounced in EU countries and countries with middle-class governments. The explanatory power of these two variables is demonstrated very clearly by the R-square of 0.59, if the classical outlier Spain is excluded.

TABLE 3: THE DETERMINANTS OF INFRASTRUCTURE PRIVATIZATION

Dependent variable: privatization ( $\Delta$ 1983–2000 in %) Model	20 countries					19 countries (without Spain)	
	1	2	3	4	5	6	Jack-knife
Government ideology ( $\emptyset$ 1983–2000)	–0.369 (1.24)		–0.499* (1.59)	–0.427* (1.89)	–0.490* (2.02)	–0.662*** (3.51)	–0.661*** (3.02)
Corporatism ( $\emptyset$ 1983–2000)	–4.906 (0.74)		–6.211 (0.84)				
Institutional constraints (constant)	1.751 (0.27)		0.488 (0.08)				
Public debt (max 1983–1997)	–0.033 (0.19)		0.088 (0.48)				
EU membership (member before 1995)	25.148* (2.35)	30.596** (3.06)		26.311** (2.62)	24.571** (2.46)	18.297** (2.22)	17.625* (1.94)
Financial market deregulation ( $\Delta$ 1980–1997 absolute)	–1.931 (0.70)	–3.189 (1.25)		–1.306 (0.64)			
Trade dependence ( $\Delta$ 1983–2000 in %)	–0.042 (0.18)	0.062 (0.27)					
R-Square	0.49	0.35	0.31	0.46	0.45	0.59	
Adjusted R-Square	0.19	0.23	0.13	0.36	0.39	0.54	

Notes: Results of OLS regressions, absolute t-values in parentheses, t-values are based on heteroscedasticity robust variance estimates; \*significant on the 10 per cent level, \*\*significant on the 5 per cent level, \*\*\*significant on the 1 per cent level; two-sided tests; results for the constant term are omitted;  $\emptyset$  denotes an average,  $\Delta$  denotes a difference; model 6 shows the results for model 5 without the outlying case Spain; the last column presents jack-knife estimates of coefficients and corresponding t-statistics resulting from 19 re-estimations of model 6 where each re-estimation omits one of the countries from the estimation sample.

Source: Volker Schneider and Frank M. Häge, "Europeanization and the retreat of the state," *Journal of European Public Policy*, 15, 1 (2008), 9.

## 5 RESULTS OF THE CONVERGENCE STUDY, INTERPRETATION AND CONCLUSION

It was assumed that in most countries rising state debt since the 1980s set the liberalization and privatization trends in motion. The interesting question was, therefore, which mechanisms and factors, in fact, led to the proliferation of these measures in the OECD and EU, against the background of policy convergence.

The results can only be interpreted meaningfully, once the theoretical fundamentals have been presented. The fifth mechanism, namely transnational communication and learning, was not considered in this study, although the literature accords it a high explanatory power.<sup>43</sup> To test this mechanism in context with other mechanisms can be an interesting

<sup>43</sup> Katharina Holzinger, Helge Jörgens and Christoph Knill, "Transfer, Diffusion und Konvergenz: Konzepte und Kausalmechanismen," *Politische Vierteljahresschrift*, 38 (2007), 26.

foundation for further research. There are many indications that an even more meaningful explanatory model for the proliferation of privatization policy can be developed with this variable included.

Of the five hypotheses advanced, four could be confirmed. Only hypothesis four: „The more an economy is exposed to international competition, the higher the level of privatization“, could not be confirmed. In both studies the variables measuring economic openness and foreign trade remained insignificant. In Table 2 the openness variable even revealed an influence which contradicted the theory. So, the fourth convergence mechanism, international competition, was invalidated. It can and must by all means be emphasized that this did not impact the convergence of privatization policy in any way.

The two approaches to explaining, which emanate from the first convergence mechanism, namely independent problem-solving, were confirmed. In fact, privatization policy only spread to investigated countries with high new indebtedness and weak economic growth performances. From that it can be deduced that governments often only react with reforms after their problems have become very pressing. That political-administrative systems are designed to react rather than to have a strategic focus - and if they have a strategic focus, then only for a single legislative period - is nothing new. It can also be inferred that financial guidelines stimulate privatization measures, and tend to trigger a high motivation for bigger change, where socio-economic influences work in a sustainable way. Precarious budget deficits often offer a compelling reason for introducing a paradigm shift.<sup>44</sup>

The results of Schneider and Häge are very convincing.<sup>45</sup> They ascertain membership of the EU constitute an important factor for the spreading of privatization policy. Unfortunately, the study does not produce an unambiguous result for the convergence mechanisms, since EU membership plays a part in only three of the five causal mechanisms (peer pressure, international harmonization and international competition). Which influence was the strongest in the EU should, therefore, be tested in further studies, to determine the most influential causal mechanism. Since the results of the OECD comparison show clearly that international competition has no influence, it can be assumed that it also played only a subordinate role in the EU. That leaves peer pressure and international harmonization as the most important causal mechanisms for the proliferation of privatization policy in the EU. Both asserted strong influences. It can be said, with its supply-oriented and neo-liberal economic policy the EU has been a driving force in the field of privatization policy since the 1980s. Furthermore, almost all member states jumped on the bandwagon.

With the aforementioned reservations, the party allegiance of government was determined as an intervening variable in the theoretical part. The hypothesis is that centrist governments are more likely to implement privatization policy. As is evident from Table 1, this is not the case in the EU. From the other two tables it is, however, clear that party affiliation can occasionally be the most important determinant of privatization policy, at least in the sample of all the OECD states. How can this fundamental

<sup>44</sup> Markus Reiners, „Regierungsbezirke im Vergleich: Voraussetzungen umfassenden organisatorischen Wandels: Diverse Paradigmen, strukturelle Anpassungsleistungen und differierende Handlungsspektren in den deutschen Gliedstaaten,“ *Zeitschrift für Vergleichende Politikwissenschaft, Comparative Governance and Politics*, 4, 1 (2010), 108-109.

<sup>45</sup> Volker Schneider and Frank M. Häge, „Europeanization and the retreat of the state,“ *Journal of European Public Policy*, 15, 1 (2008), 1-19.

difference be explained? As already mentioned, membership of the EU has a very strong influence. The results are simply overwhelming, so that the pressure coming from EU membership neutralizes the determinant party allegiance. The peer pressure and harmonization tendencies of the legislation are so strong, that even left-leaning governments see no other possibility, than to push ahead with privatization. In this way, institutional criteria determine the action orientation of the actors. Thus, the environment effectively moulds the goals and the choice of means. So, the moulding power of institutional factors is decisive. Here a rather restrictive action context is deployed, which is decisive for the developments and results.<sup>46</sup> Furthermore, compliance with the convergence criteria (three percent new debt upper limit) plays a big role. In summary, it can be said that the party allegiance of government actually acts as intervening variable as long it does not get swamped, or crowded out by other causal mechanisms.

In this context it can also be explained why below-average economic growth correlates with strong privatization policies in the OECD comparison, but not in the EU comparison. It seems as if the pressure brought about by EU legislation is stronger than economic urgency, because privatization is even promoted by strong-growing states in the EU, while mostly states with weaker-performing economies pursue privatization policies in the OECD. So, the EU can almost be seen as an institutional corset limiting the states in their actions.

Certainly the most interesting conclusion of this study is that the EU was an engine for privatization between 1980 and 2000, which kept member states privatizing, despite strong economic growth and left-leaning governments. Interesting questions for further research are which causal mechanism has the biggest impact on member states of the EU and their policy-making. Both aforementioned questions could be researched meaningfully.

To summarize, it can be stated that the theoretical framework of policy convergence provides a suitable framework for identifying the most important causal mechanisms contributing to the proliferation of liberalization and privatization policies, or what can be called denationalization. The results point independent problem-solving out as the most critical causal mechanism. Thus, high new indebtedness and low economic growth promote sustainable privatization policy. Just as important is a power-asymmetrical coercion mechanism which, for instance, forces policies on other member states in the process of Europeanization with incentives and sanctions, and in this context establishes convergence criteria for fiscal policy to reduce debt and prevent new indebtedness. Furthermore, the related criteria international harmonization plays an important role in getting internationally agreed programs implemented on the national level, as can be observed very clearly in the run-up to the decision whether a country is accepted as an EU candidate. All in all, EU membership brings substantial pressure to bear on diverse liberalization and privatization trends. It can also be observed that the party affiliation of a government is subordinate to the pressure emanating from EU membership. The party deviation hypothesis

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<sup>46</sup> Renate Mayntz and Fritz W. Scharpf, "Der Ansatz des akteurszentrierten Institutionalismus," in *Gesellschaftliche Selbstregulierung und politische Steuerung*, eds. Renate Mayntz and Fritz W. Scharpf, (Frankfurt a.M.: Campus, 1995), 39–72; Fritz W. Scharpf, *Interaktionsformen: Akteurszentrierter Institutionalismus in der Politikforschung* (Opladen: UTB, 2000); Markus Reiners, "Regierungsbezirke im Vergleich: Voraussetzungen umfassenden organisatorischen Wandels: Diverse Paradigmen, strukturelle Anpassungsleistungen und differierende Handlungsspektren in den deutschen Gliedstaaten," *Zeitschrift für Vergleichende Politikwissenschaft, Comparative Governance and Politics*, 4, 1 (2010), 123–125.



only comes into play as intervening variable as long as it is not overpowered by other causal mechanisms, as was the case in the OECD comparison. Thus, the dominant factors in the result are high new indebtedness, low economic growth, and membership or the prospect of EU membership, in combination with the coercion and harmonization mechanisms.

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