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TRANSFORMATION OF MIGRATION POLICIES IN POLAND AND TURKEY IN THE EU ACCESSION PROCESS: EUROPEANIZED AND/OR SECURITIZED?

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Abstract

Poland and Turkey traditionally have been known as source countries for migration to the European countries until the recent decades. Recently, both countries have been gradually turning into transit and target countries. Due to the geopolitical location of the two countries for migration routes, Poland and Turkey will be the key “gatekeeper” countries in the Eastern borders of the EU in case of Turkey’s membership to the EU. In this process, as Poland has experienced, Turkey will be subject to Europeanization and related securitization of its migration policies in accordance with EU conditionality. However, as concluded from the Polish case, the pace of Europeanization and related securitization is likely to depend on the strength of EU membership perspective for Turkey. In this framework, this article explores Europeanization and EUization, in other words policy Europeanization, and securitization in the transformation of migration policies in Poland and Turkey in the accession process. In this regard, a comparative analysis is made regarding the process of adopting to the accession requirements on issues of visa policy, border controls, and “illegal” immigration.

Introduction¹

Political and economic developments throughout the world such as the end of the Cold War and increasing globalization have affected and increased the migration movements and created “new waves and patterns of migration.”² As in the other parts of the world, migration issues have increasingly taken a significant place on the political, economic and social agenda of the EU both in internal and international affairs. Since the end of communism, Poland has been a “trendsetter” among the Central and Eastern European countries on their way towards full membership to the

¹ An earlier version of this article was presented at the 4th CEU Graduate Conference in Social Sciences "Global Transformations: Integration, Transition and Development", Budapest, Hungary, June 20-22, 2008.

² Ahmet İçduygu, “Demographic Mobility and Turkey: Migration Experiences and Government Responses,” *Mediterranean Quarterly* 15 (4, 2004): 88.

EU.³ Poland formally applied for full membership in 1994, and accession negotiations on the Chapter 24 of Justice and Home Affairs covering migration issues started in 2000. After a challenging period of adopting the *acquis communautaire*, Poland entered in the EU in 2004. During this process, the country has been high on the agenda regarding migration issues such as “illegal” migration, visa policy, border controls and its legal migration potential. Poland, the largest new EU member state, and its migration policies are definitely of crucial importance to the amount of and trends in East-West migrations.⁴

On the other hand, another key-country for East-West migrations, Turkey, was granted candidacy status for EU membership during the Helsinki Summit in December 1999 and the accession negotiations started on 3 October 2005. Thus, as done widely in other areas, Turkey has been in the process of aligning its migration policies with that of the EU. However, Turkey has not completed the screening process yet on Chapter 24 titled Justice, Freedom and Security and thus negotiations on this chapter have not started. Actually, the size and challenging nature of the EU Acquis in this field under Chapter 24 makes the harmonization process a “complex” one⁵. Moreover, although Turkish accession has been debated in many political, economic and social areas, migration has been an area which has interactions in all these three dimensions. Thus, it can be expected that migration issues will be one of the most significant and debatable areas in the accession negotiations.

Poland and Turkey have experienced “diverse but converging paths to EU membership.”⁶ Although the duration and nature of the accession process of these two countries varies, they are comparable in terms of their size, challenging geopolitical features, and similar migration patterns. Thus, there are outstanding “commonalities” as well as evident differences between the cases of Poland and Turkey which shows the need and value for a comparative analysis in various dimensions.⁷ Turkey and Poland traditionally were countries of emigration, although in recent decades they have gradually turned into countries of immigration and transit.⁸ They are the main

³ Atilla Agh, *Emerging Democracies in East Central Europe and Balkans* (Cheltenham, UK: Edward Elgar, 1998), 28.

⁴ Anna Kicingier, *Between Polish Interests and the EU Influence - Polish Migration Policy Development 1989-2004*, Central European Forum For Migration Research Working Paper 9 (2005) [database online]; available at www.cefmr.pan.pl/docs/cefmr_wp_2005-09.pdf, 3.

⁵ Valsamis Mitsilegas, “The Implementation of the EU Acquis on Illegal Immigration by the Candidate Countries of Central and Eastern Europe: Challenges and Contradictions,” *Journal of Ethnic and Migration Studies* 28 (4, 2002): 678.

⁶ Ziya Öniş, “Diverse but Converging Paths to European Union Membership: Poland and Turkey in a Comparative Perspective,” *East European Politics and Societies* 18 (3, 2004): 481.

⁷ Öniş, “Diverse but Converging Paths to European Union Membership,” 482.

⁸ Krystyna Iglicka, *EU Membership Highlights Poland's Migration Challenges* (April 2005) [database online]; available at www.migrationinformation.org/Profiles/display.cfm?ID=302; Kemal Kirisci, *Turkey: A Transformation From Emigration to Immigration* (2003) [database online]; available at

countries that will form and “guard” the Eastern borders of the EU in the case of Turkey’s membership to the EU. Poland, as a country of transit, faced vast challenges in the process of Europeanization of its migration policies in the run up to accession. As Poland has experienced, Turkey also will be subject to the Europeanization and related securitization in the transformation of its migration policies in accordance with EU conditionality. In light of these developments, there is a necessity for a comparative analysis between Poland and Turkey for examining the recent experiences of Poland as the largest country in the recent enlargement of the EU and for providing lessons for Turkey which has been experiencing the same process.

Despite the significant and growing challenge and importance of the issue especially for Turkey, there is a gap in previous research on the topic. Although there is literature on migration policies of Poland⁹ and Turkey¹⁰ separately, there is not much emphasis on Europeanization and securitization in the accession process. Moreover, there is no comparative analysis of Poland and Turkey on this issue. Given these considerations, this article deals with the following research question: how do EU conditionality and strength of membership incentives affect Europeanization and securitization of migration policies in the cases of Poland and Turkey comparatively? Thus, the aim of this article is to analyze the impact of EU conditionality on Europeanization/EUization and related securitization of migration policies of these countries in a comparative perspective, the variable being the strength or weakness of

<http://migrationinformation.org/Profiles/display.cfm?ID=176>

⁹ Major literature in migration policies of Poland are; Igllicka, *EU Membership Highlights Poland’s Migration Challenges*; Kicinger, *Between Polish Interests*; Anna Kicinger and Agnieszka Weinar, eds. *State of the Art of the Migration Research in Poland*, IMISCOE Working Paper 19, November 2007.; Anna Kicinger, Agnieszka Weinar, and Agata Gorny, “Advanced yet Uneven: The Europeanization of Polish Immigration Policy,” in *The Europeanization of National Policies and Politics of Immigration*, ed. Thomas Faist and Andreas Ette (New York: Palgrave Macmillan, 2007); Iwona Piorko and Monika Sie Dhian Ho, *Integrating Poland in the Area of Freedom, Security and Justice* (06-10-2003) [database online]; available at

www.epc.eu/en/ce.asp?TYP=CE&LV=177&see=y&t=42&PG=CE/EN/detail&l=6&AI=329; Agnieszka Weinar, *The Polish Experiences of Visa Policy in the context of Securitization* (2006) [database online]; available at

http://www.libertysecurity.org/IMG/doc/The_Polish_experiences_of_visa_policy_in_the_context_of_securitization-1.doc

¹⁰ Major literature in migration policies of Turkey are; İçduygu, “Demographic Mobility and Turkey”; Ahmet İçduygu, “EU-ization Matters: Changes in Immigration and Asylum Practices in Turkey,” in *The Europeanization of National Policies and Politics of Immigration*, ed. Thomas Faist and Andreas Ette (New York: Palgrave Macmillan, 2007); Hasan Keser, “Justice and Home Affairs: Europeanization of Turkish Asylum and Immigration Policy in the Light of the Central and Eastern European Experience,” *Ankara Review of European Studies* 5 (3, Spring 2006); Kemal Kirisci, *Turkey: A Transformation From Emigration to Immigration* (2003) [database online]; available at

migrationinformation.org/Profiles/display.cfm?ID=176; Kemal Kirişçi, “Immigration and Asylum Issues in EU-Turkish Relations: Assessing EU’s Impact on Turkish Policy and Practice,” in *Migration and the Externalities of European Integration*, ed. Sandra Lavenex and Emek M. Uçarer (Oxford, Lexington Books, 2002); Jonas Widgren, “Turkey on the Threshold to the EU: Will Migration be a Complicating or Facilitating Factor?,” in *Migration and Labour in Europe*, ed. Emrehan Zeybekoğlu and Bo Johansson (Istanbul: Şefik Matbaası, 2003).

membership perspectives for both countries. To achieve this aim, the regular reports prepared by the European Commission for Poland and Turkey which presents the progress achieved for membership are analysed. Besides, the other official documents such as Accession Partnership Documents drawing a way for the candidate countries and National Programmes on the Adoption of the EU Acquis are examined which present the demands of the European Commission and the response of the governments to these demands.

Drawing on the cases of Poland as a country recently granted full membership and Turkey as a country still in the accession process, this article claims that the strength and weakness of membership incentives closely affect Europeanization/EUization of migration policies in the accession process. Although the transformation of migration policies in the way towards EU accession is a tough task, the strength of membership perspective helped the Polish policy makers to overcome the challenges of policy transformation. On the other hand, the relatively weaker membership perspective for Turkey has created a slower and insufficient response for the EU conditionality in migration issues. Thus, it can be stated that the key factor in the pace of Europeanization in migration issues is the strength of full membership incentives for the country. On the one hand, the same diversification between the two countries is observed in the securitization approach. Securitization approach can be suggested as an outstanding dimension of Europeanization in migration issues. Although migration policies are still depoliticized in Poland, a securitized approach has developed along with Europeanization. On the other hand, in the Turkish case, migration issues still are not politicized and securitized in contrast with the situation in Poland.

In this context, drawing on the theoretical framework of Europeanization/EUization process and securitization theory of Copenhagen School, the main topics handled in this article in a comparative perspective are harmonization with EU common visa policy; tightening of border controls; “combating ‘illegal’ immigration”; and the return of “illegal” immigrants. It should be noted that adaptation to EU asylum policies is not addressed in this article due to the comprehensiveness of the issues addressed.

Overview of Migration Trends in Poland and Turkey

Poland has been one of the most outstanding countries of emigration among the Central and Eastern European countries for more than a century. Presently, Poland is a remarkable example of a new member country that has been shifting from a country of emigration to a target and transit country since 1990s.¹¹ Geopolitical location of Poland at the eastern edge of the EU, and its accession perspective to the EU strengthened this tendency¹². In this process, Poland has been receiving increasing

¹¹ Iglicka, *EU Membership Highlights Poland's Migration Challenges*.

¹² Ibid.

numbers of immigrants especially from former Soviet Union countries and transit migrants aiming to reach the western countries.¹³ However, as Kicinger argues, numerically one can still identify Poland as a country of emigration since the number of emigration is still more than the number of immigration.¹⁴

Turkey, similar to Poland, has also been facing challenges as a country of transit and emigration. In fact, contrary to the general knowledge in the EU public, Turkey has been in the process of changing from a country of emigration to a transit and destination country in the recent decade.¹⁵ This transformation is similar to the developments in Poland on the way to EU membership. This trend would transform Turkey into a country of immigration after accession which would increase pull factors for immigration in Turkey. In light of these, as the main routes of the east-west migration passes over these two countries, Poland and Turkey will be the key “gatekeepers” of the Eastern borders of the EU in the case of Turkey’s membership to the EU.

Turkey, which is a country at the crossroads of three continents and has faced various types of migration during its history, has been affected by the changing environment and become one of the countries subject to the immigration debate in Europe. Thus, as asserted by scholars such as Widgren, migration has had and will keep on having an important place in the relations between Turkey and the EU.¹⁶

Transformation of Policies, Institutions and Discourses on Migration Issues in Poland and Turkey: Europeanized and/or Securitized?

Europeanization is identified as “the reorientation and reshaping of aspects of politics and governance in the domestic arena in ways that reflect the policies, practices and preferences of European level actors.”¹⁷ According to Radaelli, Europeanization includes the processes of “construction, diffusion and institutionalization of formal and informal rules, procedures, policy paradigms, styles, “ways of doing things” and shared beliefs and norms which are first defined and consolidated in the EU policy process and then incorporated in the logic of domestic (national and subnational) discourse, political structures and public policies.”¹⁸

¹³ Kicinger, Weinar, and Gorny, “Advanced yet Uneven,” 181.

¹⁴ Kicinger, *Between Polish Interests and the EU Influence*, 25.

¹⁵ Kirişçi, Turkey: A Transformation From Emigration to Immigration.

¹⁶ Widgren, “Turkey on the Threshold to the EU,” 47.

¹⁷ Ian Bache and Andrew Jordan, eds., *The Europeanization of British Politics?* (Basingstoke: Palgrave, 2006).

¹⁸ Claudio M Radaelli, *Europeanization: Solution or Problem?*, European Integration online Papers (EIoP) 8 (16, 2004) [database online]; available at <http://eiop.or.at/eiop/texte/2004-016a.htm>

Europeanization can be analysed in three dimensions, called internal, enlargement and external Europeanization as asserted by Diez.¹⁹ In this article, enlargement Europeanization is handled in the cases of Poland and Turkey. Enlargement Europeanisation consists of the “export” of the *acquis communautaire* and secondary legislation and norms of the EU²⁰. This type of Europeanization is mostly based on policy Europeanization or in other words EUization in which the influence and power of the EU is very apparent.²¹ As expressed by Featherstone, the relationship between the candidate countries and the EU is like that of “David and Goliath, albeit with the former having no effective sling in this case.”²² Thus, the “compulsory pathway” towards EU membership would create some challenges as well as opportunities for both sides.

When looking at immigration policy developments in Poland, it is seen that Poland’s migration policy was isolationist from 1945 to the end of Soviet Bloc in 1989.²³ Moreover, Poland “virtually” did not have an immigration policy in the late 1980s.²⁴ After 1997, the evolution of Polish migration policy has been mostly influenced and transformed by EU membership conditionality.²⁵ The unity and commitment of the “reforming” elite and the pro EU mobilization from below made the transformation and Europeanization of policies swifter in response to the EU conditionality on these matters.²⁶

In the beginning of negotiations of Poland in the Chapter 24 of Justice and Home Affairs in 2000, there existed a “policy Europeanization” which worked on the basis of EU conditionality. The main channels of Europeanization in these matters were screening meetings, accession negotiations and twinning projects which started with the beginning of accession negotiations in 1998. Thus, Polish policymakers learned Europeanized policymaking and “norm diffusion mechanisms.” Kicinger et.al. argue that the common beliefs, ideas and norms of Polish policymakers and the discourse on migration issues are well Europeanized compared to institutional Europeanization. On the other hand, they stress that institutional Europeanization and Europeanization of “ways of doing things” such as policymaking procedures is observed less in Poland. Lack of lobbies, NGOs and parties interested and participated in the transformation of

¹⁹ Thomas Diez, *Wishful Thinking or Longterm Strategy? Europeanization, EU Enlargement and Turkey*, Lecture delivered at Dokuz Eylul University, Izmir Turkey (April 2007).

²⁰ Simon J Bulmer and Claudio M. Radaelli, *The Europeanization of National Policy?*, Queen’s Papers on Europeanization (1, 2004).

²¹ Thomas Diez, Apostolos Agnantopoulos, and Alper Kaliber, “File: Turkey, Europeanization and Civil Society,” *South European Society & Politics* 10 (1, April 2005):1-2.

²² Kevin Featherstone, “Introduction: In the Name of ‘Europe’”, in *The Politics of Europeanization*, eds. Kevin Featherstone and Claudio M. Radaelli (Oxford: Oxford University Press, 2003).18

²³ Iglicka, *EU Membership Highlights Poland’s Migration Challenges*.

²⁴ Kicinger, Weinar, and Gorny, “Advanced yet Uneven,” 181.

²⁵ Kicinger, *Between Polish Interests and the EU Influence*, 28.

²⁶ Öniş, “Diverse but Converging Paths to European Union Membership,” 484.

migration policies are also asserted.²⁷ As an overall analysis, one can show Europeanization of migration policies as an outstanding example in the Europeanization process of Central and Eastern European countries in the accession process.²⁸ On the other hand, as a critical approach, Kicinger claims that the migration policy in Poland is “not ideal, not widely discussed, not extremely efficient, not very well articulated and presented and not comprehensive”, but still “defending Polish interests; not only merely reacting to EU integration requirements.”²⁹

In Turkey, migration issues started to take its part in official concerns in the recent years with the starting of negotiations in 2005. In contrast to the situation in Poland, as a fact in general affairs, “power elite” which include economic elites, political elites and the military could not sufficiently reveal the unity and commitment for swift reform process.³⁰ In this environment, it is argued that Turkey does not have comprehensive, broadly discussed sufficiently established migration policies.³¹ In Turkey which is still in the early stages of Europeanization process in migration issues, EUization has developed in these matters rather than Europeanization especially since 2001. Because, as the negotiations on the Chapter 24 of Justice, Freedom and Security has not started yet, there still exists a state of mind in Turkey that the Europeanization in migration issues will be a rather technical adoption of the Acquis on these matters.³² Thus, EUization is mostly expected in Turkey to happen on these matters which is an expectation in contrast to the developments in Poland. On the other hand, in the light of Polish experience, one can envisage that “strategic bargaining and sociopolitical learning” would increase their significance as Europeanization increases in these matters.³³

Along with Europeanization of migration policies, a securitization process developed in the policymaking on migration issues internally in the EU and in the enlargement process of the EU. Securitization theory was developed by Barry Buzan, Ole Waever and other collaborators who are also known as the leading members of “Copenhagen School.” The main suggestion of this theory is that “security is a speech act.”³⁴ Waever explains the idea as; “security is not of interest as a sign that refers to

²⁷ Kicinger, Weinar, and Gorny, “Advanced yet Uneven,” 181-183.

²⁸ Agnieszka Weinar, *Europeizacja polskiej polityki wobec cudzoziemców 1990-2003* (Europeanization of Polish Policy towards Foreigners 1990-2003) (Warszawa: Scholar, 2006) cited in Anna Kicinger and Agnieszka Weinar, eds., *State of the Art of the Migration Research in Poland*, IMISCOE Working Paper 19 (November 2007), 56.

²⁹ Kicinger, *Between Polish Interests and the EU Influence*, 28.

³⁰ Öniş, “Diverse but Converging Paths to European Union Membership,” 484.

³¹ İçduygu, “EU-ization Matters,” 210.

³² Keser, “Justice and Home Affairs,” 129.

³³ İçduygu, “EU-ization Matters,” 203.

³⁴ See Barry Buzan, Ole Waever, and Jaap De Wilde, *Security: A New Framework For Analysis*, (Colorado:Lynne Rienr Publishers, 1998).

something more real; the utterance itself is the act.”³⁵ Irregular migration, borders and integration of immigrants are some of the many fields in which securitization is applied. The term of “illegal” migration is used for the “undesired form of human mobility” and this issue is often treated as a crime. Thus, the need for “surveillance, detention, control and penalization” is emphasized and “legitimized”.³⁶ Huysmans handles securitization of migration as “the way migration is rendered problematic in the security field and not in the political and societal production of the field itself by a variety of agents and strategies.”³⁷

The securitization approach in supranational policymaking of the EU is also reflected on the preconditions requested from the candidate countries in the enlargement process which leads us to the debates on the creation of “fortress Europe.” Securitization discourse also took its place in Poland in the accession process. Europeanization in migration issues is mainly observed in the securitized dimensions of migration policies such as “illegal” migration and border security. This approach focused on the fear of mass migration from post Soviet countries in the early 1990s since Poland has a long border with these countries, and it had a visa free regime with these countries.³⁸ Moreover, in the negotiation process, the topics addressed in this article are included in the Justice and Home Affairs Chapter with other topics of judicial cooperation in criminal matters, police cooperation, fight against organized crime, trafficking in human beings, fight against terrorism, fight against drugs, protection of the euro against counterfeiting, which are mostly security issues. The handling of migration issues with these security issues is obvious indicators of securitization of migration issues in the enlargement process as seen in the Acquis in a parallel way. On the other hand, the twinning projects and negotiations on migration issues mostly focused on border security and “illegal” migration which reflects the security priorities of accession negotiations.³⁹

It is seen in the regular reports and Accession Partnership Documents that the issues such as “legal” migration, family reunification and integration issues have been hardly mentioned. Thus, this securitized nature of the EU policies and the requirements of the candidate countries in this field tend to create strong divisions like “insiders-outsiders”⁴⁰ by the exclusionary characteristics of the process which strengthens the arguments on “fortress Europe.”⁴¹

³⁵ Ole Waever, “Securitization and Desecuritisation,” in *On Security*, ed. Ronnie D. Lipschutz (New York: Columbia University Press, 1995). 55.

³⁶ Elspeth Guild, Sergio Carrera, and Thierry Balsacq, “The Changing Dynamics of Security in an Enlarged European Union,” *Challenge Research Paper* 12 (2008): 2.

³⁷ Jef Huysmans, “The European Union and the Securitization of Migration,” *Journal of Common Market Studies* 38 (5, December 2000): 758.

³⁸ Kicinger, Weinar, and Gorny, “Advanced yet Uneven,” 183-184.

³⁹ Kicinger, Weinar, and Gorny, “Advanced yet Uneven,” 184.

⁴⁰ Mitsilegas, “The Implementation of the EU Acquis,” 679.

⁴¹ Mehmet Uğur, *The European Union and Turkey: An Anchor/Credibility Dilemma* (England: Ashgate, 1999), 247.

On the other hand, the use of the terminology of “illegal” for identifying “irregular” migration in the regular reports both for Poland and Turkey in the same direction with the Acquis could also be thought as an indication of securitization. As King asserts, “the language of security needs to be deconstructed because of the emotiveness of the debate and its use of military terminologies of migrants constituting an ‘invading army’ laying siege to the ‘European fortress’.”⁴²

Regarding migration policy, the most important securitization discourse is the discourse of threat to the internal security of the state. Migration policymakers use specific securitized terms such as the “the burden”, “bogus asylum seeker”, “the boat is full” or “organized crime” to rationalize solutions for migration “problems.” This discourse creates the idea of immigration as a threat in the social and cultural sense as well as military sense which have been in use mainly since September 11 events.⁴³

Especially after the September 11 events, security discourse on migration issues has become dominant in the member states along with the securitizing discourses of publics, media and governmental structures.⁴⁴ For instance, in the UK, the speech of Home Secretary David Blunkett in 2002 presents the securitization of political discourse regarding migration movements.

I went to Calais and Frethun and to Belgium last week. I secured ... agreement... that will ensure that we have properly organized immigration *controls*. We *secured the fencing and security* at the depots. *Not because this is anti-asylum, but because it is anti the organized traffickers* who are *exploiting the exploitable* across the world; getting their families to pay for children as well as adults to be trafficked across Europe, to be dumped in Sangatte, and then to try and make their way in containers or under trains across to Britain. It is a *scandal* that needs to be *stopped* and we should be the first to say so.⁴⁵

In parallel with this tendency, the security discourse is also observed in many of the EU official documents. As an example, the discourse in the five-year Hague Programme which is one of the key documents regarding migration after Tampere Programme shows the securitized feature of migration policies as given below. As seen in the wording, there are many securitized words used with migration concept.

⁴² Russell King, “Southern Europe in the Changing Global Map of Migration,” in *Eldorado or Fortress? Migration in Southern Europe*, ed. Russell King, Gabriella Lazaridis, and Charalambos Tsardanidis (London: Macmillan, 2000). 205.

⁴³ Weinar, *The Polish Experiences of Visa Policy*, 2.

⁴⁴ Alessandra Buonfino, “Between Unity and Plurality: The Politicization and Securitization of the Discourse of Immigration in Europe,” *New Political Science* 26 (March 2004): 1.

⁴⁵ David Blunkett, October 2, 2002, Home Office website, cited in Buonfino, “Between Unity and Plurality,” 41.

The *security* of the European Union and its Member States has acquired a new *urgency*, especially in the light of the *terrorist attacks* in the United States on 11 September 2001 and in Madrid on 11 March 2004. The citizens of Europe rightly expect the European Union, while guaranteeing respect for fundamental freedoms and rights, to take a more effective, joint approach to cross-border *problems such as illegal migration*, trafficking in and smuggling of human beings, *terrorism and organised crime*, as well as the *prevention* thereof. Notably in the field of *security*, the coordination and coherence between the internal and the external dimension has been growing in importance and needs to continue to be vigorously pursued.⁴⁶

Furthermore, the Council of European Union also uses the securitarian discourse as follows emphasizing the importance of tightening of borders in order to “protect the citizens from threats against the society”.

The external borders of the EU play a key role in defining and protecting the area of freedom, security and justice that we all desire. *The control and surveillance of borders contribute to managing flows of persons entering and leaving that area and help protect our citizens from threats to their security*. Besides, they constitute a fundamental element in the *fight against illegal immigration*⁴⁷

In this setting, it is remarkable that, as a result of Europeanization, Polish policymakers also started to share the fears and perceptions on migration observed in the EU countries and adopt the securitization and “fortress Europe” approaches, although Poland is currently a country with insignificant immigration compared to EU15 countries.⁴⁸ As an indicator, the statement below in the draft national development plan is an example for migration-security nexus.

Under the NDP for 2007-2013, the ETC programmes are to address in particular the following:

.....

- A. the assurance of a widely understood security of the state, including the development of the migration policy,⁴⁹

However, migration policy in Poland and Turkey can still be identified as “depoliticized” in contrast with high politicization of the issue both in the media and political agenda in EU15 countries.⁵⁰

⁴⁶ “The Hague Programme: Strengthening Freedom, Security And Justice in the European Union,” *Official Journal of the European Union* (3.3.2005): C 53/1.

⁴⁷ Council of the European Union, 11 June 2002, cited in Buonfino, “Between Unity and Plurality,” 43.

⁴⁸ Kicinger, Weinar, and Gorny, “Advanced yet Uneven,” 191, 196.

⁴⁹ *Draft National Development Plan 2007-2013* [database online]; available at www.npr.gov.pl, 85.

⁵⁰ Kicinger, Weinar, and Gorny, “Advanced yet Uneven,” 192.

Challenges of Harmonization with EU Common Visa Policy

EU common visa policy is a significant tool to “remote control” immigration in the EU which is in line with the securitization approach of EU regarding migration. Any third country national who carries a risk for the security of any member state is not granted a Schengen visa although the measurement of a security threat is not clear and consistent. Furthermore, in order to grant a short-stay visa to a third country national, the person is checked from the visa black list and categorized if s/he is a citizen of a black list country. This approach is identified as a “police logic introduced into consulates”.⁵¹

Alignment with the EU visa regime is an essence for candidate countries for EU membership since candidate countries are expected to “accept the Schengen Acquis in full”⁵² before accession although they are not automatically included in the Schengen area and need to wait for the Council Decision after accession regarding the sufficiency of the “capacity and practice in terms of border control and surveillance.”⁵³

In the recent enlargement process, most of the candidate countries had difficulties and disturbances in the implementation of the EU visa regime as well as in other migration issues subject to alignment. The most outstanding example is Poland which has close cultural and trade ties with its eastern neighbors of Belarus, Moldova, Russia and particularly Ukraine.⁵⁴ For Poland, this issue has been one of the most challenging and politicized issues in the accession process.⁵⁵ Poland amended its Aliens Act in 2001 and 2003. In 2004, Poland ended the visa exemption for neighborhood countries such as Russia, Belarus, Ukraine, Georgia, Kazakhstan, Moldova, Mongolia, Azerbaijan. It is striking that Poland waited until its accession to put visa obligations on Belarus, Russia, and Ukraine.⁵⁶ The introduction of new visa

⁵¹ Didier Bigo and Elspeth Guild, “Policing at a Distance: Schengen Visa Policies,” in *Controlling Frontiers*, ed. Didier Bigo and Elspeth Guild (Ashgate: Hants/Burlington, 2005). 238-240 cited in Aliza Tekofsky, “Security in European Union External Border Law” (2006) [database online]; available at http://www.libertysecurity.org/IMG/pdf/State_of_the_Art.pdf, 11-12.

⁵² Monika Moßhammer, *Schengen Acquis General Aspects Implementation Mechanism*, Presented at Analytical Examination of the Acquis Chapter 24 - Justice, Freedom And Security Agenda for the Explanatory Screening (23 - 25.01.2006) [database online]; available at www.abgs.gov.tr/files/tarama/tarama_files/24/SC24EXP_Schengen%20acquis%20and%20impl.pdf

⁵³ European Commission, *Issues Arising from Turkey’s Membership Perspective* (Brussels, 6 October 2004) [database online]; available at ec.europa.eu/comm/enlargement/report_2004/pdf/issues_paper_en.pdf, 41.

⁵⁴ Iglicka, *EU Membership Highlights Poland’s Migration Challenges*; Sandra Lavenex, *Safe Third Countries-Extending the EU Asylum and Immigration Policies to Central and Eastern Europe* (Budapest: Central European University Press, 1999), 146.

⁵⁵ Mitsilegas, “The Implementation of the EU Acquis,” 678.

⁵⁶ European Commission, *Poland Scadplus* (2005) [database online]; available at <http://europa.eu/scadplus/leg/en/lvb/e22106.htm>, 5; European Commission, *Comprehensive Monitoring Report on Poland’s Preparations for Membership* (Brussels, 2003) [database online]; available at

regimes with these countries was expected to harm relations and historical ties with these countries as well as with Polish minorities living in these areas. For example, Ukrainian President Kuchma declared that “the EU is replacing the Iron Curtain with a paper one.”⁵⁷ Thus, this issue created a tension between the Europeanization of domestic politics and national interests of Poland regarding these neighboring countries.⁵⁸ However, visa issuing was legitimized by EU conditionality discourse rather than securitization.⁵⁹ In the end, Poland fulfilled both its national interests and EU membership obligations by issuing visas liberally.⁶⁰ Facilitation of visas to these countries mainly depends on family ties, business relations, and institutional collaboration such as academic and educational collaboration.⁶¹

In the Turkish case, in the Accession Partnership Document (APD) of 2003, Turkey was urged to align its “visa legislation and practice” with the EU legislation in the medium term.⁶² In line with this, the National Programme for the Adoption of the EU Acquis (NPAA) stated the priorities regarding visa issues in line with the APD.⁶³ However, as full alignment could not be achieved, European Commission has stated the same need in the priorities for medium term in the next APD⁶⁴.

In this framework, Turkey needs to align with positive and negative visa lists of the EU. Eight countries are to be included in the positive list. Although there is no problem raised by Turkey about aligning with the positive visa list, there seems to be disturbance about aligning with the negative visa list. Turkey has been making progress in alignment but there is still an inconsistency between EU’s negative visa list and that of Turkey since Turkey still has not started visa obligations for Azerbaijan, Mongolia, Uzbekistan, Tajikistan and Turkmenistan⁶⁵. As Kirisci argues, this process would direct Turkey to tighten its visa system which used to be liberal. It is evident that introducing a visa requirement to countries with which Turkey has had

ec.europa.eu/enlargement/archives/pdf/key_documents/2003/cmr_pl_final_en.pdf, 53.

⁵⁷ Piorko and Sie Dhian Ho, *Integrating Poland in the Area of Freedom, Security and Justice*.

⁵⁸ Peter Vermeersch, “EU Enlargement and Immigration Policy in Poland and Slovakia,” *Communist and Post-Communist Studies* 38 (2005): 84, 85.

⁵⁹ Weinar, *The Polish Experiences of Visa Policy*, 6.

⁶⁰ Kicinger, Weinar, and Gorny, “Advanced yet Uneven,” 189; Kicinger, *Between Polish Interests and the EU Influence*, 19.

⁶¹ Weinar, *The Polish Experiences of Visa Policy*, 7.

⁶² European Commission, *Accession Partnership with Turkey* (Brussels, 19 May 2003) [database online]; available at <http://www.deltur.cec.eu.int/english/e-g-countries-01.html>, 15).

⁶³ “National Programme for the Adoption of the Acquis”, *Official Gazette* 25178 (24 July 2003) [database online]; available at <http://www.abgs.gov.tr/NPAA/up.htm>, 666.

⁶⁴ European Commission, *Accession Partnership with Turkey* (Brussels, 23 January 2006) [database online]; available at www.abgs.gov.tr/dokumanlar/apd/Turkey_APD_2006.pdf, 15.

⁶⁵ European Commission, *Turkey 2007 Progress Report* (Brussels, 2007) [database online]; available at http://www.avrupa.info.tr/Files/File/ab_turkiye_reports/progress-reports-2007-en.pdf, 64; Joanna Apap, Sergio Carrera, and Kemal Kirisci, *Turkey in the European Area of Freedom, Security and Justice*, CEPS EU-Turkey Working Papers 3 (2004) [database online]; available at http://shop.ceps.be/downfree.php?item_id=1145, 29

close cultural ties or which are neighbors of Turkey, such as Turkish Republics like Azerbaijan, has created negative externalities for Turkey.⁶⁶

As emphasized by Kirişçi regarding the relations with Turkish Republics, there might arise “a net cultural, economic, and social loss, as it may resemble the Cold War days when the movement of people between Turkey and these countries was absolutely minimal.” This situation also increases the probability of irregular migration movement by making it more difficult for these people to come to Turkey.⁶⁷ Besides, the possible deterioration of business relations and tourism are the concerns on the Turkish side especially regarding countries such as Russia, Ukraine and Iran.⁶⁸ Apap *et.al.* points out the extent of the possible impact by stating that approximately 2,5 million people from these countries temporarily come to Turkey every year.⁶⁹

Regarding the alignment in this issue in the enlargement process, some criticisms were made, including that of the Reflection Group, stressing that these practices do not “take into account the specific needs and interests of the new members in maintaining their existing links with their eastern neighbors.”⁷⁰ After these tensions, flexibility in the visa system could be introduced at the borders of Poland and Ukraine which could be a possible solution to the problems faced by Turkey in this issue.⁷¹

Tightening of Borders: Expanding “Fortress Europe”?

Especially after the September 11 events and London bombings on 13 July 2005, security has been the main topic of the Area of Freedom, Security and Justice in the EU. In other words, the balance between freedom and security has been lost.⁷² In this environment, one of the key aims of border management in the EU is to establish a common migration policy that “manages comprehensively” and “fights against” “illegal” migration. The main securitized wordings used frequently in the EU documents are “illegal immigration”, “fight against” and “combat”. These expressions add “suspicion and criminality” to the people and concepts they are used for.⁷³

As stated by the European Commission, Poland achieved important progress in border management despite financial difficulties. In 2001, Poland adopted a Schengen Action Plan to implement the border management strategy. The significant

⁶⁶ Kirişçi, *Turkey: A Transformation from Emigration to Immigration*.

⁶⁷ Kirişçi, *Turkey: A Transformation from Emigration to Immigration*.

⁶⁸ Apap, Carrera, and Kirisci, *Turkey in the European Area of Freedom, Security and Justice*, 41.

⁶⁹ Apap, Carrera, and Kirisci, *Turkey in the European Area of Freedom, Security and Justice*, 43.

⁷⁰ Reflection Group, *Final Report of the Reflection Group on the Long-term Implications of EU Enlargement: The Nature of the New Border* (Fiesole: European University Institute, 1999), 56.

⁷¹ Apap, Carrera, and Kirisci, *Turkey in the European Area of Freedom, Security and Justice*, 37-41.

⁷² Thierry Balzacq and Sergio Carrera, *Terrorism and Data Retention: Persistent Predicaments in EU's Policy* (14 October 2005) [database online]; available at http://www.ceps.be/Article.php?article_id=486

⁷³ Guild, Carrera, and Balsacq, “The Changing Dynamics of Security,” 3.

inadequacies faced in this process have been a lack of trained staff, administrative capacity and infrastructure at the borders.⁷⁴ Therefore, in the accession process, alignment with the JHA legislation created considerable financial, socioeconomic and political challenges for Poland. Because of the high implementation costs of JHA legislation in particular in the area of border management, financial challenges occurred. Poland's accession made the EU border with Russia, Belarus and Ukraine. Thus, these borders became one of the longest borders of the EU "guarded" by a single member state (over 1150 km.). This required a high amount of investment in staff training and border control infrastructure. An estimated 18,000 officers were required for the Polish border management system. A total cost of around 257 million Euro is estimated for border control for three years.⁷⁵

As can be derived from the experiences of Poland, border management would be one of the challenging issues for Turkey since it would be responsible for "keeping the gates" in the southeastern borders of the EU after accession. Border management has been one of the main priorities under the cooperation on justice and home affairs between Turkey and the EU due to the length and challenging characteristics of Turkish borders, and the fact that Turkish accession would make Syria, Iran, Iraq and the Caucasus the EU's new neighbors.⁷⁶ Turkey also has long sea borders in the Aegean, Mediterranean, and Black Seas. The Aegean Sea in particular is hard to control, known as the main gate of transit for migrants trying to pass through Greece to other EU countries.⁷⁷

In the 2007 Regular Report on Turkey, it is stressed that limited progress has been made regarding external borders and Schengen. It is pointed out that the National Action Plan on integrated border management "needs to be equipped with a more precise roadmap containing concrete actions, targets, realistic deadlines, responsible authorities and an estimated budget for each of the actions requiring important investment." Besides, it is emphasized that there have been no considerable steps taken on the establishment of the new "border law enforcement authority." Moreover, the need to "training and professionalism of border staff, risk analysis capacity and modernization of checking equipment" is pointed out.⁷⁸

⁷⁴ European Commission, *Poland Scadplus*; European Commission, *2002 Regular Report On Poland's Progress Towards Accession* (Brussels, 2002) [database online]; available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/pl_en.pdf, 114, 115; European Commission, *Comprehensive Monitoring Report on Poland's Preparations for Membership*, 53.

⁷⁵ Piorko and Sie Dhian Ho, *Integrating Poland in the Area of Freedom, Security and Justice*.

⁷⁶ Apap, Carrera, and Kirisci, *Turkey in the European Area of Freedom, Security and Justice*, 1.

⁷⁷ Kemal Kirişçi, "Border Management and EU-Turkish Relations: Convergence or Deadlock," *CARIM Research Report 03* (2007): 19-20.

⁷⁸ European Commission, *Turkey 2007 Progress Report*, 64.

The need to establish a “nonmilitary professional corps of border guards” has been a significant topic raised under border management.⁷⁹ However, this issue creates a few challenges as observed in the case of accession states. First, border management was the main problem for accession states in the harmonization process due to the inadequacy of communication and coordination between different bodies responsible for borders.⁸⁰ The need to create a nonmilitary border guard, in other words “demilitarization of borders”, raises the issue of lack of sufficient resources of the candidate country which is one of the issues raised regarding the economic cost of the required effective border management for candidate countries⁸¹. Although these borders would be EU borders after accession, the essential funds have to be supplied by candidate countries prior to accession as expressed by European Commission for Turkish case.⁸² Thus, as was experienced in the previous enlargement, Turkey will have to overcome these tough problems in order to become a member which would be easier with the support of EU assistance. Although this is a massive task for Turkey, this issue can be facilitated to contribute “mutual confidence-building” for the whole accession process.⁸³

The debates on the evolution of EU migration policies and the EU conditionality mechanism for candidate countries regarding border management seem to show enlargement as a process towards enlarging “fortress Europe.” As Lavenex argues, making the border controls tighter does not necessarily lead to a decrease in irregular migration as expected. Moreover, tighter border controls create a threat for liberal freedoms and fundamental human rights for the people affected by this process.⁸⁴

“Combating ‘Illegal’ Immigration” and Return of “Illegal” Immigrants

“Illegal” migration has been on the agenda throughout the world since it is a multidimensional phenomenon having socioeconomic, political, geographical and humanitarian aspects. Thus, it has also been one of the outstanding issues for the internal agenda of the EU and for Turkey-EU and Poland-EU relations due to the fact that Turkey and Poland have increasingly become transit countries. In the accession process, both countries have been expected by the EU to take serious measures against “illegal” migration.

⁷⁹ European Commission, *2005 Regular Report on Turkey's Progress towards Accession* (Brussels, 9 November 2005) [database online]; available at http://ec.europa.eu/comm/enlargement/report_2005/pdf/package/sec_1426_final_en_progress_report_tr.pdf, 111; European Commission, *Issues Arising from Turkey's Membership Perspective*, 42.

⁸⁰ Mitsilegas, “The Implementation of the EU Acquis,” 675.

⁸¹ Mitsilegas, “The Implementation of the EU Acquis,” 675.

⁸² European Commission, *Issues Arising from Turkey's Membership Perspective*, 42.

⁸³ Kirişçi, “Border Management and EU-Turkish Relations,” 22.

⁸⁴ Sandra Lavenex, “Migration and the EU's New Eastern Border: Between Realism and Liberalism,” *Journal of European Public Policy* 8 (1, 2001): 38-39.

Together with its geopolitical setting as a bridge between countries of origin and destination for migration movements, Turkey also has a large informal economy which increases the pull factors for “illegal” migrants.⁸⁵ As a result of serious measures, Turkey could shift transit migration routes to southern routes of Iraq-Syria-Lebanon and northern routes of Iran-Caucasus-Ukraine especially in the years of 2000 and 2001. Furthermore, boat migration from African countries has shifted to Italy and France and routes from Sri Lanka and India started using the Suez Canal to arrive at Greek Cyprus, Greece and Italy.⁸⁶ Between 1995 and November 2006, 622,611 “illegal” migrants were captured.⁸⁷

It should be noted that there has been an increasing trend of “illegal” migration targeting EU countries in all routes, especially the Mediterranean route as seen in the recurrent news of sinking vessels full of migrants. These trends could be interpreted as a result of restrictive migration policies of the EU leading to “fortress Europe” which seems to be “vicious circle” triggering each other. Thus, this shows that securitization alone cannot provide a solution to the “problem.”

Although Turkey could take measures against “illegal” migration and it would be appreciated by EU authorities, the other tough issue in this matter remains the signing of readmission agreements by Turkey. In the Polish case, in 1991 and 1993, a readmission agreement with Schengen group of countries and with Germany was signed respectively in order to get a visa free entry to these countries.⁸⁸ Polish policymakers believed in irrevocable feature of the transformation and therefore accepted further agreements as a precondition for the credibility of Poland in the international arena.⁸⁹

In the Turkish case, achieving a compromise on this issue seems to be complicated and sensitive due to the importance attached to it by the EU, and the concerns expressed by Turkish officials that the EU does not take into consideration efforts made by the Turkish government to prevent irregular migration while being left to its own resources, in contrast to the attitude towards accession states in the recent enlargement.⁹⁰

⁸⁵ Kirişçi, “Border Management and EU-Turkish Relations,” 23.

⁸⁶ *Turkish National Action Plan for the Adoption of the EU Acquis in the Field of Asylum and Migration* (15 March 2005) [database online]; available at <http://www.egm.gov.tr/duyurular/english.zip>, 26.

⁸⁷ Kirişçi, “Border Management and EU-Turkish Relations,” 23.

⁸⁸ Vermeersch, “EU Enlargement and Immigration Policy in Poland and Slovakia,” 81; Kicinger, Weinar, and Gorny, “Advanced yet Uneven,” 184-185.

⁸⁹ Weinar, *The Polish Experiences of Visa Policy*, 2.

⁹⁰ Apap, Carrera, and Kirisci, *Turkey in the European Area of Freedom, Security and Justice*, 23.

The EU officially requested Turkey to sign a readmission agreement in March 2003⁹¹. In response to this requirement, in the NPAA, the Turkish government presented actions that would be taken in advance:

Turkey will initiate, in the medium term, the practices on readmission and expulsion in addition to the alignment with the EU legislation required in the preaccession process. The Turkish Government will continue to sign readmission agreements with neighboring countries and countries of origin covering Turkish citizens, persons illegally transiting through Turkey, and foreign nationals caught during illegal residence in Turkey. In this vein, Turkey aims to conclude readmission agreements first with its Eastern neighboring countries, and then with countries East of these countries and finally, with its Western neighboring countries.⁹²

Table 1: Progress Regarding the Signing of Readmission Agreements by Turkey

<i>Signed</i>	Syria: 10 October 2001 (ratified in Greece: 8 November 2001 Kyrgyzstan: 6 May 2003 Romania: 16 January 2004 Ukraine: 7 June 2005
<i>Negotiations continuing</i>	Bulgaria, Russian Federation, Uzbekistan, Belarus, Hungary, Macedonia, Lebanon, Egypt, Libya, Iran, Pakistan, Sri Lanka, Jordan
<i>No response to Turkey's offer</i>	Algeria, Bangladesh, China, Ethiopia, Georgia, India, Israel, Kazakhstan, Mongolia, Morocco, Nigeria, Pakistan, Sri Lanka, Sudan, Tunisia.

Sources: “National Programme for the Adoption of the Acquis,” 666; *Turkish National Action Plan for the Adoption of the EU Acquis in the Field of Asylum and Migration*, 28- 29; European Commission, *2005 Regular Report on Turkey's Progress towards Accession*, 111; Apap, Carrera, and Kirisci, *Turkey in the European Area of Freedom, Security and Justice*, 50; European Commission, *Turkey 2007 Progress Report*, 63.

As indicated in table 1, Turkey is waiting for replies from many countries and in many countries negotiations are under way. It should be noted that these facts show

⁹¹ European Commission, *2003 Regular Report on Turkey's Progress towards Accession* (Brussels, 5 November 2003) [database online]; available at http://ec.europa.eu/comm/enlargement/report_2003/pdf/rr_tk_final.pdf, 117.

⁹² “National Programme for the Adoption of the Acquis,” *Official Gazette* 25178 (24 July 2003) [database online]; available at <http://www.abgs.gov.tr/NPAA/up.htm>, 666.

how candidate countries have difficulties in convincing third countries to sign these agreements.

Due to the concerns of Turkish officials that Turkey would be a “dumping ground for unwanted immigrants by the EU”⁹³, the compromise to sign the agreement could be reached in March 2004⁹⁴, and negotiations started in May 2005⁹⁵. This process is in line with Turkey’s policy that firstly sending countries, then transit countries and finally target countries would be addressed⁹⁶. Thus, with this strategy, Turkey seems to aim to ensure the proper functioning of the agreements as a whole which are defined by Phuong as “chains of removals.”⁹⁷ Since the last round of negotiations on a readmission agreement between Turkey and the EC in December 2006, there has been no real progress on this topic.⁹⁸

Conclusion

Drawing on the cases of Poland and Turkey, this article claims that the strengths and weaknesses of membership incentives closely affect Europeanization/EUization and thus securitization of migration policies in the accession process. In Poland, “policy Europeanization” or EUization took place in the beginning of accession negotiations on the alignment with EU common visa policy, strengthening border controls and “combating “illegal” immigration” as a result of tough EU conditionality. It could be stated that this process transformed from EUization into “Europeanization” as the negotiations proceeded and accession took place. Although the transformation of migration policies for EU accession is a tough task, strong support and pro-EU mobilization from below helped Polish policy makers to overcome the challenges of policy transformation that affected relations with its neighbors and created economic and institutional burdens. In this process, a carrot-stick approach is observed in which full membership served as an attractive and motivating carrot. Thus, full membership incentive was very prominent in the evolution of migration policies in Poland.

On the other hand, the relatively weaker membership perspective for Turkey has created a slower and insufficient response from the Turkish side for the EU conditionality in migration issues. As negotiations have not started on these issues, no

⁹³ Apap, Carrera, and Kirisci, *Turkey in the European Area of Freedom, Security and Justice*, 22.

⁹⁴ European Commission, *2004 Regular Report on Turkey’s Progress Towards Accession* (Brussels, 6 October 2004) [database online]; available at ec.europa.eu/comm/enlargement/report_2004/pdf/tr_tr_2004_en.pdf, 139.

⁹⁵ European Commission, *2005 Regular Report on Turkey’s Progress towards Accession*, 111.

⁹⁶ *Turkish National Action Plan for the Adoption of the EU Acquis in the Field of Asylum and Migration* (15 March 2005) [database online]; available at www.egm.gov.tr/duyurular/english.zip, 28.

⁹⁷ Catherine Phuong, “Enlarging ‘Fortress Europe’: EU Accession, Asylum, And Immigration in Candidate Countries,” *International and Comparative Law Quarterly* 52 (2003): 654.

⁹⁸ European Commission, *Turkey 2007 Progress Report*, 63.

concrete Europeanization and no real transformation has been achieved. Like Poland, Turkey will become one of the key “gatekeepers” of the EU after accession, and Turkey is likely to face challenges similar to the ones Poland faced with regard to migration issues. However, since the carrot of full membership is still not as strong as it was for Poland, it is hard to expect that the Turkish Europeanization process in this area would be similar to Poland's.

On the other hand, the same diversification between the two countries is observed in the securitization approach. The securitization approach can be suggested as an outstanding dimension of Europeanization in migration issues. Although migration policies are still depoliticized in Poland, securitization has developed along with Europeanization. In the Turkish case, migration issues are still not politicized and securitized in contrast to the situation in Poland.

Thus, it can be concluded that the key factor in the pace of Europeanization in migration issues is the strength of full membership perspective for the country. As Europeanization in toughest matters is directly associated with full membership in TNAPAM, the pace of policy transfer is likely to depend on the strength of EU membership perspective. As stated by Kirisci, Europeanization of migration policies is not a “smooth” process, and “ups and downs” will be encountered during the transformation of these policies.⁹⁹

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⁹⁹ İçduygu, “EU-ization Matters,” 2003.

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UNDERSTANDING THE SOCIAL MOVEMENT IN CONTEMPORARY CHINA

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Abstract

This article is a political and cultural analysis of social movements in contemporary Chinese society. The aim of social movement does not mean to challenge the dominated social order, and it mainly happens on the local level and does not go up to higher levels. The main research question of this article is: “why do social movements of protests in contemporary China mainly stay on the local level, do not rise up to higher levels, and what kinds of mechanisms or traditions make it so?” The hypothesis is that there are three factors affecting the level of social movement in China, each of them playing a different role in dealing with the issue. The Letters and Visits system which is a unique institutional design in Chinese politics creating the channel for the protesters to convey their grievance, and it appears as an important supplement to the rule of law. The second one is that the Chinese conception of civil society does not offer citizens the idea to organize themselves against the authoritarian system. On the other hand, the role of NGOs in China is different from that in Western society. They do not organize social movements of protest. I mainly analyze the hypothesis using secondary literature and combining the first material and information from fieldwork in a Chinese county. This article makes a contribution to understanding the cases of social movements and institutional design in preventing and handling the public protests in China.

Introduction¹

During Chinese modern history, social movements have been launched by different political groups for hundreds of years. During the New Democratic Revolution, the Chinese Communist Party (CCP) legitimated itself to represent the benefits of the workers and peasants in China, and eventually won the “People’s War”, to establish the People’s Republic of China (PRC) in 1949. Today's China, after nearly 30 years

¹ I appreciate the helps and comments from Professor Jesus de Miguel at University of Barcelona, Professor Chun Lin at the London School of Economics, Professor James Hsiung at New York University, and Professor Yan Sun at CUNY Graduate Center.

of economic reform starting in 1978, has become the third largest economy in the world after the United States and Japan. On the other hand, the cleavage between the rich and poor has become considerable². There are all kinds of social movements of protests happening in contemporary Chinese society. The government announced that the “collective incidents” had grown from ten thousand per year in 1993 to more than sixty thousand per year in 2003, and numbers of participants had increased from 0.73 million to 3.07 million³.

However, most protests happened on the local level and are organized by the peasants and workers. Scholars notice that most of the social movements in contemporary China can be concluded as the rightful resistance and mainly happened on local levels⁴. This means that in contemporary China, those who participate in social movements of protests are not the elites, but the people from the grassroots. Their purposes do not directly refer to institutional change or democratization, but claim their rights to be protected by the government and their voices heard by the society.

The situation of social movements of protest in contemporary Chinese society leads to my research questions of why social movements of protest in contemporary China mainly exist on the local level, do not rise up to higher levels, while protests have grown both in size and number. Furthermore, what kinds of mechanisms or traditions make it so is another puzzle. My hypothesis is that the Letters and Visits System in China helps build up the channel between the protesters and the government, so that the protesters can convey their grievances and claim their rights through this system. Most social contradictions can be relieved in local levels through this mechanism. Culture also accounts for the difference of social movements in China compared to the West. The conception of civil society in China is different from the West, in which the citizens trust the “sage rule” more than the political mechanism. Although NGOs have been promoted by the Chinese government since the economic reform, they are essentially different from the traditions and functions of NGOs in Western societies. On one hand, the NGOs do not get much development in rural areas and less developed regions. On the other hand, most of the NGOs in China have all kinds of connections with the government. They are funded by the government or depend on the government to fulfill their own interests. Besides theoretical analysis, I also use a case study of Hantai County, where I did fieldwork and interviewed both protesters and local officials to test my hypothesis. Finally I consider the implications of this social movement in China, and conclude that the social movements in China have not yet been beyond government control because both the mechanism and the tradition can relieve the pressures and help to tame the protests growing to higher levels. I am also aware of the argument that the state and the Party play crucial roles in controlling

² A research by the Finance Ministry has concluded that China's Gini Coefficient standing at 0.46 in 2005, which was well above the internationally recognized warning line of 0.4.

³ See “http://news.xinhuanet.com/mrdx/2005-07/31/content_3290161.htm”

⁴ O'Brien, Kevin and Lianjiang Li, *Rightful Resistance in Rural China* (New York: Cambridge University Press, 2006).

consistent social movements of protest in China, as in many other non-liberal democratic countries. However, this article focuses on the distinctive mechanism in China, and makes a contribution to the existing social movement literatures.

Defining Social movement in China

The classical theories of social movement in Europe can be briefly summed up as follows: Alain Touraine defines social movement as something it has to challenge the overall system of meaning which sets dominant rules in a given society. This concept is very similar to Antonio Gramsci's concept that a social movement is the emergence of a class alliance, forging its own identity among highly differentiated beliefs and senses of community into a challenge, first to the allocations of state funds, eventually to the state and the social order it maintains as a whole. The literature on this topic is extensive, but the level of analysis and theoretical basis is limited. Since the topic is also dynamic, the analysis cannot be based on a single previous study. The fieldwork and case studies are very important in understanding and analyzing the essence and change of the social movement in contemporary China. For all the previous studies about this topic, lack of trustful data is one of the main obstacles in analysis. Historically, Chinese people have long traditions of mass protests against high local taxes, and local rebellions were familiar phenomena in Chinese history. In contemporary China, certainly, there are many public protests in local areas, but rarely at the national level to challenge the dominant social order. Kevin O'Brien and Lianjiang Li in their book *Rightful Resistance in Rural China* write: "After the research, there is no social movement existing in rural China, the form of protest is mainly focused on rightful issues". Elizabeth Perry concludes that there are three forms of social movements in contemporary China: the economically motivated actions by hard-pressed workers and farmers, the nationalistically inspired demonstrations by patriotic students, and the religiously rooted resistance by zealous believers.

The Chinese government particularly showed utmost tolerance to protests by farmers and workers. From the imperial past to the present, economic protests demanding a secure livelihood were generally seen as a signal of local distress that should be dealt with by primary-level officials⁵. As the Chinese government emphasized the motto "build the Party for the public, govern for the people", it is the responsibility of the Party to provide welfare for the whole people. Historically, the CCP mainly depended on the workers and peasants in the civil war that defeated the Kuomintang and ushered in the Communist regime in 1949. The mass line in the Maoist era emphasized that the party and the mass should have close connections and the Party should always serve the masses and lean on them. After Deng's economic reform that

⁵ Perry, Elizabeth J. *Challenging the mandate of Heaven: social protest and state power in China* (New York: M.E. Sharpe, 2002)

began in 1978, the workers and peasants gradually lost their previous eminent status in society. Their economic rights were adversely affected by rapid urbanization, privatization and reform of the ownership system. The problem of “peasantry, agriculture and rural areas” became one of the major socioeconomic woes in China in the 1990s. Economically, the cleavage between urban and rural areas has widened continually. The problem surrounding the issue of land remains the main problem in Chinese rural areas. Much of the protest was confined to the countryside, where many issues were connected to land confiscation. Politically, as the village-level elections gave villagers the right to choose their own leaders, the relationship between the party and the elected village leaders became a new problem. Most of the township officials complained that the leaders in villages did not care about the government. On the other hand, the existing household registration system upset the equal rights between urban and rural dwellers. There is in effect little social security (such as health insurance) in the countryside, but until now, the peasants did not protest about it. Most of the collective protests in rural areas were related to the usage of land, and local government official corruption in the trading of land. In addition, in the process of rapid urbanization, many peasants lost their land, and the compensations for that were much lower than what they expected. In general, the protests in rural areas were mostly focused on economic, rather than political, issues.

In urban areas, the social protests largely clustered around the issues of employment and social security of the working class. Different from the peasants, the urban working class was the leading force in the newly established People’s Republic. Before the ownership reform in 1990s, the working class was seen to hold the “steel bowl”, which meant that the government and factories paid in full for their salaries, health care, affordable housing and schooling. Nowadays the working class is the group that has lost its eminent status and become the class that needs to be protected. Most of them used to work in state-owned enterprises (SOEs). After the privatization and modernization of those enterprises or factories, large numbers of workers lost their jobs, or were laid-off. They received very little pensions from the factories they had worked for or the government. Although the emergence and prosperity of private enterprises and the rapid economic growth have absorbed labor forces from the former SOEs, many workers who are elderly, lacking in special skills and with little education cannot find jobs. As such, they do not benefit from the country’s economic growth. Compared to the peasant protests, the worker class protests were well-organized, and in most cases they used Maoist slogans in raising demands on the government⁶. However, their petitions mostly were focused on the questions of unemployment, social security, education, health care, economic and social issues, rather than questions of political change. David Kelly points out that the political goals of movements among the legions of laid-off workers and related groups are often relatively modest. Most protests also made references to inequities in laws and

⁶ Such as: “We do not want democracy, but the right to work”; “Workers are Masters of the State”; “Yes to Socialism, No to Capitalism”; “Long Live the Working Class”.

regulations, but sought economic rights and fulfillment of basic needs of life rather than political rights. Rather than using violence, protesters asserted their claims largely through approved channels and questioned the regime's policies and legitimating myths. The party's task now focuses on "building up the party for the public, achieving the good governance for the people". Solving these social problems has been listed on the agenda of the government. In fulfilling Hu Jintao's call for a "harmonious society", the crucial factor is to deal with the relationship between the different classes, and understanding their situations and claims is essential.

In contemporary China, in short, the main social movements of protest are geared toward economic and social issues and the relationship with the rule of law. The participants mainly come from the peasant and working classes. Economic rights, rather than political rights are what they are really concerned with. Under this situation, social movements in contemporary China can be defined as acts of rightful resistance⁷. As the old Chinese saying goes, "one can get heard by the world if reason is on one's side," most protesters believe they have the right reasons to protest against unreasonable regulations and improper behaviors of governmental officials. The existing laws and the ideas of rule of law that are advocated by the Party and the government itself create an existing channel for the individuals or groups disputing the authority for their own ends. In contemporary China, the central government makes laws and rules to regulate the behaviors of the local governments. But in local areas, the laws and regulations are not fully implemented by local officials. Corruption, local interests and abuse of political power by local officials invade the economic and political lawful rights of the people. Under this situation, people who have been deprived lawful rights often band together to demand their rights through collective action. Their claims rarely exceed their original appeals, to become demands on political issues. That is a pattern characteristic of this genre of protests. Furthermore, this resistance usually starts in rural areas, and ends after their claims get response by the government. It rarely becomes violent.

The Letters and Visits System

The Letters and Visits system is a unique political system in China, and acts as the main mechanism to appease the protests from rising up to higher levels. It is a political participatory institution in which the normal citizens can convey their grievances to the government, but also it is a supplement to the rule of law, which means almsgiving for the citizens using the political power by the government. There are Bureaus of Letters and Visits in all level governments in China existing as governmental departments. Its main responsibilities are to handle the issues of

⁷ Kevin O'Brien and Lianjiang Li on their book *Rightful Resistance in Rural China* (2006) gives the following definition: "Rightful resistance is a form of popular contention that operates near the boundary of authorized channels...In particular rightful resistance entails the innovative use of laws, policies, and other officially promoted values to defy disloyal political and economic elites."

complaints and grievances from people in that region⁸. The main functions of the Letters and Visits system are to report the important comments, suggestions and problems that are expressed in letters and visits to the authorities. When complains have been received by the government, the bureau should give response and proposed solutions in 90 days⁹. When the investigation is finished, the Bureau of Letters and Visits gives the final solution to the complainers.

Since stability has become the priority in Chinese *Realpolitik*, the quality of dealing with the citizen's complains has become one of the most important benchmarks in measuring the achievements of the local politicians. Usually higher level governments rank lower level governments by the number of citizen's complains. Local officials hardly get promoted if many collective actions, such as public protests, resistance or acts of violence have happened in that region. Because of that, all governments have paid considerable attention to the work of the Letters and Visits. The complainers now have learned to use this system to pressure the local government into solving their problems. Protest through the Letters and Visits System has become the priority for them, and also can be seen as a 'shortcut' for the complainers in dealing with all kinds of complaints, including issues concerning lawsuits. Usually in a society where the law is sound and respected, using lawsuits should be superior to other means of solving complaints and other legal issues. But in contemporary Chinese society, the law still needs to be improved and the concept of rule of law has not yet prevailed in the society. The Letters and Visits system is *de facto* a system that emphasizes using executive powers to solve the socioeconomic problems for the complainers. Although the *Regulation on Letters and Visits* regulates that the citizens can only complain for those issues harming their lawful and legal rights, in reality, this system deals with all kinds of issues that the citizens complain¹⁰. Hence, the system of Letters and Visits has created a channel for the complainers to face the governmental officials directly to convey their grievance and request for results.

Although the number of complaints increases each year, mainly complaints are still kept at local levels. Partly because the design of this system is that "the issues should be solved by the related level government"¹¹, the complainers rarely really go to the central government to complain for the local issues. Most of them use this to pressure local officials. Lacking organization and support even from the surrounding people,

⁸ Based on the Regulation on Letters and Visits, the citizens have their rights to use all kinds of forms, such as sending letters, or going to the bureau to ask for the help.

⁹ When the related departments receive the policy suggestions from the Bureau of Letters and Visits, they also need to investigate on those complains. At the same time, the Bureau of Letters and Visits has the right to supervise the progress of these related departments.

¹⁰ Many complainers use the collective ways to complain. Facing this situation, most of the governmental officials would like to negotiate with the complainers, and promise to solve the problems for them. In most cases, the more pressure given to the government by the complainers, the easier and faster their problems get solved.

¹¹ It means that usually the higher level governments do not handle the issues directly for the complainers coming from lower regions.

the complainers who went to the central government account for very small percentages of the total complainers. Due to China's size, compared to the well-organized complaints at the local level, the complainers who go to the central level are mainly individual behaviors. The mainstream of social protests in contemporary China are organized by and participated in by the peasants and working class, which means in general they belong to the weakened class and need more protection from the law and government. However, in a society which lacks sound NGOs and laws, direct almsgivings from the government becomes the best choice for them. The Letters and Visits system appears as the channel for the grassroots to get attention from the government. It also creates a channel for the Party and government perceiving the contradictions in contemporary Chinese society to adjust the public policies and achieve good governance.

The Letters and Visits system has been seen as a very important mechanism to deal with the relationship between the government and the citizens. The leadership in all levels of government understands that the stability is crucial for governance and their own promotion as well. Also after more than 25 years of economic developments, the State obtains more ways to handle the issues of social protests. It allows officials to use alternative way to solve the social problem¹². The Letters and Visits System can be explained as the most important non-violent mechanism in dealing with social protest in contemporary Chinese society. It helps to keep most of the large and rightful resistance in local areas. However, there is no denying that this system is not perfect, and when this system fails to handle protestors' complaints, or protestors are not satisfied with the results, more conflicts will happen and sometimes evolve into collective riots in local areas¹³.

Ideas of Civil Society in China

The concept of civil society is originally a European idea and a product of the prosperous capitalist economy and the emergence of the modern state. Justice, rights and legal procedure play crucial roles in building European civil society. It has also been defined in numerous ways. Although there is no direct linkage between democracy and civil society based on these definitions¹⁴, the society with more social organizations and a greater public sphere is more likely to be democratic.

¹² Such as giving compensation to the protesters, this happening in many rich regions in China.

¹³ Especially on the township level, the government is not well-organized in dealing with the issues of public protest. Conflicts are more likely to happen there.

¹⁴ Jude Howell defines civil society referring to an intermediary sphere of voluntary association, comprising a range of organizations, groups, networks, and associational forms, that is situated between the state and the family, and that has some degree of autonomy from the state. Stephan Feuchtwang defines "civil society is whatever exists as a public field of mass and personal communication and organization against tyranny, then and now, and in the politics of modern states a bulwark against the overweening use of the state's executive powers."

Randy Kluver considers that the rise of urban culture and the more complex and centralized social organization that urban life requires made China one of the oldest continuous civil societies in human history. Michael Frolic offers the idea of ‘State-Led Civil Society’ in contemporary China. State-led civil society refers to the organizations and groups designed by the state for coordinating state activity in a specific sector of the economy or the society. But here there are certain distinctions between the Chinese and the European traditions of civil society. In Europe, the political development created a fundamental antagonism between state and society, public and private, opposing civil society to the government during the forming of civil society. However, in China, it is the Confucian ideal of *Ren* (People), which is responsiveness to others and to things in a sense of the world as a balanceable set of relations, not an association of individuals. Trust in the government is based on trusting the leadership’s morality and capacity, rather than trust the in law in the European tradition.

Chinese citizens expect government to act according to their ideas of a leadership’s responsibility and can condemn them for not doing so. The Chinese concept of civil society is that the people expect the government to pay its responsibility to serve the people, and achieve good governance through “moral leadership”, rather than expect good mechanisms to make them participate in policy making. When many protesters go to the government to convey their grievances, they expect to get help from ‘good leaders’, and expect the leaders to solve the problem for them, rather than to seek help from the legal process¹⁵. In Chinese society, the central government is seen to represent the interest of the people, but local government is not sometimes¹⁶. The Chinese tradition of expecting “good leadership” and “sage rule” certainly plays an important role in building up the Chinese style of civil society. A sage within and a monarch facing outward (*neisheng waiwang*) is the best model of leadership in Chinese history. Sage leadership should be the one that is used by the people, not one that uses the people. All the good leaders in Chinese history first set the standard of being a moral example, and then a capable leader. Expecting more from the “Sage Rule” than through the good mechanism is the main characteristic of Chinese civil society.

Culture does play a crucial role in understanding the different ideas of civil society between the West and China. Now, the Chinese government gives the idea of “harmonious society”, originally from Confucianism, which also focuses on the moral building up of governance and leadership. However, from the perspective of the state, the principle of individual autonomy could be challengeable to the authority, which

¹⁵ The citizens have the ideas and feelings that the higher the government level is the more efficient and just it will be.

¹⁶ Based on the studies by Jianrong Yu, he interviewed more than 6 hundred protesters who went to the Central Bureau of Letters and Visits. 40% of these people believed that the central government would solve the problems for them. But they do not trust the local government at all. The township government is the government closest to the people and has lowest amount of trust from the protesters in the survey.

can not be tolerated by this political culture. Also, the predominant agrarian social composition in rural areas, social segmentation, and mass poverty are all serious impediments to the possible emergence of a civil society, especially in rural areas. So in contemporary China, most of the protests end after the requisitions is fulfilled. The purpose of protests is not for the welfare of the public, but for their own benefits. A lack of the idea of citizenship makes the protesters less focused on the influencing society, or influencing others to organize against the system and government. Protesters give more tolerance to the system itself than to the corrupted officials. When the requisitions are fulfilled by the government, rarely will they maintain the protest to fight for other people who are suffering from the same problems. When people's welfare is strongly linked and dependent on the state, whether or not the state can achieve good governance is crucial for people's livelihood, a western style of civil society can not really be built inn this social condition. To the peasants and working class, improving their lives through help and guidance from the government is the more practical goal.

The Role of NGOs in China

There is still a theoretical debate about the relationship between NGOs and social movements¹⁷. Marlies Glasius points out that NGO, together with social movements, have successfully filled the vacuum left behind by the death of ideology and the failure of traditional political parties. When most people feel disappointed about the political parties, they may choose to join NGOs, and through the social movements led by NGOs, they achieve fulfillment from the process. On the other hand, NGOs would be more successful if they organized more social movements and achieved the goals which people could not achieve through the political parties. This is the incentive for NGOs to organize social movements and participate actively.

Qin Hui¹⁸ considers NGOs in China to be different from those in most countries. They are a product of market reform and the corresponding process of social transformation. He defines NGOs also as the third sector, which means the 'volunteer sector'. Based on his definition of NGOs in China, they are more or less the organizations which provide public good through voluntary mechanism. It is a substitute to 'government failure' and 'market failure'. His analysis about NGOs in China is mainly focused on their economic functions in which they help prevent and eliminate the influence of the 'state failure'. NGOs are not a main body in Chinese society, but appear as the byproduct of a developing market economy, and as he described "a component of global corporations revolution". Western Scholars hold the similar opinion that the emergences of Chinese NGOs are followed by the market

¹⁷ Most NGOs exist in the form of institutionalized organizations. They are attacked by the social protester movements for lacking passion to organize, being only a routine bureaucracy.

¹⁸ Qin Hui, a professor at Tsinghua University, China. See his paper *NGO in China: the third sector in the globalization process and social transformation*.

reform of the 1980s. When the state realized that it had limited capacity to deal with all kinds of economic and political issues, it started to downsize and transfer many of its economic and social functions to a variety of social groups. Most NGOs in China will fall under the category of either government-organized NGOs or quasi-official NGOs. In fact, the name NGO in Chinese is not exactly the same as in the West. Usually it is called “social organization” or “mass organization”.

However, it is true that the Party-State has withdrawn from direct administrative controls from many public sectors, while retaining powerful means of selective intervention¹⁹. On the other hand, some kinds of NGOs are also welcomed by the state, especially by local governments. In ways that state agencies cannot serve the poor, the disabled and the diseased. Many international NGOs are also encouraged by the Chinese government. Those INGOs serve as bridges from the government to the people. They also convey information from the people to the government. State leaders clearly believe that social groups, if carefully monitored, can provide a politically safe conduit for people’s voices to be heard. So finally the Chinese government can use social groups in an attempt to gain legitimacy and money internationally.

Although the Chinese government encourages the development of NGOs in China, every NGO needs to have a supervisory body in a state agency, its so-called *guakao danwei*. On the other hand, many NGOs are started by Party-State agencies²⁰, many local level associations used to be governmental departments and have been transferred to social organizations. But they still have interrelations with the government. Some of their leaders are also appointed by the local government, and some of them are funded by the government. Those with close government links often play a more direct role in policy formulations than their counterparts²¹. In order to get its economic benefit, most NGOs prefer to negotiate with the states and maintain a good relationship with the government.

The NGOs in China have won the opportunities to develop both in size and in number, and also to gain increasing autonomy. Most the NGOs based on their own interests would not like to organize the social protest, since they have associations with the government and their economic benefits also prohibit them from protesting against the government²². The space for NGOs to participate in politics is limited, and without the protection from the appropriate law, becoming involved with protest

¹⁹ Jude Howell points out that the Party-State mainly withdrew from two sectors. One is in favor of regulation by reference to laws and judicial procedures. The other is by reliance on professionalism, like lawyers, academic, doctors and managers.

²⁰ Such as the educational charity for schools in poor areas - Operation Hope, is started by the national China Youth League.

²¹ Saich, Tony, “Negotiating the State: The Development of Social Organizations in China,” *The China Quarterly*, No. 161 (2000): 124-141.

²² Jude Howell points out that NGO in Chinese society do not organize social movement or protest.

against the government will only damage their own survival and development. The cost for them choosing to cooperate with the government is much lower than going against the government to achieve their own goals. In general, NGOs in contemporary China lack the socioeconomic conditions and incentives to organize social movement against the government.

Case studies-the social protest in Hantai County

In 2006, I did fieldwork and an internship in Hantai County government, Shanxi Province, China, for 3 months. I went to the Bureau of Letters and Visits working as an intern there. During the daily work, I contacted and interviewed many people who went to the bureau to convey their grievances and seek for help from the government. I also talked to government officials inside the Bureau of Letters and Visits. Through working inside the bureau, I got many first-hand materials concerning the protests. Through 3-month's fieldwork, I realized that most resistance in local areas can be concluded as 'rightful resistance', which related to the social and economic transition in contemporary Chinese society. I perceived the contradiction between modern rule of law and traditional rule by men from both sides - the people and the officials. I confirmed my hypothesis that the social protests were not towards a democratic goal, and resistance mainly stayed in the local area. The government may not predict them or prevent them from happening, but it still controls social protest in that region.

I concluded the contents of protests in Hantai as following: (1) Protest against inadequate compensation from citizens and peasants who have lost their land and housing. (2) Protest from laid-off and unemployed workers who used to work in the state-owned enterprises against privatization. (3) Protest against inadequate pensions and social security by retired workers and former army and governmental officials. (4) Protest against corrupted officials and power abuse in villages by peasants. (5) Protest and complaint about the socioeconomic issues concerning the legal process. Summing up these specific issues, protests and complaints in Hantai County can be classified as the following types: Land problems, unemployment in SOEs, social security, corruption and judicial issues. Those problems not only existed in Hantai, but also in contemporary Chinese society. Through understanding and analyzing their problems, scholars and government can understand better the social contradictions. And the Letters and Visits System helps the government create a channel to hear voices from the bottom-up, the grassroots in China.

In the case of Hantai, the protests and complaints from the citizens do put a lot of pressure on the government and the officials. Under the large background of building up a "harmonious society", stability is the top concern of the Party. The local government mainly used the Letters and Visits as the channel to communicate with

protesters²³. A large percentage of the complainers who went to the government were really seeking for help from the government, and hoped the government could solve their living problems. Also in most cases, the government gave a subsidy to the complainers if they used more extreme actions²⁴. Although the Letters and Visits System can not solve all problems about which the protesters complained, in contemporary Chinese society, where both the rule of law and the spirit of respecting the law are not totally established, this ‘rule by men’ system becomes an important supplement to the law. During my research in the county, police forces were rarely used to solve the problem, and most protesters came peacefully as well.

During the interview and talk with the complainers, most of them had said the similar words, “I (we) want to see the head of the government”. They more or less had the simple belief that once they saw the leaders, especially the good leaders, they would help to solve the problem for them immediately. The higher-ranking the leader was, the fast their problems could be solved. Sporadic violent protests and resistance in most of the cases were a means of showing the determination of the protesters, and put more pressure on the leaders of the local government. But once their goals had been achieved, the movement would also be terminated automatically²⁵. Also because the people who participated in the protest knew very little about the law and democratic ideas, their incentive for protesting was mainly fighting for their own benefits. It was a very self-conscious way to behave, rather than having the modern citizenship identity to fight for legal rights.

In Hantai County, most the complainers see government as their first and best choice to solve problems. In fact, the Association of Law Assistance- a NGO organized by the government, is just next door to the Bureau of Letters and Visits. But compared to the busy bureau, very few people really trust the association or go to it for help. Also, those associations lack of enough funds to support the complainers, such as the Association of Law Assistance is funded by the Hantai government. In the case of Hantai, a less developed county in China, the NGOs hardly play a role in the social protest.

The prospect of social movement in China

Although social movements in China mainly happen at the local level and are under the control of the government, officials are mindful of Mao Zedong’s counsel that “a single spark can start a prairie fire.” Hence, local protesters often get timely response from officials, and many do hope that eventually there will be basic change in the governmental decision-making process. Finally if the resistance continues to spread

²³ There are specific persons in each governmental department to cooperate with the Bureau of Letters and Visits.

²⁴ This behavior can be called “maintaining the stability through money”.

²⁵ Even the protesters chose to use the collective actions to express their dissatisfactions. The coalition would not become the regular organization once the protest ended.

and escalate, the foundation of the regime's legitimacy and stability will become shaky. Citizenship is the political right within a society, also it reflects to a citizen should have both duties and rights. Compared to urban people, rural people have less opportunity for quality mandatory education, health insurance and social security, and the household registration system makes it difficult for rural people to live in the cities in terms of integrating to the urban lives. However, the central government has abandoned the agricultural tax to the villagers in 2003, and they can participate in village elections to elect the leaders of villages directly. The social movements educate and make the protesters understand more about the rule of law, and use the weapon of law to protect their lawful rights, but do not necessarily help them to form and fight for their citizenship.

In terms of political change through protest, scholars believe that once the protest threatens to undermine the legitimacy of the regime, it encourages top leaders to pay more attention to the demands of villagers. But in the Chinese political system, the consideration of the central government and the local government to the public protest can be different from each other, sometimes contrary. Although social stability is crucial for the government, the central government may pay more attention to stability and sustainable social development. To the local officials, the most important benchmark to judge their political achievements is still economic development in the region. As long the public protests do not reach a higher level, the local officials would like to use other means to solve and relieve the protests, rather than reform policies which could possibly affect the speed of economic development. Also for the protesters, their main interest also focuses on the economic rights, and once their requests get fulfilled, the protests are suspended. But it is possible that once the local governments lose the control of social protests, both the central government and local government may pay more consideration to the institutional change. Currently the political change is mainly affected by the influence of economic reform and institutionalization of the Party and government.

The former Soviet Union and Eastern European countries collapsed under the weight of widespread national social protests against communist rule. In China, similar challenges erupted in 1989 at Tiananmen Square. But since then, the elites seemed to learn lessons from the post-communist regimes. The abrupt collapse of the states would not bring welfare to the people and nations. In contemporary China, the Communist party is presiding over the most astonishing example of economic growth in human history. Never before has so much wealth been created by so many people in so short a time in Chinese history. Economic growth has improved the welfare of most of the population, giving them a stake in the survival of the current regime as long as they continue to benefit from its policies and its stability.

Although social movements of protests happen in China everyday, through the social protest, the party and government can identify the main problems. The central government can change and plan better its policies in regard to peasant burdens,

social welfare and security. This authoritarian regime can be “resilient”, because it remains robustly authoritarian and securely in power. Now it has focused on the issues concerning the economic and social equality and reducing the poverty.

Conclusion

The Letters and Visits System, the Chinese conception of civil society and the role of NGOs explain the reasons why social movement in China most likely stays at the local level, rather than going to higher levels. Although there is much criticism and debate to the Letters and Visits system, in contemporary Chinese society, it plays a crucial role in dealing with the social protests. When the rule of law has not been established totally, and the spirit of respecting the law is even further from the reality of Chinese society, this executive way - almsgiving of political power, can be seen as the second best choice. Since the main characteristic of social protest in China is that it has happened mainly in rural areas and concerned rightful issues, the NGOs in China do not have the capacity to help them. At that same time, the development of NGOs themselves needs the permission of and connection with the government. The NGOs can not represent the interest of protesters from the grassroots. Their roles among social movement are very limited. The different interpretations to the Chinese idea of civil society from that of the West explain what the people really expect from society and government. The Confucian idea of the “*Datong Society*” gives more emphasis on the welfare and equality offered by the government, rather than a society with good mechanism. Stability, rather than spontaneity, is the watchword of the day even for rural people. Traditionally, the lifestyle such as “live and work in peace and contentment” (*Anju Leye*) is always the pursuit of normal people. The Chinese tradition of civil society certainly has an effect on taming the extreme idea of social changes during the social movements. As long as the CCP keeps leading the economic growth of China, and brings a more equal society to the people, social protest will not challenge the current political system, and social protest will also hardly reach higher levels to challenge the national security of China.

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THE ROLE OF POLITICAL ACTORS IN DISTRIBUTING POWER DURING CONSTITUTION-MAKING: THE CASE OF UKRAINE

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Abstract

This article aims to study a link between political actors' constellations (preferences and constraints) and stability of the constitutional system during democratization. The relevance of studying causes of stability of institutional framework is conditioned by its importance for consolidation of democracy. The main hypothesis is that one of the factors behind a stable constitutional system is consensus-based as opposed to conflict-based constitutional distribution of executive and legislative power. It is generated in accordance with Jon Elster's theoretical framework for constitution-making in Central and East Europe and Fritz Scharpf's analytical framework of actor-centered institutionalism which combine actor-based and institutional approaches employed by transition studies. The post-Soviet European states, for which institutional redesigning was among the paramount tasks of regime change, represent a puzzling divergence on the dimension of institutional stability. Since there are no general theories of constitution-making and the qualitative nature of the analysis of the constellations of political actors requires the deep contextual knowledge, the case-study format (of Ukraine) was chosen. The conclusion is that the way executive-legislative relations are established and amended is indicative for prospects of consolidation of democracy. Namely, the constitutional provisions adopted under the condition of conflict between the main political actors are a subject for further revision and a source for constitutional instability.

Introduction

The task of institutional redesigning, first of all separation of powers, was of paramount importance to the ex-republics of the former Soviet Union (fSU). They all inherited the same institutional model of formally parliamentary council-based form of government founded in the Soviet Constitution of 1936.¹ However, essentially due to different preceding experience of nation- and statehood, they have developed

¹ Serhiy Kul'chys'kyi, "Utverdzhenia nezalezhnoyi Ukrainy," (Consolidation of the Independent Ukraine) in *Istoriya Ukrainy*, ed. V. A. Smoliiy (Kyiv: Al'ternatyvy, 1993), 372.

different political regimes. The trajectory of post-Soviet European states' institutional designs of executive-legislative relations in the process of constitution-making has been particularly divergent. (The notion "post-Soviet European states" here designates three Baltic States as well as Western Newly Independent States, or WNIS, term coined by Dov Lynch to define Belarus, Moldova, and Ukraine).² Moreover, a plausible divergence among them on the dimension of institutional stability has been puzzling. Whereas since dissolution of the Soviet Union the Baltic states and Belarus have held to newly established forms of government (parliamentary and presidential, correspondingly), Moldova in 2000 and Ukraine in 2004 shifted from semipresidential to parliamentary.³ (This led, however, to convergent institutional designs of executive-legislative relations, a parliamentary regime (except for Belarus) which constitutes another puzzle, not addressed in this article.)

Hence the research question follows: Why was the institutional design of executive-legislative relations stable in some countries and an object of constant change in others? The relevance of this question is due to the consequent negative influences of unstable constitutional system on the prospects of democratization.

To contribute to the explanation of stability of the constitutional systems, particularly of executive-legislative relations, among the post-Soviet European states, this article aims to study a link between constitutional stability of separation of powers, once legally institutionalized, and the political actors' constellations (preferences and constraints).

From the actor-centered institutional theoretical perspective taken in the article, it is analyzed how the constitutional (re)distribution of executive and legislative power was influenced by the constellations of political actors during constitution-making according to the following criteria: their preferences, expectations, and constraints, related to the institutional choice.⁴ It is argued that the constellations of political actors at critical junctures of constitution-making is one of explanatory variables for stability of (re)distribution of power between legislative and executive branches, chosen as a dependent variable due to its impact on stability of the constitutional system and thus - the prospects of democratic consolidation.⁵ The hypothesis is that strategic consensus, and not tactical compromise about constitutional distribution of executive and legislative power, is likely to result in a stable constitutional system. Namely, that the more consensus-oriented, i.e. with resolved tensions among

² "The New Eastern Dimension of the Enlarged EU", *Chaillot Papers: Partners and neighbours: a CFSP for a wider Europe* 64 (Paris: EUISS, 2003): 34-60.

³ Nina Nyzhnyk and Vasyl' Lemak, *Postsotsialistychna derzhava: teoretyko-pravovi problemy* (Postsocialist state: theoretical-legal problems) (Uzhgorod: UzhNU, 2003), 22-23.

⁴ Jon Elster, Klaus Offe, and Ulrich K. Preuss, eds., *Institutional Design in Post-Communist Countries: Rebuilding the Ship at Sea* (Cambridge: Cambridge University Press, 1998), 292-304.

⁵ Arend Lijphart, "Democratisation and Constitutional Choices in Czecho-Slovakia, Hungary and Poland," *Journal of Theoretical Politics* 4:2 (1992): 207-223.

conflicting political actors adoption of the constitutional framework is, the more likely it will be to achieve stable constitutional distribution of executive and legislative power, i.e. without consequent amendments of the constitution. In other words, conflicting constellation (characterized by failed consensus on the basic rules or principles) increases reliance on negotiation and compromise and intimately leads to post-decision reevaluation of these rules/principles, i.e. redistribution of power.

The article proceeds as follows: the introduction is followed by overview of the theoretical and methodological framework. First the constitution-making of 1994-96, and then amending the Constitution in 2004 in Ukraine are analyzed from the actor-centered approach. In the conclusion, the main findings of the research are summarized.

Theoretical and Methodological Framework

Modern political science has developed a number of theories to explain different paths of democratization chosen by the Central and East European (CEE) states. The most known among them are post-Soviet (Alexander J. Motyl (1992; 1997)) and comparative regime change (Valerie Bunce (1995; 2003)), transitology (Philippe C. Schmitter, Terry Lynn Karl (1991; 1994; 1995)), modernization (Adam Przeworki, Fernando Limongi (1997)), Europeanization (Peter Mair (2004)), etc. Despite differing theoretical premises, there are some shared theses. First and foremost, it is usually agreed that “evolution of constitutional framework is at the heart of the complex political transition”⁶ to, and consolidation of, democracy, as well as for the analysis of the strengths, weaknesses, and stability of the parliamentary, presidential, and semipresidential forms of government (e.g. Arend Lijphart (1992); Juan Linz (1994); Jon Elster, Klaus Offe, Ulrich K. Preuss (1998), Alfred Stepan and Cindy Skatch, Ray Taras (2003)). Another focal point is the importance of the political actors during institutional designing of separation of powers in the process of regime change in Central and Eastern Europe.

For the ex-republics of the European part of the fSU, drafting and adoption of the new constitutions was among the paramount tasks of regime change. According to Walter F. Murphy’s typology of constitutional functions,⁷ introduction of the principle of separation of powers was crucial.⁸ The core choices of the institutional design, primarily distribution of executive and legislative power, are usually made during the process of drafting and adopting the constitution, which then serves as a set of “meta-

⁶ Oleh Protsyk, “Troubled Semi-Presidentialism: Stability of the Constitutional System and Cabinet in Ukraine,” *Europe-Asia Studies* 55:7 (2003): 1077-95.

⁷ Walter F. Murphy, “Constitutions, Constitutionalism, and Democracy,” in *Constitutionalism and Democracy*, eds. Douglas Greenberg, Stanley N. Katz, Melanie Beth Oliviero, and Steven C. Wheatley (New York: Oxford University Press, 1993). 14-17.

⁸ Kataryna Wolczuk, *The Moulding of Ukraine: The Constitutional Politics of State Formation* (Budapest: CEU Press, 2001), 12-16.

rules” for democracy.⁹ Another reason why designing political institutions by means of constitution-making is chosen for analysis is because according to Wolfgang Merkel’s periodization of democratic consolidation process, it is a phase of structural consolidation, i.e. a foundation for subsequent representative consolidation (parties and interest groups), attitudinal consolidation (civil society),¹⁰ and ultimately - for consolidation of democracy.

In the field of democratization and postsocialist transition studies, there are different explanations for causes and outcomes of institutional design. Schematically, on the diametrically opposed ends of this theoretical continuum could be institutionalism and actor-centered approach. According to the former, a democratic constitution is neutral to the interests of political actors, whereas political institutions are relatively autonomous,¹¹ thus democratization is possible only under existence of institutions that give some institutional guarantees to major political forces.¹² According to the latter, institutions are the only framework for behavior of political actors.¹³ In this section, the interconnection between them as well as theoretical framework and research design are outlined.

Actors-centered institutionalism and constitutionalism

Within the institutionalist approach, there is a compromise analytical standpoint on the interrelation between political actors and institutions: the analysis of political actors’ constellations (mainly preferences)¹⁴ is as important as the institutional setting within which they operate.¹⁵ Likewise, in transition studies the influence of political actors on consolidation of democracy is analyzed along with institutions. Bohdan A. Futey argues that the lack of political consensus leads to (and is reinforced by) fundamental problems, which “unless resolved will sap the viability of new

⁹ Philippe C. Schmitter, “Dangers, Dilemmas and Prospects for the Consolidation of Democracy,” in *Democracy: Theory and Practice*, ed. John Arthur (Belmont, Calif.: Wadsworth, 1992). 141-44.

¹⁰ Wolfgang Merkel, “Institutions and Democratic Consolidation in East Central Europe,” *Estudio/Working Paper* 86 (Dec. 1996): 2-4.

¹¹ James G. March and Johan P. Olsen, “The New Institutionalism: Organizational Factors in Political Life,” *American Political Science Review* 78 (Sep. 1984): 734-749.

¹² Adam Przeworski, “Democracy as a Contingent Outcome of Conflicts,” in *Constitutionalism and Democracy*, ed. Jon Elster and Rune Slagstad (Cambridge University Press and Universitetsforlaget, 1988). 59-80.

¹³ Klaus von Beyme, “Institutional Engineering and Transition to Democracy,” in *Democratic Consolidation in Eastern Europe. Volume I: Institutional Engineering*, ed. Jan Zielonka (Oxford: Oxford University Press, 2001), 3-24.

¹⁴ George Tsebelis, “Decision Making in Political Systems: Veto Players in Presidentialism, Parliamentarism, Multicameralism and Multipartism,” *British Journal of Political Science*, 25 (1995): 289-325.

¹⁵ Arend Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries* (New Haven, CT: Yale University Press, 1999), 203-13.

constitution as a long-term fundamental document.”¹⁶ As Schmitter’s analysis notwithstanding shows, provision of a set of institutions embodying contingent consensus among politicians is a challenge for democratic consolidators.¹⁷

The political actors’ perspective is particularly important for study of the institutional designs in postsocialist transitions. In contrast to the parliamentary model characteristic of West-European states,¹⁸ where the institutional structures play a crucial role in mediation of the actors’ behavior and determination of policy outcomes, in the postsocialist societies weak institutions are heavily influenced by the choices of political actors who design institutions while pursuing own strategic interests.¹⁹ In this regard, the important aspects of postsocialist transitions are highly politicized constitution-making, i.e. use of constitutional framework for realization of drafters’ interests,²⁰ primarily for exercising control over the executive, and low respect for formal constitutional norms.²¹ Along with the importance of the analysis of considering political actors of postsocialist transitions, the institutional framework is to be considered.²²

New institutionalist framework is relevant because it aims to reconcile actor-based and institutional approaches.²³ Such a unifying framework seems necessary because on the one hand a functionalist assumption of rational choice model - that the institutional designs and changes (e.g. constitutional reforms) can be explained through their functional outcomes for their framers²⁴ - contains the important shortcoming. Namely, even given normative aspirations of constitution-making (such as strong presidency as a symbol of national unity or parliamentary form of government as a means to meaningful democracy), constitutional designers can only have short-term horizons (preferences, constraints, expectations and acceptance of outcomes) and can not anticipate institutional outcomes which probably will differ from their expectations, leading to constitutional reforms.²⁵ On the other hand, although political institutions establish the “rules of the game” for political actors, i.e.

¹⁶ Bohdan A. Futey, “Ukraine’s Draft Constitution Meets Political Reality,” *East European Constitutional Review* 2 (1993): 14-17.

¹⁷ Schmitter, “Dangers, Dilemmas and Prospects,” 138-39.

¹⁸ Matthew S. Shugart, “Politicians, Parties, and Presidents: An Exploration of Post-Authoritarian Institutional Design,” in *Liberalisation and Leninist Legacies: Comparative Perspectives on Democratic Transitions*, ed. B. Crawford and Arend Lijphart (California: University of California Press, 1997). 40-90.

¹⁹ Wolczuk, *The Moulding of Ukraine*, 78-79.

²⁰ Stephen Holmes, “Back to the Drawing Board: An Argument for Constitutional Postponement in Eastern Europe,” *East European Constitutional Review* 2:1 (1993): 430-451.

²¹ Wolczuk, *The Moulding of Ukraine*, 10.

²² Ibid.

²³ Klaus von Beyme, “Institutional Engineering,” 3.

²⁴ Todd Landman, *Issues and Methods in Comparative Politics: an Introduction* (London: Routledge, 2000), 179-99; William Riker “Political Science and Rational Choice,” in *Perspectives on Positive Political Economy*, ed. James Alt and Kenneth Shepsle (Cambridge: Cambridge University Press, 1990). 163-81.

²⁵ Philippe C. Schmitter, “‘Process’ not ‘Product’ Engineering in the Consolidation of Democracy,” in *Democratic Consolidation*. ed. Zielonka. 36-46.

provide the frame for policy-making (including constitution-making) and institutional guarantees for relevant interests in the course of democratic competition,²⁶ they do not determine the result of political bargaining.²⁷

Therefore, on the premise of actor-based and institutional approach the analytical framework of actor-centered institutionalism (ACI) was developed by Fritz Scharpf to explain the institutional evolution of executive-legislative relations. According to ACI, institutions are created by political actors who have their own particular interests and aim to embody them in some form of the institutional structure. Particularly, the constitutional frameworks and institutional designs are assumed to result from political and normative conflicts among the political actors, operating within institutional framework of “norms, institutions, and organizations”.²⁸

The main concepts of the ACI, actor constellation and institutional setting (as defined below) are employed in this article, following theoretical framework for constitution-making, developed by Jon Elster particularly for CEE. It is based on the hypothesis that actions of constitution-makers are explained by institutional interests. Thus, constellations of political actors, i.e. their institutional and personal preferences and constraints, and mechanism of realization of preferences, are analyzed according to the following outline: first, identification of constraints for the constitution-makers. Second, ordering of available options, or preferences, of constitutional choice, for which information on their goals and motivations is needed. Third, the mechanisms of realization of these preferences: rational argumentation, bargaining (credible threats and promises), and voting. Elster argues that institutional interests particularly make rational impartiality impossible, especially if institution-participant of the constitution-making process is subjected to its outcomes: it will aim at enhancing own weight in the balance of powers.²⁹

Main concepts

In this article, the narrow definition³⁰ of a constitution as a “code of norms which aspire to regulate the allocation of power, functions, and duties among the various agencies and officers of government”,³¹ i.e. between the legislative and executive branches of power, is employed. The focus of analysis is on the constitution-making as a process, the means by which a constitution is drafted and adopted, rather than on

²⁶ Przeworski, *Democracy*, 70.

²⁷ Peter A. Hall and Rosemary C. R. Taylor, “Political Science and the Three New Institutionalisms,” *Political Studies* 44 (1996): 936-57.

²⁸ Merkel, “Institutions and Democratic Consolidation,” 1-2.

²⁹ Elster et al., *Institutional Design*, 294.

³⁰ K. C. Wheare, *Modern Constitutions* (London: Oxford University Press, 1966). 1-3.

³¹ S. E. Finer, Vernon Bogdanor, and Bernard Rudden, *Comparing Constitutions* (New York: Oxford University Press, 1995). 1-2.

the constitution as a product.³² Another important concept built on “constitution” is that of constitutional design, which generally designates a set of governing institutions, primarily distribution of executive and legislative power among president, cabinet, and parliament.³³ This dimension of constitutional design – distribution of executive and legislative power - is analyzed because there has been a general consensus in the literature that a functioning separation of powers among major branches of government is one of the crucial factors for consolidation of democracy.³⁴ Therefore, executive-legislative relations as rules of the institutional game³⁵ are central to any democratic constitution.³⁶

The concept of the political actor designates the key participants of the constitutional process who can institutionally change distribution of executive and legislative power.³⁷ Thus, only the subjects of constitution-making, i.e. the actors with formal power to draft, adopt, and amend a constitution: presidency and the main party groups in the legislature, are included in the analysis. (The government and judiciary are not included, the former because executive branch of power was not a subject of constitutional-making according to the Soviet Constitution of 1978 and the latter because although it was, it did not act as a separate actor having backed up the president’s preferences.)

The analytical distinction can be made between individual (presidency and prime-ministership) and collective (parliament, government, and judiciary) actors. To operationalize the concept, the latter is to be disaggregated into (schematically) individual actors on the basis of the dominating preference for the executive-legislative relations, i.e. parliamentary groups. Hence, the analysis operates with the constellations of the following political actors: the presidency; the right, the center, and the left in the parliament at the critical junctures. Where necessary, the references to the head of the parliament³⁸ and the prime-minister (occasionally and only during amending the constitution, when this actor was legally empowered to, and actually involved) are made. Finally, the analysis includes references to the Constitutional Court, an institution that can play a role of the mediator in institutional conflicts

³² Schmitter, “‘Process’ not ‘Product’ Engineering,” 42.

³³ Leonardo Morlino, “Constitutional Design and Problems of Implementation in Southern and Eastern Europe,” in *Democratic Consolidation*, ed. Zielonka. 48-108.

³⁴ Robert Elgie and Jan Zielonka, “Constitutions and Constitution-Building: A Comparative Perspective,” in *Democratic Consolidation*, ed. Zielonka. 25-47.

³⁵ Schmitter, “‘Process’ not ‘Product’ Engineering,” 42.

³⁶ Matthew S. Shugart and John M. Carrey, eds., *Presidents and Assemblies: Constitutional Design and Electoral Dynamics* (Cambridge: Cambridge University Press, 1992), 39-46.

³⁷ Vladimir Pigenko, Charles W. Wise, and Trevor L. Brown, “Elite Attitudes and Democratic Stability: Analysing Legislators’ Attitudes towards the Separation of Powers in Ukraine,” *Europe-Asia Studies* 54: 1 (2002): 87-107; Ian Jeffries, ed., *The Countries of the Former Soviet Union at the Turn of the Twenty-First Century: the Baltic and the European States in Transition* (New York: Routledge, 2004), 516-47.

³⁸ On the evolution of this post and its powers, see Anatoliy F. Gorlov, Volodymyr O. Koroliuk, Serhiy I. Lavreniuk, and Yuliana V. Shevchuk, *Evoliutsiya vlyady* (Evolution of power) (Kyiv: VAT Vydavnytstvo “Kyivs’ka Pravda”, 2005), 8-77.

between legislative and executive branches of power. “Constellation” of political actors refers to the players of the game, their strategy choices, the expected outcomes, and the preferences over these outcomes; institutional setting means institutions as the rules of the game.³⁹

The notions of “conflict” and of “consensus” are crucial to the stability of the institutional design. In this article, the former is defined as inconsistent preferences of multiple nested actors confronting multiple nested time perspectives, and the latter – as harmony and shared commitment to goals and decisions.⁴⁰

Stability of the institutional design (and thus of constitutional system) is chosen as a dependent variable because, according to the main body of the literature on consolidation of democracy, it is one of the basic necessary conditions (along with e.g. institutionalization of separation of powers). Since such stability hypothetically requires the contractual relationship among the relevant actors,⁴¹ the constellations of political actors at critical junctures of constitution-making are analyzed as an independent variable.

The options of possible institutional design considered during constitution-making in CEE varied from a “pure” parliamentary to “pure” presidential, with premier-presidential, and president-parliamentary types of constitutional systems in-between, as categorized by Matthew S. Shugart.⁴² There is an interesting observation that semipresidentialism (as defined by Maurice Duverger)⁴³ is characteristic of institutional design of states in transition due to their aspiration to unite the advantages of both presidentialism and parliamentarism to overcome the crisis caused by system transformation.⁴⁴

Research design

The analysis is conducted on the micro-level of political actors as well as on the meso-level of political institutions. The qualitative methods are employed. First, preferences and constraints of political actors are identified and ordered. For this, discourse analysis of publicly accessible primary sources such as pre-election

³⁹ Fritz W. Scharpf, *Games Real Actors Play: Actors-Centered Institutionalism in Policy-Research* (Boulder, Colo.: Westview, 1997), 36-51.

⁴⁰ Ari Ginsberg, “Mapping the Competition: From Mapping to Mastery,” *Strategic Management Journal*, 14 (Winter 1994): 153-174.

⁴¹ Peters, B. Guy. *Institutional Theory in Political Science: The “New Institutionalism”* (London: Pinter Publishers, 1998), 43-61.

⁴² Shugart, Matthew S. “Of Presidents and Parliaments,” *East European Constitutional Review* 2: 1 (Winter 1993): 30-32.

⁴³ See Protsyk, “Semi-Troubled Presidentialism,” 1092.

⁴⁴ Y. A. Tykhonova, “Problemy rozvytku parlamentaryzmu v Ukrayini” (The problems of development of parliamentarism in Ukraine), in: *Derzhavno-pravova reforma v Ukrayini. Materialy naukovo-praktychnoyi konferentsiyi* (Kyiv: Instytut zakonodavstva VRU, 1997). 177-181.

programs, as well as presidents' speeches and party press, is carried out. Second, on the basis of identified constellations of political actors, the analysis of how the power is constitutionally (re)distributed between executive and legislative branches is made. For this, textual analysis of legal documents (Declaration on Independence, Constitution and relevant laws, decisions and conclusions of the Constitutional Court of Ukraine, resolutions of the Parliamentary Assembly of Council of Europe and Venice Commission), secondary sources, especially expert opinions, institutional reports, and informational-analytical bulletins, is made. Third, the causal link between consensus/conflict among political actors and the initial institutional choices and subsequent constitutional changes of distribution of executive and legislative power is analyzed according to the following outline: ordering of preferences, identification of constraints, and mechanism of realization of preferences. For this, the descriptive-inductive method of analysis of the change of institutional frameworks aimed at their contextual explanation is employed.⁴⁵

The case-study format is chosen because first, the qualitative nature of the analysis of the constellations of political actors requires the deep contextual knowledge, and second, there are no general theories of, and only few comparative studies on, constitution-making.⁴⁶ It is a case-study of Ukraine during the time periods of 1994-1996, an active phase of constitution-making, and of 1999-2004, a critical juncture resulting in amendment to the constitution in favor of parliamentary republic. Due to the limitation of the scope of the article, the international constraints under which all the actors operated, mainly those of the European Union (integration into which was proclaimed by President Kuchma as a strategic state aim for Ukraine as early as in 1994⁴⁷) and the Russian Federation (e.g., all political actors aimed to adopt a constitution prior to Russian presidential elections) are to be left out.

As mentioned in the introduction, there have been two distinct patterns on the dimension of institutional stability among the post-Soviet European states: one is a stable institutionalization of executive-legislative relations, characteristic for the Baltic states and Belarus (see table 1). To the contrary, Ukraine represents an extreme path of constitution-making in the post-Soviet European states, characterized by situational compromises rather than strategic consensus among the parliament, president, and government and by redistribution of executive and legislative power by means of constitutional reform. The intense constitution-making, including transforming the semipresidential form of government into parliamentary, is main justification for choosing Ukraine as a case-study.

⁴⁵ R. A. W. Rhodes, "The Institutional Approach," in *Theory and Methods in Political Science*, ed. David Marsh and Gerry Stoker (London: Macmillan, 1995). 42-57.

⁴⁶ Wolczuk, *The Moulding of Ukraine*, 17.

⁴⁷ Molchanov, Mikhail, "Ukraine and the European Union: a Perennial Neighbour?" *European Integration* 26:4 (2004): 451-73; Mykola Riabchouk, "Civil Society and Nation Building in Ukraine," in *Contemporary Ukraine: Dynamics of Post-Soviet Transformation*, ed. Taras Kuzio (Armonk, New York: M. E. Sharpe, 1998). 81-98.

Table 1. Evolution of institutional (executive-legislative) design in post-Soviet European states.

Initial distribution of power	Current distribution of power		
	Parliamentary		Presidential
	Parliamentary	Latvia Lithuania Estonia	-
	Semipresidential	Moldova Ukraine	-
Presidential	-	Belarus	

Importantly, Ukrainian political actors were constitution-makers themselves,⁴⁸ having almost unanimously refuted the idea of the creation of a constitutional assembly.⁴⁹ By this, the basic consensus shared by all political actors during institutionalization was, according to Motyl, recognition by all sides of the existence (even if not legitimacy) of the other.⁵⁰ Puzzling about the case-study is first, the protracted adoption of the basic law (in 1996, the last among the post-Soviet states), which is difficult to bring to another consensus about an urgent need for it. Second, the change of form of government from semipresidential (founded by the Constitution of 1996) towards parliamentary (by amendments to the Constitution of 2004) is puzzling, given the constant tendency of strengthening the presidency in that time period. Despite the importance of political consensus on constitutional distribution of executive and legislative powers for constitutional stability, in the case of Ukraine it has turned out impossible to reach, primarily because of political actors' vested interests,⁵¹ as is analyzed in detail further. Although Elster's theoretical framework for constitution-making is applicable for analysis of stability of postsocialist institutional design in other countries of the region, the peculiarity of the constellation of political actors must be analyzed in context.

One of the possible problems of this article is that in the case of Ukraine even after adoption of the Constitution of 1996⁵² the actual practices of political actors,

⁴⁸ Kataryna Wolczuk, "The Politics of Constitution Making in Ukraine," in *Contemporary Ukraine. Dynamics of Post-Soviet Transformation*, ed. Taras Kuzio (Armonk, New York: M. E. Sharpe, 1998). 118-38.

⁴⁹ Futey, "Ukraine's Draft Constitution," 16.

⁵⁰ Alexander J. Motyl, "Structural Constraints and Starting Points: The Logic of Systemic Change in Ukraine and Russia," *Comparative Politics* 29:4 (1997): 433-47.

⁵¹ Ibid.

⁵² Serhiy Linyts'kyi, "Konstytutsiynyi protses v Ukrayini: problemy i perspektyvy," (Constitutional process in Ukraine: problems and perspectives) in: *Derzhavno-pravova reforma v Ukrayini. Materialy naukovo-praktychnoyi konferentsiyi* (Kyiv: Instytut zakonodavstva VRU, 1997). 75-77.

particularly president and parliament, did not necessarily correspond with the constitutionalized distribution of power.⁵³

Distributing Power, Debating the Constitution: 1990-1996

From the above outlined theoretical perspective it is important to understand whether at critical junctures of constitutional-making regarding distribution of executive and legislative power constellations of political actors are characterized by consensus or conflict. For this, their background and establishment, preferences and constraints, mechanisms of realization of preferences, and the outcomes of their actions are analyzed.

Background and establishment of political actors

The principal question concerning the origin of political actors in Ukraine as independent from former power center, Moscow, is the reasoning behind adoption of the pro-independence platform by a leading part of the Ukrainian republican communist elite.⁵⁴ Partially, an explanation is their reorientation⁵⁵ in reaction to weakening of all-Union political control during *perestroika*. After the removal in early 1990 of, the hardliner first secretary of the Communist Party of Ukraine (CPU) Volodymyr Shcherbyts'kyi from his post, the hitherto seemingly monolithic communist elite split into anti- and pro-*perestroika* factions. However, it is not exhaustive because a following political compromise about independence, even if pursuing different aims, is of crucial importance. It was made between the proreform part of the *nomenklatura*,⁵⁶ or the “national-communists”, who sought to retain power, and the national-democratic opposition led by grassroots pro-democracy movement *Rukh*,⁵⁷ who strived for statehood and democratization.⁵⁸ This compromise allowed them to receive a persuasive support of 90% of the votes in the all-Ukrainian referendum on independence (held on the December 1, 1991).⁵⁹ However, having

⁵³ Schmitter, “‘Process’ not ‘Product’ Engineering,” 42.

⁵⁴ Marta Dyczok, *Ukraine: Movement without Change, Change without Movement* (Amsterdam: Harwood Academic Publishers, 2000), 23-39.

⁵⁵ Kataryna Wolczuk, “Ukraine: Tormented Constitution Making,” in *Democratic Consolidation*, ed. Zielonka. 243-69.

⁵⁶ Alexander Motyl and Bohdan Krawchenko, “Ukraine: From Empire to Statehood,” in *New States, New Politics: Building the Post-Soviet Nations*, ed. Ian Bremmer and Ray Taras (Cambridge: Cambridge University Press, 1997). 235-75.

⁵⁷ Futey, “Ukraine’s Draft Constitution,” 16.

⁵⁸ Lars Handrich, “Ekonomichniy rozvytok nezalezhnoyi Ukrayiny,” (The economic development of independent Ukraine) in: *Ukrayina: kamjanytyi shliakh do demokratiyi*, ed. V. I. Adriyko and G. Kurt (Kyiv: Zapovit, 2002). 46-61.

⁵⁹ Doris Wydra, “Verfassung und Rechtstaatlichkeit der Ukraine seit der Unabhängigkeit,” in *Ukraine: Geographie, Ethnische Struktur, Geschichte, Sprache und Literatur, Kultur, Politik, Bildung, Wirtschaft, Recht*, ed. Peter Jordan et al. (Frankfurt am Main: Peter Lang, 2001). 783-806.

agreed on the necessity of working out the constitutional framework for a new state, political actors did not reject the Soviet model of institutional arrangement.⁶⁰

Therefore, the establishment of political actors in charge of institutional evolution by means of constitutional-making should be traced back to declaration of *perestroika* in the SU.⁶¹ The institutional changes were commenced with adoption of the Law *Amendments to the Constitution of Ukrainian SSR* on October 27, 1989⁶² about preservation of council-based system with the Supreme Council at the top; however, they stayed very insignificant in the time period from 1991 to 1993, which can be neatly identified as “institutional preservation rather than institutional engineering.”⁶³

As outlined in the first section, for the analysis of the constraints and mechanisms of realization of preferences of political actors in the active phase of constitution-making (1994-1996), the main actors: presidency; the left, the center, and right (national-democratic) groups in the parliament are considered. As already indicated, it is difficult to single out a preference for the distribution of power for the collective body - *Verkhovna Rada* (Supreme Council) of Ukraine, or Parliament. Moreover, the analysis of preferences of parliament groups is complicated because of internal splits and of collective action problems.⁶⁴ That is why, for the aim of this article, only the prevalent position of each group in the parliament is considered. Later, during the phase of constitution amending (1999-2004), a third individual actor - prime-minister - is added.

The Presidency is the newest institution of the political system of Ukraine. It was introduced instead of the post of the first secretary of the communist party in Soviet institutional design⁶⁵ by the Law *On founding of the post of the President of Ukrainian SSR* on July 5, 1991⁶⁶ aimed to adopt the republican Soviet institutional framework, consisting of the legislative supreme council and the executive council of ministers, to the needs of the independent state.⁶⁷ According to this law, a president (elected through direct elections) would have the right to propose candidacy of prime-minister, the post introduced instead of the head of the council of ministers, as well as

⁶⁰ Wolczuk, “Tormented Constitution Making,” 243.

⁶¹ Valeriy Zaitsev “Konflikty mizh gilkami vladny v protsesi yikh stanovlennia,” (The conflicts between the branches of power in the process of establishment) in *Stanovlennia vladnyh struktur v Ukrayini*, (Consolidation of power structures in Ukraine) ed. Oleksiy V. Haran’ (Kyiv: ZAT “Ukrayins’ka pres-grupa”). 5-29.

⁶² Mikhail Orzikh, *Konstitutsionnaya reforma v Ukraine* (Constitutional reform in Ukraine) (Odessa: Yuridicheskaya literatura, 2003), 1-12.

⁶³ Wolczuk, “Tormented Constitution Making,” 243.

⁶⁴ Wolczuk, *The Moulding of Ukraine*, 209-218; Oleh Protsyk, “Troubled Semi-Presidentialism,” 1077.

⁶⁵ Viktor Kolisnyk, “Protseual’no-protsedurni aspekty provedennia konstyututsiynoyi reformy,” (The procedural aspects of adoption of constitutional reform) in *Konstyututsiyna reforma: ekspertnyi analiz*, (The constitutional reform: the expert analysis) ed. Yevhen Y. Zakharov (Kharkiv: Folio, 2004). 63-72.

⁶⁶ Orzikh, *Konstitutsionnaya reforma*, 12.

⁶⁷ Wolczuk, “Tormented Constitution Making,” 245.

number of ministers in key spheres (on defense, national security, internal affairs, finance, justice and head of KGB), for appointment or dismissal, but neither to dissolve the parliament nor to veto legislation, which could be overcome by simple majority.⁶⁸ The conflict over the presidential powers became the main driving force behind both constitution-making (1994-1996) and amending the Constitution (1999-2004).⁶⁹

Constellations of political actors: preferences and constraints

As outlined in the introduction, during constitution-making within the legal framework of the constantly amended Constitution of 1978, there were three legal subjects who could change the institutional status quo: the president, the parliament, and the judiciary (however, the latter was not independent and thus is not included in the current analysis). Their preferences were crucial for the distribution of power among the branches during adoption and amending of the constitution. Given main political actors' very differing preferences for distribution of power among the branches, the only broad consensus for political actors (except for the communists who preferred the Soviet one) was the necessity to adopt the new constitution as soon as possible.⁷⁰

The left groups (hereinafter referred to as "left"), represented mainly by the Communist Party of Ukraine (CPU), Socialist and Peasant Parties of Ukraine (SPU-SelPU) were in favour of the parliamentary form of government. In terms of Elster's analytical framework, at the top of the left's preference-ordering was ideological vision of necessity of pursuing restoration of a socialist state and opposition to a nation-state. Institutionally, it required foremost restoration of council-based system. Thus, it was incompatible with the institution of presidency;⁷¹ in addition to demand for its abolishment, the principal institutional preferences of the left included a parliamentary form of government and formation of a cabinet by the largest party in the parliament.⁷² In addition to formal explanation of the left's institutional preferences by ideological ones, there is a political one: institutional provisions of parliamentary model would have allowed the left to retain power within councils with a unicameral parliament at the top - national level. In political discourse, however, it was framed in ideological terms: a parliamentary model would prevent actual "usurpation of power" by the president under "the separation of powers" proposed in the 1992, 1995 and 1996 constitutional drafts.⁷³

⁶⁸ Orzikh, *Konstitutsionnaya reforma*, 23.

⁶⁹ Wolczuk, "The Politics of Constitution Making," 120.

⁷⁰ Wolczuk, "Tormented Constitution Making," 259.

⁷¹ Mykhailo Bilyts'kyi and Mykhailo Pogrebyns'kyi, "Politychni partii u vzayemodiyi zi strukturamy vlady" (Political parties in the interaction with power structures), in *Stanovlennia vladnyh struktur*, ed. Haran'. 30-65.

⁷² Jeffries, *The Countries of the Former Soviet Union*, 516-26.

⁷³ Wolczuk, *The Moulding of Ukraine*, 141-143.

Finally, there was a pragmatic reason for strong institutional preference for parliamentarism: in electoral competition, the left (substantially communists) were more likely to dominate in a parliament than to nominate a competitive candidate at the presidential elections. On the other hand, the primary source of their prevalence in the parliament - the level of electoral support - with the lapse of time turned out to be a constraint on the mechanism of realization of their preferences. Based on the numerical superiority, it consisted mainly of not registering to vote to prevent a quorum and blocking disagreeable alternatives by rivals.⁷⁴ Namely, after the parliamentary elections of 1991, the left never collected more than 40% of the popular vote and could not form a constitutional majority to adopt or to amend the constitution;⁷⁵ moreover, their electoral support dramatically decreased in the 2002 elections compared to those in 1994 and 1998.

Thus, the left's institutional preferences were both ideologically and politically conditioned and on both directions opposed to the president's and center-right's preferences for conservation of strong presidential powers, first institutionalized by the Constitutional agreement of 1995. Moreover, due to the ideological stance, the left refused to compromise with hypothetical allies (the center) as well. Paradoxically, despite having been the most numerous group in parliament during drafting and adoption of the post-Soviet constitution, the left could not have realized their set of preferences. They did so after having lost much of their electoral support and hence bargaining power, during constitutional amendments unfavorable to their preferences in 2004, because the constellation, and the preferences, of other political actors changed – in favor of parliamentary form of government.

Likewise, for the right groups (hereinafter referred to “right”), or national-democrats, including among others Ukrainian Republican Party, Democratic Party of Ukraine, *Narodnyi Rukh Ukrayiny* (People's Movement of Ukraine) factions, Reform and Order Party, the crucial preferences were ideological, namely nation- and state-building. The institutional preference for distribution of power between legislature and executive, derived from them, aimed at the strong presidency (as guarantor of state independence and national consolidation)⁷⁶ and abolishment of the system of councils, a power-base of communists. Ultimately, having in fact allied with a president in the constitution-making process, the parliamentary minority of national-democrats implemented at least their ideological preferences, contrary to the communist majority; nevertheless, it failed to prevent reduction of presidential powers during constitutional reform of 2004.

⁷⁴ Ibid. 211.

⁷⁵ Protsyk, “Troubled Semi-Presidentialism,” 1090.

⁷⁶ Wolczuk, *The Moulding of Ukraine*, 213-216.

Since any opportunity for compromise with the left was excluded, support of a president became a traditional mechanism of implementation of the right's ideological preference. The largest constraint on realization of it in the parliament was the same as that of left: after the first parliamentary elections in 1991, the right never collected more than 25% of the popular vote and could not initiate adoption or amending of the constitution on its own. Even after their most successful parliamentary elections in 2002, national-democrats split on the issue of constitutional reform for strengthening the presidency: while one part argued that it would lead to authoritarianism, another part reasoned that it would be effective given a fragmented party system.⁷⁷

The third political actor within the parliament, **centrist groups** (hereinafter referred to as "center"), embraced various parties during different parliamentary convocations; the main of them were: Social-democratic Party of Ukraine (SDPU), Liberal party of Ukraine (LPU), *Yednist'*, *Centre*, *Derzhavnist'*, *Social market Choice*, *New Ukraine*, and independents. Different from the left and the right, the center was characterized by ideological neutrality and pursuing opportunity for reforms rather than by ideological preferences. The center's institutional preferences for executive-legislative relations, given the abolition of a council-based system, favored chiefly a parliamentary system of government with empowered legislature and cabinet, and limited presidency. Thus, on the institutional preferences, the center, like the national-democrats, could not have compromised either with the left, nor could they, unlike the national-democrats, have sided with the president. Having no defined hierarchical ordering of ideological preferences, the center was in an equivocal position to realize its institutional ones. For a long time it functioned as a field for compromise between the president and the right on the one hand, and the left on the other, who played a zero-sum game.⁷⁸ And yet, exactly because the left and the right (with the president) had opposite preferences for constitutional framework of executive-legislative relations, the center's ones were decisive for changing the institutional status quo. Indeed, during all three parliamentary terms after 1991, together with majority of independent members of parliament (MPs), the center tended to opportunistically support the president on the issue of constitutional adoption/reform, mainly for clientelistic reasons.⁷⁹

To sum up, there are several explanatory factors for parliament groups' differing preferences for distribution of power: ideology, consensus on prior agreement, and institutional learning.⁸⁰ Among them, according to the analysis of MPs' voting behavior during 1994-1998 and 1998-2002 terms in the parliament, clientelistic patterns of voting, including preferences for maintaining or changing the constitutional distribution of power, dominate over ideological and learning-based

⁷⁷ Protsyk, "Troubled Semi-Presidentialism," 1090.

⁷⁸ Wolczuk, *The Moulding of Ukraine*, 217-218.

⁷⁹ Protsyk, "Troubled Semi-Presidentialism," 1091.

⁸⁰ Pigenko et al., "Elite Attitudes," 91.

ones.⁸¹ On the one hand, this explains why the right and the center supported the president, who controlled the government (but not necessarily the prime-minister) on crucial dimensions. Therefore, it would be inappropriate to explain the MPs' preferences over distribution of power by the institutional self-preservation model only.⁸² On the other hand, quite in line with it, the parliament as a whole consistently took an anti-presidential position at all critical junctures of constitution-making: Constitutional agreement of 1995, Constitution of 1996, and referendum of 2000. Consequently, contrary to the both presidents' efforts on strengthening the presidency, in the time period from the first Draft of the Constitution (July 1, 1992) to adoption of the Law *On the Amendments to the Constitution of Ukraine* (December 8, 2004), legislature's powers increased at the expense of presidential ones.

Both presidents of Ukraine, Leonid Kravchuk and Leonid Kuchma, had similar preferences for strengthening the powers of the president and the executive vertical, although their mechanisms for its realization differed. The first president, Kravchuk, was representative of *nomenklatura* (a secretary in charge of ideological issues for the Central Committee of the CPU) until 1990; afterwards he became a "national communist".⁸³ His preferences were limited presidency and strengthening of the executive branch,⁸⁴ justified by the state- and nation-building ends. There is a disagreement in the literature about to what extent the institutional resources at the disposal of the first president were defined by the Constitution of 1978, since they were not clearly separated from those of the parliament.⁸⁵ However, since his overarching aim of state-building was commonly shared by most political actors, except for the left, Kravchuk enjoyed support from the majority in parliament and received additional privileges of law-making with the aim of political and economic reforms.⁸⁶ Still, they were temporary and never granted him enough bargaining power to realize the preference for a strong presidency.⁸⁷ Particularly, the initial draft of the Constitution, although prepared by the parliament's Constitutional Commission in July 1992, gave much authority to a president, including some legislative and judicial powers. However, the parliament objected in favor of strengthening the legislative branch, a point on which there seemed to be a considerable political consensus among otherwise divisive political actors within it.⁸⁸

⁸¹ Oleh Protsyk and Andrew Wilson, "Center Party Politics in Russia and Ukraine: Patronage, Power, and Virtuality," *Party Politics*, 9: 6 (2003): 703-727.

⁸² Protsyk, "Troubled Semi-Presidentialism," 1088.

⁸³ Mykhailo Bilets'kyi and Mykhailo Pogrebyns'kyi, "Politychni partiyyi u vzayemodiyi zi strukturamy vlady," (Political parties in the interaction with the power structures) in *Stanovlennia vladnyh struktur*, ed. Haran'. 30-65.

⁸⁴ Serhiy Tolstov, "Konstytutsiinyi protses v istorychniy retrospektyvi," (The constitutional process in historic retrospective) in *Stanovlennia vladnyh struktur*, ed. Haran'. 66-88.

⁸⁵ Volodymyr Lytvyn, "Osnovni polozhennia Konstytutsiyi Ukrayiny," (The main regulations of the Constitution of Ukraine) in *Istoriya Ukrayiny*, ed. V. A. Smoliiy (Kyiv: Al'ternatyvy, 1997). 352-72.

⁸⁶ Tolstov, "Konstytutsiinyi protses," 68.

⁸⁷ Wolczuk, *The Moulding of Ukraine*, 205-208.

⁸⁸ Futey, "Ukraine's Draft Constitution," 15.

The preferences of the second president, Kuchma, were similar to those of his predecessor but aimed at purely institutional and not ideological goals. The empirical evidence of the first term and the first half of the second term of his presidency, particularly the president's behavior at crucial stages of the constitution-making (Constitutional agreement of 1995, Constitution of 1996, and Referendum of 2000)⁸⁹ confirm Shugart's hypothesis that if the president is involved in constitution-making, he will promote a strong presidency.⁹⁰

After having signed the Constitutional agreement of 1995 which secured strong presidential powers, the president's goal was to transfer them into the new Constitution. A powerful instrument for this was a presidential right to request a referendum on the Constitution. Formally, this was only possible after agreement of the text of the basic law with the parliament, but this provision was violated by the president in 1996. Another important lever was the second president's impact over composition of the Constitutional Commission. It was no longer parliamentary, but consisted of representatives of all three branches of power, i.e. political actors with very differing preferences for constitutional distribution of power among the branches.⁹¹ However, due to his control over the judiciary, the president obtained the support of a majority of commission members, and due to informal instruments, of the MPs, which ensured promotion of his preferences when the final draft of the first constitution of post-Soviet Ukraine was passed to the parliament in March 1996.⁹²

However, during Kuchma's second term in office (2000-2004), a fundamental change in his preferences for constitutional distribution of executive and legislative power from (semi)presidential to premier-presidential form of government took place. It was a consequence of a number of internal political developments of this period aimed at weakening the president's position. Among them, particularly important for the president's review of the preferences were: "cassette scandal" (2000) initiated by the socialist and democratic oppositional parties in the parliament, followed by mass protest actions "Ukraine without Kuchma" (2000-2002) demanding early presidential elections; the first victory of democratic opposition in the parliament elections of 2002; and the culmination – an ultimate victory of the leader of the democratic opposition Viktor Yushchenko in presidential elections accompanied by "Orange Revolution" (2004). From the theoretical perspective employed in this article, it is important that this chain of both societally and institutionally determined anti-presidential developments forced the president to reverse his constant preference for consolidation of presidential powers in favor of a premier-parliamentary form of government. The reason behind this was to prevent the transfer of strong presidential

⁸⁹ Protsyk, "Troubled Semi-Presidentialism," 1087.

⁹⁰ Shugart, "Politicians, Parties, and Presidents," 42.

⁹¹ Bohdan Harasymiw, *Post-Comunist Ukraine* (Edmonton: Canadian Institute of Ukrainian Studies Press, 2002), 67-86.

⁹² Wolczuk, *The Moulding of Ukraine*, 207.

powers to a political opponent. A new preference could have been implemented only by means of the constitutional reform.

The Cabinet of Ministers, or government, of Ukraine has no right to initiate the amendments to the constitution. However, the prime-minister's position as a head of the executive branch (introduced in 1996) is important for the analysis of the constellation of political actors along with that of the president and the parliament during the amending of the Constitution (1999-2004). The prime-ministers did not have single preference for distribution of executive and legislative power throughout constitution-making; predominantly, they supported a pro-presidential stance, but there were antipodal cases (e.g., Yevhen Marchuk's opposition to Kuchma's initiative on referendum in 2000).

The constraints under which all of the above analyzed actors acted to reform an institutional framework included legacies of membership in the SU, the external influence (mainly balance of power in the Russian Federation⁹³ and the pressure of the Council of Europe),⁹⁴ but most importantly – internal balance of power, the object of analysis of this article. Concerning the post-Soviet legacies, at least two of them influenced the outset of the new state most of all: the lack of modern experience of statehood⁹⁵ and the experience of totalitarian communist regime.⁹⁶ Because of the latter, there was no historically legitimized template of the government; therefore the Constitution of 1978 with slight changes was used as the constitution of the independent Ukraine.⁹⁷ Due to the former, there was no democratic legal system which made it necessary to create the whole law and legal order anew⁹⁸. Moreover, there was no power base for reforming institutional framework: neither former communists nor national-democrats had any experience of governing the independent state.⁹⁹

To summarize, parliamentary republic in Ukraine was promoted by the left, a presidential form of government was supported by a president and the right; however, neither constitutional draft promoted a “pure” type, being in favor of some type of semipresidentialism instead. Since it was backed by the center as well, it was a potential compromise. Regarding the actual political practice throughout the 1990s up to adoption of the Constitution in 1996, however, there was a general tendency

⁹³ Ibid., 72.

⁹⁴ Wydra, “Verfassung und Rechtstaatlichkeit der Ukraine,” 784.

⁹⁵ Pigenko et al., “Elite Attitudes,” 91; Wolczuk, “Tormented Constitution Making,” 246.

⁹⁶ Dyczok, *Movement without change*, 1-22; Alexandr Motyl and Bohdan Krawchenko, “Ukraine: From Empire to Statehood,” in: Ian Bremmer, and Ray Taras, *New States, New Politics: Building the Post-Soviet Politics* (Cambridge: Cambridge University Press, 1997). 235-76.

⁹⁷ Wolczuk, “Tormented Constitution Making,” 246.

⁹⁸ Wydra, “Verfassung und Rechtstaatlichkeit der Ukraine,” 784.

⁹⁹ Motyl and Krawchenko, “From Empire to Statehood,” 237.

towards consolidation of president's and erosion of parliament's powers, in particular determined by the influence on formation and operation of government.¹⁰⁰

Based on the above analysis of how political actors' constellations influenced the distribution of executive and legislative power in the Ukrainian Constitution, several conclusions can be made. First, by adoption of the constitution, the normative principle of the separation of powers and the actual distribution of power among branches was introduced in Ukraine. Second, the tendency towards strengthening the presidency, developed during Kuchma's term in office, was reversed. Not only the president's aspiration to weaken the parliament (e.g., by introducing the second chamber by means of referendum in 2000) was overcome, but the presidential powers were significantly decreased, and the government became accountable to the parliament. Therefore, due to the changes in the constellation of political actors and of their preferences, a presidential form of government was not consolidated in Ukraine, contrary to the predominant tendency during the constitution-making. Third, the principle of constitutional review, however imperfectly implemented, was introduced by the establishment of the Constitutional Court instead of the previous Soviet-type undemocratic office of public prosecutor that was in charge of monitoring legality and constitutionality of the government.

Institutional design of the Constitution of Ukraine of 1996

The adoption of the new Constitution on August 24, 1996 was a result of the protracted bargaining process among the main political actors, who were also constitution-makers: the president and left, right, and center in the parliament. The distribution of executive and legislative power turned out to be an object of constant conflict. In the aftermath, a president-parliamentary form of government, characterized by the dual authority over the government (i.e., unilateral right to dismiss the government) was founded by the Constitution. This constitutional distribution of power reflected partial realization of preferences of President Kuchma and the left, the largest parliament group, resulting from the temporary configuration of political forces in 1996, and did not embody the basic consensus in dispute over distribution of power.¹⁰¹ On the one hand, the president has realized his top institutional preference for strong presidency, but partially: the control over the government was to be shared with a prime-minister who became the chief executive, and the president was not granted right to dissolve the parliament. Partially the levers of presidential power turned out to be limited because the national democrats yielded their support for them to realize their top priority preference – adoption of the constitution as guarantee of the sovereignty of Ukraine - instead. However, the center

¹⁰⁰ Mykola Tomenko, "Zakonodavcha, vykonavcha i sudova vlady Ukrayiny do i pislia vyboriv 2002," (Legislative, executive, and judicial powers in Ukraine before and after elections of 2002) in: *Ukrayina: kamjanystyi shliakh do demokratiyi*, (Ukraine: a stony path to democracy) ed. V. I. Andriyko and G. Kurt (Kyiv: Zapovit, 2002).74.

¹⁰¹ Wolczuk, "The Politics of Constitution Making," 122.

supported the president to realize their rather vague preference for the president-parliamentary form of government.¹⁰² Hence, the left has not implemented its preference for parliamentary form of government, on the other hand: although the parliament received powers equal to presidential ones, the “usurpation of power per sample” of the Soviet council-based system was prevented.

The implemented constitutional distribution of power was heavily criticized, particularly, for absence of real power in the government and indefinite scope of the presidential powers. Namely, the constitutional status of presidency was defined as a guarantor of constitutionalism, i.e. “above the power.” However, it had powers over all three branches of power: a legislative, i.e. to issue decrees for the government; an executive, i.e. to appoint the prime-minister and to form the system of executive power (with the assistance of parliament); and a judicial power, with a parliamentary consent.¹⁰³ Yet, formal introduction of the very principle of separation of powers,¹⁰⁴ a necessary precondition for the democratization,¹⁰⁵ was undoubtedly the main positive effect of adoption of the Constitution of 1996. Moreover, the “basic rules of the game,” or institutional framework for distribution of executive and legislative power, were established. Nonetheless, unsolved problems of institutional design, as well as ongoing conflict among political actors over distribution of power, meant that the Constitution was based on a fragile compromise and, following changes of balance of power in the constellation of political actors, was relatively soon fundamentally amended.

Adjusting Institutional Design, Amending the Constitution: 1996-2004

Immediately after the Constitution was adopted following the president’s threat of the referendum, the debates between the presidential and parliamentary groups on redistribution of executive and legislative power recommenced. Gradually, the balance of parliamentary groups was changing: the anti-left opposition was winning a majority to replace traditional anti-presidential majority. Namely, the center-right institutional preferences were changing in favour of empowering parliament at the expense of strong presidency. The reasons for this crucial change were the following: first, the center-right preference of having secured state- and nation-building, which required cooperation with the president, were realized by means of adoption of the

¹⁰² Zaitsev, “Konflikty mizh gilkamy vldy,” 18; Wolczuk, “Tormented Constitution Making,” 253.

¹⁰³ Iryna Solovjevych, “Deyaki pytannia vdoskonalennia poriadku formuvannia parlamentom derzhavnykh orhaniv v Ukrayini” (Some issues of improvement of parliament’s order of forming state organs in Ukraine), in *Derzhavno-pravova reforma v Ukrayini. Materialy naukovo-praktychnoyi konferentsii*, ed. V. F. Opryshko (Kyiv: Instytut zakonodavstva VRU, 1997). 173-75.

¹⁰⁴ *Konstytutsiya Ukrayiny 1996: Pryiniata na pjatii sesiyi Verkhovnoyi Rady Ukrayiny 28 chervnia 1996 roku* (Constitution of Ukraine: Adopted at the fifth session of the Supreme Council of Ukraine on 28 June 1996) (Kyiv: Yurinkom), Article 6.

¹⁰⁵ Wydra, “Verfassung und Rechtsstaatlichkeit der Ukraine,” 785; also Harasymiw, *Post-Communist Ukraine*, 78.

Constitution; and second, the increasing power of the their former ally – the president, threatened that of parliament and ultimately concealed a danger of authoritarianism.¹⁰⁶

Distribution of power according to the 2004 amendments to the Constitution

In consequence of the redistribution of power, the parliament obtained control over the executive branch, including the rights to form a government and to vote for no confidence, initiated either by not less than one-third of the MPs or the president (but at most once during a regular session or within a year after parliament's approval of the government's program of activities). The parliament can dismiss individual members of the government, except for the minister of defense and foreign affairs who can be dismissed only if proposed by the president. The prime-minister's candidacy is proposed to the parliament by the president, who, in turn, receives this candidacy from the parliamentary coalition. The government, along with the MPs and the president, has the legislative initiative in the parliament.

In the interrelation with the president, the parliament has to consider the draft laws proposed by the president, and can override the president's effective veto over accepted law by the constitutional majority (two-thirds of votes). As already stated, the parliament and the president have dual powers concerning the government in terms of appointment of the prime minister and the key ministers of defense and minister of foreign affairs.¹⁰⁷ However, the president retained the right to dissolve the parliament after formal consultations with its head (except for the last six months of both the president's and the parliament's term) under three conditions: first, if the coalition of deputy factions is not formed during one month; second, if the new government is not formed during 60 days after resignation of the previous government; third, if the plenary hearings cannot be started within 30 days of one regular session. In case of the pre-term elections, the parliament cannot be dissolved again within one year term. Finally, the parliament obtained the authority to initiate the impeachment of the president by three-fourths of the constitutional majority, e.g. in case of the committal of treason, given the Constitutional Court's conclusion on the constitutionality of the procedure and Supreme Court's conclusion about *corpus delicti*. In the case of pre-term dismissal of the president, his duties are performed by the head of the parliament until the next president is elected and is sworn into the office.¹⁰⁸

In the aftermath of the constitutional reform, a number of serious violations was revealed by the National Commission on consolidation of democracy and

¹⁰⁶ Wolczuk, "Tormented Constitution Making," 255.

¹⁰⁷ Riabchouk, "Civil Society and Nation Building," 221.

¹⁰⁸ V. Tymoshchuk and O. Struts, *Vzayemodiya Verkhovnoyi Rady Ukrainy, Prezidenta Ukrainy ta Kabinetu Ministriv Ukrainy v umovah konstytutsiinyh zmin* (Interaction of Verkhovna Rada of Ukraine, President of Ukraine and Cabinet of Ministers of Ukraine under conditions of constitutional amendments) (Kyiv: Zapovit, 2006), 1-28.

strengthening the rule of law. In external evaluation, provided by the Venice Commission and the Parliament Assembly of Council of Europe (PACE), the reform was similarly estimated as “a part of package agreement for cessation of political crisis” and as not corresponding to the principles of democracy and rule of law and the Council of Europe standards.¹⁰⁹ It was particularly recommended that the “constitutional amendments have to be grounded on consensus among political forces and civil society” and “not be subjected to short-term political expectations”.¹¹⁰ These opinions can be realized by force of the right to appeal (unlimited in time)¹¹¹ to the Constitutional Court to recognize the amendments to the Constitution, adopted on December 8, 2004 and in force since January 1, 2006, unconstitutional.

In conclusion, it must be stated that, contrary to the general tendency of strengthening presidential and executive powers at the cost of the parliamentary ones, the form of government in Ukraine was unexpectedly transformed into a parliamentary one by means of the constitutional reform of 2004. This article argues that the main reason for this is principal change in constellation of political actors after 2002. Such a fundamental change of institutional design of executive-legislative relations can be evaluated differently. On the one hand, the parliamentary form of government is conventionally (but not unanimously) estimated as more conducive to democratic consolidation, in particular, by stimulating the development of a multi-party system.¹¹² On the other hand, because of profoundness, suddenness and nontransparency, the constitutional reform of 2004 in Ukraine can be estimated negatively as politically arbitrary and disrespectful towards the constitutional system. As put by the U.S. Undersecretary of State for Global Affairs in 2004, “While Ukraine’s constitutional arrangements can and should be modified when appropriate, changing the rules under which the country’s leaders operate shortly before an election undermines democracy.”¹¹³ Since the constitution was amended in the time of confrontation of political actors, namely the president and pro-presidential majority versus parliamentary minority, the stability of distribution of executive and legislative power stay questionable. Thus, changes like these witness constitutional instability which is not facilitating democratic consolidation.

Conclusions

The analysis of the executive-legislative dimension of institutional design, framed by means of constitutional-making, is substantial for transition and democratic

¹⁰⁹ *Resolution 1466 (2005) on the honouring of obligations and commitments by Ukraine*, adopted by the Parliament Assembly of the Council of Europe on October 5, 2005 (28th session).

¹¹⁰ *Opinion on the procedure of amending the Constitution of Ukraine*, No. 305/2004.

¹¹¹ *Vysnovok shchodo dotrymannia konstytutsijnoyi protsedury...* 2005.

¹¹² Riabchouk, “Civil Society and Nation Building,” 219.

¹¹³ James Sherr, “Kaliningrad,” in *Ambivalent neighbors: the EU, NATO and the price of membership*, ed. Anatol Lieven and Dmitri Trenin (Washington D.C.: Carnegie endowment for International Piece, 2003), 312.

consolidation studies. Although the way executive and legislative power is distributed in postsocialist transitions depends on a number of factors (e.g., level of political parties' consolidation, strength of organizations of civil society, etc), some of them, first of all institutional legacies and political actors, are considered to be determinative for stability of executive-legislative relations and constitutional design as a whole. Thus, Elster's theoretical framework for constitution-making is applied in this article as explanatory for the repercussions of constellations of political actors on the (in)stability of institutional design and constitutional system.

Ukraine is a representative case of the political actors' decisive role in institutional evolution during postsocialist transitions in CEE: it is the constellation of them rather than ideological aspirations which account for constitutional stability, the constitutional distribution of executive and legislative power. The constitution-making was primarily focused on distribution of power among the president, the parliament and the government. It was characterized by two major conflicts: an ideological, between the left and right, and institutional, between the parliamentary groups themselves and the president. Generally, the left (with preferences for parliamentarism) was trying to block the passage of the constitution, whereas the centre-right and the president (with preferences for strong presidency) were insisting on adoption of the new constitution. The semipresidential form of government introduced by the Constitution of 1996 did not last for several reasons. First, the constitution did not provide a durable balance of powers: due to the mixed form of government, powers of the president and the parliament over the government were overlapping;¹¹⁴ likewise, the interrelation of a president and a parliament was institutionally undefined and hence deadlocked.¹¹⁵ Second, it was adopted by conflicting political actors in the aftermath of a situational compromise and not a basic consensus. Therefore in the ongoing political competition between the president and the parliament, the distribution of power was constantly questioned. Thus, despite the indubitable importance of the constitution adoption, it reflected rather balance of powers at the time than established basic consensus on the "rules of the game," i.e. constitutional distribution of executive and legislative power. Although throughout the 1990s, both prior to and after adoption of the Constitution, powers of the president increased at the cost of two other branches of power, ultimately (and unexpectedly) the parliamentary form of government was introduced in 2004 by means of constitutional amendments, both questionably legal and legitimate. This article argues that this transformation of institutional design is a result of changes within the constellation of political actors in 2000-2004. Moreover, since again the compromise was situational and underlying conflicts recommenced new redistribution of power is probably only a matter of time.

¹¹⁴ Shugart and Carrey, *Presidents and Assemblies*, 41-42.

¹¹⁵ Motyl, "Structural Constraints and Starting Points," 437.

A noteworthy finding of the article is that to explain the constitutional (re)distribution of power among branches and its stability, it is necessary to consider not only actors' interests (as a minimalist interpretation of rational choice and actor-oriented approach would imply), but the constellations of actors, i.e. their preferences and intensions, and real outcomes of their actions as well as legacies and constraints under which they operate. Such a perspective helps to understand the seeming paradox in the case of Ukraine: the institutional preferences of the communists (the largest party in parliament 1991-2002), exactly as the those of the president (the strongest executive in 1999-2005) ran counter to the distribution of executive and legislative power at the junctures of adopting and amending constitution, i.e. correspondingly semipresidential republic (in 1996) and premier-parliamentary republic (in 2004). Thus, contrary to the general political tendencies, (re)design of constitutional distribution of executive and legislative power was caused by changes in political actors' preferences and constraints. In the case of Ukraine, the constitution-making characterized by conflict among political actors (and priority of political interests above law regulations), resulted in a situational compromise rather than a fundamental consensus on the distribution of executive and legislative power, and therefore – in their recurring redistribution. The implication is that constellations of political actors influence stability of constitutional system: if the consensus among framers is missing, constitutional distribution of power – a core constituent of a constitutional design – is likely to be unstable thus impeding consolidation of democracy.

Finally, an important induction from the case-study is that institutionalization of the principle of separation of powers, although necessary, is probably not a sufficient condition for the consolidation of democracy since following changes to executive-legislative design can be foundational rather than marginal, contrary to some hypotheses in the field.¹¹⁶ In the case of Ukraine, after distribution of executive and legislative power had been institutionalized by adoption of the new Constitution, it first became an object of the conflict among political actors - constitution-makers, and subsequently – of situational, arbitrary, and legally questionable amendments. Therefore, Juan J. Linz and Alfred Stepan's hypothesis that the consensus among all political actors on the distribution of power between political institutions, i.e. resolution of political conflicts according to the established constitutional norms, rather than "mere" constitutional institutionalization of principle separation of powers, is a crucial factor for consolidation of democracy in transition states, seems to be confirmed.¹¹⁷ As the case-study demonstrates, if in the process of constitution-making and designing a new institutional framework, the consensus between the main political actors is missing, the subsequent political conflict is more likely to be

¹¹⁶ Schmitter, "Dangers, Dilemmas and Prospects," 144; Pigenko et al., "Elite Attitudes," 91.

¹¹⁷ Juan J. Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe* (Baltimore: The Johns Hopkins University Press, 1996), 3-7.

focused on power struggle than on policies¹¹⁸ leading to constitutional instability and impairing consolidation of democracy.

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¹¹⁸ Marc Nordberg, "State and Institution Building in Ukraine," in *Contemporary Ukraine. Dynamics of Post-Soviet Transformation*, ed. Taras Kuzio (Armonk, New York: M. E. Sharpe, 1998). 41-55.

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BOOK REVIEWS

Jennifer M. Brinkerhoff, Stephen C. Smith,, and Hildy Teegen (eds.), 2008, *NGOs and the Millennium Development Goals: Citizen Action to Reduce Poverty*. New York: Palgrave Macmillan, 217 pp. + index.

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United Nations Millennium Development Goals (MDGs) set the agenda for human development at a time when the nation-state centered development paradigm declared to be in crisis. In that context, the eighth goal assigned the objective of reaching MDGs by 2015 to the global partnership of governments, the private sector and nongovernmental organizations (NGOs). This edited volume links the slow pace of MDG process worldwide -voiced by MDGs Report 2007- to the unsatisfactory participation of NGOs. By ascertaining the meager role played by NGOs so far, this volume is intended to analyze the possible roles that NGOs can assume in accelerating MDG process worldwide.

Investigating the issues of poverty and development within the framework of MDGs, the volume mainly suggests that the NGOs' radius of activities and their "comparative advantage" lie in the limitations of the public and the private sector. Authors bring forth an ideal model of division of labor among the government, the private sector, and NGOs, by employing a welfare economics paradigm of excludability and rivalry. The volume points to the importance of not only partnerships among three sectors within nation-state boundaries, but also cooperation within sectors globally such as between international nongovernmental organizations (INGOs) and local NGOs, and governments of Global North and Global South to improve the poor record of MDG process. The target group of the volume includes both academics specialized in development and NGO studies and all stakeholders working in development related fields including policy practitioners and policy-makers.

The volume, divided into three main sections, starts with the section addressing the main theoretical framework of the book, which reveals the comparative advantages of NGOs in comparison to the public and private sectors concerning development-related fields. This theoretical approach is presented against a background of limitations inherent to the current global economic system and conceptual ambiguity of civil society. Following this, the second section renders a fruitful discussion on the conditions sine qua non to the success of MDG process including political will and global partnerships necessary to back MDG process and positive attitude to be taken

by governments towards NGOs. Based on the “comparative advantage” perspective, last section of the volume focuses on possible contributions of NGOs in specific MDG-related fields (i.e. extreme poverty, gender, health, education, and environment). Last but not the least, the volume concludes with a call for further research concerning the integrated evaluation of development programs carried out by NGOs.

The book successfully fulfills its main objective by specifying the role of NGOs in development-related areas “where innovation, flexible programming, specialized knowledge related to the poor, targeted local public goods, common-property resources management, and representation and advocacy” (p. 195) is required. Contributors from diversified backgrounds -such as academia, international organizations, and NGOs- provide the proper combination of approaches needed for bridging the theoretical discussions surrounding the possible role of NGOs in development with policy proposals aimed at furthering human development. This productive synergy among the authors results in a volume providing not only a rich theoretical discussion on human development and NGOs, but also a detailed analysis of NGO role in MDG process.

One specific theoretical issue could have been addressed more explicitly in the conclusions raised in this volume. Given the limitations of the possible success that NGOs can bring to worldwide development voiced in the first section, the third section of the volume principally applies J. M. Brinkerhoff et al.’s “comparative advantage” framework without fully integrating the former. The contributions of first two chapters -the former pointing to the critique of MDGs in worldwide poverty alleviation, the latter discussing the limits of NGO role in MDG process- could be better integrated into the main theoretical framework. That would be helpful for the authors to take a distance from neo-Tocquevillean optimism towards NGOs’ possible contributions to development, especially as far as the policy implications are concerned.

However, one should definitely note that the insight of this volume concerning the future research in development studies can be of great importance in resolving above mentioned tension. In this regard, the book successfully emphasizes the observable lack of studies concerning the evaluation of NGO activities and programs in the realm of development (p. 198). Operating on this insufficient world of data, the authors could only utilize a small group of development programs being implemented by outstanding NGOs (i.e. CARE and BRAC) which could hardly provide the necessary empirical findings sufficient to substantiate the main framework.

Given the challenge that development studies facing due to the crisis of the nation-state centered development paradigm, the contribution of J. M. Brinkerhoff et al.’s book to the literature is valuable in finding a way to break the deadlock that the MDG process is in. The challenge that this book faces is the challenge of pursuing a

development agenda in a global world. In this respect, the volume's special emphasis on a new research agenda concerning the evaluation of NGO effect in development-related realms seems to be of key importance for those interested in development and NGO studies.

Andrew Dobson and Robyn Eckersley (eds.), 2006, *Political Theory and the Ecological Challenge*, New York: Cambridge University Press, 262 pp.

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The second half of the twentieth century was characterized by an increased environmental consciousness in post-industrial society triggered by manmade catastrophes including oil spills, deforestation, and radioactive waste. Yet, "green thought", albeit political appreciation, still lacks general intellectual and theoretical recognition in academia today. In *Political Theory and the Ecological Challenge* editors Andrew Dobson and Robyn Eckersley conceptualize the increasing ecological practices and embed it in modern political ideologies and theories. Dobson, professor in environmental politics at Keele University (United Kingdom) and Professor Eckersley, who shares her colleague's vocation at the University of Melbourne in Australia, called for a dozen scholars to address the issue from an interdisciplinary perspective. While the first part of the book explores the connection of ideologies such as liberalism, conservatism, socialism, and feminism with ecologism, several authors then analyze the ramification of theoretical concepts, ranging from democracy and representation to security related issues on environmentalism in the second part. This is an ambitious, yet difficult endeavor to pursue.

Environmentalism theory is rooted in dichotomous concepts best illustrated by the ideological tension between nationalism and cosmopolitanism. Roger Scruton, in his chapter on conservatism, points out the importance of territorial attachment for nations and also with respect to ecology, establishing a direct link between society and nature. Individuals not only feel strongly attached to the nation, but also express the desire to protect it from environmental degradation (p. 15). Mary Mellor posits the promotion of environmentalism within this framework via subsistence sectors and local economy, addressing the concept of socialism (p. 46). Consequences of local environmental pollution directly affect the life of certain communities as well as increase their alertness and readiness for protest. At the far end of the ideological

spectrum, however, is cosmopolitan theory which, according to Andrew Linklater, generates “common experiences” in order to create a transnational awareness that goes beyond locally oriented reasoning (p. 122). The challenge for a new green theory lies therefore in consolidating cosmopolitanism and nationalism. Other, more recent theoretical concepts are facing similar challenges. Feminism, for instance, follows a holistic approach with Val Plumwood emphasizing hybridity to tackle the integration problem. According to her, nature ought to be valued at least as much as humankind (pp. 51-74). While she is trying to go beyond an anthropocentric concept, Andrew Hurrell and Michael Saward in chapter 10 and 11 respectively, use anthropocentrism to personify nature for political purposes (pp. 165-199). This approach, although not new, is rather original, as it requires rethinking not only the relationship of humans, animals, and nature, but also inquires about how to conceptually integrate this within a legal framework. Hence, this reiterates the detached yet interdependent character of ecological thought and established political concepts.

A closer look at questions regarding the difference between rights, freedom, citizenship, and democracy highlights this paradox, revealing how environmentalism crosses conceptual boundaries. As Richard Dagger suggests, citizens have to surrender some of their options, yet not give up their entire range of freedom to incorporate nature within a new theoretical framework (pp. 200-215). Andrew Dobson develops a similar idea with respect to citizenship, concluding that a cosmopolitan citizenship will eventually be able to transgress political limits (pp. 228-229). Both concepts are embedded in the democracy model of Terrence Ball who, in addition, outlines problems related to green political agendas that authoritative regimes pursue (pp. 131-147). This begs the question how important democratic structures are for environmentalism? Compared to autocratic regimes, in democracies intellectuals have elaborated political tools that take into account environmental protection. As a case in point, Hans Jonas, German philosopher, wrote an influential work, *The Imperative of Responsibility*¹, not only catalyzing the German environmentalist movement, but also laying the foundations for the “precautionary principle”. Widely used in decision-making structures of democratic states in Europe, this concept considers the environment as a valuable resource and requires *a priori* evaluations in order to minimize harmful consequences on nature and society due to political action. Ecologism, therefore, is anchored in the theoretical world as well as in the real-life politics.

Despite its innovative and inspirational character, the book has nonetheless some shortcomings. In particular with respect to methodology, my critique is twofold. While authors acknowledge the right of existence of ecologism, the message about establishing a separate subfield in political theory is blurred. In an earlier book, however, Dobson argued already that ecologism is a political ideology, and in the late

¹ Jonas, Hans, 1984, *The Imperative of Responsibility: In Search For the Ethics in a Technological Age*, Chicago University Press.

1990s Brian Baxter courageously took upon himself the ungrateful chore of conceptualizing the socio-political issue of environmentalism.² In other words, the field could have benefited significantly, if the editors had included preliminary structural and conceptual elements to outline a theoretical foundation. Also, Daniel Deudney, by addressing unfounded security threats in regards to environmentalism at a national level, only weakens his own argument. Rather than clinging on to unjustified aspects of violence, it would have been methodologically more suitable to focus on the ramification of ecologism on the nation-state paradigm and state institutions, as mentioned in his conclusion. This would have been particularly helpful to evaluate how different political systems deal with the issue. Albeit its theoretical relevance to environmentalism, federalism has not received any attention and should have been included in this approach. It is pivotal, as its multi-level structure allows for political mechanisms that enhance problem solving. Suffice to say that the principle of subsidiarity, referring to the idea that problems are best solved at the level where they arise, enhances local efforts of environmental protection. It combines two primary modes of political action, top-down and bottom-up, in order to cope with the ecological challenges and bridges the gap between cosmopolitanism and nationalism.

The effort of embracing various subfields of political theory to tackle this problem is exemplary; yet it would be very interesting to delve into the question of how to broaden an interdisciplinary perspective. Put differently, cultural and sociological aspects are also innate when examining ecologically relevant topics, and it would therefore be compelling to find means of taking these elements into account and eventually incorporate them into a general concept. More recently developed theories, such as feminism, emblematically illustrate that the theoretical core thought is inherent in many different fields and generate a continuously increasing number of research areas. Ecologism, as this book ultimately asserts, follows a similar logic and therefore the authors have contributed a great deal of outlining the first roadmap for future research that should not be limited to the topics treated in this collection, yet be expanded in order to create an integrative conceptual framework for ecological theory. Despite the abstract and philosophical nature of the subject matter, the authors have grounded arguments, which make this book accessible to a wide range of educated and curious readers who express curiosity and alacrity to learn about integrating the ecological challenge into political theory. Not only theorists, but also other disciplines will benefit from this interdisciplinary undertaking; however, a solid foundation in political theory is recommended.

² See Dobson, Andrew 1992, *Green Political Thought: An Introduction*, Routledge: London, and Baxter, Brian, 1999, *Ecologism: An Introduction*, Edinburgh University Press.

Nick Bisley, 2007, *Rethinking Globalization*, New York: Palgrave Macmillan 255 pp.

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The notion of globalization has caused immense scholarly debate within the last two decades, providing competing conclusions about the transformations in the modern international system. From the claims on the retreat of state to the emergence of a cosmopolitan world society, globalization has been perceived, in either negative or positive terms, as an overarching force challenging the very foundations of the world politics. In his comprehensive study entitled as *Rethinking Globalization*, Nick Bisley proposes a Lukacsian approach of *rethinking* this much heated debate. Underlining that the ever-expanding literature on globalization has produced more confusion than it resolves, Bisley argues that *a process of digestion* on the interactions between globalization and the institutions and structures of world politics is needed to make sense of how globalization transforms the core dimensions of the modern international system (p. 4).

The author advocates the peculiar idea that globalization and its interactions with the world politics can be best understood by avoiding *grand theories* about itself (p.215). Criticizing the maximalist approach which has attempted to explain the social reality with reference to all-encompassing frameworks, Bisley argues that globalization involves contradictory, complex, uneven and contingent processes whose interactions with the workings of the international order can only be assessed by looking at the particular context one is interested. That is, *the context is all for the consideration of globalization*, for Bisley. (p. 2)

This context-oriented approach to the study of globalization structures the book into ten chapters, including introduction and conclusion. In the first two chapters, Bisley provides a critical overview of the theoretical discussions and historical evolution of globalization. After briefly examining the central themes in the debates over globalization, Bisley constructs his own definition of globalization by relying on the distinction between globalization as cause and as consequence. The implications of this complex and multidimensional process on world politics can be best understood by relying on its consequential dimensions. Then, Bisley defines globalization as “...a set of consequences deriving from the reduced costs and increased speed of transporting goods, knowledge, people and capital.” (p.31) This specific approach to globalization enables the author to construct the basis for a critical inquiry into six

central themes of world politics, namely, state, world economy, international institutions, war, nationalism and international order.

In this critical inquiry, Bisley methodologically relies on the analysis of the existing literature existing on the particular context at hand. While analyzing each and every topic, the book enables the reader to get familiar with the main lines of discussion existing on that particular theme. This specifically provides the chance to have a list of ‘the most important readings’ on globalization for those interested in further research on the issue (even though such a list would lack some of the important critical voices in the literature). This brief literature review is followed by an attempt to reconstruct the notion at hand. Such an attempt clarifies the position of the writer and strengthens his claim over the importance of the context in a study of globalization. Then, the author tries to assess consequential dimension of globalization on that particular issue to grasp the nature and extent of transformation.

By doing so, Bisley successfully overcomes the intellectual confusion surrounding the globalization debate. Providing convincing examples, the author shows the main fallacies of the extreme approaches to globalization as far as the particular context is concerned. For instance, as discussed in chapters three and four, globalization does not pose an existential challenge to the state, but transforms the environment in which the state operates both domestically and internationally. This has necessitated a transformation of the role and function of the state in domestic and international realms (p.57). Therefore, the impact of globalization is far more than the simple depiction of weak state-strong market. Besides, the book pays particular attention to the multidimensional and contradictory nature of the ongoing process of globalization. Examined within the contexts of international organizations, war or nationalism, the contradictory processes of globalization have not fundamentally recast the place or nature of these topical issues in world politics, but transformed their situational importance and the meaning.

Entitled “Still an Anarchical Society?” chapter eight tries to connect all the hitherto made arguments about the central themes of world politics to the general issue of international order to assess how globalization has transformed the contemporary world politics. As can be inferred from the title, Bisley questions whether Hedley Bull’s notion of *anarchical society* is still valid to make sense of the contemporary international system. Viewing the international order from a state-centric perspective, but not excluding the other actors, processes and mechanisms brought by globalization, Bisley stresses that although all the central aspects of world politics are in a transformation, this does not recast the fundamental basis of the modern international system. However, it is no longer an anarchical society either because of the inadequacy of the term to picture the contemporary reality (p. 190).

Structured on the contextual analysis of the consequences of globalization, the book explains the broader context of world politics by marching from the particular issues,

and then gathering them into one meaningful totality. Even though such an approach provides a great degree of practical facility in an area full of theoretical complexity, it unavoidably carries the danger of dividing social reality into enclosed contexts. That is, the inherent danger of overlooking the complex interactions between these central themes is implicitly embedded in the book. In fact, the author acknowledges this danger and, in many ways, stresses on the interactions between those themes in the era of globalization. More importantly, chapter eight is devoted to such an aim. Nonetheless, a state-centric discussion on the international order seems to be insufficient to trace the issue on a more analytical level.

This inherent problem of the book is a more general question of treating the complex social phenomenon as *the thing in itself*. Abstracted from the broad historical and social contexts, the particular issues examined in separate chapters stand as if they were something existing on their own. What is more, the constitution of globalization as a consequence inevitably falls short of overcoming eclecticism in the study of the social phenomenon. For instance, the book lacks a proper answer to questions like this one: How does the economic dimension of globalization (think about increasing poverty and inequality within and between states) have an impact on the rise of ethnic nationalism or even racism in different parts of the world?

Overall, *Rethinking Globalization* provides an important means to reconsider what has really happened to structural features and actors of the modern international system during the complex and contradictory processes of globalization. The mission of initiating a *process of digestion* seems to be well accomplished in the totality of the book. However, the context-bound approach of the book seems to fall short of analytically linking different contextual issues to one another. This in turn weakens the author's argument that *the context is all* in order to make proper sense of the contradictory process underway. However, this does not undermine the book's theoretically novel path of rescuing the globalization-world politics debate from the never-ending discussions around the *grand theories*. As such, Bisley opens new intellectual horizons for those interested in the question of contemporary state of affairs in world politics.

Albert Rakipi, 2008, *Weak States & Security: Rethinking the Balkan Post-Cold War Security Agenda*, Tirana: Albanian Institute for International Studies, 229 pp.

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Rakipi looks in his 2008 ‘Weak States and Security: rethinking the Balkan Post-Cold War Security Agenda’ to the weak state phenomenon and the shapes it takes in the Balkans after the fall of the Communist regime. He focuses in his work on two case studies – Albania and Macedonia – which in spite of their different histories both are in the post-Cold War period weak states. The study addresses both the literatures on international relations and the weak/failed states by attempting to substantiate a link between security concerns and weak states. As such the author starts by building up a theoretical framework which allows addressing simultaneously international relations theory, the security dilemma, the process of democratization, and strong/weak statehood. This theoretical framework is by and large steaming out of the international relations theory, more specifically its realist/neo-realist and liberal/neo-liberal streams. The author builds up the argument in such a way as to justify a predominant focus on the internal aspects of security, delimiting the study from the international dimension of the security dilemma – i.e. the traditional understanding of the security dilemma within international relations – and a focus on power holders within the international system. Such a move, even if contradictory to the (neo-)realist IR, it is broadly in line with the (neo-)liberal stream. A second step is to justify a focus on the ‘institutional base of the state’. This focus draws a particular attention to the development of the post-communist institutions and their representation of state strength. Furthermore it requires a strong focus on the development of statehood per se, the national question, and the transformations of the underlining organizing ideology.

At this level Rakipi draws our attention to the discrepancies between the forms of statehood we may find in the West and those that are developing in the periphery/Balkans – here the crux of the problem being the understanding and projection of power and the role the state has in the manipulation of power. Ultimately the criterion decided upon as the most relevant in the discussion on state strength/weakness is political legitimacy which guides the author in his analysis of the two case studies.

Considering the evolution of the international system and the sharp increase in the number of states during decolonization and the post-communist period, the apparition of states which maintain a formal sovereignty but are too weak to maintain a normal relation with their citizens based on the adequate provision of public goods and security puts the international community in a new and difficult situation. The answer given up to date to the weak state phenomenon is fragmentary and insufficient. Rakipi attempts therefore to underscore the dangers the proliferation and inadequate approach towards this kind of states can bring for the international community. He does so by looking into the Albanian and Macedonian cases.

Albania is dealt with extensively and Macedonia is treated as well but more succinctly; the author manages therefore to provide a nice picture of the apparition and development of the Albanian and Macedonian states. The many problems that come with the institutionalization and strengthening of these states are considered and their impact on the security dynamics of the region and the whole Europe is highlighted.

Rakipi looks further into the link between such weak states and the international community. He starts by tackling the issue of the foreign policy of weak states. The foreign policy is relevant as it reveals the perceptions of threats of the weak states. In this case the legitimacy so much needed for increasing the strength of the state in the liberal order, comes mainly from external actors and is a useful tool in the competition with the many internal 'enemies'/ opposing forces which are characteristic of weak states.

Finally the author deals with the role of the international community in dealing with the situations of fragility. As it may be expected this role is major and has a deep impact on the functioning of the weak state and its institutions. The focus is mainly put on the role of the EU and NATO in the crises that Albania and Macedonia have faced in their period since the fall of the communist regime. Whether the international community's presence takes the form of an international protectorate, presence of international forces, development aid, engagement in mediating peace deals, or a contribution to the consolidation of democracy and state capacity, these contribute substantially to the transformations of the local institutional environment.

As such the book treats a very topical subject given the current engagements of the international community (e.g. Afghanistan) and the ever stronger interest for the deteriorating situation of African states. The strengthening of weak states does receive more and more attention from both scholars and policy makers. The book maintains a pretty clear structure offering a substantial contribution due to its focus on the Balkans. While most of the weak/failed states literature deals with other areas of the world, the post-communist Central and Eastern European area has important lessons to be drawn for the efforts of various states and the international community in what regards strengthening statehood.

From the post-communist area, Albania and Macedonia are both wonderfully selected cases as they make possible a nice employment of Mill's method of difference. Albania has independence for a longer period of time and is ethnically homogenous, while Macedonia gains independence for the first time after the fall of the communism and is ethnically heterogeneous. In spite of these differences, in both cases we find strong evidence of weak statehood and difficult transition paths towards more democratic societies. Rakipi manages to bring forwards reach localized knowledge which is enlightening in the context of weak/failed states literature. As well, the contexts of the two states, concerning their development as states and particularly so their position in the international system and relation to the international community, allow important lessons for the security literature.

However, there are several drawbacks: the two case studies are disproportionate. The Albanian case study is treated substantially and at length while Macedonia is dealt with more superficially. This aspect as well as the views presented on Albania and Macedonia and the relations between the two reveal a certain level of unnecessary bias towards the Albanian position. As well, much of the information provided for the Albanian and Macedonian case studies is anecdotal, lacking a seriously structured analysis and at times comprising value judgments. Furthermore, the strong reliance on the neo-/realist and neo-/liberal theories brings several tensions which are not entirely dealt with. While the more critical streams of IR theory are not considered at all in spite of the obvious potential contribution such lenses could bring to the undertaken analysis.

The literatures employed in the building up of the theoretical argument exclude by and large the development and economic development literatures. In spite of one of the conclusions of the book that development is at the core of the strengthening of the current states in the Balkans, this line of argumentation is not taken further. Overall, the argument the author attempts to build is composed of several components which unfortunately do not add up in a structured and clear analysis. Nevertheless, the contribution as a whole does offer an important contribution to the weak states literature by focusing on the Balkans and link between security and weak states in the same region.