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PERCEPTION OF IMAGES OF POLISH PRESIDENTS AFTER 1989 IN THE CONTEXT OF DEMOCRACY CONSOLIDATION PROCESSES

Agnieszka TURSKA-KAWA and Waldemar WOJTASIK[1]

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Since 1990, the highest office in Poland has been elected by Polish citizens through secret ballot in universal, direct and equal elections. Since then, there have been six presidential elections in Poland won by Lech Wałęsa (1990–1995), Aleksander Kwaśniewski (1995–2000 and 2000–2005), Lech Kaczyński (2005–2010), Bronisław Komorowski (2010–2015) and Andrzej Duda (since 2015). Focusing on the psychological dimension of perception mechanisms, the aim of the analysis was to find what is the perception of presidents of Poland after 1989. We also wanted to know if respondents' age differentiate between the perceptions of presidents of Poland since 1990. Using multiple stages analysis (including exploratory research, factor analysis, competent jurors method) we identified four factors named: potency, honesty, social competence and expertise. The study (N=949) showed that the perception of heads of state is significantly different regarding all the factors and significant differences in the perception in specific way explaining in the article.

Key words: presidency in Poland; consolidation of democracy; political image; leadership.

1 INTRODUCTION

In Central and Eastern European countries a specific form of presidentialism has developed, being the product of historical experiences and the effects of democratic transition (Brunclík and Kubát 2018; Wiatr 2018). Taking into consideration the possible evolution towards authoritarianism (which did occur in Belarus and at least partly in Russia), post-communist countries decided to choose the model of weak presidency or presidency balanced with the power of other authorities (semi-presidentialism). The Polish case has an additional specificity due to the transitory nature of the adopted institutional solutions. It is

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worth emphasizing, however, that the source of this provisional character was the need to adapt to the dynamically changing political system situation, not the current intentions or political interests (Szczerbiak 2017, 105–138). Presidency was restored in Poland was the result of the adopted political agreement between communists and "Solidarity" [*Solidarność*]. On April 7, 1989, the *sejm* adopted the act (the so-called April amendment), which amended the communist constitution and restored the office of president in Poland. The key arguments that justified the reactivation of presidency were pointed out then: the role of the president was to supervise the transition from communist dictatorship to parliamentary democracy, to guarantee the maintenance of the current system rules, to serve as a substitution leader of the communist party and as an arbiter on the political scene (Glajcar 2015, 264). The election of the president was excluded from political competition procedure; the office was to be held by a representative of the contemporary authorities. On July 19, 1989, the National Assembly elected a president: the communist leader Wojciech Jaruzelski. He was aware of his poor legitimization and did not try to become the leading figure on the Polish political scene.

Since 1990, the highest office in Poland has been elected by Polish citizens through secret ballot in universal, direct and equal elections. Strong social legitimization contributes to the president's high position in the system and allows the voters to believe that they have a direct influence on the situation in the country. Direct election of the head of state is quite a popular mechanism in democratic countries, which procedurally improves the president's position in the system. On the other hand, the need to apply the direct model of presidential election is not inherent in the current Polish regime model; especially that this has never been a tradition in Poland. The current solution was worked out as a result of political, doctrinal and personal reasons (Wojtasik 2012, 218).

Since 1990, there have been six presidential elections in Poland. The first president was Lech Wałęsa (1990–1995), whose political legitimization mostly resulted from leading the "Solidarity" movement in the 1980s. Yet, being the tribune of the people and the leader of anti-regime powers did not have a positive effect on his way of exercising power (Braun 2018). The next politician to receive the office of head of state was Aleksander Kwaśniewski (1995–2005), who was the only one to hold this office for two terms. Kwaśniewski was one of the authors of the constitution that is still in force in Poland (Millard 2000, 56–59). Since the legal system limits the duration of presidency to two terms of office, in 2005 Lech Kaczyński (2005–2010) won the presidential election. His rule, however, finished prematurely as he died in the plane crash in Smolensk. After the death of Lech Kaczyński, the premature election was won by Bronisław Komorowski (2010–2015) associated with Civic Platform *[Platforma Obywatelska, PO]*, although he was not the party leader. During his political career, he had been i.a., the Minister of National Defense and the Marshal of the Sejm, but in practice he had always been in the shadow of party leaders (Cześnik 2014, 521). The current president of Poland, elected in 2015, is Andrzej Duda, who was recommended by Law and Justice *[Prawo i Sprawiedliwość, PiS]*. Just like in the case of Komorowski, he had previously been a medium-rank party member, serving as a European Parliament deputy representing Law and Justice. As we analyse the individuals holding the office of president of Poland, we can see two regularities. The first is that the people who have recently become presidents are not political and party leaders, unlike Wałęsa and Kwaśniewski elected before. After 2005, the office of president has been held by politicians who are significant and recognizable, yet the actual leaders have been interested in the cabinet and the parliament instead. The other regularity is related to the instability and high dynamics of political change, resulting in the lack of re-election of incumbent presidents (except

Kwaśniewski) and the polarization (alternation) of political origin of successive presidents. In each case, it was a politician opposing the one leaving the office, which does not ensure continuation but provides a new political start (Materska-Sosnowska 2015).

2 PSYCHOLOGICAL ASPECTS OF PERCEPTION OF POLITICIANS

Politicians' qualities are the basic factors affecting their political images. Potential voters' reasoning about the qualities of a political leader is rooted in the need to understand the reasons of human behaviour, forecast that behaviour, and control events (Pilch and Turska-Kawa 2015). The more coherent our environment seems to be, the more it ensures us the sense of security and stability (Scammel 2015). The observer can "grasp", predict and control the reality only by referring the transient and changeable behaviour and events to relatively unchanging underlying conditions (Heider 1958, 79). The need to maintain a stable and coherent system of experience representation is also one of the four needs of a human in the experiential system, regarded as fundamental by Seymour Epstein (2003, 162–163).

The need to maintain a stable and consistent surroundings over time generates some interesting questions: do the changes in socio-political contexts initiate the process in which events recorded in the memory are adjusted to them, or do they serve as stabilizing anchors? Do emotions connected with each president, generated because of important historical events, consolidate their images over time? Do the rapid changes in political communication lead to higher dynamics of citizens' opinions about politicians? Does the tabloidization of politics increase the need to formulate extreme views about political attitudes? And finally, does the present universal availability of information result in reduced importance of historical assessments in favour of opinions formed ad hoc, here and now?

The tendency to organize information and create a coherent image is explained with a stable mechanism of our perception, which at the same time reveals numerous errors in it. According to the classic attribution theory by Fritz Heider (1958), people have the tendency to perceive their surroundings as coherent and controllable. Thus, we try to determine the reasons for other people's behaviours so as to make them part of a predictable environment. Individual diagnosis of motivations behind people's behaviours may be internal – when the reasons are identified with personal factors connected with one's character, or external – when we attribute the dominant force generating a certain action to the environment. Another important attribution theory is the correspondent inference theory by Edward E. Jones and Keith E. Davies (1965, 220–266). In this theory, other human's behaviour is perceived to be the product of consistence between the person's outward actions, intentions and dispositions (personality traits). According to the authors, the process of explaining human behaviours involves two stages. First, we identify the person's intention, and then we attribute the corresponding dispositions. We assume that the behaviour was intentional if the person was able to predict its effects and to achieve the assumed results. Intentions are determined through observing the consequences of the actor's actions or through the comparison of the outward effects with the probable results of other actions that could have been taken. Our belief that we can predict how someone will behave in the future depends on the coherence and consistency of the person's present behaviours. The lens model by Egon Brunswik (1956) is an attempt to understand the person's behaviour in their natural environment. Following the trend of probabilistic functionalism, the

author concluded that inference about other people's behaviours is connected with more or less accurate guidelines we obtain, related to the information about the actor that we have or are able to find, concerning the actor's previous behaviours and their traits we know about. The more we have of such information, the higher the probability that the opinion about the subject of the behaviour will be accurate. Elements occurring in the voter's environment serve as a kind of "lens" through which the object of observation is assessed.

These theories and models attempting to understand the behaviour of other people have three important issues in common. First, information available for the individual (concerning other behaviours, dispositions and perceived competencies of the actor) plays an important role in all of them. If we have access to many decisions made by the politician, it is easier to draw conclusions of their dispositions based on their activities and utterances; furthermore, if that information is coherent, the evaluation is quicker, more permanent, and more resistant to change. Thus, the distinctness of the politician's image will be affected by their presence in the media and press, not only during the term of office but also later, when they serve as commentators of the reality or show their less public face. It is important that if the information is coherent, each additional piece of information consolidates the politician's image, but otherwise, the image tends to change. Politicians from consolidated democracies show that the process of consolidating the previous image is more often the case. Charles de Gaulle, Helmut Kohl, Bill Clinton or Barack Obama are examples of such processes. To the contrary, at least some leaders from Central and Eastern Europe did not manage to consolidate the image they had when holding the office. Examples are i.a., Boris Yeltsin, Vaclav Havel, and the aforementioned Lech Wałęsa. The amount of available information is related to the second aspect: time. In a longer period, the observer is able to observe and absorb more. But what is interesting in the context of this study is the dynamics of the change after the end of the term of president of Poland. Does the passing time work in favour of the person's image formed during the term, or is it verified by the on-going events? Third, openness to information is largely connected with taking interest in it. More information will be of no use if the voter is not interested in the political scene. Thus, in order to assess a politician in a more accurate and stable way, it is important to build the assessment over longer time, which requires constantly following politicians' actions. It seems the current president should generate more interest, because his decisions have a direct influence on the citizens; quality of life.

3 METHODS

Focusing on the psychological dimension of perception mechanisms, the research presented in this article aimed to identify the key factors affecting the voters' perception of all the presidents of Poland elected in direct elections after 1989: Lech Wałęsa, Aleksander Kwaśniewski, Lech Kaczyński, Bronisław Komorowski and Andrzej Duda. According to Pascal de Sutter (2009, 16), in the time of excessive medialization and blurred ideological differences between parties, personality and image are often more important than the programme, and appearances than the reality.

The research involved multiple stages. In the first, exploratory phase of the research, a short study was carried out among students of different social sciences courses to find out what is the most important quality of an ideal president for them. The question was open-ended. The respondents (N=208)

were asked to write down the first quality they think of as they read the instruction. The collected responses were then subject to qualitative analysis.

Firstly, mocking, vulgar and irrelevant terms were excluded (N=32). After removing the qualities repeated in multiple responses, finally we were left with fifteen.

In order to group the qualities into homogeneous sets, we used factor analysis. Four coherent factors were identified and applying the competent jurors method (using four sociologists, four psychologists and seven political scientists) in the research we named them: *potency*, including characteristics such as active, strong, independent and courageous; *honesty*, which covers ethics and honesty; *social competence*, made up of traits such as friendliness, mildness, tactfulness, kindness and joy, and *expertise*, i.e., competence, reliability, diligence and conscientiousness.

Each quality was treated as a dimension, with opposing qualities being the extremes. The perception of candidates for political offices involves different dimensions. Evaluating an object or an event, individuals do not perceive the object of perception as a whole but focus their attention on certain aspects only. Thus, the scope of information is narrowed so that the voter would be able to make a decision concerning their voting behaviour. Attributing scales to each dimension, we obtained sixteen 7-item scales used in the proper research in the form of semantic differential. Semantic differential is one of the most frequently applied methods of analysing candidates' images. The method was developed by Charles E. Osgood, George J. Suci and Percy H. Tannenbaum (1967). It measures the significance of different objects or concepts for individuals. The instrument is based on the thesis that a human absorbs two kinds of information from the environment: descriptive and connotative/emotional. The method diagnoses the connotative significance, measured using scales whose extremes are pairs of opposite adjectives.

In the proper study, we applied all the scales to each president of Poland after 1989. The questionnaire also included the demographics section, in which the respondents were asked to provide the following data: sex, age, and education. Sex and education were just for control, but age was the key variable in the analysis. The aim of the analysis was to answer the following research questions:
- *What is the perception of presidents of Poland after 1989?*
- *Does respondents' age differentiate between the perception of presidents of Poland after 1989?*

3.1 Study sample

The proper study was carried out between December and February among a sample of 949 adult Poles with an active voting right (W=518; M=431). Quota stratified sampling was used, in which Polish provinces (16) were the strata, and the quota control applied to variables such as sex, age and place of residence (town/village) of the respondents. Thus, the sample was varied as follows in terms of the respondents' age: there were 186 respondents aged 18-24 (19.6%), 138 aged 25-34 (14.5%), 189 aged 35-44 (19.9%), 188 aged 45-54 (19.8%), 100 aged 55-64 (10.5%) and 148 aged over 65 (15.6%). One-fifth came from rural areas or small towns (up to 25 thousand residents) – 17.9% and 4.2%, respectively. One-third lived in medium-sized towns (25-100 thousand residents) – 32.7%, and the highest number of people were from big towns with over 100 thousand residents – 45.2%. The biggest group among the respondents

were people with higher education (42.7%). There were slightly fewer people with secondary education (41.7%); every eighth person had vocational education (13.7%), and only 21 people had discontinued their education at the elementary or junior secondary level (2.2%).

4 RESULTS

In the first stage of the analysis, profiles of presidents of Poland after 1989 were outlined in the context of the identified factors and the significance of differences between them was verified. The study showed that the perception of heads of state is significantly different regarding all the factors: POTENCY $(F(4;4728)=140.07$; $p<0.001$; HONESTY $F(4;4728)=86.696$; $p<0.001$; SOCIAL COMPETENCE $F(4;4728)=291.13$; $p<0.001$ and EXPERTISE $(F(4;4728)=236.094$; $p<0.001$. Specific differences between the presidents were verified with the post-hoc Tukey HSD Test (see tables 1, 2, 3 and 4).

TABLE 1: MEANS OF THE ASSESSMENTS OF POTENCY AND THE SIGNIFICANCE OF DIFFERENCES IN THE POST-HOC TUKEY HSD TEST

		Lech Wałęsa	Aleksander Kwaśniewski	Lech Kaczyński	Bronisław Komorowski	Andrzej Duda
POTENCY	Lech Wałęsa M=4.56	-	|I-J|=.24127; p=0.003	X	|I-J|=1.28836; p <0.001	X
	Aleksander Kwaśniewski M=4.32	|I-J| =.24127; p=0.003	-	|I-J|=.36640; p <0.001	|I-J|=1.04709; p <0.001	X
	Lech Kaczyński M=4.69	X	|I-J| =.36640; p <0.001	-	|I-J| =1.41349; p <0.001	|I-J| =.37089; p <0.001
	Bronisław Komorowski M=3.28	|I-J| =1.28836; p <0.001	|I-J| =1.04709; p <0.001	|I-J| =1.41349; p <0.001	-	|I-J| =1.04259; p <0.001
	Andrzej Duda M=4.38	X	X	|I-J| =.37089; p <0.001	|I-J| =1.04259; p <0.001	-

In terms of POTENCY, the perception of Lech Wałęsa does not differ significantly from the perception of Lech Kaczyński and Andrzej Duda. The level of POTENCY attributed to Andrzej Duda is insignificantly different from that attibuted to Aleksander Kwaśniewski. According to the respondents' the weakest president was Bronisław Komorowski.

TABLE 2: MEANS OF THE ASSESSMENTS OF HONESTY AND THE SIGNIFICANCE OF DIFFERENCES IN THE POST-HOC TUKEY HSD TEST

		Lech Wałęsa	Aleksander Kwaśniewski	Lech Kaczyński	Bronisław Komorowski	Andrzej Duda
HONESTY	Lech Wałęsa M=3.70	-	X	|I-J| =-.68967; p <0.001	X	|I-J| =-.60721; p <0.001
	Aleksander Kwaśniewski M=3.81	X	-	|I-J| =-.53114; p <0.001	X	|I-J| =-.44868; p <0.001
	Lech Kaczyński M=4.39	|I-J| =-.68967; p <0.001	|I-J| =-.53114; p <0.001	-	|I-J| =.79675; p <0.001	x
	Bronisław Komorowski M=3.77	X	X	|I-J| =.79675; p <0.001	-	|I-J| =.71429; p <0.001
	Andrzej Duda M=4.31	|I-J| =-.60721; p <0.001	|I-J| =-.44868; p <0.001	X	|I-J| =.71429; p <0.001	-

HONESTY differentiates between presidents in another way. Two coherent groups can be found in this regard. The first homogeneous group with lower scores comprises Lech Wałęsa, Aleksander Kwaśniewski and Bronisław

Komorowski. The other group, attributed higher honesty, includes Lech Kaczyński and Andrzej Duda.

TABLE 3: MEANS OF THE ASSESSMENTS OF SOCIAL COMPETENCE AND THE SIGNIFICANCE OF DIFFERENCES IN THE POST-HOC TUKEY HSD TEST

		Lech Wałęsa	Aleksander Kwaśniewski	Lech Kaczyński	Bronisław Komorowski	Andrzej Duda
SOCIAL COMPETENCE	Lech Wałęsa 3.63	-	$|I-J| = -1.29071$; p <0.001	$|I-J| = -1.46575$; p <0.001	$|I-J| = -.81833$; p <0.001	$|I-J| = -1.72331$; p <0.001
	Aleksander Kwaśniewski M=4.92	$|I-J| = -1.29071$; p <0.001	-	$|I-J| = -.17504$; p=0.026	$|I-J| = .47238$; p <0.001	$|I-J| =0.43259$; p <0.001
	Lech Kaczyński M=5.10	$|I-J| = -1.46575$; p <0.001	$|I-J| = -.17504$; p <0.026	-	$|I-J| = .64742$; p <0.0001	$|I-J| = -.25755$; p <0.001
	Bronisław Komorowski M=4.45	$|I-J| =0.81833$; p <0.001	$|I-J| = .47238$; p <0.001	$|I-J| = .64742$; p <0.001	-	$|I-J| = .90497$; p <0.001
	Andrzej Duda M=5.36	$|I-J| =1.72331$; p <0.001	$|I-J| =0.43259$; p <0.001	$|I-J| = -.25755$; p <0.001	$|I-J| = .90497$; p <0.001	-

SOCIAL COMPETENCE strongly differentiates between presidents. The highest social competence is attributed to Andrzej Duda, followed by Lech Kaczyński, Aleksander Kwaśniewski, Bronisław Komorowski and Lech Wałęsa.

TABLE 4: MEANS OF THE ASSESSMENTS OF EXPERTISE AND THE SIGNIFICANCE OF DIFFERENCES IN THE POST-HOC TUKEY HSD TEST

		Lech Wałęsa	Aleksander Kwaśniewski	Lech Kaczyński	Bronisław Komorowski	Andrzej Duda
EXPERTISE	Lech Wałęsa M=3.85	-	$|I-J| =0.74356$; p <0.001	$|I-J| =1.20574$; p <0.001	$|I-J| =0.31121$; p <0.001	$|I-J| =1.13747$; p <0.001
	Aleksander Kwaśniewski M=4.46	$|I-J| =0.74356$; p <0.001	-	$|I-J| =0.46219$; p <0.001	$|I-J| =1.05476$; p <0.001	$|I-J| =0.39392$; p <0.001
	Lech Kaczyński M=5.06	$|I-J| =1.20574$; p <0.001	$|I-J| =0.46219$; p <0.001	-	$|I-J| =1.51695$; p <0.001	x
	Bronisław Komorowski M=3.54	$|I-J| =0.31121$; p <0.001	$|I-J| =1.05476$; p <0.001	$|I-J| =1.51695$; p <0.001	-	$|I-J| =1.44868$; p <0.001
	Andrzej Duda M=5.00	$|I-J| =1.13747$; p <0.001	$|I-J| =0.39392$; p <0.001	x	$|I-J| =1.44868$; p <0.001	-

The presidents attributed the highest level of EXPERTISE by the respondents are Andrzej Duda and Lech Kaczyński. Significantly lower scores were obtained by Aleksander Kwaśniewski, Lech Wałęsa and Bronisław Komorowski, respectively. It is worth pointing out that regardless of particular factors, Lech Wałęsa and Bronisław Komorowski are generally assessed relatively low. Lech Wałęsa is only attributed a high level of POTENCY, which may be for historical reasons. On the other hand, the deceased president Lech Kaczyński and the current president Andrzej Duda are the leaders of evaluations. Next, we verified the significance of age as a factor differentiating between the perception of each president with regard to the identified factors (Table 5).

TABLE 5: MEANS AND MULTIPLE COMPARISONS IN POST-HOC TUKEY HSD TEST IN THE CONTEXT OF ASSESSMENT DIFFERENTIATION BY AGE

		Lech Wałęsa	Aleksander Kwaśniewski	Lech Kaczyński	Bronisław Komorowski	Andrzej Duda
POTENCY	18-24	4.05abc	3.94abc	4.58	3.06a	4.19
	25-34	3.93def	3.88def	4.86	3.02b	4.54
	35-44	4.35ghij	4.10ghi	4.55	3.32c	4.15
	45-54	4.98adgj	4.85adg	4.67	3.18d	4.10a
	55-64	4.92beh	4.62beh	4.89	3.03e	4.78a
	Over 65	5.37cfi	4.65cfi	4.74	4.01abcde	4.46
HONESTY	18-24	3.47abc	3.70abc	4.13ab	3.42a	4.11a
	25-34	3.46def	3.61def	4.34c	3.60b	4.32
	35-44	3.59ghi	3.68ghi	4.21de	3.72c	4.19b
	45-54	3.92adg	4.07adg	4.55ad	3.35cd	4.37
	55-64	4.06beh	4.01beh	4.61	3.47e	4.62ab
	Over 65	3.95cfi	4.03cfi	4.73bce	4.06abde	4.34
SOCIAL COMPETENCE	18-24	3.14abc	4.78	4.75abc	4.42	5.31
	25-34	3.25def	4.91	5.04	4.47	5.48
	35-44	3.24ghi	4.90	4.87	4.55	5.15a
	45-54	4.06adg	4.97	5.14a	4.18a	5.39
	55-64	4.21beh	4.98	5.15b	4.30	5.69a
	Over 65	4.29cfi	5.04	5.80c	4.61a	5.29
EXPERTISE	18-24	3.05abc	4.59	4.91a	3.38a	4.86a
	25-34	3.29def	4.43	5.24b	3.24b	5.12b
	35-44	3.25ghi	4.65	5.04	3.63c	4.83c
	45-54	4.43adg	4.66	4.86bc	3.44d	4.86d
	55-64	4.68beh	4.43	5.05	3.24e	5.62abcde
	Over 65	4.87cfi	4.71	5.35ac	4.25abcde	4.95e

*the same letters show which groups significantly differ in their assessments.

Lech Wałęsa
One-way analysis of variance ANOVA showed significant differences in the perception of Lech Wałęsa in different age groups regarding all the factors: POTENCY $F(5;943)=28.800$; $p<0.001$; HONESTY $F(5;943)=7.755$; SOCIAL COMPETENCE $F(5;943)=40.005$; $p<0.001$ and EXPERTISE $F(5;943)=76.045$; $p<0.001$. Multiple comparisons in the post-hoc Tukey HSD Test show the general regularity regarding the perception of Lech Wałęsa. There is a clear difference between the assessments in the age groups below and above 45 years old. Older people perceive the first president of Poland as significantly stronger, more honest, with higher social competence and greater expertise.

Aleksander Kwaśniewski
Age only differentiates the perception of Aleksander Kwaśniewski in terms of two factors: POTENCY $F(5;943)=20.277$; $p<0.000$ and HONESTY $F(5;943)=4.382$; $p=0.001$. In terms SOCIAL COMPETENCE and EXPERTISE there were no statistically significant differences. In the case of POTENCY and HONESTY attributed to Aleksander Kwaśniewski, there was a similar tendency as in the case of Lech Wałęsa: younger voters perceive the second president of Poland as significantly weaker and less honest than people aged 45 and older.

Lech Kaczyński
Age is not a factor that differentiates the perception of Lech Kaczyński regarding POTENCY. Significant differences were found for the other factors: HONESTY $F(5;943)=6.774$; $p<0.001$; SOCIAL COMPETENCE $F(5;943)=16.388$; $p<0.001$ and EXPERTISE $F(5;943)=4.888$; $p<0.001$. The highest level of HONESTY is attributed to Lech Kaczyński by the oldest voters – it is significantly different to the assessments by people under 45. People aged 45-54 also express a clearly higher level of HONESTY than do both the youngest voters and those in the 35-44 age group. His SOCIAL COMPETENCE is assessed the lowest by the youngest voters. People over 45 associate Kaczyński with a significantly higher level of this quality. The deceased president's EXPERTISE is considered the lowest by the

youngest voters as compared to the oldest ones. The assessment of Kaczyński's EXPERTISE by voters aged 45-54 is also distinct: they assess it lower than both those aged 25-34 and the oldest ones.

Bronisław Komorowski

Age significantly differentiates between the perception of Bronisław Komorowski in terms of all identified factors: POTENCY $F_{(5;943)}=10.013$; $p<0,000$; HONESTY $F_{(5;943)}=7.051$; $p<0.000$; SOCIAL COMPETENCE $F_{(5;943)}=3.601$; $p=0.003$ and EXPERTISE $F_{(5;943)}=8.677$; $p<0.000$. There is a clear tendency in the perception of POTENCY and HONESTY of Bronisław Komorowski: the oldest people evaluate him significantly better. The voters are more homogeneous in terms of SOCIAL COMPETENCE assessment: significant differences were only observed between people aged 45-54 and the oldest voters, with the latter assessing it much better.

Andrzej Duda

People of different ages perceive Andrzej Duda differently in terms of all the identified factors. The biggest differences were found in the case of EXPERTISE $F_{(5;943)}=4.473$; $p<0.000$. They were somewhat smaller in the case of POTENCY $F_{(5;943)}=3.003$; $p=0.011$, HONESTY $F_{(5;943)}=2.947$; $p=0.012$ and SOCIAL COMPETENCE $F_{(5;943)}=2.558$; $p=0.026$. The most distinct of all voters of Andrzej Duda are those aged 55-64. They perceive the current present of Poland as significantly more POTENT than do people aged 45-54, more HONEST than do the youngest voters and those aged 35-44, having more SOCIAL COMPETENCE than do voters aged 35-44 and the highest level of EXPERTISE among all age groups.

5 DISCUSSION OF RESULTS

The aim of the research was to find answers to two research questions. The first was connected with the perception of images of each president of Poland elected in direct elections after 1990. The second question verified the significance of the respondent's age for the diagnosed images. The obtained results showed significant and interesting relations in the analysed areas as regards the four identified factors: POTENCY, HONESTY, SOCIAL COMPETENCE, and EXPERTISE, as well as differences in them between age groups.

The diversification in perceiving the presidents of Poland may have several general sources. The first is historical experience connected with having (or the lack of) the opportunity of direct observation. The youngest respondents did not have the opportunity to see the first presidents holding their offices. Therefore, they need to base their judgement on the existing information, historical descriptions and other people's opinions. They decode that information from the perspective of their own experiences and opinions on the people whose images and styles of doing politics they are able to observe directly. Although the first politicians elected presidents (especially Lech Wałęsa and Aleksander Kwaśniewski) represented different sides of the political scene, in the public awareness they are associated with the process of democratization and the transition from communism to democracy. Hence, for the older respondents they may be the symbol of democratic transformations in Poland, especially that both of them were the architects of joining the NATO and the European Union. What may also be important is that they 'serve' ideologically different segments of the electorate: the post-communist one and the pro-independence one. For the younger generation they may symbolize a somewhat coarse and unattractive

image of politics. Presidents elected in the 21st century were gradually more and more similar to their counterparts from consolidated democracy countries, both in terms of the image and the political style. In this case, the development of political communication techniques may also play a role, since thanks to it the respondents can compare the images of Polish heads of state with those from the Western countries.

The more positive perception of Lech Wałęsa and Aleksander Kwaśniewski in the older generation may also be based on the psychological mechanism of repression, i.e., blurring the negative experiences and reinforcing the positive ones over time. Perhaps in the case of the first two presidents enough time has already passed for this process to occur, especially that the political differences between them (the axes of conflict) from the past do no have any political significance any more. Although they were the main candidates in the 1995 election, from today's perspective the former political axis of conflict (post-communism − Solidarity) practically does not matter in political competition. Thus, even the opponents of the two politicians may not take into consideration the reasons why they formed critical judgements about them in the past. Wałęsa may appear as a Solidarity-based patron of democratisation processes, and his non-democratic ambitions and actions from the time of his exercising power may have been blurred in the public awareness. It is similar in the case of Aleksander Kwaśniewski, whose critics at the time of the 1995 election raised arguments related to his post-communist origin and connections with Soviet politicians (including accusations of being a Russian spy). His later activity oriented at the integration of Poland with the European Union and joining the NATO may have reduced the severity of the former accusations.

Interestingly, both politicians are perceived rather high in terms of POTENCY and HONESTY. They are much better assessed in those areas by people aged 45 or older than by the younger respondents. In the case of POTENCY this may be the result of the evolution of the role of the president in the system − until 1997 (i.e., during the term of office of Lech Wałęsa and the first two years of office of Aleksander Kwaśniewski), the president had had much more prerogatives. Especially in the case of Wałęsa this was the reason for his political problems, because he tried to use the power of his office in a dubious way to fight his political opponents. At the time, the formal instrument of political power of presidency was the participation (along the Prime Minister) in deciding about the crucial positions in the cabinet (the Minister of National Defense, the Minister of Internal Affairs and the Minister of Foreign Affairs). It was only the adoption of the Constitution in 1997 that separated those competencies, granting them to the Prime Minister only. The high rates of HONESTY among the older voters may be the result of the honours both presidents have received on the international arena. In the case of Lech Wałęsa, these were first of all the Nobel Peace Prize and the Presidential Medal of Freedom. Kwaśniewski could not expect to receive this king of awards but he was awarded various medals. The most important ones are i.a., the Golden Olympic Order of the International Olympic Committee, The Most Distinguished Order of Saint Michael and Saint George, or L'Ordre national de la Légion d'honneur.

In terms of POTENCY, Lech Wałęsa, Lech Kaczyński and Andrzej Duda make a homogeneous group. What is interesting, these three presidents, who are perceived as POTENT, politically originate from the right side of the political scene. And that wing is the source of demands concerning the ensuring of strong executive authority within the political system (e.g., as part of the presidential system). Aleksander Kwaśniewski (left-wing origins) is evaluated slightly lower. Bronisław Komorowski is assessed clearly lower in this aspect. The causes of

such opinions may have two basic sources. The first is the way of exercising power by Komorowski. He had a non-confrontational style of doing politics, attempted to seek compromise with the competing political forces and did not display much activity in the legislative process (few projects of his own, no veto for governmental acts). Another determinant of this perception was the party context: for the whole term of office, the position of the Prime Minister was held by Donald Tusk, a politician with a strong personality, effective and tough with his political opponents. In relation to the Prime Minister, Komorowski – coming from the same party (PO) – could have been perceived as a vassal. This factor was additionally reinforced with the way of appointing Komorowski as a presidential candidate, which was done by Donald Tusk himself.

The respondents attribute the highest level of EXPERTISE to Andrzej Duda and Lech Kaczyński, although it differs between age categories. This attribution may be motivated by several factors, especially the formal one and the practical one. In the case of the formal factor, the difference in education and the general way of linking education with competence may be the main thing. Unlike the others, those two politicians had university education and academic degrees (Kaczyński – Ph.D. and habilitation, Duda – Ph.D.). In addition, for some time both had worked as academics at renowned universities. These facts were emphasized in their electoral campaigns and could have had an influence of the respondents' opinions on their EXPERTISE. Their university specialization may also play a role: they were both lawyers, i.e. were educated in a highly respectable field. On the other hand, Bronisław Komorowski had graduated from the faculty of history, whereas Aleksander Kwaśniewski and Lech Wałęsa did not attain higher education.

It is worth pointing out that regardless of particular factors, Lech Wałęsa and Bronisław Komorowski are generally assessed relatively low. Lech Wałęsa is only attributed a high level of POTENCY, which may be for the above-mentioned historical reasons. The most important of them are being the leader of Solidarity and not very democratic way of exercising presidential authority. The public perception of Lech Wałęsa was deteriorated by accusations of being an agent of the communist authorities when leading the strikes in Gdańsk in the 1970s. This fact may have raised doubts concerning both his honesty and his social competence in the minds of the respondents. On the other hand, the deceased president Lech Kaczyński and the current president Andrzej Duda are the leaders of evaluations. In the case of Bronisław Komorowski, the assessment may have been the result of several factors. The first of them is the specific situation in which Komorowski was appointed as the candidate of Civic Platform. Bronisław Komorowski was elected in the primary election after the public declaration of the party leader, Donald Tusk, that he was not going to run for the office of president of Poland. Presumably, for the supporters of Donald Tusk (the unquestionable party leader enjoying great trust and popularity), the perception of B. Komorowski's dependence on D. Tusk may have been an important assessment factor. Second, Komorowski lost to Andrzej Duda in surprising circumstances. For a long time before the election, election polls had showed a huge advantage of Komorowski over Duda, to the point of initially predicting victory in the first round. Yet, after some time, the advantage began to shift to the candidate of Law and Justice, who eventually won the election in the situation of nearly passive campaign of Komorowski.

The positive perception of Lech Kaczyński is an extremely interesting finding. A poll carried out a month before his unexpected death showed that as a politician and president, Lech Kaczyński did not have too much support from the citizens, and the attitude to him was dominated by distrust. In fact, positive assessments

only exceeded negative ones in the first three months of his term of office. In the subsequent months and years, Poles were becoming more and more dissatisfied. The Smolensk disaster had a vital impact on his image in the media, quite clearly reflected in public opinions. There were more and more views expressing appreciation for his presidency and belief that he had been underestimated while alive. References to Kaczyński as a human and politician mostly highlighted the strengths of his presidency, whereas the weaknesses were overlooked (BS/97/2008; BS/82/2010). The present study, carried out 8 years after the Smolensk crash, confirms the tendencies diagnosed by the Public Opinion Research Center at that time. The Smolensk disaster is an event that after so many years is still vivid in Poles' memory: every month, the party of Jarosław Kaczyński (the twin brother of the deceased president) organizes so-called "monthly anniversaries" to commemorate the victims, many memorial marches are organized, and numerous streets, squares and events are given the name of Lech Kaczyński. What is more, positive memories of the former president still appear in the press. From the time perspective, we can see that all these activities and the emotions aroused in the citizens dramatically changed the image of Lech Kaczyński as the head of state.

The current president Andrzej Duda is also definitely perceived positively. This is in conformity with public opinion polls carried out regularly during the president's term of office (15/2018; 53/2018). Their results show that Andrzej Duda's decisions and actions are evaluated positively. In the middle of the term (January 2018), there were over twice as many positive as negative opinions about his activity (66% and 27%, respectively). Actually, since the beginning of the term of office, president Duda has been a politician with the highest social trust among the whole political class.

The institution of president, and especially the procedure of his direct election, may be a factor destabilizing the political system, particularly dangerous for unconsolidated democracies with a low level of political institutionalization. Juan J. Linz considers destabilizing the sphere of politics as one of the biggest disadvantages of universal presidential elections. It is so because of the introduction of a strong element of principles of zero-sum game into democratic politics – "the winner takes it all" [Linz 1994: 18]. However, as observed by Larry Diamond (1994, 15), democratic consolidation should not only refer to institutional changes, which stabilize the functioning of democracies. It is also necessary for citizens to participate in creating social and cultural development, mechanisms of leadership and other functions served by the civil society. Therefore, when recognizing the legitimization value of direct election of the president, we should also be aware of their negative consequences. Juan J. Linz (1994) points out i.a.: (1) the lack of political and programme coherence between voters supporting the winning candidate; (2) the winner translating the support of an actual minority of voters into the support of the whole nation; (3) contributing to the fragmentation of the party scene in the situation when political parties put up their candidates despite no real chance for their victory.[2]

We can expect that the above-mentioned determinants can explain the differences in the perception of the presidents of Poland between age groups. The primary factor is the instability of the party scene generated by the deterministic character of presidential elections, which leads up to voters' poor rooting in party

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[2] According to Juan J. Linz, the others are: (1) the lack of political alternative if the key candidates have similar positions in the political universe; (2) the lack of institutional political context if the candidate does not have their own party base, which may lead to weakening the competition between political parties and party programmes.

electorates. This determines the low level of party loyalties, explaining the expression of very critical opinions by the youngest voters. Unlike older people who had the opportunity to see the electoral campaigns in the initial period of democratization processes, the youngest ones have formed their judgements on the basis of current political content or others' opinions. Especially since 2005, the developed models of political competition have been different to the ones formed in the last decade of the 20th century.

The determinism of presidential elections also results from the generalizations of the social position of the president, i.e., the belief that the legitimization of the president's authority comes from the whole nation. In practice, with consideration of the relatively low voter turnout (approx. 50%), only about 1/4 of Poles with the voting right were in favour of electing the winning president. Additionally, apart from the re-election of president Kwaśniewski, all the other presidents were elected as a result of the second round. This may point to deep political divisions in the Polish society. Thus, the president referring to himself as the expression of the nation's will, can often be critically assessed by the 3/4 of the electorate who did not vote for him.

This mechanism can be reinforced by political parties, which put up their candidates although they have no real chance for victory. It is so whenever small parties want to use the public interest in the presidential election to promote their own ideas, programme, and indirectly building electoral support they need in other types of universal elections. This way, they develop voters' loyalty and can indirectly form a more critical attitude to the head of state. Moderating the formulated opinions by party loyalty may also extend to people who had served as the president in the past. This may explain the high assessments of Lech Kaczyński, who had been a candidate from Law and Justice like the current president Andrzej Duda.

REFERENCES

Braun, Aurel. 2018. "Poland: The vanguard of Change." In *The Extreme Right. Freedoom and Security at risk*, ed. Braun, Aurel, 185–200. London: Routledge.
Brunclík, Milos and Michal Kubát. 2018. *Semi-presidentialism, Parliamentarism and Presidents: Presidential Politics in Central Europe*. London: Routledge.
Brunswik, Egon. 1956. *Perception and the representative design of psychological experiments*. Berkeley C.A.: University of California Press.
CBOS 53/2018, Zaufanie do polityków w kwietniu. Research report.
CBOS 15/2018, Opinie o prezydencie Andrzeju Dudzie w połowie kadencji. Research report.
CBOS BS/82/2010, Ocena prezydenta Lecha Kaczyńskiego. Research report.
CBOS BS/97/2008, Podsumowanie połowy kadencji prezydenta Lecha Kaczyńskiego. Research report.
Cześnik, Mikołaj. 2014. "In the Shadow of the Smolensk Catastrophe—The 2010 Presidential Election in Poland." *East European Politics and Societies* 28 (3): 518–539.
Diamond, Larry. 1994. "Rethinking Civil Society: Towards Democratic Consolidation." *Journal of Democracy* 5 (3): 4–17.
Epstein, Seymour. 2003. "Cognitive Experimental Self-Theory of Personality." In *Comprehensive Handbook of Psychology: Personality and Social Psychology*, vol. 5. New York: Wiley.
Glajcar, Rafał. 2015. *Demokratyczny reżim polityczny: relacje między legislatywą i egzekutywą w III Rzeczypospolitej*. Katowice: Wydawnictwo Uniwersytetu Śląskiego.
Heider, Fritz. 1958. *The psychology of interpersonal relations*. New York: Wiley.

Jones, Edward E. and Keith E. Davies. 1965. "From act to dispositions: The attribution process in person perception." *Advances in experimental social psychology* 2 (1965): 219–266.

Linz, Juan J. 1994. "Presidential or Parliamentary Democracy: Does It Make a Difference?" In *The Failure of Presidential Democracy*, eds. Linz, Juan and Arturo Valenzuela, 47–62*.* Baltimore: Johns Hopkins University Press.

Materska-Sosnowska, Anna. 2015. "Relacje między wyborami prezydenckimi a systemem partyjnym w Polsce." *Studia Socjologiczno-Polityczne* 1 (2015): 75–92.

Millard, Frances. 2000. Presidents and democratization in Poland: The roles of Lech Wałesa and Aleksander Kwaśniewski in building a new polity. *The Journal of Communist Studies and Transition Politics* 16 (3): 39–62.

Osgood, Charles E., Suci, J. George and Percy Tannenbaum. 1967. *The Measurement of Meaning*. Urbana: University of Illinois Press.

Pilch, Irena and Agnieszka Turska-Kawa. 2015. "Voters' Personalities and Ideal Party Personality. Evidence from Poland." *Romanian Journal of Political Science* 15 (1): 159–184.

Scammel, Margaret. 2015. "Politics and Image: The Conceptual Value of Branding." *Journal of Political Marketing* 14 (1–2): 7–18.

Sutter de, Pascal. 2009. *Szaleńcy u władzy.* Warszawa: Wydawnictwo Akademickie Dialog.

Szczerbiak, Aleks. 2017. "Power without love: Patterns of party politics in post-1989 Poland." In *Post-Communist EU Member States,* ed. Jungerstam-Mulders, Suzane, 105–138. London: Routledge.

Wiatr, Jerzy. 2018. "Democratic experience in Cetral Europe: 25 years later." *Journal of Comparative Politics* 11 (1): 5–11.

Wojtasik, Waldemar. 2012. *Funkcje wyborów w III Rzeczypospolitej: teoria i praktyka*. Katowice: Wydawnictwo Uniwersytetu Śląskiego.

POPULISM AND THE 2014 EUROPEAN ELECTIONS: A COMPARATIVE STUDY OF PARTY SPEECHES BY THE LEADERS OF *MOVIMENTO CINQUE STELLE* AND UNITED KINGDOM INDEPENDENCE PARTY

Cristina CREMONESI and Eugenio SALVATI[1]

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The national Governments and the European institutions' problematic management of the 2008 economic crisis have increased voters' distrust towards both national elites and the European Union. In this framework, populist and Eurosceptic parties have emerged as the winners of the 2014 EU electoral campaign thanks to their ability to ride the popular dissatisfaction. This paper focuses and compares two of these parties: Movimento Cinque Stelle (M5S) and The United Kingdom Independence Party (UKIP). Its aim is to verify if and how their leaders' electoral communication presented populist and/or Eurosceptic elements, and so to shed light on the unclear position of the M5S towards the EU, a compelling theme at the eve of 2019 European Elections. In order to accomplish this goal, a quali-quantitative analysis of the political speeches of Grillo and Farage has been conducted by means of a codebook that detects the leaders' political orientations about the main political categories of polity, politics and policy both at national and European level.

Key words: Euroscepticism; populism; Five Star Movement; UKIP; European elections.

1 INTRODUCTION

The 2014 European elections have been a real watershed for the EU's future and for the modality of the integration process, due to the crisis started in 2008 that has shaken the EU institutions and their legitimacy. The golden age of European integration started from Maastricht and continued along all the nineties, which was slowed down by the rejection of the Constitutional Treaty after the French

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and the Dutch referendum, and with the stop imposed to the Lisbon treaty by the Irish referendum. If those rejections may have had some internal political reasons, like a negative evaluation of parties and leaders that were at government so stressing how structurally related are national and supranational arenas (Taggart 2006), it is also clear that those results would have underlined a certain degree of intolerance against the EU by a part of the European citizens. The economic crisis started in 2008 and has been the opportunity for some political entrepreneurs to mobilize the vast amount of discontent against the EU that was present in European societies.

It is within this framework that the 2014 electoral campaign has taken place; an election that gave space to Eurosceptic leaders which have implied a political message founded on an efficient mix of populism, anti-politics messages and aversion towards the EU. The popular anger and disappointment against the EU allowed Eurosceptic parties to transform this dissatisfaction in political consent.

Fundamental in order to mobilize the electoral support is the kind of political communication used, which words and symbols have been implied to build the Eurosceptic electoral success. The aim of the article is to understand if the Italian populist party *Movimento Cinque Stelle* (M5S - Five Star Movement) has used the instruments of the Eurosceptic rhetoric and if it has taken clear Eurosceptic stances. This kind of research is particularly interesting because it starts a preliminary enquiry about the positions of the M5S towards the supranational arena helping to clarify the peculiarities of the populism of this party in view of the approaching 2019 European campaign. This article adds also a new piece of knowledge about the beginning of the M5S' institutionalization phase (Ceccarini and Bordignon 2016), paying attention to a undeveloped research field that concerns the relationship between the M5S and the EU.

In order to reach this goal the study has focused on the comparative content analysis of two political actors that have gained a relevant success in the last European elections: Beppe Grillo (M5S founder) and Nigel Farage (UKIP leader). This comparative analysis allows us to understand if the two parties used the same tactics and arguments and so if they were similar in their hostility against the EU.

In the first part of the work we analyse the concepts of populism and Euroscepticism and present a brief review of the literature, trying to understand the common elements between these two phenomena. In the second part we justify the case and the sample of speeches analysed and we introduce the research method applied. Finally, we present and discuss the empirical data.

2 POPULISM AND EUROSCEPTICISM: TWO DIFFERENT BUT INTERCONNECTED CONCEPTS

In social science literature the term populism has been applied to a wide range of objects across a variety of contexts, so multiple definitions of this phenomenon have been developed. Even though they differ, all of these can be grouped into three main conceptual approaches (Gidron and Bonikowski 2013). Populism has been conceived, respectively, as a political strategy (Weyland 2001), as a discursive style (Taguieff, 2002; Laclau, 2005), and as a set of ideas or a thin-centred ideology (Mény and Surel 2002; Mudde 2004). The ideological approach to populism is currently the most accepted among the scholars of populism (Alberg et al. 2016; Hameleers, Bos and de Vreese 2016). According to this

conception, populism can be conceived as a thin-centred ideology "that considers society to be ultimately separated into two homogeneous and antagonistic groups, 'the pure people' versus 'the corrupt elite', and which argues that politics should be an expression of the *volonté générale* (general will) of the people" (Mudde 2004, 543). Moreover, there is also a wide agreement on Jagers and Walgrave's (2007) argument according to which in addition to the vertical opposition of the people to the elite, the people may also be opposed to horizontal outgroups, such as the immigrants (Hameleers and Schmuck 2017). In order to elaborate a good operationalization of the concept of populism, it is necessary to clearly define its fundamental elements that emerge from these theoretical conceptions: the pure people, the corrupt elites, the dangerous outgroups, and the need to restore the "general will".

Firstly, typical of all kind of populisms is the valorization of "the people", who is conceived as a homogeneous and virtuous entity. What "the people" indicate is defined in opposition to a series of enemies, since the populists share a dichotomous and Manichean vision of the world. Different conceptions of "The people" exist according to which elements of this complex entity are considered; these conceptions, however, are not in opposition and can coexist even in the rhetoric of the same populist leader (Canovan 1999; Mény and Surel 2002). According to Taguieff (2002, 127–140) populism may be differentiated in two variants according to the type of people to which populist formations refer: the protest populism, based on the appeal to the people conceived as *demos*, and the identitarian populism, that refers to the people understood as *ethnos*. The protest populism defines the people as the whole of common citizens and opposes them to the ruling elites based on the idea that the representative system limits the citizens' power. The identitarian populism, on the contrary, considers the people as a group not divided into class and coincident with the nation; according to this conception the people's enemies are not the elites but the foreigners.

Secondly, given the dichotomous vision that characterizes populism, the valorization of the people always corresponds to the devaluation of who is not part of that homogenous group: the elites and the external agents that represent a threat for the cohesion of the people. The populist criticism does not concern only the political elites, but has a broader target: parties and professional politicians, bureaucrats and technocrats, economic powers (multinationals, world of finance, trade unions and capitalists), media (media tycoons, journalists, etc.), and intellectuals (universities, writers and professors) (Tarchi 2003; Jagers and Walgrave 2007). Besides the elites, according to some populist formations, a second category of the people's enemies exists: they are the social actors which may threaten the cohesion of the people conceived as a homogeneous and well-delimited (for language, tradition, culture, etc.) community. It means the immigrants, the ethnic and/or religious minorities, and those who may weaken the cohesion of the people by introducing supranational identification alternatives (e.g. the European Union).

Finally, the populists' valorization of "The general will" manifests itself throughout a strong and personalized leadership style and by the intolerance towards representative institutions (Tarchi 2003). The populist leadership is characterized by a close relationship between the leader and the followers: the populist leaders are able to present themselves as members of the people letting the followers to identify with them, so creating a direct relationship with the supporters and relegating the party organization to the margins. This it is strictly connected to the populist criticism towards the mechanism of the representative democracy: populists affirm that the political decision process should be respectful of people, so refusing the mechanisms of representative democracy

(Canovan 1999). However, the populist's disapproval of democratic institutions does not automatically evolve into a rejection of the democracy but, on the contrary, usually it realizes itself in a demand of a stronger democratization of the relationship between citizens and institutions (Canovan 1999; Mény and Surel 2002).

Differently from populism, Euroscepticism is a "younger" political phenomenon which has emerged with the process of European integration. According to some prominent scholars the European integration process has moved forward thanks to what has been defined *permissive consensus* (Lindberg and Scheingold 1970), the complete independence of political and technocratic elite from any kind of accountability process about the way used to pursue the European integration. This consideration was based on the idea that European issues were too complex for citizens, and this created a favourable condition for European elite to manage freely this political process (Steenberg et al. 2007).

With the enlargement of the European Union (EU) and the growth of the policy competences of the Union, this kind of "mandate" has steadily weakened and has been substituted by the so-called *costraining dissensus* (Hooghe and Marks 2008). This *dissensus* is nothing more than the political contestation of the integration process that is now feeding a real pro/anti integration political cleavage. According to Eurosceptic movements, the sign of the Maastricht Treaty has been the watershed which has detected the passage towards the *dissensus* and the politicization of the EU issue (Usherwood 2014).

The development of the integration process has created the conditions for a gradual transformation of the EU in a definite polity (Hix 2005), a complex political structure with a political regime built on a complex and plural political community; a community composed by multiple national communities. It is properly within this (would be) *in fieri* polity that is structuring on a system of multiple memberships - organized in a system of multilevel governance (Hooghe and Marks 2001) in which the supranational political representation is weak and has blurred borders and the political conflict seems to concern quite exclusively the nature of the integration process according to the idea of the output legitimacy (Scharpf 1999) -, that we are facing the formation of a variegated political opposition that has the common task to break up the EU.

Differently from other scholars (Marks and Wilson 2000) Taggart and Szczerbiak (Taggart 1998; Taggart and Szczerbiak 2002) do not agree on the idea that the party position along the left – right axis could be predictive of party positions about European integration. What seems to be more foretelling about the party stance on Europe is the party collocation within the national political spectrum, in particular if a party has more or less radical positions (Hooghe et al. 2004). Parties which radicalize their political messages are the once positioned in the peripheral part of the political system, far away from the government area: a position that allows them to take radical stances against the European integration (Taggart 1998).

The best known attempt to define Euroscepticism is the one proposed by Taggart and Szczerbiak which is based on a distinction between hard and soft euroscepticism. In the first category we find parties which totally oppose EU and refuse the integration process; in the second one there are parties which are not prejudicially against EU or against the membership of their own country but criticise some policies because they damage the national interest (Taggart and Szczerbiak 2002; Taggart and Szczerbiak 2008).

What has emerged in the last years it is that the growth of Euroscepticism represents the most evident signal of the politicization of the European integration issue. For this reason it is particularly relevant to understand if and how the integration process and the political conflicts are nesting together, and if the old political cleavages have a role in feeding such a conflict (Steenbergen and Marks 2004).

In order to provide an explanatory framework about cleavages connection, a brand new interpretative approach detects the birth of a new political dimension defined by a continuum that is defined by the GAL pole (green/alternative/libertarian) and the TAN pole (traditional/authoritarian/nationalist) (Hooghe and Marks 2001; Hooghe et al. 2004).

The GAL/TAN cleavage seems to have a good explicative capacity compared to the other approaches because it defines an innovative cleavage that take into account new political issues that are connected to the creation of a new supranational polity as the EU, which produces a new conflict dimension that is strictly related to its own existence. The issues included within this cleavage are all themes that have been irrupted in the public debate of the European states in the last thirty years, and that have seen in the European institutions both a discussion forum and a political arena in which take relevant decisions concerning these new issues (decisions that obviously involve the EU member states).

In the GAL pole issues like environmentalism, individual self-determination, new technologies issues and participative democracy are collected; in the TAL pole we find issues connected to the defence of traditional values and of the religious roots, the fight against immigration, the protection of the national community and the refusal of cosmopolitism. As it is easy to understand, all these issues deeply concern the European integration, its values and policies and the way in which it undermines member states sovereignty and national identities.

The protection of sovereignty and national identity are the core tasks of Eurosceptic movements and this explains why they totally refuse European integration, a political process that is permeating the administrative and functional national borders and so, according to Eurosceptic vision, it has impoverished a huge number of European citizens.

Even if populism scholarships generally acknowledge the link between populist parties and Euroscepticism (Canovan 1999), the relationship between the two concepts have been examined in depth only by Euroscepticism scholars (among the few exceptions, Mudde 2007). According to these studies, the party collocation within the national political spectrum is predictive of the party stance on Europe; more specifically a foretelling factor is whether the party has more or less radical positions (Hooghe, Marks and Wilson 2004). The parties which radicalize their political messages – such as the populist parties - are inclined to be positioned in the peripheral part of the political system, and to take stance in opposition to the European integration process as a sign of differentiation from the cartel of dominant parties (Taggart 1998, 384). Consequently, populist parties which criticise the European Integration process may be assigned to the Taggart's category of "Protest based parties with Euroscepticism" (Taggart 2008), whatever ideological position they have. In effect, the party position along the left-right axis is not predictive of the party's position about the European integration (Taggart 1998; Taggart and Szczerbiak 2002) and both right-wing

and left-wing populist parties may be Eurosceptic (De Vries and Edwards 2009). This aspect is well explained by Hooghe and Marks, who write (2008, 21): *(…) most mainstream parties continued to resist politicizing the issue. But a number of populist, non-governing, parties smelt blood. Their instinctive Euroscepticism was closer to the pulse of public opinion. On the far left, opposition to European integration expressed antipathy to capitalism; on the populist right, it expressed defence of national community*.

Taking some insights from Leconte (2015) and Salvati's (2018) studies, together with the contribution of Hooge and Marks (2008), it is possible to identify some elements that populism and Euroscepticism share (Cremonesi 2017):
▪ the criticism towards the elites (in the case of Euroscepticism, towards the ruling European elite and European politicians, e.g. Schulz, but also Angela Merkel, and the European Union bureaucrats)
▪ the opposition between the people and the elite (which, in the particular case of Euroscepticism, can be conceived in terms of people vs. European Union elites)
▪ the criticism towards the functioning of democracy at local, national or European level and the demand to fix it throughout instruments of direct democracy.

3 THE M5S: A POPULIST EUROSCEPTIC PARTY?

M5S is an Italian populist party created in 2009 by Beppe Grillo, a former Italian popular comedian who funded it after many years of individual political action. Grillo started his political engagement after having been excluded from the Italian Public Television in 1988 because of his strong criticism of the governing party. Grillo subsequently performed in theatres and squares, and during his performances he attacked the Italian elites and denounced Italy's problems with a sharp irony. This allowed Grillo to build a solid group of followers, who supported him in the first phases of FSM creation (Corbetta and Gualimini 2013). Between 2009 and 2012, Grillo's party participated in a series of local elections obtaining low but increasing support.

At the 2013 Italian General Election, M5S was still an outsider formation but it unexpectedly obtained a striking success. A quarter of the Italian voters (25.56%) casted a ballot for the M5S and it resulted the most voted party in Italy. The strong popular support for this populist party was confirmed also at the 2014 European Parliament elections, when it obtained 21.16% of votes.

In 2018, M5S approached the Italian national campaign as a proper and experienced political party ready to cover governmental position. The party leadership reflected on it: before the elections the comedian Beppe Grillo took a step back and the campaign was led by Luigi Di Maio, at the time Vice-President of the Chamber of Deputies. After a close political campaign, M5S was confirmed the most voted party in Italy with 32.68% of votes. While, after the 2013 vote, M5S chose to seat at the opposition, in 2018 it took part to a coalition Government together with the right-wing populist party the League.

The latest moves of the M5S allow us to reflect on its process of institutionalization (Ceccarini and Bordignon 2016).The M5S gained an extraordinary success due to the challenges that it had posed to the Italian political system. The vote for the M5S, as a matter of fact, is a protest vote that is based on a rooted dissatisfaction with political elites and that is amplified by the

voters support for certain issues, well represented by the movement (i.e. rights for new families and dissatisfaction with the actual functioning of the EU) (Passarelli and Tuorto 2016).

The challenges posed by M5S are directed to two aspects of the Italian political system: the first concerns specific political issues, while the second refers to the very structure of the actual political system.

In the first group we can find themes both from the left and the right side of the political spectrum that the Movement is able to represent, like the so called post materialistic issues (environment protection, civil rights, new technologies etc.) and the improvement welfare state on one side, and the fight against the tax burden, a better regulation of immigration, a certain distrust towards EU on the other side (Ceccarini and Bordignon 2016). This ability to capture issues and political support from both left and right is the reification of Grillo's idea that the movement is neither left nor right wing.

So the electoral success is linked to the Movement's ability in constructing a programmatic supply which is not limited to one single issue but has a wide arrow of proposals that is transversal to different political orientation (Conti and Memoli 2015; Ceccarini and Bordignon 2016); furthermore it has a political proposal based on the strong opposition against the social-economic status quo and that cover themes extremely salient in times of crisis that were abandoned by mainstream parties (Conti and Memoli 2015).

The second level is connected to the party's position *vis a vis* the institutional structure and the role of mainstream parties. A strong anti-system rhetoric which finds its main in: the fight against professional politicians – the so called "casta" –, the struggle against corruption and the waste of public money (the moralization of politics), the support towards the instruments of direct democracy opposed to the representative democracy, the accusation against the cartelization of mainstream parties, the refusal to make alliance with other parties (Bordignon and Ceccarini 2015). Properly on this point and to explain the "anti-systemic" charge expressed by the M5S in its first experience within the Italian Parliament, it can be fruitful to rely on Zulianello's theory about anti system parties. Zulianello (2017) proposes a multidimensional approach to the definition of anti-system parties that is based on two properties: the ideological features of a party and its systemic interactions within the political system. The second property can be of particular interest in the definition of M5S's role within the political system, because it implies the refusal/impossibility to take part in cooperative interactions at the systemic level. This party's marginalisation involves both the other parties' attitudes and the self-perception of the anti-system party, that pursues a "process of radical disembedding" (Zulianello 2017, 5) within the system. The absence/refusal of "coalitionability" as expressed by the M5S after the 2013 elections, can collocate Grillo's movement within this frame. An interpretation that could be valuable also for the UKIP, but that is difficult to test due to the absence of the anti-EU party's elected in Westminster. For UKIP it is clear other parties' refusal about every possible type of cooperation, while for the M5S this kind of hostility is more nuanced (especially in this historical moment) as outlined also by Zulianello (2017, 15).

Probably it can be fruitful to measure the anti-system potential also in the European Parliament where, with all the differences due to the nature of the supranational arena, there is a party system (Bardi 2002; Hix 2005), and where it is possible to measure if and how challenger parties interact with mainstream parties (Franzosi et al. 2015; Salvati 2017; Salvati 2018).

While political science scholars agree in considering M5S a populist party, more complicated is the identification of its positions about the EU. For example, according to the Chapel Hill survey (Bakker et al. 2015) referred to the year 2014, M5S is considered as a true Eurosceptic party like the UKIP, representing one of the clearest example of solid refusal of the integration process. In fact, in the survey's scale ranging from 1 to 7, in which 1 detects strong opposition towards the EU and 7 detects strong commitment in favour of the integration process, the M5S obtains 1.4 and UKIP obtained 1. Other surveys points in the same direction: for example, the European Election Study (Schmitt et al. 2016), on a scale from 1 to 10 - 1 pro EU integration, 10 anti EU integration -, identifies the M5S with 8 points and UKIP with 10, so collocating both parties at the top of the Eurosceptic ladder. Partially different are the results of the Parlgov dataset (Doring and Manow 2018), which gather various expert surveys, that on a scale from 0 to 10 – 0 anti EU integration, 10 pro EU integration – collocates the M5S at 6.5, while UKIP at 0.

On other relevant aspects the expert surveys' results, however, underline the striking differences between the two parties (Table 1): on issues like environment protection and immigration, M5S and UKIP have completely different positions (and this is confirmed also by their collocation on the GAL/TAN continuum).

TABLE 1: COMPARISON BETWEEN M5S AND UKIP STANCES, ACCORDING TO EXPERT SURVEYS DATASET

	Chapel Hill		EES		Parlgov	
	M5S	UKIP	M5S	UKIP	M5S	UKIP
Left/right	4	9	/ (not detected)	8	2,5	7,8
Scale	0-10 (0 extreme left, 10 extreme right)		1-10 (1 extreme left, 10 extreme right)		0-10 (0 extreme left, 10 extreme right)	
EU integration	1.4	1	8	10	6.5	0
Scale	1-7 (1 strong opposition towards the EU, 7 commitment for EU integration)		1-10 (1 pro EU integration, 10 against EU integration)		1-10 (1 against EU integration, 10 pro EU integration)	
Environment protection	1,8	9	4	8	/	/
Scale	0-10 (0 commitment for protection, 10 not supportive)		1-10 (1 commitment for protection, 10 not supportive)			
Immigration	4,2	10	/ (not detected)	10	/	/
Scale	0-10 (0 fully opposed to restrictive policies on immigration, 10 fully in favour on more restrictive policies on immigration)		0-10 (0 fully opposed to restrictive policies on immigration, 10 fully in favour on more restrictive policies on immigration)			
GAL/TAN	2,6	9	/	/	/	/
Scale	(0 GAL pole, 10 TAN pole)					

Despite what has emerged by the expert surveys' data about the two parties' pro/anti EU stances, the work by Franzosi et al. (2015) has underlined how different the M5S's voting position was in the EP compared to the votes expressed by the UKIP, its main ally in the Europe for Freedom and Direct Democracy group (EFDD). According to this analysis, the M5S can be considered quite far from the hard anti EU positions taken by a Eurosceptic party like the UKIP. This discrepancy between experts' positions and M5S legislative behaviour makes it particularly interesting to analyse whether during the EP elections the M5S campaign has been conducted along the pro/anti EU cleavage like the biggest Eurosceptic parties, or if the movement has shown only populist traits in this occasion.

From the theoretical background depicted so far, the following research questions stem: "What are the peculiarities of M5S populism?", "Which was M5S'

position towards the European Union at the beginning of its institutionalization process?", "How populism and Euroscepticism were connected in M5S's rhetoric?". In order to answer them, this research analyses the electoral speeches held by Beppe Grillo during the electoral campaign for the 2014 EP elections and compares them with the speeches by the UKIP leader Farage. In this way, the research adds a contribution to the recent empirical studies which are starting to analyse the M5S stances about European integration (Corbetta and Vignati 2014; Franzosi et al. 2015; Carlotti 2017; Salvati 2018).

According to the conception of populism as a thin-centred ideology, the use of specific rhetorical strategies in political discourse may define a political actor as populist (Mudde 2004; Gidron and Bonikowsky 2012; Kriesi 2014). A series of studies have individuated these distinctive strategies (i.e. valorisation of the people, devaluation of the elite, exclusion of the outgroups, valorisation of the 'general will') (Mudde 2004; Mudde and Rovira Kaltwasser 2012), and verified that they may be used also with reference to the European political arena (e.g. Cremonesi 2017). All this suggests that analysing the political discourse of an anti-system party during a campaign for the European Parliament Elections may reveal its position towards both the national level of government and the European Union (e.g. Wessler et al. 2008; Diez 2001; Radaelli 1999), allowing the assessment of the party's type of populism and Euroscepticism and the understanding of how the two concepts may be intertwined.

Given its populist and anti-system connotation and it's still blurry position towards the EU, the M5S can be considered a suitable case-study for investigating the relationship between the elements of populism and Euroscepticism. Moreover, the increasing electoral consensus of this party and its current central role in the Italian Political scenario make it even more important to understand the relationship between the M5S and the EU, in particular at the eve of the 2019 European elections.

4 METHODOLOGY

The applied methodology is a content analysis based on the individuation of cluster of symbols (Fedel 1999) which permits to individuate with analytical precision on which concepts Grillo and Farage have based their electoral campaign, catching the importance of the two dimensions on which we are interested: populism and Euroscepticism.

This approach directly steams from Harold Lasswell's theory, which interprets politics as a power process which involves the production and the distribution of values in a society and that connects two main actors: the elites which control the great part of these values, and the masses which have a residual part of these values (Battegazzorre 2013). According to Lasswell the political discourse is an instrument of political control and for this reason the symbols – which are mainly expressed by the means of political language – may be interpreted as resources controlled by the elite used to protect and/or increase their power positions.

Following our choice to focus on evaluative aspects of the speeches, we do not focus our attention on *signifiers* (i.e. single 'words') but we rather focus on *signified*, on meanings. Following Lasswell's approach (1965; Franzosi 2013), our coding unit is the symbol, a syntagm that both denotes and evaluates - positively or negatively - particular features of a political system (for example political community, leaders, policies etc.) (Fedel 1991; Battegazzorre 2013; Pansardi and

Battegazzorre 2018). This type of discourse analysis entails a mixed method approach, in which both qualitative and quantitative aspects are involved. The identification of the symbols and categorization is the qualitative part of our research, the benefit of this methodology is the opportunity to capture the linkage between symbols that a mere quantitative method cannot explore since it keeps the analysis to the surface of the discourse. The quantitative part is referred to the measuring of the frequency by which some symbols and cluster of symbols recur during the analysed speeches; this choice is fundamental because the measure of frequency is a valuable method to value the intensity of a symbolic invocation (Battegazzorre 2013; Pansardi and Battegazzorre 2018).

To accomplish these tasks, we have defined a codebook which allows us to code the content of the speech, in terms of positive or negative symbols. The codebook relies on the constitutive elements of a political system to which the speaker refers to: every time one of those elements will be the object of positive or negative valorisation, it will be collected and codified as a relevant signified unity and will be counted to reconstruct the argumentation's key elements map (Franzosi 2013). This instrument allows us to identify those symbols that belong to populism and Euroscepticism. Considering that the context in which the speeches have been pronounced was the electoral campaign of the 2014 European Parliament election, the codebook has been constructed in order to take into account the complexity of a political competition that is played on the intertwine of different political dimensions: the nationals and the supranational arenas. The codebook is articulated in three macro categories: a) polity symbols, which detect the general elements of a political system, b) politics symbols, which concern the political competition, the relationship among parties in the electoral and institutional arenas, c) policy symbols, which refer to the policy making. Each of the three areas is articulated in various subcategories that categorize the various symbols. The definition of the categories and sub-categories and the distribution of symbols into the correct category allows for the comparative analysis between Grillo and Farage's speeches. Table 2 presents the full list of categories included in our codebook.

TABLE 2: COMPARISON BETWEEN GRILLO AND FARAGE POLITICAL DISCOURSES' DETECTED SYMBOLS

Area	Category	Sub category
Polity	Community	National +/-
		Supranational +/-
		Subnational +/-
		Extra-EU +/-
		Functional +/-
	Political regime - national	Rules of the game / Institutional architecture/ Interinstitutional relationship +/-
		Political doctrines /values +/-
		Distance between elite and masses +/-
		Hostility against professional politicians +/-
	Political regime - EU	Rules of the game / Institutional architecture/ Interinstitutional relationship/ Eurozone membership +/-
		Political doctrines /values +/-
		Distance between elite and masses +/-
		Hostility against professional politicians +/-
	Relationship between national and supranational institutions +/-	
	Use of internet as an instrument of political participation +/-	
Politics	EU level	Support to a *spitzenkandidat* +/-
		Alliance to constitute a EP political group +/-
		Relationships with other EP political groups within the EP arena +/-
		Relationship with other parties from their own country +/-
	References to other politicians personal qualities +/-	
	References to political leader personal qualities (Grillo or Farage) +/-	
	Party strategies +/-	
Policy	EU level	Support to EU policies (monetary policy; structural funds; CAP; etc.) +/-
	National level	Support to economic and social policies +/-
	EU role in immigration policies +/-	

For what concerns the analysed speeches, we managed to build a reliable sample despite the unavailability of the transcripts of the electoral speeches. We selected four Beppe Grillo's speeches from the *#VinciamoNoi* European electoral tour and four Farage's public speeches, held in different moments of the 2014 European electoral campaign, and we considered also a TV appearance for both leaders (the full list of speeches is reported in Table 3). We retrieved the videos of these selected speeches on YouTube, and we transcribed them manually before performing the analysis. We then coded the texts independently with software NVivo, and the inter-coder reliability test showed a good degree of agreement between our measurements (i.e. K-alpha coefficient higher than 0.76 for the various symbols categories).

TABLE 3: THE ANALYSED DISCOURSES

Leader	Type of discourse	Place	Date
Beppe Grillo (M5S)	Public Meeting	Bari	07/05/2014
	Public Meeting	Tortona	16/05/2014
	Public Meeting	Verona	18/05/2014
	TV interview	Studi Rai, tv program "Porta a Porta"	19/05/2014
	Electoral campaign closing	Roma	23/05/2014
Nigel Farage (UKIP)	UKIP Spring Conference	Torquay	01/03/2014
	TV Debate	BBC studios, "Second debate between LibDem Nick Clegg versus UKIP's Nigel Farage"	02/04/2014
	Public Meeting	Gateshead	23/04/2014
	Public Meeting	St Ives	02/05/2014
	Electoral campaign closing	Eastleigh	20/05/2014

5 THE COMPARATIVE ANALYSIS OF POLITICAL SPEECHES. SIMILARITIES AND DIFFERENCES BETWEEN GRILLO AND FARAGE

The first significant result of our analysis is the strong difference in the number of symbols that refer in various ways, to the supranational dimension individuated in the two leaders' discourses (Figure 1) – a result that is even more interesting since we are dealing with speeches delivered during the EP electoral campaign. While in Grillo's speeches only 23% of the codified symbols refer to the European Union (49 over 209), the groups of symbols referring to Europe are quite frequent in Farage's speeches, amounting to the 40% of the total of symbols registered. This datum shows a substantial diversity in the attention paid by the two leaders to European issues: the pro/anti-integration cleavage is marginal for Grillo, but it represents the fulcrum of Farage's discourse and political action. In any case, the symbols referring to the EU are mostly negative for the two leaders, and in both cases numerous aspects of the European integration are criticised (e.g. institutional asset, rules of the game, values, impact on national democracies). The quantity and negativity of the European symbols in Farage's speeches further confirm that the UKIP have focused its 2014 EP elections' electoral discourse on Eurosceptic arguments. On the contrary, Grillo's discourse cannot be defined fully Eurosceptic because of the marginality of European topics in his discourse and of his blurry position on the most important European questions.

FIGURE 1: IMPORTANCE GIVEN TO THE NATIONAL AND THE EUROPEAN ARENA IN THE POLITICAL DISCOURSE OF GRILLO AND FARAGE
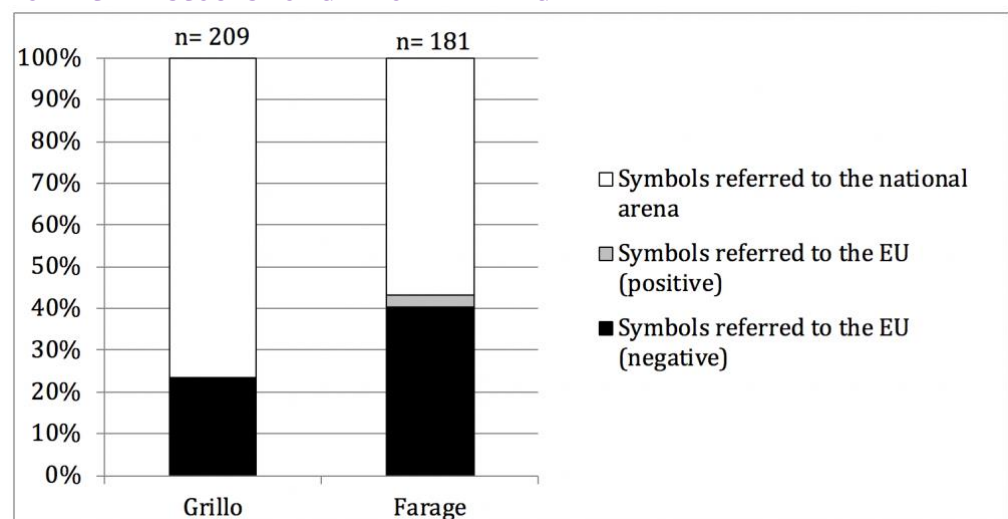
Independently from the different attention paid to the European issue overall, the analysis reveals an interesting element common to the two parties (Table 2): the dimension "European politics" – that comprehends the (lack of) support for a European Commission candidates, the issue of building or partaking to a euro-group, and the relation between national delegations in the EP – is totally missing. It suggests that at the moment of the 2014 European election campaign, the two movements intend was to project their refusal of political alliances and their outsider image, both in the national and in the European political system. They claim the lack of a clear party strategy and their will of not melting with other political actors in order to maintain a high degree of recognisability and purity. It suggests that the post-electoral alliance between the two parties does not originate from a political communality, but as an answer to a contingent organizational need.

Another missing category is the one named "Functional Community" (Table 2); it refers to the appeal to certain well defined social groups (i.e. class cleavage, workers, entrepreneurs). The lack of these symbols exemplifies the leaders' populist vision of the community as homogeneous and not divided in functional groups. However, the two leaders connote in different ways the homogeneous National community they refer to: Grillo refers to the *demos*, a community of active and participating citizens, and Farage to the *ethnos*, a homogeneous national group. On this point, Italy and the UK's different political traditions play a crucial role. In England national identity is far more heart-felt than in Italy, probably thanks to an ancient and rooted tradition of unity in the Country and to its glorious past characterised by the great empire and the birth of the Parliamentary System. On the opposite, Grillo does not appeal to the Italian people but to the citizens, and he connects the citizenship with the importance of the internet as an instrument of direct democracy. It explains the significant presence of symbols referring to the political role of the internet in Grillo's message, an aspect that is totally missing in Farage's discourse.

The leaders' conception of the community is strictly connected to the way they deal with the issue of "immigration management": also in this case a substantial difference between Grillo and Farage's discourses can be identified (Figure 2). According to Farage, immigration is a fundamental issue and he frames it both as a threat to the national community and as European policy, transforming it in an instrument of radical criticism toward the European Union. The group of symbols identified highlights that according to Farage the weakening of Britain borders is due to the immigration policies decided by Brussels (the Schengen agreement is sharply criticised). The European Union – considered an impersonal technocracy – in Farage's rhetoric becomes the instrument that deletes the English borders and allows uncontrolled mass immigration, which threats the English social cohesion and the cultural identity of the National community. The issue has declined also in terms of criticism toward the British political parties; Farage accuses them of being aware accomplices of Brussels' "open door" policy. In Grillo's discourse, not only is the immigration issue marginal, but Grillo also does not consider the European Union as the responsible of an immigration policy that damages the Country. As a matter of fact, Grillo accuses the EU of not helping Italy enough with the management of immigration flows. Consequently, from the analysis it emerges that while for Farage the solution to the immigration problem involves the immediate exit of the UK from the European Union, for Grillo it implies "more Europe but a different one". It is also important to highlight that in general Farage shows a deeper knowledge of European policies than Grillo; while the latter only makes rare and vague references to European policies, Farage presents a radical and detailed criticism toward them and their effect on the British economy.

FIGURE 2: RELEVANCE OF EUROPEAN, NATIONAL AND IMMIGRATION POLICIES IN THE POLITICAL SPEECHES OF GRILLO AND FARAGE
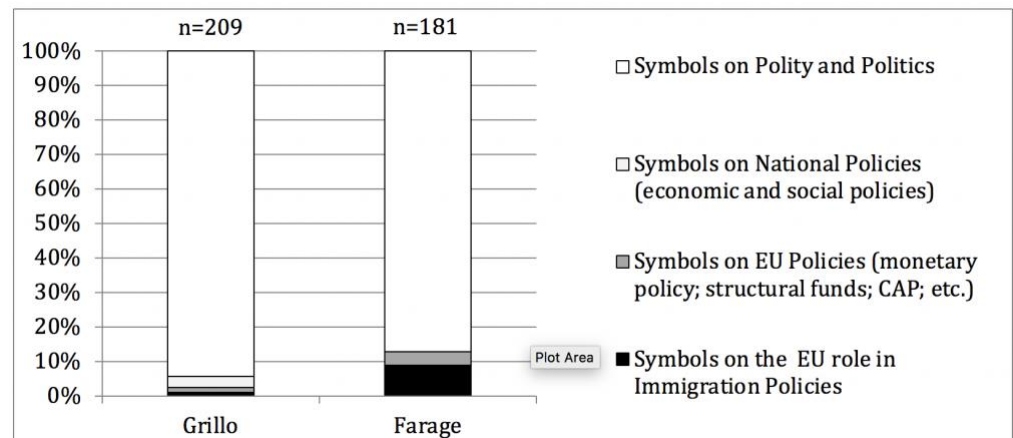
The two leaders have different approaches also regarding the 'Relation between national and supranational institutions' (Table 2). The data shows that for Farage the Brexit referendum was a leading issue during the electoral campaign, a goal finally reached in June 2016 with the victory of the "leave" option over the "remain". A political success that represented also the end of UKIP's experience. In fact, after the referendum Farage resigned as party leader and UKIP imploded, gaining a poor 1.8% at the 2017 UK general elections. A result that signed the end of the party. Grillo's position is different: firstly, he does not mention the necessity for Italy to leave the European Union, he only refers to the eventuality of having a referendum about the permanence in the Eurozone. Secondly, he does not declare the position that the Movement would take about that choice, he simply insists on the need to offer the citizens the opportunity to decide directly and autonomously if to remain or not in the Eurozone. The symbols collected in this category clearly show Farage's total opposition and refusal to the EU, while Grillo's position results to less radical.

Two more categories belonging to the macro category 'Polity' are relevant for the leaders' comparison: 'National political regime' and 'European political regime' (Figure 3). The symbols connected to the 'National political regime' show once more a clear distinction between Grillo and Farage. Farage's speeches display total adhesion and positive judgement toward both the "rule of the game" and the institutions of the British political system. Farage upholds the British parliamentary system, he exalts its history, values and democratic nature; moreover, he affirms that he wants to enter in Westminster – as he has already entered in local levels of government – in order to change the wrong policy choices made by the governing parties. On the contrary, Grillo's message shows an ambivalence toward the Italian political system: from one side, Grillo sharply criticises it – e.g. by saying that it is inefficient and corrupted – and declares the intention to demolish and reform the system by introducing instruments of direct democracy. On the other side, Grillo comments positively to the entry of the Movement into the Italian institutions and frames it is an opportunity to protect the institutions against traditional parties.

Another difference regards the allusion to values. While Farage rarely refers to this dimension and when it happened, it is to defend the free-market values, Grillo often mentions the values of direct democracy and environmentalism, post-material and post-ideological issues (Inglehart 1977; Corbetta and Gualmini 2013) that in Italy still struggles for enter in the political agenda. This disparity is explained by the leaders' divergent conception of their national institutions:

since Farage completely adheres to the British political regime's values and spheres of action, he does not need to refer to new value categories. On the contrary, the insistence of Grillo on the new values can be connected to the M5S's need to introduce new reference points in a political system that has to be reformed in depth.

The most similar aspects of Farage and Grillo's campaigns concerns the dimensions "elite-mass" and "political professionalism": in these cases, both the quantity and quality of the symbols identified is comparable ("elite-mass": Grillo, 23 – Farage, 18; "political professionalism": Grillo, 22 – Farage, 12). In both leaders' discourse, a strong populist hostility against the national establishments clearly emerges: they are considered responsible for the UK and Italy's difficulties. This dimension highlights that the elites (political, economic, financial, and informational) are considered extraneous to the national community of reference. This fact is connected to the criticism toward other leaders' personal characteristics, a dynamic common to both Grillo and Farage even if with some relevant differences. The English leader only criticises the poor communicative skills of the former deputy Prime Minister Nick Clegg; Grillo lapses into a big number of insults and mockeries by using rhetorical tools aiming to the dehumanization of the enemy (Cosenza 2013; Biorcio and Natale 2013). Concerning the European political regime, both criticize it putting particular emphasis on its institutional organisation. However, Farage shows a more punctual and radical criticism than Grillo toward the functioning of the communitarian institutions; it proves – once more – that the UKIP originates from the pros/vs. integration cleavage. The only positive symbols recorded in Farage's message refer to the goodness of the European project as a free exchange area and are expressed in opposition to the Union as a political entity. Regarding Grillo, his discourse contains few references to the European Union, anyway they clearly show his opposition toward the effects of the Euro on the continental economic crisis. Finally, they both feel a strong aversion against the technocratic and bureaucratic elites in Brussels and toward the grievous effects of their actions on the functioning of national democracies.

FIGURE 3: TYPES OF SYMBOLS USED BY GRILLO AND FARAGE WHEN REFERRING TO THE NATIONAL AND EUROPEAN POLITICAL REGIME
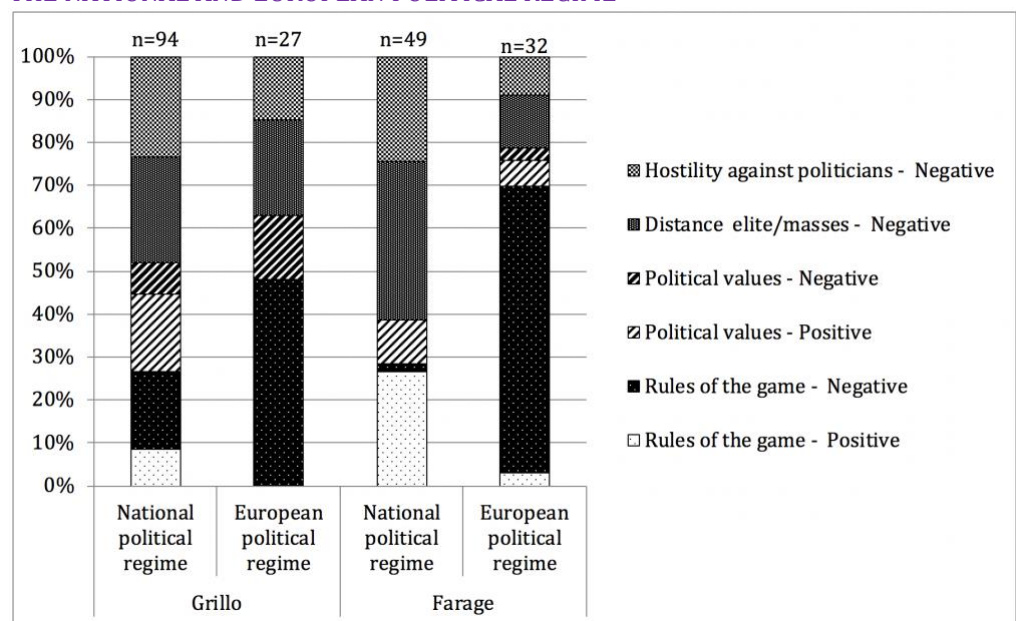
The category "party strategies" shows that Farage is especially disapproving toward his competitors' behaviours. In particular, the UKIP leader focuses on the choices made by the three main UK parties regarding the relations between the UK and the EU. According to Farage, the professional politicians have been incapable of making the right choices for the country and have proven to be accomplices to the bad communitarian policies and unable to defend the national interest. Quite the reverse, Grillo does not criticize how the Italian elites have contributed to the European institutions' formation but Italian politicians' strategic short-sightedness for having signed agreements such as the Fiscal Compact, on which, substantially, M5S's criticism focuses.

The comparative analysis of the 2014 EP elections political discourse has highlighted a different rhetorical style between Grillo and Farage, and it has also revealed the divergences in their political objectives. Farage systematically focuses his discourse on the European Union manifesting a clear objective: the exit of the UK from the Union. Grillo's objective, on the other hand, appears much more opaque since in his discourse there is neither a defence nor an attack against the EU; moreover, not even clear proposals of EU institutions' reforms are advanced.

Also without considering Grillo's lack of knowledge about the functioning of the European politics, it markedly emerges that for Grillo the EU is neither an enemy nor an ally but simply a marginal actor. Grillo's electoral campaign focuses on the attack toward the Italian establishment, on the desire to defeat the political elite who lead the Country, and on the need to frame the M5S as the only political organization able to collect and represent citizens' demands and requests. Also in Farage's discourse the anti-elites criticism is consistent, but it never develops into an attack toward the National institutions and it is always addressed to the relations between the National and the European arenas.

In conclusion, the analysis conducted demonstrates that the Farage and UKIP's core political message is fundamentally Eurosceptic and that it contains elements of populist rhetoric only with reference to the positive valorisation of the national community. Farage's discourse does not show anti-political elements, like the refusal of democratic institutions or the renunciation to the competition with other political actors. Grillo's discourse, on the contrary, contains many elements typical of populist message and few references to Euroscepticism (with the exception of the attack toward the European bureaucracy and the ECB). Finally, in Grillo's discourse the use of anti-political sentences, the rhetorical tool of the enemies' dehumanization, and the refusal of confrontation with the opponents is stronger than in Farage's.

6 CONCLUSIONS

In this article we explored the relationship between populism and Euroscepticism by focusing on the case of the Italian M5S. After exploring the theoretical connections between the concepts of populism and Euroscepticism, we empirically investigated whether the populist party M5S, currently the leading Italian party, can be effectively described as a Eurosceptic party. Focusing, in particular, on its former leader Beppe Grillo's speeches during the 2014 EP electoral campaign, we conducted a content analysis aimed at identifying Grillo's attitudes towards the EU and the components of his overall communication. The

comparison with the communication of Nigel Farage, the leader a clearly Eurosceptic party UKIP, allowed us to propose some interesting results.

The empirical analysis of Grillo and Farage's speeches provided us some relevant insights that suggest an overall difference between the two parties, that also manifests itself in their positions toward the EU. The striking element that differentiated the two leaders, is in fact the attention paid to European issues: if the pro/anti integration cleavage is the focus of Farage's public speech, for Grillo EU issues are marginalized, and when he engages with them, he does it in a very superficial and blurred way. This means that we can explain the M5S European campaign with the lens of the EU elections as second order (Reif and Schmitt 1980) more than in terms of a strong Eurosceptic approach, as for Farage.

On the other hand, what the two leaders most have in common concerns one of the main features of the populist approach: the contrast between elite and masses and the hostility towards professional politicians. Both Grillo and Farage use this message, but while Grillo focuses on the Italian establishment, Farage attacks Britain leaders for the way in which they act in the European arena and for they alleged subordination to Euro technocrats. Moreover, due to this anti elite rhetoric, both leaders are inclined to positively value the national community, the idea of a group which share common values from which elites are excluded as a foreign body. It is important, however, to underline that for Grillo the referred community is the one made by citizens as *demos*: Grillo does not appeal to 'Italian people', highlighting that M5S' populism is neither 'exclusionary' – as typical of right-wing populist parties, such as the League in Italy –, nor 'inclusionary' as for the left-wing populist parties like Podemos in Spain. On the opposite, Farage declines the community in a nationalistic way: he particularly stresses the nationalistic idea and the theme of British identity in order to contrast the process of European integration and the idea of a multinational and cosmopolitan community, which according to UKIP stances is the biggest threat to Great Britain's integrity.

The anti-elite stance is the strongest feature of Grillo's discourse, and it was used in the European elections specifically as an attack to Italian mainstream parties. This is a great difference with Farage's approach that has focused the attention precisely against the EU, so clearly positioning his party within the pro/anti EU cleavage, stance that is not so clearly embraced by Grillo.

According to both quality and quantity of the codified symbols, therefore, while we can confirm the strongly anti EU identity of the UKIP, the M5S cannot be claimed to make use of a Eurosceptic rhetoric. In order to provide further evidence to support the claim that the M5S is not, after all, a Eurosceptic party, however, further research is needed, especially by focusing on its behaviour within the EP and on the political positions on the EU that it will take in the next European election campaign. This preliminary research, focusing on the analysis of the speeches delivered during the electoral campaign, suggests a certain originality of the M5S rhetoric and a relevant political distance from UKIP positions. It will be interesting to investigate if and how, in the next EU elections, the M5S will change its approach to the EU as a consequence of its institutionalization path and of its nature of hybrid movement party (Bordignon and Ceccarini 2015), which acts at the crossroads between protest in the societal arena and institutional behaviour within the public offices.

REFERENCES

Aalberg, Toril, Esser, Frank, Reinemann, Carsten, Stromback, Jesper and Claes De Vreese (eds.). 2016. *Populist political communication in Europe. Vol. 1.* London: Routledge.

Bakker, Ryan et al. 2015. *2014 Chapel Hill Expert Survey.* Chapel Hill, NC: University of North Carolina at Chapel Hill.

Bardi, Luciano. 2000. Parties and party systems in the European Union. National and Supranational dimensions. In *Political parties in the new Europe: political and analytical challenges*, eds. Luther, Kurt and Ferdinant Muller-Rommel, 293–322. Oxford: Oxford University Press.

Battegazzorre, Francesco. 2013. Linguaggio e Discorso Politico: la Prospettiva della Scienza Politica. In *La Ragione Politica. I Discorsi dei Leader (vol.1)*, ed. Rositi, Franco, 155–184. Napoli: Liguori.

Biorcio, Roberto and Paolo Natale. 2013. *Politica a 5 stelle: idee, storia e strategie del movimento di Grillo*. Milano: Feltrinelli Editore.

Bordignon, Fabio and Ceccarini, Luigi. 2015. "The Five Star Movement: a hybrid actor in the net of state institutions." *Journal of Modern Italian Studies* 20 (4): 454–473.

Canovan, Margaret. 1999. "Trust the people! Populism and the two faces of democracy." *Political Studies* 47 (1): 2–16.

Carlotti, Benedetta. 2017. The odd couple: analysing United Kingdom Independence Party (UKIP) and Italian Five Stars Movement's (FSM's) European Union (EU)-opposition in the European Parliament (EP). In *Italian Political Science Review/Rivista Italiana di Scienza Politica*, 48 (2): 197–220.

Ceccarini, Luigi and Bordignon Fabio. 2016. "The five stars continue to shine: the consolidation of Grillo's 'movement party' in Italy." *Contemporary Italian Politics* 8 (2): 131–159.

Conti, Nicolò and Memoli, Vincenzo. 2015. "The emergence of a new party in the Italian party system: rise and fortunes of the Five Star Movement." *West European Politics* 38 (3): 516–534.

Corbetta, Piergiorgio and Elisabetta Gualmini (eds.). 2013. *Il Partito di Grillo*. Il Mulino: Bologna.

Corbetta, Piergiorgio and Rinaldo Vignati. 2014. "Direct Democracy and Scapegoats: The Five Star Movement and Europe." *The International Spectator* 49 (1): 53–64.

Cosenza, Giovanna. 2013. "Come comunica Grillo. Dal turpiloquio al linguaggio del corpo." *Comunicazione Politica* 13 (1): 109–124.

Cremonesi, Cristina. 2017. Populism and Euroscepticism, the case of the Italian Five Star Movement in 2013: an analysis of party direct communication and media coverage. In *Why Europe? Narratives and Counter-narratives of European Integration*, eds. Bârgăoanu, Alina, Buturoiu Raluca and Loredana Radu. Bern: Peter Lang.

Diez, Thomas. 2001. "Europe as a Discursive Battleground. Discourse Analysis and European Integration Studies." *Cooperation and Conflict* 36 (1): 5–38.

De Vries, Catherine E. and Erica E. Edwards. 2009. "Taking Europe to Its Extremes: Extremist Parties and Public Euroscepticism." *Party Politics* 15 (1): 5–28.

Döring, Holger and Phillip Manow. 2018. *Parliaments and governments database (ParlGov): Information on parties, elections and cabinets in modern democracies.* Available at http://www.parlgov.org/static/static-2014/stable/index.html.

Fedel, Giorgio. 1991. *Simboli e Politica*. Napoli: Morano.

Fedel, Giorgio. 1999. *Saggi sul Linguaggio e l'Oratoria Politica*. Milano: Giuffrè.

Franzosi, Paolo. 2013. Polity, Politics, Policies nel Dibattito sulla Fiducia nel Parlamento Italiano. In *La Ragione Politica. I Discorsi dei Leader (vol.1)*, ed. Rositi, Franco, 185–218. Napoli: Liguori.

Franzosi, Paolo, Marone, Francesco and Eugenio Salvati. 2015. "Populism and Euroscepticism in the Italian Five Star Movement". *The International Spectator* 50 (2): 109–124.

Gidron, Noam and Bart Bonikowski. 2013. "Varieties of Populism: Literature Review and Research Agenda." *Weatherhead Working Paper Series*. Cambridge MA: Harvard University.

Gualmini, Elisabetta. 2013. Da Movimento a partito. In *Il Partito di Grillo,* eds. Corbetta, Piergiorgio and Elisabetta Gualmini, 7–28. Bologna: Il Mulino.

Hameleers, Michael, Bos, Linda and Claes H. de Vreese. 2016. ""They Did It" The Effects of Emotionalized Blame Attribution in Populist Communication." *Communication Research* 44 (6): 870–900.

Hameleers, Michael and Desirée Schmuck. 2017. "It's us against them: a comparative experiment on the effects of populist messages communicated via social media." *Information, Communication & Society* 20 (9): 1–20.

Hix, Simon. 2005. *The Political System of the European Union*. London: Palgrave.

Hooghe, Liesbet and Gary Marks. 2001. *Multilevel governance and European Integration*. Lanham: Rowman & Littlefield.

Hooghe, Liesbet and Gary Marks. 2008. "A Postfunctionalist Theory of European Integration: from Permissive Consensus to Constraining Dissensus." *British Journal of Political Science* 39 (1): 1–23.

Hooghe, Liesbet, Marks, Gary and Carole J. Wilson. 2004. Does left/right structure party positions on European integration? In *European Integration and Political Conflict*, eds. Marks, Gary and Marco R. Steenbergen, 120–140. Cambridge: Cambridge University Press.

Inglehart, Ronald. 1977. *The Silent Revolution: Changing Values and Political Styles Among Western Publics*. Princeton, NJ: Princeton University Press.

Jagers, Jan and Stefaan Walgrave. 2007. "Populism as political communication style: An empirical study of political parties' discourse in Belgium." *European Journal of Political Research* 46 (3): 319–345.

Kriesi, Hanspeter. 2014. "The populist challenge." *West European Politics* 37 (2): 361–378.

Laclau, Ernesto. 2005. *On populist reason*. London: Verso.

Lasswell, Harold Dwight. 1965. *World politics and personal insecurity*. New York: Free Press.

Leconte, Cécile. 2015. "From pathology to mainstream phenomenon: reviewing the Euroscepticism debate in research and theory." *International Political Science Review* 36 (3): 250–263.

Lindberg, Leon N. and Stuart A. Scheingold. 1970. *Europe's Would Be Polity*. Englewood Cliffs: Prentice-Hall.

Marks, Gary and Carole J. Wilson. 2000. "The Past in the Present: A Cleavage Theory of Party Response to European Integration." *British Journal of Political Science* 30 (4): 433–459.

Mény, Yves and Yves Surel. 2002. *Democracies and the populist challenge*. Basingstoke: Palgrave.

Mudde, Cas, 2004. "The populist zeitgeist." *Government and Opposition* 39 (4): 542–563.

Pansardi, Pamela and Francesco Battegazzorre. 2018. "The discursive legitimation strategies of the president of the commission: a qualitative content analysis of the State of the Union Addresses (SOTEU)." *Journal of European Integration* 40 (7): 853–871.

Passarelli, Gianluca and Tuorto, Danilo. 2016. "The Five Star Movement: Purely a matter of protest? The rise of a new party between political discontent and reasoned voting." *Party Politics* 24 (2): 1–12.

Radaelli, Claudio. 1999. "Harmful tax competition in the EU: Policy narratives and advocacy coalitions." *Journal of Common Market Studies* 37 (4): 661–682.

Reif, Karl Heinz and Schmitt, Hermann. 1980. "Nine second order elections: a conceptual framework for the Analysis of European Election Results." *European Journal of Political Research* 8 (1): 18–36.

Salvati, Eugenio. 2017. "Anti-systemic or opposition parties within the EP? The case of the Five Star Movement and Syriza." Paper presented at the IPSG conference European Democracy Under Stress, Torino 13–14 January 2017.

Salvati, Eugenio. 2018. "Eurosceptic, Eurocritical or Euroconfused? An analysis of the Five Star Movement's voting behaviour in the European Parliament." *European Politics and Society* 20 (3)*:* 296–314.

Scharpf, Fritz W. 1999. *Governare l'Europa. Legittimità Democratica ed Efficacia delle Politiche nell'Unione Europea*. Bologna: Il Mulino.

Schmitt, Hermann, Braun, Daniela, Popa, Sebastian A., Mikhaylov, Slava and Felix Dwinger. 2016. *European Parliament Election Study 2014, Euormanifesto Study.* Cologne: GESIS Data Archive.

Steenbergen, Marco R., Edwards, E. Erica and Catherine E. De Vries. 2007. "Who's Cueing Whom? Mass-Elite Linkages and the Future of European Integration." *European Union Politics* 8 (1): 13–35.

Taggart, Paul. 1998. "A Touchstone of Dissent: Euroscepticism in Contemporary Western European Party System." *European Journal of Political research* 33 (3): 363–388.

Taggart, Paul. 2006. "Keynote Article: Questions of Europe - The Domestic Politics of the 2005 French and Dutch Referendums and their Challenge for the Study of European Integration." *Journal of Common Market Studies* 44 (1): 7–25.

Taggart, Paul and Aleks Szczerbiak. 2002. "The Party Politics of Euroscepticism in EU Member and Candidate States." *OERN Working Paper*. Falmer: Sussex European Institute, University of Sussex.

Taggart, Paul and Aleks Szczerbiak. 2008. *Opposing Europe? The Comparative Party Politics of Euroscepticism.* Oxford: Oxford University Press.

Taguieff, Pierre-André. 2002. *L'illusione populista*. Milano: Bruno Mondadori.

Tarchi, Marco. 2003. *L'Italia populista. Dal qualunquismo ai girotondi*. Bologna: Il Mulino.

Usherwood, Simon. 2014. "Euroscepticism as a lever: Contesting European integration with ulterior motives." Paper presented at the Europe's social substrate Workshop, 4–6 November 2014, University of Oslo.

Weyland, Kurt. 2001. "Clarifying a contested concept: Populism in the study of Latin American politics." *Comparative politics* 34 (1): 1–22.

Wessler, Hartmut, Peters, Bernhard, Brüggemann, Michael, Kleinen-von Königslöw, Katharina and Stefanie Sifft. 2008. *Transnationalization of public spheres*. Houndmills, Basingstoke: Palgrave Macmillian.

Zulianello, Mattia. 2017. "Anti-system parties revisited: concept formation and guidelines for empirical research." *Government and opposition* 53 (4): 1–29.

THE INFLUENCE OF ECOLOGICAL TAXES ON THE EXPOSURE OF WASTE AND CO$_2$ EMISSIONS IN A SELECTED GROUP OF EU COUNTRIES

France KRIŽANIČ, Žan OPLOTNIK, Jože MENCINGER and Boštjan BREZOVNIK[1]

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In the continental European countries (EU Member States) an increase of the environmental taxes by 1% after one year leads to a 0.13% reduction in the amount of deposited waste per capita. Across the entire business sector and the construction industry this effect is the greatest for the tax on energy used, as well as for the taxes and charges on pollution and the use of natural resources. An increase for 1% in taxes on transport yields a 0.5% reduction in emissions of CO$_2$, and an increase in energy taxes of 1% after one year yields a 0.13% decline in emissions of CO$_2$. When a technological and economic opportunity adapt to changed environmental tax rates, as is the case for the landfill tax, increased tax rates leads to sharp pollution reduction and thus have a limited fiscal effect.

Key words: Economic Welfare; Taxation; Environmental Management; Tax Law; Public finance.

1 INTRODUCTION

Economic growth leads to the increased pollution of nature. This effect comes from the supply side (production of goods, provision of services) as well as from the demand side (household consumption, investments, state spending and exports). The state has the possibility and duty to limit the burden on the environment by direct regulation (prohibitions, etc.), by leading a specific approach to development policy (promoting the introduction of cleaner technologies) and through tax policy. In this article we analyse the effectiveness of its environmental tax measures based on data from continental EU Member States.

The article starts with a short outline of economic theory on pollution and the role of ecological levies, followed by the presentation of the methodology, the data used and the estimated model of the impact of various factors on the

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generation of waste and CO_2 emissions. Below is the outline on how change in environmental taxation affects deposited waste and CO_2 emissions. In the last part of the article an example of the effectiveness of the landfill tax on the disposal of waste at landfills is specifically illustrated. The end of the article presents the conclusions, an indication of the literature used, data sources and the software used.

2 POLLUTION, EXTERNAL DISECONOMIES AND ECOLOGICAL TAXES

Economizing is a conscious human activity to reduce the required limited resources for meeting our needs. These resources are called goods. In the process of economizing, the consumers maximize their utility and the producers maximize their profits. One and all act in accordance with the prices of goods as they are established on the market in the relation between supply and demand (Kneese and Clifford 1994). In most cases the production and consumption of goods cause negative externalities or external diseconomies, which are not included in prices as established in the relation between the supply and demand of these goods.[2] This fact represents a market failure. The first economic thinker to theoretically explain it was Arthur Pigou (1920), the successor to Alfred Marshall at Cambridge University. As a solution, he proposed the introduction of an ecological tax. Of course, apart from this economic incentive to limit or even prevent pollution, the state also operates through direct regulation and subsidies. An economic analysis of the effectiveness of various measures to reduce pollution and to eliminate external diseconomies has been in constant development since the 1970s (Kneese and Bower 1979). External diseconomies or different forms of pollution are on one side increasing with the growth of the production and consumption of goods, and on the other side they decrease with state regulation, investments in clean technologies and ecological taxes. Which of the instruments the regulator (the state) elects to use depends on how producers are able to respond to the price signals of environmental taxes. If the cost of reducing pollution is low, environmental taxes are effective; otherwise, direct bans are more effective (Weitzman 1974; Stavins 1996). When the state combines ecological taxes with other measures (licenses) to reduce certain pollution, it must also take into account the interaction effect of limiting the emissions of one pollutant on the emissions of other pollutants, i.e. that the goods associated with this pollution exist in a complementary or substitute relation (Ambec and Coria 2013). In models of endogenous growth (Romer 1986; Romer 1990) environmental policy measures (including ecological taxation) influence the choice of technologies and the structure of the economy (Soretz 2007). Market power or a monopoly of polluting economic subjects increases the importance of tax regulation in relation to prohibitions (Heuson 2010). In North-South international trade, however, synchronized environmental tax policy cannot prevent distortion in the allocation of resources (Daubanes and Grimaud 2010).

Environmental taxes, environmental contributions (charges) and environmental penalties all sit among environmental levies in the Pigou sense. The basis for an environmental tax is a physical unit (or its approximation) of something that has

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[2] In the case of negative externalities, it is not necessary that a precisely defined person or group of persons is damaged by pollution of the natural environment; it can also be a deterioration of the state of public goods that people need collectively and for which there is no sense in differentiating individuals from total consumption (Samuelson 1954). Air is a typical example of such a good, yet the entirety of living and non-living nature, in fact, belongs here.

a provable negative effect on the environment. Dedicated use of the resultant revenue collected with them, as with other taxes, is not well established; furthermore, the funds acquired through such taxation are not necessarily fully used to protect the environment. In the case of environmental contributions the opposite holds, where they serve to raise funds for a specific purpose. While they are mandatory, they can be paid into the budget or into a certain fund or organization to cover the costs of specific related services, such as water supply, cleaning or access to a natural resource. However, there is no strict distinction between environmental taxes and contributions; different countries use different definitions in their classifications (Križanič, Mencinger and Kolšek 2016). According to Eurostat's typology, environmental taxes are divided into energy taxes, transport taxes, pollution and resource taxes (Eurostat 2001).

Environmental taxation has two objectives or effects: the first is the protection of the environment or the elimination of that external diseconomy, while the other is the fiscal, i.e. generating revenue for the state treasury. For the environmental impact of a tax or duty, it is important to reduce environmental pollution and to use the funds collected to eliminate the damage; the "moral" effect of benefits is also important in raising awareness of environmental protection (Križanič, Mencinger and Kolšek 2016). Some analyses show that the link between environmental taxes and awareness of the importance of protecting the environment is not linear, as environmental taxes can sometimes reduce the impact of ecological awareness on environmental protection (Lanz, Wurlod, Panzone and Swanson 2018; see also Kuokštis 2017). The fiscal effect of the environmental tax allows the reduction of income tax rates, in particular tax rates on income from work (Ekins and Barker 2001). Such a reorientation of public expenditure financing is called a green reform (Fullerton and Metcalf 1997; Hettich 1998). Fiscal revenue from environmental taxation may allow the financing of transfers to the population to eliminate the negative distribution effects of this tax – connected to the fact that people with lower incomes spend relatively more on polluting goods (Klenert, Schwerhoff, Edenhofer and Mattauch 2016), as well as on financing projects for remediation of environmental damages. Analyses show that the use of these funds to reduce the damage caused by pollution increases the political acceptability of environmental taxation (Carattini, Baranzini, Thalmann, Varone and Vöhringer 2017).

3 METHODOLOGY

We designed a model to explain various factors that influence waste generation and CO_2 emissions while also assessing the link between the first differences in the amount of waste collected per capita (data vary among seventeen EU Member States) and the first differences of the variables which influence the change in the amount of waste collected (ecological taxes, investments in cleaner technologies, GDP, etc.).[3] We estimated panel equations on annual first differences of different variables across different countries:

[ws_? - ws_?(-1)] = f {[[tax_? - tax_?(-1)] + [in_? - in_?(-1)] + ... + u}

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[3] Data are annual, and the first differences are calculated as the difference in the value of the given variable (quantities of collected waste in kilograms per capita, collected ecological taxes in millions of euros, etc.) in a given year and the value of this variable in the previous year. Since we have data for the analyzed countries from 2004 to 2012, we analyze data on the first differentials from 2005 to 2012.

where:

ws_?   indicates the amount of collected waste in kilograms per capita in the analysed group of 17 countries; these countries are designated by "?";

ws _? (- 1)   indicates the amount of collected waste in kilograms per capita (ws_?) in the previous year;

tax_?   indicates the total collected ecological taxes (millions of euros) per country (?) in the analysed group;

tax _? (- 1)   indicates tax_? in the previous year;

in_?   indicates investments (millions of euros) into cleaner technology related to the generation or treatment of waste by country (?) in the group;

in _? (- 1)   indicates in_? in the previous year;

...   indicates other variables that have a statistically significant effect on the amount of waste (different types of ecological taxes and eco-investments, economic growth variables and proxy variables for the institutional framework);

u   indicates the remaining unexplained factors in the regression analysis.

The equations were estimated on annual data that were tested for Unit Root, and the hypothesis that the series has a single root was rejected. In the regression the specificities of individual countries that could introduce bias in the final result (heteroskedasticity) were eliminated by the introduction of weights.

4 DATA

The analysis of the impact of ecological taxation (as reported by Eurostat) and other variables on the amount of collected waste per capita included EU Member States that have provided relevant data to Eurostat. Listed in alphabetical order, these countries are Austria, Belgium, Czech Republic, Finland, France, Germany, Hungary, Italy, Lithuania, the Netherlands, Poland, Portugal, Romania, Slovenia, Slovakia, Spain and Sweden. The analysed group of 17 countries has almost 400 million inhabitants (78% of the EU population before Brexit), and their national economies together generate a gross domestic product of 11 trillion euros (77% of the EU total). The analysis was carried out on Eurostat annual data for the period 2004 to 2012 with data on various ecological taxes (including those on energy consumption and transport), on waste (total and structural parts, depending on the nature of the waste or according to its source), CO_2 emissions, investment in cleaner technologies (including individual structural upgrades according to purpose), economic growth (GDP, wages, etc.) and institutional conditions (as an indicator of the state's readiness to intervene also in the environmental field, we assume a share of general government revenues to GDP or a share of the general government deficit to GDP). Data on waste are given in kilograms per capita and the data on CO_2 emissions are in thousands of tons. Data on ecological taxation are in millions of euros; these figures represent the tax rate or the rate of excise duties per unit of goods indirectly rather than directly.

Changes in the amount of ecological taxes collected can also be linked to greater or lesser intensity of enforcement, changes in the tax base, inclusion or exclusion of taxpayers, changes in tax incentives, etc. The data used in the analysis are collected exclusively from the Eurostat website.[4] The data on the deposited waste are published every two years. Each intermediate period was calculated as the average of the amount of collected waste of the two adjacent years.

5 FACTORS OF CHANGING THE AMOUNT OF WASTE AND CO_2 EMISSIONS

The equations that explain the first differences in the quantity of deposited waste per capita and the CO_2 emissions in the 2005–2012 period for the analysed group of EU Member States are presented in Tables 1 and 2. Table 1 shows the impact of different factors on deposited waste and CO_2 emissions for the group's combined, entire national economies, while Table 2 presents results separately for the group-wide economy and households. The results are presented for collected waste with or without mineral waste and just for mineral waste. The last lines of both tables present the determination coefficient (R^2), indicating the portion of explained variance in the amount of collected waste per capita (and CO_2 emissions), and the results of the Durbin-Watson statistic (DW), which assesses first-order autoregression in the equations. The explanation for changes in the amount of collected waste per inhabitant (and CO_2 emissions) is good: R^2 ranges from 36% to 98% and results of the DW statistics are near 2. In the basic equation (third column of Table 1) of our model to explain the change in total collected waste per capita R^2 is 95% and the DW statistic is 1.58.

In Table 1 and Table 2 the dependent variables (change in the amount of collected waste per capita and in CO_2 emissions) are shown in columns, and the independent variables (change of ecological taxes, etc.) that influence the dependent variables are shown in rows. Here we can see the regression coefficient that shows the influence of each independent variable on a dependent variable. Annual time lag of influence is shown in the brackets next to the regression coefficients. In the brackets under the regression coefficients are the t-values showing the statistical significance of the influence of each explanatory variable (change in ecological taxes, etc.) on the corresponding dependent variable (change in the amount of collected waste or CO_2 emissions).

From the equations shown in Tables 1 and 2 it can be understood that the impact of ecological taxes on the disposal of mineral waste is different than the influence of these taxes on the disposal of total waste, while the impact of economic growth and eco-investments is similar in both cases. The impact of energy taxes on waste disposal in the economy occurs faster than the impact of total ecological taxes on the disposal of waste in the economy without the inclusion of mineral waste. In this segment the influence of investments in cleaner waste management technologies is statistically significant.

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[4] See Eurostat Data, available at http://ec.europa.eu/eurostat/data/database.

TABLE 1: EQUATION RESULTS EXPLAINING THE CHANGE IN COLLECTED WASTE PER CAPITA AND CO_2 EMISSIONS

		Total waste	Total waste without mineral waste	Mineral waste	CO_2 emissions
	Constant	171.5105 (8.0)	-6.5786 (-5.5)	164.2262 (19.7)	-2873.658 (-2.7)
	Ecological taxes total	-0.0509 (-1) (-3.4)	-0.0055(-1) (-5.6)		
Taxes and levies	Taxes on energy				-1.6648(-1) (-1.7)
	Taxes on transport				-28.549 (-7.1)
	Taxes on pollution and on natural resources			-0.6234(-1) (-2.7)	
Investments in cleaner technology	for cleaner air				-34.193(-1) (-4.7)
	for waste treatment	-3.9679 (-3.1)	-0.9687 (-5.9)	-1.3173 (-1.6)	
Economic growth	GDP	0.0005(-1) (1.7)	0.0001 (3.5)	0.0006(-1) (1.9)	0.2872 (5.3)
Institutional conditions	share of general government revenue in GDP	-33.3827 (-3.3)			
Explanation	R^2	0.95	0.92	0.98	0.87
	DW	1.58	1.51	1.42	2.63

Source: Own calculations based on data published by Eurostat.

Household waste is influenced by total ecological taxes (there is no data indicating the direct tax burden of households for the disposal of waste in this segment). Higher taxes reduce the amount of landfilled household waste (negative sign in the equation). The impact of economic growth on the disposal of household waste is found to be statistically significant through a change in the cumulative wage bill (with a positive sign) and by changes in the unemployment rate (with the corresponding opposite sign). A higher wage bill (sum of all salaries in the economy) and lower unemployment indicate a situation in which households increase their quantities of waste, and vice versa.

TABLE 2: EQUATION RESULTS EXPLAINING THE CHANGES IN THE COLLECTED WASTE PER CAPITA

		Waste in the economy	Waste in the economy other than minerals	Construction waste	Household waste
	Constant	0.8622 (0.0)	11.9271 (2.3)	1.3099 (0.4)	-2.1406 (-2.1)
	Ecological taxes total		-0.0044(-1) (-2.1)		-0.0018 (-2.2)
Taxes and levies	Taxes on energy	-0.032 (-1.6)		-0.0101 (-1.4)	
	Taxes on pollution and on natural resources	-0.3234(-1) (-1.2)		-0.1822 (-1.9)	
Investments in cleaner technology	for waste treatment		-0.9010 (-4.0)		
Economic growth	GDP	0.0011(-1) (2.0)		0.0006 (4.0)	
	Salaries (sum at national level)				0.0003(-1) (4.6)
	unemployment rate		-14.6114 (-2.9)		-2.7833 (-4.6)
Institutional conditions	general government deficit to GDP	-17.7352(-1) (2.0)			
Explanation	R^2	0.36	0.78	0.49	0.58
	DW	1.61	1.53	1.36	1.56

Source: Own calculations based on data published by Eurostat.

6 THE IMPACT OF ENVIRONMENTAL TAXES ON THE AMOUNT OF WASTE

Based on the results shown in Tables 1 and 2, we have simulated the impact of changing ecological taxation on the amount of deposited waste. The results are presented in Table 3. Here we can see that a 1% increase in total environmental taxes after one year yields a 0.13% reduction in the amount of waste per inhabitant. In the economy and construction industry waste reduction is mainly influenced by taxes on the energy used but also by taxes on pollution and on the use of natural resources. The impact arrives within the same year. The same is true for households, but the lack of direct taxation data limits this research in terms of taking into account total ecological taxation.

TABLE 3: IMPACT OF VARIOUS ECOLOGICAL TAXES ON WASTE DISPOSAL

Dependent variable	Independent variable (increase of 1%)	% variation of dependent variable first year after change	% variation of dependent variable second year after change
Waste per capita total	Ecological taxes total	0	-0.13
Waste in the economy per capita	Taxes on energy	-0.07	-0.07
	Taxes on pollution and on natural resources	0	-0.03
Waste in construction per capita	Taxes on energy	-0.08	-0.08
	Taxes on pollution and on natural resources	-0.06	-0.07
Household waste per capita	Ecological taxes together	-0.06	-0.06

Source: Own calculations based on data published by Eurostat.

TABLE 4: HOW TAXES ON ENERGY AND ON TRANSPORT INFLUENCE CO_2 EMISSIONS

Dependent variable	Independent variable (increase of 1%)	% variation of dependent variable first year after change	% variation of dependent variable second year after change
CO_2 emissions	Taxes on energy	0	-0.13
	Taxes on transport	-0.53	-0.54

Source: Own calculations based on data published by Eurostat.

In Table 4, we see that an increase in transport taxes of 1% yields a 0.5% reduction in CO_2 emissions, while an increase in taxes on energy of 1% after one year yields a 0.13% reduction in CO_2 emissions. The result is not linear and thus cannot be extended to any greater scale or percentages. Nonetheless, it is clear that ecological transport taxes are more efficient in reducing CO_2 emissions than energy taxes.

7 AN EXAMPLE OF THE EFFECTIVENESS OF LANDFILL TAXATION

In certain cases, there are technological and economic opportunities for producers and consumers to rapidly and thoroughly adapt behaviour through environmental taxes. Such a situation is evident in the tax on the disposal of waste at landfills (landfill tax).[5] Economic subjects can reduce this tax burden by shifting waste into recycling, composting or incineration. The effectiveness of the landfill tax in four EU Member States (Slovenia, Austria, the Netherlands and

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[5] The results of the analysis of the efficiency of carbon tax in reducing energy intensity and electricity consumption in the UK showed similar effectiveness (Martin, Preux and Wagner 2014).

Sweden) is shown in Figures 1 to 4 (European Commission (DG ENV) 2012; Ministry of Finance 2015; Government of the Republic of Slovenia 2015).

FIGURE 1: LANDFILL TAX AND SHARE OF LANDFILLED WASTE IN SLOVENIA
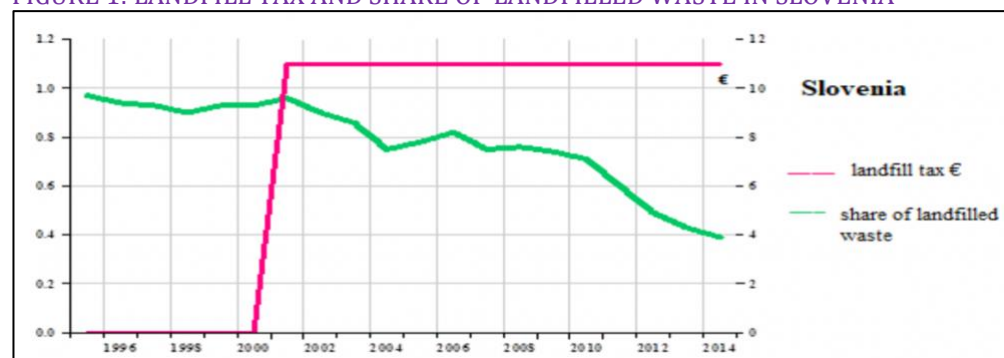
Source: Ministry of Finance (2015) and Government of Republic of Slovenia (2015).

FIGURE 2: LANDFILL TAX AND SHARE OF LANDFILLED WASTE IN AUSTRIA
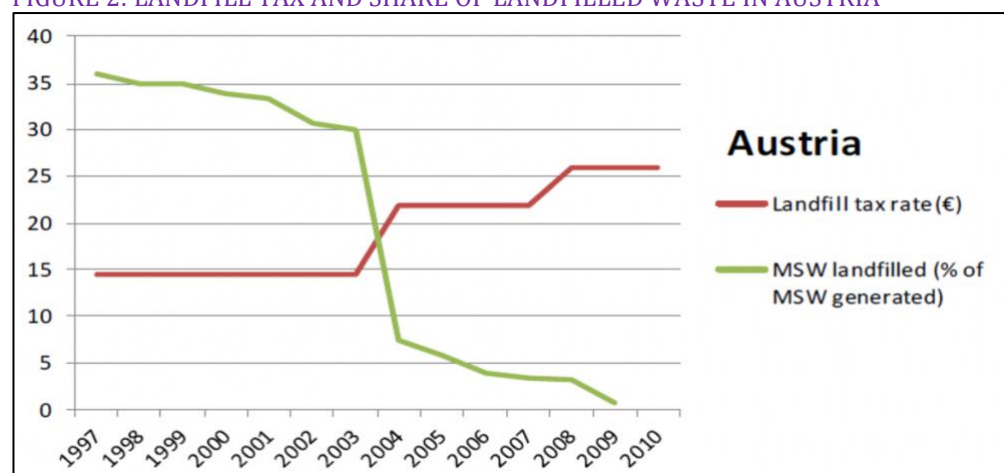
Source: European Commission (DG ENV), Bio Intelligence Service (2012, 60).

FIGURE 3: LANDFILL TAX AND SHARE OF LANDFILLED WASTE IN THE NETHERLANDS

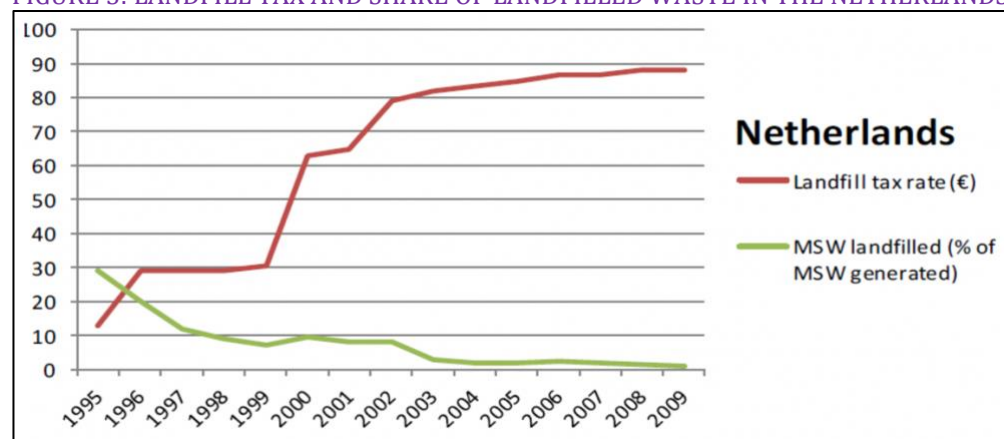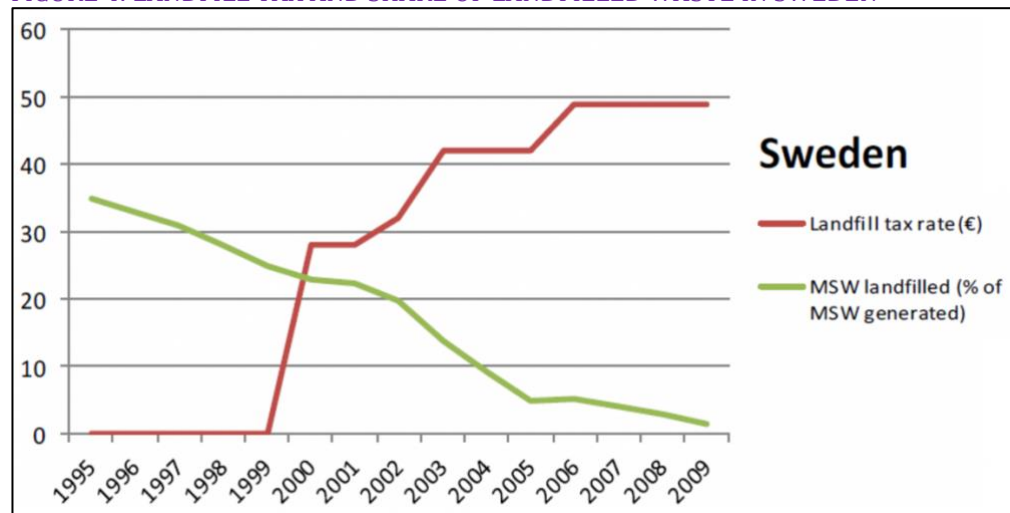
Source: European Commission (DG ENV), Bio Intelligence Service (2012, 61).

FIGURE 4: LANDFILL TAX AND SHARE OF LANDFILLED WASTE IN SWEDEN

Source: European Commission (DG ENV), Bio Intelligence Service (2012, 62).

With this visual approach we are limited to an illustration, since the effect of tax rates cannot be separated from other influences (especially increased regulation). In any case, the increased tax rate is accompanied by a reduction in the proportion of deposited waste in the generated waste to the extent that the fiscal impact of the tax is significantly reduced. In this case the scope for the implementation of the "green reform" (increase in fiscal revenues from ecological taxes and the easing of labour taxation) is significantly limited.

8 CONCLUSIONS

The production and consumption of various goods often have external negative effects (negative externalities or external diseconomies) that are not included in prices set in the supply and demand relations. This is a market failure which requires a certain correction. One of the possibilities for such correction is the introduction of an ecological tax.

Environmental taxes serve to eliminate or reduce pollution of the natural environment on the one hand and to generate revenue for the state treasury on the other. It is important for the environmental impact of the tax or levy that it reduces environmental pollution and that the funds collected represent sources for the elimination of the damage incurred, while the fiscal effect of the environmental tax allows a reduction of tax rates in other areas such as workers' income (green reform).

In our analysis we measured ecological taxes in millions of euros, and not in tax rates. In this context, the change in the amount of collected ecological taxes may be connected to a change in the tax rate or to a greater or lesser intensity of tax enforcement, to changing the tax base, including or excluding taxpayers, changing tax incentives, etc.

In the analysis, we divided the impact on the amount of collected waste and CO_2 emissions among ecological taxation, investments in cleaner technologies, economic growth and an institutional framework in 17 EU Member States.

The simulation of the impact of changing ecological taxes on changing the amount of collected waste per capita shows that a 1% increase in total environmental taxes after one year yields a 0.13% reduction in the amount of waste per inhabitant. Ecological taxes obviously have an influence on the reduction of pollution, but the existing impact is not great.

In reducing CO_2 emissions the impact of ecological taxes on energy is similar (-0.13%). However, the impact of ecological taxes on transport is considerably higher (-0.5%).

When there are technological and economic opportunities for producers and consumers to adapt quickly and thoroughly to environmental taxes, pollution is reduced to the extent that the tax is effective from the point of environmental protection (the external diseconomy is eliminated), but the fiscal effects are no longer large enough to allow green tax reform. An example of this kind is the landfill tax.

REFERENCES

Ambec, Stefan and Jessica Coria. 2013. "Prices vs quantities with multiple pollutants." *Journal of Environmental Economics and Management* 66 (1): 123–140.

Carattini, Stefano, Baranzini, Andrea, Thalmann, Philippe, Varone, Frederic and Frank Vöhringer. 2017. "Green taxes in a post-Paris world: are millions of nays inevitable?" *Environmental and Resource Economics* 68 (1): 97–128.

Daubanes, Julien and Andre Grimaud. 2010. "Taxation of a polluting non-renewable resource in the heterogeneous world." *Environmental and Resource Economics* 47 (4): 567–588.

Ekins, Paul and Terry Barker. 2001. "Carbon taxes and carbon emissions trading." *Journal of Economic Surveys* 15 (3): 325–376.

European Commission (DG ENV), Bio Intelligence Service. 2012. *Use of Economic Instruments and Waste Management Performances*, Final Report, 10 April 2012.

Eurostat. 2001. *Eurostat Data.* Available at http://ec.europa.eu/eurostat/data/database.

Fullerton, Don and Gilbert E. Metcalf. 1997. *Environmental Taxes and the Double-Dividend Hypothesis: Did You Really Expect Something for Nothing?* Cambridge: National Bureau of Economic Research.

Government of Republic of Slovenia. 2015 Osnutek programa ravnanja z odpadki in program preprečevanja odpadkov Republike Slovenije. Ljubljana: Government of Republic of Slovenia.

Hettich, Frank. 1998. "Growth effects of a revenue-neutral environmental tax reform." *Journal of Economics* 67 (3): 287–316.

Heuson, Clemens. 2010. "Weitzman revisited: Emission standards versus taxes with uncertain abatement costs and market power of polluting firms." *Environmental and resource economics* 47 (3): 349–369.

Klenert, David, Schwerhoff, Gregor, Edenhofer, Otmar and Linus Mattauch. 2016. "Environmental Taxation, Inequality and Engel's Law: The Double Dividend Redistribution." *Environmental Resource Economics* 71 (3): 605–624.

Kneese, Allen V. and Blair T. Bower. 1979. *Environmental Quality and Residuals Management.* Baltimore: John Hopkins University Press for Resources for the Future.

Kneese, Allen V. and Russell S. Clifford. 1994. Environmental economics. In *The New Palgrave Dictionary of Economics, volume 2,* eds. Durlauf, Steven and Lawrence E. Blume. London: Palgrave Macmillan.

Križanič, Franci, Mencinger, Jože and Vasja Kolšek. 2016. *Strokovne podlage za preureditev sistema okoljskih dajatev v Republiki Sloveniji (končno poročilo).* Ljubljana: EIPF, Ekonomski inštitut.

Kuokštis, Vytautas. 2017. "Economic Conditions and tax compliance: the mediating effect of trust." *Journal of Comparative Politics* 10 (2): 55–69.

Lanz, Bruno, Wurlod, Jyles-Daniel, Panzone Luca and Timothy Swanson. 2018. "The behavioural effect of Pigovian regulation: Evidence from a field experiment" *Journal of Environmental Economics and Management* 87: 190–205.

Martin, Ralf, de Preux, Laure and Ulrich J. Wagner. 2014. "The impact of carbon tax on manufacturing: evidence from microdata." *Journal of Public Economics* 117(C): 1–14.

Ministry of Finance. 2015. *Okoljska dajatev na onesnaževanje zaradi odlaganja odpadkov na odlagališčih.* Ljubljana: Ministry of Finance.

Pigou, Arthur Cecil. 1920. *The Economics of Welfare.* London: Macmillan.

Romer, Paul M. 1986. "Increasing Returns and Long Run Growth." *Journal of Political Economy* 94 (5): 1002–1037.

Romer, Paul M. 1990. "Endogenous Technological Change." *Journal of Political Economy* 98 (5): 71–102.

Samuelson, Paul A. 1954. "The pure theory of public expenditure." *Review of Economics and statistics* 36 (4): 387–389.

Soretz, Susanne. 2007. "Efficient Dynamic Pollution Taxation in an Uncertain Environment." *Environmental and Resource Economics* 36 (1): 57–84.

Stavins, Robert N. 1996. "Correlated Uncertainty and Policy Instrument Choice**."** *Journal of Environmental Economics and Management* 30 (2): 218–232.

Weitzman, Martin L. 1974. "Prices vs quantities." *Review of Economics Studies* 41 (4): 477–491.

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PIRATE PARTIES: THE SOCIAL MOVEMENTS OF ELECTRONIC DEMOCRACY

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Contemporary technologies facilitate democratic participation in a digital form. And Pirate Parties claim to represent such an empowered electronic democracy. Thereby this study examines whether Pirate Parties are actually social movements practicing and promoting electronic democracy. For this aim, the research applies the 'real utopias' framework exploring desirable, viable, and achievable alternative social designs. In terms of methods, the inquiry is based on the analysis of expert interviews and political manifestos. The study revealed that Pirate Parties are genuine democratic initiatives, widely implementing principles and mechanisms of electronic democracy. Overall, the studied Pirate Parties foster member participation at all stages of policy making. Even though Pirate Parties have achieved low electoral results for public offices, their models of internal democratic organization and political ideas are proliferated by other parties.

Key words: democracy; e-democracy; participatory democracy; political parties; social movements.

1 INTRODUCTION

The modern digitization of public life presumes that democracy can be realized also by online participation in politics. Such electronic democracy can be defined as "the use of information and communication technologies and strategies by democratic actors (governments, elected officials, the media, political organizations, citizen/voters) within political and governance processes of local communities, nations and on the international stage" (Clift 2004). Moreover, Earl and Kimport (2011) argued that Internet allows easier and more cost-effective means for online communication, mobilization for offline protests, e-activism via e-participation instruments, and self-organizing for e-movements. Besides, given the global character of Internet, e-participation can transcend boundaries and evolve at large scale – at regional, national, and even supranational levels. Furthermore, online tools might foster engagement at all stages of policy making

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cycle, which includes, according to Hood (1998), agenda setting, policy formulation, policy adoption, implementation, monitoring and evaluation.

In this respect, the Pirate Parties (further – 'PPs') are sometimes viewed as a successful experiment in e-democracy. The movement started from the Swedish Piratpartiet, founded on 1 January 2006 (Anderson 2009). They reappropriated the word 'pirates,' used by the media to label opponents of intellectual property. At first, they aimed to attract attention to debatable copyright laws, but later their agenda expanded to the themes of civil rights in digital domain and democratic participation. Over 13 years, by the start of 2019, PPs' presence grew from 1 to over 44 societies (Pirate Parties International 2019). The founder of the movement Falkvinge (2013) defined the initiative as a decentralized, collaborative effort of volunteers who cooperate on a common goal, where the authority is delegated the way that anybody can make almost any decision for the entire organization. But does this statement conform with empirical evidence? To find this out, this study aims to test the normative design of PPs versus the political reality of their internal organization and wider institutional impact. Therefore, this inquiry seeks to answer the research question of whether PPs are social movements of a genuine electronic democracy?

The next section will illuminate the theoretical background of this inquiry, the methodological section will specify the research approach and design, the findings section will present the results of the study, and the concluding section will summarize the common patterns of PPs, discuss limitations, and suggest prospects for further studies.

2 LITERATURE REVIEW

As organizations pursuing activities for social change rather than seeking electoral victory in the government Pirate Parties can be more closely associated with social movements than with traditional political parties. In this context, Almqvist (2016) viewed PPs as alternative social movements realizing subpolitics (or sub[system]politics), enacted outside of the institutionalized political system, and subactivism, practices of personal empowerment. However, as long as PPs' goals require legal change, they do aim to affect the state, regardless of being within or outside power structures. This accords with Tilly's (1984) definition of real social movements as sustained interactions among authorities and challengers. Although, the combination of PPs' protest and electoral activities reflects the highlighted by Goldstone (2003) organic interplay between social movement and political parties. Burkart (2014) also admitted that PPs both engage in the political system directly and act as a counterhegemonic movement contesting corporate and state power.

PPs as social movements can be classified in several aspects. Postill (2018) linked the rise of digital activists of PPs with the new protest movements. Taking into account PPs' aim to affect only certain policies, they can be labelled as reformative social movements – according to the classification by Aberle (1966). Considering that they operate inside the existing institutional boundaries, in Wright's terminology (2011) they can be also referred to as targeting a transformation via a symbiotic metamorphosis – a social democratic evolutionary adaptations using state institutions. In the digital aspect, Edick (2015) compared PPs to the Net Party in Argentina and Podemos in Spain, who use open-source technology for political organizing too. Further, Hartleb (2013)

found common features between the German PP and the Italian Five Star Movement, since they are both populist new anti-elitist movements employing modern communication technologies, which makes them 'cyber parties' or 'network parties.' These wider similarities with other movements were confirmed by the findings of Fredriksson (2015); many of the interviewed PPs' members saw themselves as part of a much larger global democratic movement that includes Occupy protesters, Arab Spring activists, and others.

Furthermore, PPs as a totality can be seen as a global social movement. Their dissemination from Sweden to other countries corresponds with the diffusion process, where ideas, practices and frames spread from one country to another (della Porta and Tarrow 2005). In the beginning, they were united by common agenda, but later, with the establishment of the Pirate Party International (further – 'PPI'), they became a truly global social movement. From this perspective, they resemble transnational advocacy networks (Laxer and Halperin 2003) and transnational associations advocating for social change (Smith and Wiest 2012) aiming to empower people with a greater voice in the decisions that affect their lives. In this context, PPs can be viewed as a global social movement, an actor of the global civil society – in the meaning of Keane (2003). Accordingly, Edick (2015) named them an international, grassroots populist movement. Whereas Banaji and Buckingham (2013) recognized PPs as an international movement, engaging people for issues of high democratic and political importance.

Scholars emphasize different PPs' normative aspirations. Baldwin (2014) portrayed the European PPs as technologically digital, politically anarcho-communist, socially lumpen bourgeois, and aesthetically avant-gardist, urban, and aristocratic. Burkart (2014) found that they valued anonymity and privacy online, free speech and access to information and culture – the ideals of cyberutopianism. He described PPs as essentially optimistic and hopeful that the social agency of online communities can deliver the Internet from an impending crisis. A content analysis (Jääsaari and Hildén 2015) of the 2013-2014 political programs of PPs in 5 countries (the Czech Republic, Finland, France, Germany, and Sweden) revealed the common themes of digital rights (free speech, privacy, and access) and the freedom of self-expression (freedom of speech, freedom of information, and freedom of access). And though PPs might seem to be preoccupied primarily with their strife for a copyright reform (Kurtz and Smithey 2018), a series of deeper interviews with the members of 5 PPs revealed their concerns with the crises of democracy, capitalism, and property (Fredriksson and Arvanitakis 2015). Further, in other interviews the members of PPs of Belgium, Germany, and the UK acknowledged progressive, libertarian, and social agenda views (Cammaerts 2015). Even more, they admitted that they favour universal free education and unconditional basic income (ibid.). Their common idealistic vision becomes apparent as PPs' members express the belief that the new technology can give rise to a more democratic and enlightened world characterized by global solidarity and free sharing of knowledge and culture (Fredriksson 2015).

PPs devote special attention to the virtue of democracy. In interviews, PPs' members illuminated their core values of democracy, free speech, and freedom of information (Fredriksson 2015). In another series of interviews, members of PPs expressed the support for higher transparency in public sphere and the promotion of more participatory forms of democracy (Cammaerts 2015). PPs hold that, by means of new technology, citizens should continually participate in

politics and oppose the hierarchies within the mainstream parties (Hartleb 2013). Specifically, they believe in direct internet democracy (Baldwin 2014).

Among favourable conditions of PPs' emergence, scholars point out technological readiness, open party system, sympathetic popular sentiments, efficient leadership and political campaign. Burkart (2014) argued that Sweden was ready for 'pirate' politics because its political economy of communication possessed key information-society characteristics, its legal system supported 'pirate' politics, and its cultural norms contributed to the cultural commons. Goldstone (2015) also noted that an open multi-party in many European parliaments allowed new parties to gain entry to the legislature. Almqvist (2016) emphasized that leaders played a critical role of catalysts in establishing PPs. Burkart (2014) credited the success of PPs to their numerous media campaigns, providing a stable web presence and valuable public relations.

Regarding the profiles of PPs' members and supporters, there are several studies of voters, but most reflections about members are rather hypothetic. In terms of social class, 'pirate' politics expressed concerns of a new middle class that was structurally vulnerable and economically blocked from ascendance (Baldwin 2014). In professional realm, the Swedish PP made an explicit focus on membership recruitment from technical universities, which attracted male software programmers and file-sharing geeks, but then turned to wider political representation (Baldwin 2014). Voters data analysis demonstrated that, compared to the electorate as a whole, young people, males, students and persons living in cities were over-represented among the Swedish PP's voters (Erlingsson and Persson 2011). A comparative analysis of surveys about voting for the European Parliament in 11 countries demonstrated (Zulianello 2018) that the voters for PPs can be young groups aged 18–24 either concerned about Internet-related issues (Swedish PP in 2009) or committed to PPs and active at elections (Luxembourg and the Swedish PPs in 2014), as well as other groups supporting PPs' Internet policies or concerned about macro-economic issues and protesting against policies of other parties (Czech and Slovenian PPs in 2014). Another cross-national analysis of multiple survey data for 11 countries confirmed (Otjes 2019) that PPs' voters are (in the order of prediction power) young 'digital natives,' distrustful of politics, and supportive of cyberlibertarian policies. It also showed that Iceland and German PPs particularly tend to attract left-wing voters. However, the available studies better elucidate PPs' supporters than members themselves.

PPs are also notorious for their exotic organizational patterns. Thus, Almqvist (2016) described PPs as an 'amateur-activist' grassroots highly decentralized party with egalitarian decision-making processes and collective forms of leadership. PPs apply crowdsourcing for political organizing and decision-making: using GitHub or reddit, party members organize, debate, and decide online (Edick 2015). Furthermore, PPs practice liquid democracy giving the citizen's vote a liquid authority: a voter can delegate a vote to a known expert or trusted friend (ibid.). In theory, liquid democracy allows citizens to freely choose to either vote directly on individual policy-issues, or to delegate their votes to issue-competent representatives, which allows it to mobilizes more political expertise and achieve higher equality than under representative democracy (Blum and Zuber 2016).

The existing evaluations of actual democraticness of PP structure are ambivalent. For example, Almqvist (2016) concluded that during the mobilization phase in

the Swedish PP Falkvinge set up a top-down corporate structure and a swift commando organization lacking transparency. Later, it transitioned to a more formal party structure (Almqvist 2016). Bolleyer, von Nostitz and Smirnova (2017) found that in the German PP tribunal decision making was shaped both by 'elite partiality' and by 'stability considerations.' Besides, PPs utilized a 'cloud protesting', where individuals tailor their participation according to their own private motifs and values and take part in fluid local and global constellations without compromising their personal agendas (Fredriksson 2015). Overall, the interviewed members of PPs emphasized open horizontal structures and encouraged bottom-up participation in their parties (Cammaerts 2015).

PPs attract considerable attention to their challenges. Fredriksson (2015) criticized PPs' assumption that digital communication is egalitarian and free by its technological character, since it is linked to capitalist communication structures, which PPs pragmatically exploit. Burkart (2014) argued that ideas of PPs contradict the ontological condition of post-privacy created by the combination of data retention, surveillance, and the popularity of persistent identity services such as Facebook, Twitter, and Google. The analysis of the PP of Sweden's 2009 platform and of the 2009 e-survey of PP's sympathizers showed that the party was more preoccupied with eliminating constraints than with designing opportunities and that its sympathizers seek individual liberty at the expense of the market and the state (Demker 2014). One study characterized PPs' deliberation instrument LiquidFeedback as a failure because its highly decentralized nature makes coherence difficult to achieve even in a party of like-minded individuals (Edick 2015). For instance, the German PP congress in October 2012 demonstrated over 1,400 pages and 700 initiatives, endless debates in the virtual world, complicated decision-making processes, and an obvious lack of a coherent vision (Hartleb 2013). There were concerns that liquid democracy tends to concentrate power into the hands of the most active and initiated users (Almqvist 2016) and leads to policy inconsistency (Blum and Zuber 2016). Considering the internal balance of power, there were open and antagonistic clashes between parliamentary and extra-parliamentary organizations in Germany and the US, as well as conflicts between their radical and reformist wings (Almqvist 2016). Overall, some members of PPs expressed concerns with agenda-related or power-related controversies (Cammaerts 2015).

Despite this criticism, there is an acknowledgement of PPs' impact on politics. Erlingsson and Persson (2011) credited PP's success in EU elections not so much to protest voting, but to issue voting concerning privacy and copyright policies. Burkart (2014) admitted that the mainstreaming of some messages of 'pirate' politics suggests that its efforts have been successful. He further specified that the Pirate MEPs have exercised real influence over the creation of new International Telecommunications Regulations of the International Telecommunications Union, the rejection of the ACTA, and the official condemnation of Hungary for authoritarian new media laws. Besides, local PP has played a role in Arab Spring developments in Tunisia (Fredriksson and Arvanitakis 2015). Burkart (2014) concluded that if PPs disappear, 'pirate' politics would still persist as a transnational cultural movement that urges the development of the Internet as a platform supporting democracy, shared knowledge, and governmental transparency.

Regardless appreciable findings, the available research on PPs has multiple limitations. The found inquiries either investigate a narrow aspect of PPs or cover

a small sample of them. The socio-demographic profiles of PPs' members and their participation rates are understudied. There is a lack of analysis of democraticness of the whole participation cycle. Although numerous challenges are revealed, they are seldom accompanied by proposed solutions. The influence of PPs on individual members is understudied too. Therefore, PPs require a more systemic research.

3 RESEARCH METHODOLOGY

There are multiple theoretical frameworks potentially applicable to the study of Pirate Parties. For instance, it is possible to use the approach for the study of social movements by Tilly (2004), who devotes attention primarily to campaigns (sustained, organized public efforts making collective claims on target authorities), social movement repertoire (the ensemble of performances of political action), and participants' public representation (of worthiness, unity, numbers, and commitment). Also, once can apply the perspective of della Porta and Diani (2006), which looks how ideas, individuals, events, and organizations are linked to each other in broader processes of collective action, with some continuity over time. Similarly, Jenkins (2004) is concerned about the origins and goals of social movements, their strategies and tactics. Alternatively, Burkart (2014) studies PPs from a perspective combining new social movements theory, critical theory, and communication theory. However, the focus of this research is not so much on the methods of reaching the ultimate political goal of PPs' collective action, but rather on their democratic organization and its effect on wider politics. Thereby, this inquiry requires a different perspective.

One approach was developed particularly to study new projects promoting social change in the domain of participatory democracy. For Fung and Wright (2003) empowered participatory governance requires reforms deepening the ways in which ordinary people can effectively participate in and influence policies which directly affect their lives. This makes such approach especially suitable for the analysis of PPs as social movements aiming to embody participatory democracy. In addition, it is relevant for PPs, which are often labelled as 'utopias,' although they do exist in the political realm. Respectively, the 'real utopia' framework of Wright (2011) studies valued social designs (utopias), which are feasible (real). It employs three principal components of an analytical design: desirability, achievability, and viability. Desirability refers to normative understanding of how a social group and society should be organized. Achievability implies deliberate actions, grounded on conscious strategies and using the relative power of actors involved. Viability sets up limits to planned initiatives and tests the sustainability of already created social designs in practice. Thereby, this comprehensive approach is especially relevant for the study of PPs as real-life long-term cases of deliberate social transformations.

Accordingly, in this study PPs will be tested towards the model of a transformative 'real utopia' (a normatively desired and practically realistic) social movement. The research will examine to which extend PPs implement and promote participatory democracy in their internal organization and in public domain. The 'real utopia' approach will serve as the organizing principle for the interview guide and the logic of analysis.

Considering how understudied PPs are, the research design was qualitative. It was based on the analysis of PPs' documents and expert interviews. In addition

to academic publications on PPs, the study referred to 2 electronic books and online manifestos self-published by PPs themselves. The interview guide was structured around the aspects of desirability, achievability, and viability. Some questions were reformulated and added later. The content analysis of this qualitative data focused on common patterns across PPs.

To understand a mid-term experience of PPs, the country sample included the most established of them. Respectively, the PPs' case selection criteria were (in the order of priorities): (1) being officially registered; (2) having representation in the public office; and (3) having high participation rates. All registered PPs with electoral success with available contact details were reached via email. Further, respondents advised other numerous and active PPs, which were contacted afterwards too.

Aiming to comprehend PPs as a world movement, instead of taking several PPs as individual cases, it was intended to interview at least one member from each of the studied PPs. Only in the PP of Catalonia and the PP of Italy they decided to respond collectively (as a reflection of their democratic principles). Besides, the representatives from Germany and the US served as board members of the Pirate Parties International (further – PPI) – an international umbrella organization, so their answers referred both to national and international entities. Within parties, the respondents were selected among persons, most knowledgeable about their parties: heads, spokespersons, or other referred members.

The fieldwork lasted during 6-20 December 2013 – till the saturation point, where new interviews contributed considerably less to the gathered data. As PPs were present in oversees countries, interviews were conducted remotely, in English. Given the potential for interaction and instant clarification, interviews via Skype were most preferable, via phone were the second option, and emailing – the last option, only if respondents insisted. So, 8 interviews were held via Skype, 1 by phone, and 6 via emailing. Video and audio interviews were audio-recorded and transcribed, while email interviews were recorded as written answers. Skype and phone interviews lasted 38 to 92 minutes, 1 hour on average. The respondents agreed to be cited.

As a result, a total of 15 semi-structured expert interviews were held. Thereby, the interviews represent the PPs of: Australia, Austria, Catalonia, Croatia, Czech Republic, Germany, Greece, Iceland, Italy, Poland, Sweden, United Kingdom (further – UK), the United States (further – US) – the total of 12 countries and 1 autonomous community. In addition, the interviews also illuminate the functioning of PPI.

Overall, out of 50 functioning PPs by the end of 2013, 23 were unregistered and 27 registered, 8 of 27 registered PP had won public office (Pirate Parties International 2013). As a result, out of 27 registered parties, 13 (48.2%) were covered by this study. And out of 8 PPs with success in elections, 7 (87.5%) were studied in this research. The list of studied PPs and the data sources are presented in Table 1.

TABLE 1: THE LIST OF REGISTERED PPS IN 2013 AND THEIR RELATION TO THE RESEARCH

N	PP countries	Registration status	Electoral results	Relation to research	Interviews	Political manifestos
1	Australia	Registered	--	Studied	1 Interview	--
2	Austria	Registered	1 Communal mandate	Studied	1 Interview	--
3	Belgium	Registered	--	--	--	--
4	Bulgaria	Registered	--	--	--	--
5	Catalonia	Registered	2 Communal mandates	Studied	3 Interviews	--
6	Croatia	Registered	2 Communal mandates	Studied	1 Interview	--
7	Czech Republic	Registered	1 National, 2 communal mandates	Studied	1 Interview	--
8	Denmark	Registered	--	--	--	--
9	Estonia	Registered	--	--	--	--
10	Finland	Registered	--	--	--	--
11	France	Registered	--	--	--	--
12	Germany	Registered	45 regional, 201 communal mandates	Studied	1 Interview	--
13	Greece	Registered	--	Studied	1 Interview	--
14	Iceland	Registered	3 National mandates	Studied	1 Interview	--
15	Israel	Registered	--	--	--	--
16	Italy	Registered	--	Studied	1 Interview	--
17	Japan	Registered	--	--	--	--
18	Netherlands	Registered	--	--	--	--
19	Poland	Registered	--	Studied	1 Interview	--
20	Serbia	Registered	--	--	--	--
21	Spain	Registered	--	--	--	--
22	Slovenia	Registered	--	--	--	--
23	Sweden	Registered	2 European parliament mandates	Studied	1 Interview	--
24	Switzerland	Registered	2 Communal mandates	--	--	--
25	Tunisia	Registered	--	--	--	--
26	UK	Registered	--	Studied	1 Interview	--
27	US	Registered	--	Studied	1 Interview	1 Self-published book
	Total	27 Registered	8 With public office held	13 Studied	15 Interviews	1 Self-published book
	Pirate Parties International	N/A	--	Studied	2 Interviews	Resolutions, Statutes

Source of registration status and electoral results data: Pirate Parties International (2013).

4 OBTAINED FINDINGS

The analysis is structured around the three principles of desirability, achievability, and viability, which is reflected by respective sub-section headings.

4.1 Desirability

As Pirate Parties are deliberate endeavours, their representatives were asked about their normative visions of social designs. These included the underlying values, the initial focus on societal problems they intended to solve, the objectives set up to tackle those problems, and finally, the integral models of democratic organization.

With relation to values, officially, PPI supported "civil rights, direct democracy and participation in government, reform of copyright and patent law, free sharing of knowledge (open content), information privacy, transparency, freedom of

information, anti-corruption, and network neutrality" (2013). Over time, the formulation of these values changed, shifting the emphasis from democratic participation to the protection of human rights in the digital realm. Thus, in 2019 PPI declared "the protection of human rights and fundamental freedoms in the digital age, consumer and authors rights-oriented reform of copyright and related rights, support for information privacy, transparency and free access to information" (2019). The values shared by PPs can be grouped into 3 broad categories: civil rights (human rights, diversity, equality, information privacy, freedom of information, culture, speech and self-expression), democratic participation (openness and accessibility, direct and liquid democracy), and government responsibility (transparency, accountability, consideration of people's voices, social justice). All these are interconnected, although originally the civil rights were the priority, internal democracy followed soon, and government accountability on wider issues developed later. This normative complex clearly goes beyond particular aspects highlighted in earlier narrower studies.

The ideological background of PPs is intricate. Some members claim the absence of a distinctive ideology or a pure pragmatism. Others name particular values, not a comprehensive ideology. Still, others mention neoliberalism. However, as PPs oppose restrictive policies of private property in information realm, probably, their vision is closer to libertarianism. Besides, anarchist or pro-democratic views can be found too. The expressed sentiments gravitate towards the leftist end of ideological spectrum. Overall, it can be concluded that specific ideologies are more pronounced by individual members, rather than by official parties as a whole. This signals the risks of any speculative generalizations about PP ideology. Only representative surveys of party members can illuminate it.

PPs heavily criticize the functioning of the state, treating legislation as the key target. They perceive the deep ignorance of contemporary technological change in obsolete laws as a fundamental societal problem. The most immediate threat, which triggered the creation of the first PP in Sweden, was the new copyright policy, leading to the prosecution of proponents of the free exchange of information. PPs deem that technology enables quick and unrestricted sharing of information, while the legislature is very strict about intellectual property rights. This concern is shared by all or virtually all studied PPs.

It is connected to the problems of violating fundamental civil rights. As inscribed in its resolutions, PPI condemns all dictatorships and regimes, which deny human rights (2017a). However, not all PPs pay equal attention to these problems. They are more pronounced in the PPs of Germany, France, Sweden, and US. The primary focus is on the violation of personal privacy. In the US, they suspect that NSA is spying on people, which signals acute issues with transparency and accountability (PP UK and PPI, personal communication). Allegedly, the government power abuse can go as far as to censorship, which violates the rights to free speech and the freedom of expression.

The broader problems of thin democracy were included in the agenda too. They range from low public participation in governance to the ignorance of people's opinions in decision-making and to the insufficient protections of people's interests. And this occurs despite the fact that technology allows cheap, quick and direct voting for almost everyone.

The highest overarching mission of PPs is "to find better ways of satisfying the

needs of the public for progressive, responsive government, under conditions of rapid cultural and economic change" (Bainbridge 2012). Their goals can be classified as terminal (having ultimate value) and instrumental (required to reach terminal ones). Among the terminal goals historically the central one was the protection of civil rights. They include the protection of freedom and privacy, from governments and corporations alike. The PPs' strategy is to pursue copyright and trademark reforms. Later their priorities shifted towards broader government responsibility issues (including transparency and accountability) and democratic participation, especially direct democracy (including referenda). It is indicative that PPI resolutions specifically proclaim the strengthening of participation in political processes and utilizing general referenda (2017a). The instrumental goals comprise an active participation in the parliament and the use of modern communication technologies in governance. A special approach is advocated by several PPs representatives: they stand for bringing new principles and policies to politics, regardless of implementing actors. The representative of the PP of Greece said: "we want other parties to adopt our policies… we believe in some principles, which we want to pass into legislation… if they are going to be passed from another political party, we would be happy" (PP Greece, personal communication).

In terms of internal organization, models or initial institutional designs of PPs were based on the principles of accessibility, participation, self-governance, democracy, direct democracy (especially in agenda-setting, decision-making, and elections), and online electronic democracy. Concerning external politics, via a mandate in the parliament PPs aspired to transform the politics at local, national, EU, and even global scale.

4.2 Achievability

As the studied Pirate Parties are working cases, this sub-section is devoted to scrutinizing how they were created. The analysis covers external favourable conditions, the role of leaders, the practicalities of establishment, the profiles of typical members, the diversity of involved partners, and the mechanics of organizational functioning.

One of the relatively static and thereby an independent cause is the small country size. It makes easy to create a community and explains a success in local elections. However, there is another opinion, that it is desirable that country has a relatively moderate population size in order to have a sufficient membership base. But there should be enough enthusiasts to find each other and establish a party. Primarily this relates to a critical mass of the target group of 'digital natives,' who witness the ongoing informational technological revolution. The European societies having PPs are either small or moderate. But what about Australia, Brazil, Russia, and the US which have PPs too? In fact, they do have sufficient digital communications infrastructure, so despite huge distance between members they still can cooperate. Apart from infrastructure, a country should possess conducive political conditions: civil freedoms, an active civil society, a targeted social movement, and the easiness of establishing a party. Thus, a study of 131 countries discovered that country's e-democracy development is connected to internal factors of political norms and citizen pressures (Lee, Chang and Berry 2011).

Besides general conditions, some developments can work as triggers. The most fundamental factor was the legitimacy crisis, creating a demand for alternatives.

A more specific trigger was the political pressure endangering civil rights – copyright laws changes. In particular, there was the Pirate Bay process in Sweden, the prosecution of file sharing platforms, censorship policies, and the efforts to sign ACTA agreement. Later, the example of a functioning PP served as a model for other PPs.

A new movement and organization always require leaders. As the founder of the PP of Sweden, Falkvinge confessed: "I've found that the typical Internet community methods of inclusion, when combined with strong leadership, work much better to achieve global change than working leaderlessly under little more than a common flag" (2013). In some cases, only one person with idea and charisma – a programmer in Czech Republic or a law student in Australia – started national PPs. In other cases, a small group or groups of people with similar views and goal launched PPs.

The routine of establishing a new PP mostly rests on communication in digital media. Primary channels include emails, websites, forums, IRC channels, Mumble, and social media, like Facebook and Twitter. Secondary ways of engaging people are inviting family, friends, and colleagues. Finally, coverage in mass media news is used too. The network of contacts and the speed of spreading information enables a quick start. As the Co-Chairman of PPI narrates: the Swedish PP had a goal of collecting 3,000 signatures allowing them to run for parliament – they collected them in 48 hours (PP Germany and PPI, personal communication). Although, in other cases, a party experiences a rather gradual growth.

It is not easy to identify the profiles of PPs' members. Sometimes PP is organized in a way that only an e-mail and a nickname are known, not even basic demographic statistics is collected – and it totally complies with the party principle of personal privacy. Yet, it is possible to rely on the description of Co-Chairman of PPI that the participants are the younger people, the educated, and mostly males (PP Germany and PPI, personal communication). The characteristics of urban population, information professions, Internet culture, and leftist views complete the list of major similarities. However, in PPs with longer experience, for instance, in Germany one can observe three waves of members: the first were mostly young IT professionals, the second brought middle-age civil activists, and the third attracted older politicians. Thus, the growing publicity and political participation leads to the voluntary inclusion of a more diverse public with broader values and goals.

Taking into account different stages of PPs' development, each socio-demographic category takes its share. Definitely, the majority constitute males – 80-93% in different PPs. Although, some experts claim to have more women than in conventional parties and to incorporate more as party develops. The PPs' members are relatively young – the average age ranges from 25 to 40 years, the youngest are 15 and the oldest are 80 years old. However, the average age increases over the time of party functioning. In several PPs, many members come from big cities, so they are mostly urban residents. Nevertheless, in smaller countries with developed communication infrastructure members tend to be distributed more evenly. PPs' participants have relatively high educational level, especially taking into account that they are young and some are still studying. Their professions are rather diverse, including IT, technology, medicine, governance, finance, civil activism, higher education, music, etc. Generally, they

tend to represent white-collar jobs. They share the general Internet culture and thereby are sometimes called the 'digital natives.'

While some PPs claim that they operate on their own, the majority of experts did mention their political allies. First of all, these are individual activists, who for different reasons do not officially enter the party, like lawyers who are employed as professors or advocates elsewhere. The most common partners are NGOs, which fall within two categories: 'pirate'-specific, open-source communities or general democratic organizations. Sometimes they distribute roles for common action (charitable activity for funds and politics for PP). Some occasionally contact academia for research. Also, PPs collaborate with PPs from other countries. Due to unconventional policies of PPs, cooperation with other parties can be complicated. Still, some PPs do collaborate with other parties, which promote civil rights, and adhere to liberal and democratic values. This conforms with the perspective that PPs share intrinsic similarities with other new social movements (Edick 2015; Hartleb 2013; Fredriksson 2015).

When a PP is small enough, it can be run by simple online communication in social media and simple consensus among its members. However, bigger PPs require more detailed procedures of internal organization.

The fundamental issue of agenda-setting is solved in two ways: proposals and member meetings can be suggested either by an elected governing body, such as the board, or by party members themselves. Specific proportions vary: in some cases, the initiative mostly rests with the governing body, in others it is comparatively equal, and still in others only party members suggest proposals. It is virtually always announced by online communication channels: emails, forums, or websites.

An essential democratic process is deliberation, for it fosters better understanding and the creation of an organic public opinion. PPs employ numerous formats of discussing ideas. Among those few are offline: personal meet-ups and conferences. Yet, the overwhelming majority is online: mailing lists, internal newsletters, blogs, forums, podcasts, voice meetings, IRC channels, online working groups to discuss proposals, Mumble online voice system, the Metapad online collaborative editing system, and the LiquidFeedback online system. Proposals are usually edited online – consequently, they are usually created by many people, contributing to writing or editing.

An important issue is the process of selecting proposals, as it connected with the authority to pass a proposal for voting or to block it. It depends on the nature of the issues suggested: either it is a proposal consistent with the frame of the established statutes (minor), or it is an offer requiring change of party statutes (major). If it is a minor proposal the selection might be quite simple: in small parties, as few as 1-2 party members can put forward a suggestion and then it goes directly for voting. However, it can be as complicated as this: one member has to engage 60 members as the minimum number of supports; he or she collects signatures online; when 1 square root of the members support the proposal, everyone receives the message and one can collect further till 1/6 of the party supports the proposal and then it is passed for voting (PP Czech Republic, personal communication). In bigger parties, like the PP of Germany, there are too many proposals, so they apply a committee managed semiformal filtering, which reviews the quality of proposals and the number of supporters indicated by online surveys. If a proposal is major (meaning it affects the core

party principles) it should pass an additional check by the governing body.

With relation to power distribution, the key process is decision-making. Generally, in PPs any registered party member can vote. Yet, some PPs require at least a three-month membership to establish a person's credibility for voting. As a rule, general assemblies are conducted yearly, though they can be called more often, especially in smaller parties. In some cases, only major decisions (concerning party principles) are voted by the whole party, leaving minor ones to the discretion of a governing body. Albeit, in other PPs all decisions are voted by the members. There are three formats of voting: offline, online, and hybrid. Voting methods vary: direct, through an email list, or employing an online system, like Wiki, reddit or LiquidFeedback. Sometimes there is a combination of methods. Online voting raises identification and anonymity issues: using e-mails one ensures identification but fails anonymity; granting access without identification secures anonymity but fails identification. There are two solutions to this: the validation system for online voting in Multi-tool and the voting system reddit. Both provide each voter a unique number to login (known only to the voter). There is a range of voting principles: from direct democracy ('one person – one vote' principle) to liquid democracy (optional and voluntary delegation of votes, even to different persons depending on issues, with the possibility to withdraw a vote) up to a relatively rare representative democracy. It might raise the expertise of voters, but creates the risk of power concentration. To pass a decision, a simple majority to 50% is required for minor issues (operating decisions) and 2/3 to 75% for major issues (party principles).

The majority of PPs studied delegate some managing functions to the elected governing bodies. Some do authorize them to make operating decisions (clearly specified in party statutes), while others delegate the governing bodies mere presentation, coordinating or informing functions. As far as PPs rarely or never pay salaries to their representatives or professional workers, they do plenty of work voluntarily. Ordinary members contribute to party work by drafting press-releases, doing web-design and graphic design, performing research, and authoring articles for wiki-pages. Some use Metapad (a real-time collaborative text editor) to issue a co-authored text. PPs protect their principles: every public statement should comply with party statutes. In many cases, they even write statements for mass media with a broad party members' participation. Some trust members as far as letting them post in official social media (e.g. on party's Twitter web-page) without prior approval. According to the Leader of the PP of Sweden, there were 200 people having access to the Party Twitter account (PP Sweden, personal communication).

Last but not least, PPs conduct internal monitoring and control. In most cases, there are special governing bodies authorized for checks and sanctions: Board of Governors, Court of Arbitration, Dispute Resolve Committee, and Steering Committee. However, there are cases and options of direct democracy in controlling party work, up to recalling elected representatives. The latter is performed on a regular basis by direct observation and *ad hoc* if somebody is suspected of abuse. There is some evidence that in general PP culture altogether with institutionalized transparency ensures compliance with the core party values, so there is little need for control.

Thereby, at all stages of self-governance PPs demonstrate the attributes of a participatory digital democracy. Direct democracy is implemented in its fullest form in smaller PPs. Associational democracy, implemented in the 'three-pirate

rule', liquid and representative forms of democracy are more characteristic for bigger PPs.

4.3 Viability

For a systemic change, initiating a social project is not enough – it should be tested for sustainability in terms of both duration of existence and conforming to initial values and goals. Therefore, this subsection analyses participation rates, democraticness of internal functioning, available resources, substantial challenges and applied counteractions, created social institutions and their dissemination, synergies between other alternative projects, and overall impact on participants, communities, and wider political systems.

Concerning the number of party members (those who are considered members according to party statutes), in the registered PPs studied there are 3 clusters of membership size: (1) tens – 40-50 members; (2) hundreds – 300-600 members; and (3) thousands – 10,000-11,000 members (in Germany and Sweden). Hypothetically, unregistered parties might have even less members. The numbers vary due to membership requirements, especially whether they are free or for a fee. These party membership ratios correspond with findings in another study (Cammaerts 2015)

There is a larger group of supporters, who occasionally participate in party activities, predominantly in online discussions on forums and online social networks, and sometimes in general assemblies too. Their numbers also fall into 3 clusters: (1) hundreds – around 300 supporters; (2) thousands – 1,000-3,000 supporters; and (3) tens of thousands – up to 40,000 supporters (in Germany). Despite the seeming ten-fold increase compared to official members, the actual difference is 2-8 times. Some cannot join as official members because of the conflict of interests or affiliation issues. This relates to public officials, lawyers, bankers, etc. So, they are counted as supporters too.

The next important category of adherents is voters in official elections for public offices. These form 2 clusters: (1) tens of thousands – 20,000-40,000 voters and (2) hundreds of thousands – 100,000-960,000 voters (the highest in Germany). The ratio of voters to party members is 30-70 times.

Concerning the dynamics of PPs' membership, the numbers oscillate from year to year. Partially it is because of random causes, partially due to political situation.

Also, it is reasonable to trace the general participation level – the share of members actually participating in party's activities. The average estimation is that around 10% of all members regularly take part in activities, and of those roughly 10% (1% of all members) are the most devoted, core activists.

Discussions attract significantly varying percentage of PP members – around 7-50%. The smaller the party, the higher the percentage. Nevertheless, 10% seem to be the most widespread proportion. General assemblies show roughly the same average 10%. Intra-party voting participation levels vary considerably too: they range between 4%-56% in different PPs and votes. Online voting generates higher numbers, yet 10% is a mode.

Officially, all members of PPs have equal rights. All party activities are open to its

members. For instance, in the PP of Iceland everyone can participate in electronic voting system, through which any issue should be processed (PP Iceland, personal communication). However, members of governing bodies have additional delegated rights and duties – similarly to representative democracy. Every member of a PP has the right to express an opinion, but some of them enjoy more prestige or informal social power, which is attributed to their personal qualities, skills and experience on the merit basis. In any case, leaders share the norms of giving others word and respecting them.

An important democratic characteristic is the freedom of speech and expression. It relates both to internal party processes and external relations. It is most pronounced in direct democracy forms. The famous 'three-pirate rule' states: as long as 3 'pirates' gather and decide to do something, which is in line with the core party statements, they can start an initiative (PP UK and PPI, personal communication). In terms of complexity theory, this contributes to self-organization.

Definitely, transparency is the strongest democratic attribute of PPs. According to the Statutes of Pirate Parties International, "all votes are public" and "a permanent online e-Democracy system allowing for decision making of General Assembly between its meetings shall be put in place where issues can be raised, initiatives started, suggestions made, and progress checked until a final vote can be cast" (2017b). Transparency relates to meetings, voting, work of governing bodies, finances, and media relations. This is ensured by multiple methods: open forum discussions, live-streaming, voice and video recording, and transcribing of meetings for posting online. This applies to deliberation, decision making, and reporting on political and financial issues. Regarding accountability, PP's governing bodies are subject to control from party members, up to revoking elected representatives.

With relation to resources, PPs minimize expenses by introducing an exclusively volunteer participation and online activity. Still, some funding is needed for hosting sites, advertisement, merchandise, information materials etc. Some PPs rely on membership fees, while others on donations from individuals and organizations, yet others obtain government funding because of parliamentary representation. The size of membership fees varies: from no fees to dozens of euros yearly. In general, party contribution policies result in high cost efficiency. As the founder of the Swedish PP claimed: "Our campaign budget was fifty thousand euros. Our competitors had spent six million. We had spent less than 1 percent of their budget and still beat them, giving us a cost-efficiency advantage of over two orders of magnitude" (Falkvinge 2013).

PPs have multiple challenges, which can be grouped into 3 categories: (1) external conditions influencing PPs; (2) internal party functioning; and (3) influencing politics and civil society.

External conditions create the most pressing concerns, because it is difficult to affect them. Major limitations are imposed by state laws. Sometimes it is because the laws are too restrictive (large membership, support, or administrative coverage is required), demanding (high entrance limit – 5% instead of 2%) or incoherent with modern technologies. There may be a pressure from the government. For instance, according to PPI Resolutions, "the members of the Pirate Party of Russia do not have opportunity to officially create its own party" (2017). Absenteeism of general public is a big concern too. Almost all PPs strive

to obtain funding. It is vividly illustrated in the US: the state PP of Georgia had its party status revoked, because they didn't have 500 United States dollars on their account each year (PP UK and PPI, personal communication).

Due to online communication, some face the communication problem of misunderstanding – it is an unintended consequence of e-democracy. Others admit the lack of time for participation due to business. More serious problems are some members' deviant behaviour and internal conflicts. At worst, a PP can lose its democraticness because of delegating votes, specifically within liquid democracy format. As PPs grow in numbers, their social structure requires changes, so they face organization development issues.

The most ambitious are the challenges of influencing politics and wider society. Many PPs complain about problems with conventional mass media coverage (although online media coverage is good). A connected issue is the changing negative public opinion. Some find it difficult to cover democratic agenda, which might not be a priority for the general public, concerned with security and employment issues. More ambitious goals are winning elections and public offices. Those who already succeeded aim to sustain the election results nationally and supranationally. Politically, the most dangerous and actually widespread is the antagonism of other parties towards PPs. The most universal problem is the promotion of unconventional policies, e.g. of liquid and direct democracy.

A mere recognition of the existing challenges in not sufficient, so it is important to learn respective counteracting measures. Concerning laws, PPs study laws and try to change them. Membership issues are principally dealt by networking in person and on digital social media. It is important for them to make people feel that they and their contribution are significant, to demonstrate acceptance, recognition and respect. Conflicts are mostly resolved through a discussion: people either reach consensus or leave a party. Besides, transparency positively affects public opinion and trust.

Regarding institutional legacy, the very practices and relations matter. A simple cooperation between people based on the principles of equality and participation brings results. So, regular democratic procedures and the resulting democratic norms of transparency, accountability, and participation have effect by themselves. The practices of law-making initiatives, lobbying and other suggestions contribute too. PPs have developed numerous statutes, reflecting core principles and procedures. A more advanced example is that "common European election program was made by all European 'pirates' (for the EU election of 2014)" (PP Catalonia, personal communication).

Furthermore, social structures and elements of culture are vital for PPs sustainability. The most developed PPs have general assembly (responsible for passing statutes and policies), executive board (managing and informing), dispute resolving committee (resolving conflicts), and steering committee (supervising adherence to the party principles). These are legislative, executive, and judicial brunches of power respectively. The direct democratic institution of general assembly is acknowledged as the supreme body of power. The members of PPs are at the top of power structure, while the elected management is subordinated to them. So, PPs and their umbrella organization PPI are fully functioning democratically organized associations.

PPs disseminate institutions and develop more complex entities. They form youth divisions of parties, establish their local branches on subsocietal level and export their model to other societies. And the existence of an international organization – PPI – indicates a high level of cooperation between PPs. Although, the exit of 4 PPs from the PPI might signal an internal conflict.

The study revealed the impact of PPs' democratic practices on people at the scales of individuals, communities, and political systems as a whole. The personalities of PPs members are affected the most. At minimum, they develop knowledge and skills of participation in governance – it is the effect of civic education. Some people change their opinions about the possibility of direct democracy. Party members gain confidence in themselves, especially young people, who are given enough freedom to participate and take the initiative, and thereby become more empowered and responsible. A significant achievement is the increase of trust within PPs. Finally, party activities enhance the feeling of inclusion and belonging, social cohesion, solidarity, friendship, and a sense of well-being.

PPs have gained some electoral success. Their largest achievements in elections to authorities include: gaining 2 seats in European Parliament due to achieving over 7% of votes in Sweden in 2009, 15 seats in the state parliament of Berlin due to 8.9% percent of the votes in the Berlin state election in 2011, 16 mandates in the Parliament of Iceland with a result of up to 23.9% in parliamentary elections in Iceland in 2015 (Edick 2016). However, the number of proponents is insufficient to impact national or supranational politics with traditional methods – via representation in authorities. Nevertheless, if evaluated by the criteria of over 2% votes in national or European elections, they still enjoy notable popular support in Austria, Czech Republic, Germany, Iceland, Luxembourg, Slovenia, and Sweden.

There is a number of evidence that PPs have a 'soft' impact on politics. They experimented with new democratic forms (e.g. liquid democracy), became the first functioning cases of digital parties, and attracted attention to these new designs. They disseminate their ideas of civil rights, direct and electronic democracy – via blog posts, journalist articles, and self-published e-books. Moreover, PPs propose legislative initiatives. According to the Pirate Parties International Resolutions, the party "states support for the creation of a United Nations Parliamentary Assembly (UNPA) as a parliamentary body within the UN system that is complementary to the UN General Assembly, calling for the creation a body that is directly elected by earth's citizen" and "calls upon world governments to include the involvement of citizens in the practice of making large scoped far-reaching decisions by utilizing general referendums" (2017a). They also call for implementing or at least researching liquid democracy forms inside a possible Parliamentary Assembly of the United Nations (PP Germany and PPI, personal communication). PPs have prevented undesired policy changes, for instance, the ACTA (Anti-Counterfeiting Trade Agreement between the US, Canada, Australia, and the EU). Probably, the most profound impact of PPs is the spread of electronic democracy model. There is some criticism that other parties copy the ideas only nominally. However, there are more opinions that other parties do implement some elements of electronic democracy (mainly of transparency) and direct democracy (mostly about suggestions but voting as well). For instance, a study (Hanel and Marschall 2013) confirmed that the popularity of German PP put pressure on other German established parties to use

online collaboration platforms; and although they were implemented at a smaller scale, they did increase the intra-party participation.

5 CONCLUSION

The research revealed that Pirate Parties are genuine democratic initiatives, widely implementing principles and mechanisms of electronic democracy in both direct and representative forms and thereby empowering people. Their most distinct feature is the wide decentralization of authority. It is vividly expressed in open co-editing of resolutions, universal online voting, and the 'three-pirate rule.' Overall, the studied PPs encourage participation at all stages of intra-party policy making: agenda-setting, deliberation, decision-making, elections, implementation, monitoring and control.

It should be noted that this research has certain limitations. The sample covered 13 PPs, which constitutes 26% of all PPs active during the fieldwork. Also, the study primarily targeted more established parties, e.g. those with a registration, public office, and high membership. A bigger sample of PPs might bring more nuances to these findings. Further, most interviewees belonged to party leadership. A representative survey of regular members can provide insights into opinions and beliefs of regular PPs' members. In addition, the study largely focused on the normative system and internal organization of PPs and covered their external impact only with relation to this model. Their mobilization, public communication, and political advocacy patterns require a separate inquiry.

Considering their evolution over time, individual PPs seems to follow a hype cycle. It starts from enthusiasm of a core group of activists, continues with a membership growth, attempts to win a public office, and ends with a decline in popularity or a collapse. When a party goes through this cycle faster, it can be labelled a 'flash' party (Erlingsson and Persson 2011). This process develops at the global scale too. Over 13 years, by the start of 2019, 3 PPs seized to exist and 4 PPs left the PPI (2019).

Apparently, the potential for political outreach of PPs is debatable. Due to representation in various legislative bodies they are able to impose influence on regional, national, and even supranational levels. Yet, their popular support is limited, unstable, and demonstrates higher levels in economically advanced societies with developed information technology and an educated middle class. Although, the very nature of spreading ideas in the digital age facilitates the dissemination of their principles. Despite the modest electoral results of PPs, their model of internal democratic organization and political vision are copied by rival parties. Thereby, their democratic and participatory agenda has diffused beyond organizational and national boundaries.

REFERENCES

Aberle, David F. 1966. *The Peyote Religion among the Navaho*. Chicago: Aldine.
Almqvist, Martin F. 2016. "Pirate Politics between Protest Movement and the Parliament." *Ephemera: Theory & Politics in Organization* 16 (2): 97–114.
Anderson, Nate. 2009. "Political Pirates: A History of Sweden's Piratpartiet." *Ars Technica,* 26 February 2009. Available at https://arstechnica.com/tech-policy/2009/02/rick-falkvinge-is-the-face/.

Bainbridge, William S. 2012. "Fluid Democracy." In *No Safe Harbor: Essays about Pirate Politics*, ed. United States Pirate Party. Available at http://www.goodreads.com/ebooks/download/13425816-no-safe-harbor-essays-about-pirate-politics.

Baldwin, Peter. 2014. *The Copyright Wars: Three Centuries of Trans-Atlantic Battle*. Princeton: Princeton University Press.

Banaji, Shakuntala and David Buckingham. 2013. *The Civic Web: Young People, the Internet and Civic Participation*. Cambridge: MIT Press.

Blum, Christian and Christina I. Zuber. 2016. "Liquid Democracy: Potentials, Problems, and Perspectives." *The Journal of Political Philosophy* 24 (2): 162–182.

Bolleyer, Nicole, von Nostitz, Felix-Christopher and Valeria Smirnova. 2017. "Conflict Regulation in Political parties: An Account of Tribunal Decision-Making." *Party Politics* 23 (6): 834–847.

Burkart, Patrick. 2014. *Pirate Politics: The New Information Policy Contests*. Cambridge: MIT Press.

Cammaerts, Bart. 2015. "Pirates on the Liquid Shores of Liberal Democracy: Movement Frames of European Pirate Parties." *Javnost - The Public* 22 (1): 19–36.

Clift, Steven. 2004. "E-government and Democracy: Representation and Citizen Engagement in the Information Age." *Publicus.Net*. Available at http://www.publicus.net/articles/cliftegovdemocracy.pdf.

della Porta, Donatella and Sidney Tarrow. 2005. "Transnational Processes and Social Activism: An Introduction." In *Transnational Protest and Global Activism*, eds. della Porta, Donatella and Sidney Tarrow, 1–20. Oxford: Rowman & Littlefield Publishers.

della Porta, Donatella and Mario Diani. 2006. *Social Movements: An Introduction. 2nd ed*. Malden: Blackwell Publishing.

Demker, Marie. 2014. "Sailing Along New Cleavages: Understanding the Electoral Success of the Swedish Pirate Party in the European Parliament Election 2009." *Government and Opposition* 49: 188–206.

Earl, Jennifer and Katrina Kimport. 2011. *Digitally Enabled Social Change: Activism in the Internet Age*. Boston: MIT Press.

Edick, Cole. 2015. "The Golden Age of Piracy." *Harvard International Review* 36 (4): 7–9.

Erlingsson, O. Gissur and Mikael Persson. 2011. "The Swedish Pirate Party and the 2009 European Parliament Election: Protest or Issue Voting?" *Politics* 31 (3): 121–128.

Falkvinge, Rick. 2013. *Swarmwise: The Tactical Manual for Changing the World*. Available at http://falkvinge.net/files/2013/04/Swarmwise-2013-by-Rick-Falkvinge-v1.1-2013Sep01.pdf.

Goldstone, Jack A. 2003. "Introduction: Bridging Institutionalized and Noninstitutionalized Politics." In *States, Parties, and Social Movements*, ed. Jack A. Goldstone, 1–26. Cambridge: Cambridge University Press.

Goldstone, Jack A. 2015. "Conclusion: Simplicity vs. Complexity in the Analysis of Social Movements." In *Breaking Down the State: Protestors Engaged*, eds. Duyvendak, Jan Willem and James M. Jasper, 225–238. Amsterdam: Amsterdam University Press.

Fredriksson, Martin. 2015. "The Pirate Party and the Politics of Communication." *International Journal of Communication* 9: 909–924.

Fredriksson, Martin and James Arvanitakis. 2015. "Piracy, Property and the Crisis of Democracy." e*Journal of eDemocracy and Open Government* 7 (1): 135–150.

Fung, Archon and Erik O. Wright. 2003. "Thinking about Empowered Participatory Governance." In *Deepening Democracy: Institutional Innovations in Empowered Participatory Governance*, eds. Fung, Archon and Erik O. Wright, 3–42. London: Verso.

Hanel, Katharina and Stefan Marschall. 2013. "The Usage of Online Collaboration Platforms by Parties" Strengthening the "Party on the Ground" or the "Party in Central Office"?" *German Politics and Society* 31 (3): 27–42.

Hartleb, Florian. 2013. "Anti-Elitist Cyber Parties." *Journal of Public Affairs* 13 (4): 355–369.

Hood, Christopher. 1998. *The Art of the State*. Oxford: Oxford University Press.

Jääsaari, Johanna and Jockum Hildén. 2015. "From File Sharing to Free Culture: The Evolving Agenda of European Pirate Parties." *International Journal of Communication* 9 (1): 870–889.

Jenkins, J. Craig. 2004. "Social Movements, Political Representation, and the State: An Agenda and Comparative Framework." In *The Politics of Social Protest: Comparative*

Perspectives on States and Social Movements, eds. Jenkins, J. Craig and Bert Klandermans, 7–16. London: UCL Press.

Keane, John. 2003. *Global Civil Society?* Cambridge: Cambridge University Press.

Kurtz, Lester R. and Lee A. Smithey. 2018. *The Paradox of Repression and Nonviolent Movements*. Syracuse: Syracuse University Press.

Laxer, Gordon and Sandra Halperin (eds.). 2003. *Global Civil Society and Its Limits*. New York: Palgrave Macmillan.

Lee, Chung-pin, Chang, Kaiju and Frances S. Berry. 2011. "Testing the Development and Diffusion of E-government and E-democracy: A Global Perspective." *Public Administration Review* 71: 444–454.

Otjes, Simon. 2019. "All on the Same Boat? Voting for Pirate Parties in Comparative Perspective." *Politics* (March 2019).

Pirate Parties International. 2013. "About the PPI." 5 November 2013. Available at http://www.pp-international.net/about.

Pirate Parties International. 2017a. "Pirate Parties International Resolutions." 31 March 2017. Available at http://wiki.pp-international.net/Resolutions.

Pirate Parties International. 2017b. "Statutes of Pirate Parties International (PPI)." 31 March 2017. Available at http://wiki.pp-international.net/Statutes.

Pirate Parties International. 2019. "About the PPI." 12 February 2019. Available at http://www.pp-international.net/about.

Postill, John. 2018. *The Rise of Nerd Politics: Digital Activism and Political Change*. London: Pluto Press.

Smith, Jackie and Dawn Wiest. 2012. *Social Movements in the World-System. The Politics of Crisis and Transformation*. New York: Russell Sage Foundation.

Tilly, Charles. 1984. *Big Structures, Large Processes, Huge Comparisons*. New York: Russell Sage Foundation.

Tilly, Charles. 2004. *Social Movements, 1768-2004*. London: Boulder.

Wright, Erik O. 2011. *Envisioning Real Utopias*. London: Verso.

Zulianello, Mattia. 2018. "Mobilizing Young Voters? A Cross-national Analysis of Contextual Factors in Pirate Voting." *European Politics and Society* 19 (3): 282–298.

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DETAINEE RIGHTS: THE JUDICIAL VS. CONGRESSIONAL CHECK ON THE PRESIDENT IN WARTIME

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This paper empirically examines the role of the separation of powers in safeguarding detainees' rights within U.S. detainee policies and practices. In the wake of the September 11, 2001, terrorist attacks on the United States, the U.S. government detained terrorism suspects indefinitely and without charge, denied them a right to challenge their detention and subjected them to "enhanced interrogation methods." Relying on the empirical analysis of jurisprudence and legislation passed during the Bush and Obama presidencies, the paper argues that judicial and legislative checks on the Executive played both positive and negative roles in the U.S government's protection of Guantánamo detainees' rights within the U.S. detainee policies and practices, with the Supreme Court exhibiting predominantly a positive role and Congress predominantly a negative role.

Key words: United States; war; detainee rights; Guantánamo Bay; Congress; Supreme Court.

1 WAR POWERS UNDER THE U.S. CONSTITUTION

While government holds a monopoly on the legitimate use of violence, it ought to serve at the pleasure of the people it governs. The Framers of the United States Constitution, drawing upon the notions of individual rights and limited powers in the writings of Aristotle, Cicero, Machiavelli, James Harrington, Samuel von Pufendorf, Montesquieu, David Hume and John Locke, were hoping by way of establishing a strong government to prevent citizens from preying on each other. However, to thwart government from becoming the most injurious force of all, it was delegated powers that were few and defined (Pinker 2011, 160–161). With such a constitutional design, the Framers' mission was to protect the rights and freedoms of the people.

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A prerequisite of a government that safeguards individual rights and limits the danger of tyranny is the rule of law, which provides predictable order and decreases arbitrary conduct by the authorities (Vásquez and Porčnik 2018, 18) – a rule of law that is reinforced by constitutionally defined separation of powers that ordains a system of checks and balances in the structure of the government. While the U.S. Constitution enables the government to face ordinary and extraordinary times, it also strives for the government not to become a threat to individual rights and freedoms, as its mission is to protect those. Particularly during extraordinary times, such as war and emergencies, individual rights and freedoms are at maximum peril.

The Framers, who were significantly influenced by Locke's support for a tripartite system of federal government with dispersed powers (Irons 2005, 13–14), rejected political models that concentrated power in a single branch of government; rather, they favored one of the sharing and balancing of powers among three equal branches—executive, legislative, and judicial. In wartime, the U.S. government is entrusted with a greater scope of powers than in peacetime. Dividing the war powers between the Congress and President, the Constitution entrusts the Congress with controlling and exercising war-making power and the President with executing that power while subject to congressional authorization and oversight. In other words, neither the Executive nor the Legislature is granted exclusive control of war powers, while at the same time each plays a pivotal role in wartime. The Judiciary, the third branch, is in wartime tasked to decide cases involving the first two branches. Such a system of separation of powers addresses the Framers' greatest fear - that of concentrating the powers of war and peace in too few hands.

Looking at more than two hundred years of U.S. history, the executive branch time and again asserted that the President, as Commander in Chief, has an inherent power to act outside constitutional or statutory authority, or even in the face of statutory restrictions. The Framers, who were mindful of the human inclination to overstep boundaries in the pursuit of unlimited power, institutionally limited the President's constitutional authority in order to preclude tyranny over the people. When the President acts beyond his powers, the countervailing branches of government—the Judiciary and the Legislature—are by constitutional design expected to step in to bring the executive power back within its limits. Following Charles de Montesquieu's concept of balanced governmental forces pitted against each other for the purpose of preventing tyranny (Dietze 1960, 327), James Madison's expectation for the Constitution is expressed in *Federalist Paper* No. 51: "Ambition must be made to counteract ambition." Especially in wartime, when the institution of the presidency poses the highest risk to individual rights and freedoms, institutional checks are most needed (Fisher 2006, 51). However, in foreign affairs checks placed on the unilateral president are rare. A look at U.S. history reveals that the Judiciary and Legislature often forfeited their independence and abdicated their check on unilateral foreign affairs measures to the Executive. Due to either the Judiciary's or Legislature's lack of confidence in their own information and judgment or their capitulation to intimidation by the Executive, their proclivity in foreign affairs is to let the president assume all or the majority of responsibility and power (Schlesinger 2005, 46). In their failure to push back against presidential use of prerogative powers, the Judiciary and Legislature abdicate their role of counteracting Executive ambition, which over time can then lead to the government becoming tyrannical.

By delegating its powers to the Executive, Congress has in the last six decades visibly contributed to the emergence of the presidency as the principal actor in responding to emergencies that require the use of force and, thereby, a cause for constraints on individual liberty. As early as 1952, Justice Jackson' concurring opinion in *Youngstown Sheet & Tube Co. v. Sawyer* (343 U.S. 579, 654) predicted this development: "I have no illusion that any decision by this Court can keep power in the hands of Congress if it is not wise and timely in meeting its problems […] We may say that power to legislate for emergencies belongs in the hands of Congress, but only Congress itself can prevent that power from slipping through its fingers." Similarly, Rudalevige (2005, 15) refers to the invisible Congress, which "has not been run over so much as it has lain supine; it has allowed or even encouraged presidents to reassert power." Further, Koh (1988, 1304) opines that often the reason for the fecklessness of Congress is also its lack of political willpower "to take responsibility for setting foreign policy, preferring to leave the decisions—and the blame—with the President."

However, Congress had plenty of political willpower to stand up for their own war powers in the early 1970s. After decades of U.S. soldiers being deployed to Southeast Asia without Congressional declaration of war, Congress passed the War Powers Resolution of 1973 with an intent to clarify the use of force, as well as to mandate that the President consult with Congress about troop deployments and that he limit deployment to 60 days without specific congressional authorization (Lynch and Singh 2008, 71; Brugger 2001, 79). Yet, by authorizing the President to wage war for 90 days without congressional consent, the Resolution conflicts with the U.S Constitution, which delegates war-making power exclusively to Congress. Despite this generous—though not intentional—gift, Presidents have claimed that the Resolution encroaches on the Executive's constitutional authority of Commander in Chief, leading them to ignore it on a several occasions when using force without any congressional authorization (Padmanabhan 2012, 5): President Bill Clinton in Somalia (1993), Haiti (1994), Bosnia and Hercegovina (1995) and Kosovo (1998); President George W. Bush in Haiti (2004); and President Barack Obama in Libya (2011).

Assessing whether Congress has acquiesced to presidential action, the U.S. Supreme Court considers numerous elements, including the consistency, density, frequency, duration, and normalcy of the practice (Padmanabhan 2012, 7). As an example, in *Youngstown Sheet & Tube Co. v. Sawyer*, Justice Frankfurter's concurring opinion (343 U.S. 579, 611), based on the frequency of the practice, rejected President Truman's argument that Congress had acquiesced to presidential authority to seize steel mills.

The Supreme Court is called upon "to say what the law is"[2] by testing whether the President acted within constitutional and statutory authority and, as such, to uphold the constitutional principle of separation of powers. In these cases, the Supreme Court turns to the canonical tripartite framework in Justice Jackson's *Youngstown* concurrence (Ibid. 634–655): 1) Where the President acts pursuant to congressional authorization, he acts with the authority of both branches unless the federal government as a whole lacks authority to act; 2) Where the president acts without relevant congressional authorization, he is in a "zone of twilight" as there may be concurrent authority for the president and Congress to act; and 3) Where the president acts against the will of Congress, he acts illegally unless the congressional restrictions imposed are unconstitutional.

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[2] Justice John Marshall in *Marbury v. Madison* (5 U.S. (1 Cranch) 137, 177).

Justice Black in *Duncan v. Kahanamoku* (327 U.S. 304, 322) emphasized that courts and their procedural safeguards are indispensable to the U.S. system of government and that the Framers "were opposed to governments that placed in the hands of one man the power to make, interpret and enforce the laws." A decade later, the Court in *Reid v. Covert* (354 U.S. 1) warned that if the president "can provide rules of substantive law as well as procedure, then he and his military subordinates exercise legislative, executive and judicial powers with respect to those subject to military trials." Yet, the Judiciary is often unwilling to get involved in disputes between the president and Congress on the exercise of wartime authority (Lynch in Singh 2008, 69–71; Rogers 1971, 1203–1207), invoking the political question doctrine,[3] a requirement that plaintiffs ought to have alleged a concrete injury to themselves or other reasons. Furthermore, Adler (1996, 2) argues that the Judiciary has increased "presidential foreign affairs powers well beyond constitutional boundaries," which is the reason the Court has not only supported executive policies, but rather also "has become an arm of the executive branch." In conclusion, as Tribe (2016, 91) argues, with its unwillingness to hear cases involving executive action in the face of congressional silence "the Court shirks its vital role in defining and policing the intricate structure of government established by the Constitution—a structure that must be preserved both to enable effective and politically accountable policymaking and to protect individual liberty." That said, in the last six decades, the Court has joined Congress in contributing to the development of the presidency as the principal actor in responding to emergencies that require the use of force and, as such, also being a cause for individual liberty coming under attack.

2 THE GUANTÁNAMO DETAINEES' RIGHTS: PRESIDENT BUSH VS. PRESIDENT OBAMA

In the wake of the 9/11 terrorist attacks, President George W. Bush was determined to track down terrorists responsible for the attack as also to prevent future attacks. To that end, the President invoked his constitutional authority as Commander in Chief to authorize a system of detention and military trial for suspected terrorists.[4] The Bush administration claimed the right to hold detainees indefinitely without being charged or given counsel and also to have them tried by military commissions instead of U.S. civilian courts (Fisher 2006, 8).

Deeming U.S. criminal courts too cumbersome and insufficient to handle terrorism cases, especially in view of their exacting standards of evidence and the

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[3] The political question doctrine argues that an issue that the U.S Constitution assigns to the political branches or that is a purely political dispute should not be decided by federal courts, but instead by the political branches themselves.

[4] Military Order of November 13, 2001, *Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism*, 66 Fed. Reg. 57,833 (Nov. 16, 2001) is subject to any individual for whom the President determines there is a "reason to believe [...] is or was a member of the organization known as al Qaida, [...] has engaged in, aiding or abetted or conspired to commit, acts of international terrorism, or acts in preparation therefore, that have caused, threaten to cause, or have as their aim to cause, injury to or adverse effects on the United States, its citizens, national security, foreign policy, or economy," or has "knowingly harbored one or more individuals."

protection of defendants' rights,[5] the Bush administration established *ad hoc* military commissions as a legal system parallel to Article III courts but with greater restrictions on defendants' rights (Katyal and Tribe 2002, 103–104). As a legal foundation for establishing military commissions, the Bush administration cited the President's power as Commander in Chief along with his oath of office to defend the Constitution as well as the 2001 Authorization for the Use of Military Force (AUMF), while emphasizing that the 1920 Articles of War, the 1950 Uniform Code of Military Justice, and the 1996 War Crimes Act all refer to the establishment of military tribunals by a President (Pious 2015, 259). As a precedent, the Bush administration cited e*x parte Quirin* (317 U.S. 1) in which the U.S. Supreme Court upheld the constitutionality of military tribunals created by President Roosevelt for the trial of German saboteurs. However, the Military Order of November 13, 2001, went further than that of Roosevelt, which only denied access to civilian courts. The Bush's Order was designed in a way to augment executive power at the cost of judicial controls (Supra note 3, § 7[b]), by denying detainees the privilege "to seek remedy or maintain any proceedings, directly or indirectly, or to have any such remedy or proceeding sought on the individual's behalf in (1) any court of the United States, or any State thereof, (2) any court of any foreign nation, or (3) any international tribunal." Also, the Order (Ibid. § 4[c](8)) provided "for review and final decision" of any conviction by the President or Secretary of Defense.

In late 2001, the administration selected the U.S. Naval Base in Guantánamo Bay, Cuba, for the detention and trial by military commissions of suspected terrorists. The United States does not have ultimate sovereignty (*de jure* sovereignty) over Guantánamo Bay, which is in the hands of Cuba, and thus only exercises plenary and exclusive jurisdiction (*de facto* control). From the beginning, the location of the base has been instrumental in determining the application of the habeas corpus statutes by the captive (Overbey 2013, 410).

Arguing that foreign nationals captured on the battlefield were not lawful combatants, since they violated the laws of war, the Bush administration did not designate the detainees as "prisoners of war" but rather as "illegal enemy combatants" (Schaffer 2002, 1465–1466). Evoking e*x parte Quirin* (317 U.S. 1), which classified German saboteurs as "unlawful combatants" or "enemy belligerents," the detainees were denied protection under the U.S. Constitution and, as such, the right to a writ of habeas corpus to access U.S. civilian courts.[6] Further, this system of detention and military trial was deemed to operate outside the Geneva Conventions–the established international standards for the treatment of prisoners of war–ensuing in detainees being denied POW status under the Conventions.[7] Scott Horton reasons that President Bush's legal team

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[5] President Bush's Order (M.O. § 1(g)) reads, "it is not practicable to apply in military commissions under this order the principles of law and the rules of evidence generally record in the trial of criminal cases in the United States district courts."

[6] Consequently, only the detainees' relatives and friends were eligible to file petitions for habeas corpus in the U.S. courts in their names.

[7] In a January 25, 2002, memorandum to President Bush, then-White House Counsel Alberto Gonzales dismissed the Geneva Conventions as obsolete, quaint, and irrelevant to the war on terror, arguing that Taliban and al-Qaeda detainees were illegal enemy combatants without "the need for case-by-case determination of P.O.W. status." Gonzales' analysis built on the Office of Legal Counsel's opinion that "transnational terrorist organizations" are not a party to the Geneva Convention, which exempted Taliban and al-Qaeda detainees from Geneva protections as also U.S. soldiers from persecution under the War Crimes Act (Rudalevige 2005, 227). While not all President Bush's counsels and cabinet members agreed with Gonzales, President Bush on February 7, 2002, declared that the provisions of the Geneva Convention did not apply to the U.S. conflict with al-Qaeda.

had attempted to "overturn two centuries of jurisprudence defining the limits of the executive branch. They have made war a matter of dictatorial power" (Mayer 2006).

In practice, U.S. detention policies and practices no longer rested on previous army regulations constraining interrogation methods, which meant that tactics such as sleep deprivation, lengthy placement of the detained in "stress positions," exposure to extremes of cold and heat, sexual humiliation, and the use of dogs in shaming the detainees were authorized by President Bush and implemented by the Department of Defense (Hersh 2004). The Bush administration objected to these "enhanced interrogation methods" being torture, arguing that their officials engaged in acts with an intent to gain information and which resulted in temporary suffering, and not in acts to inflict pain, which could result in permanent injury (Pious 2015, 257). In 2007, President Bush additionally signed an Order denying any person affiliated with terrorist organizations such as al–Qaeda and the Taliban protections provided by the Third Geneva Convention to prisoners of war, while also limiting compliance with the Geneva Conventions in the treatment of detainees held in extrajudicial detention.[8] The Order effectively removed the potential for any civil or criminal action against the government or any of its agents for harsh interrogations, resulting in unsuccessful attempts to seek indictments in other countries such as Germany and France (Slomanson 2011, 538).

A few months after assuming office, in a speech at the National Archives in Washington, D.C., President Obama assured Americans that he would bring the country back on course, after the controversial detainee policy of the Bush presidency, as his government would deal with the terrorism threat "with an abiding confidence in the rule of law and due process; in checks and balances and accountability."[9] In his assurance, President Obama referred to his Executive Orders of January 22, 2009, requiring all remaining detentions at Guantánamo Bay be subject to reviews, that detention facilities at Guantánamo be closed no later than one year from the date of the Order, and that detainee custody be subject to humane standards, defined as conforming with "all applicable laws of governing such confinement, including Common Article 3 of the Geneva Conventions."[10] While affirming that detainees have the constitutional right to habeas corpus, the Orders did not give any indication whether Guantánamo detainees have constitutional rights beyond habeas challenges to unlawful detention, such as due process rights (Hernández–López 2009, 190). Significantly, the review process was to determine whether the detainees at the Guantánamo Bay facilities were to be released or transferred to detention

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[8] Executive Order of July 20, 2007, *Interpretation of the Geneva Conventions Common Article 3 as Applied to a Program of Detention and Interrogation Operated by the Central Intelligence Agency*, 72 Fed. Reg. 40,707 (Jul. 24, 2007).

[9] Remarks by the President on National Security on May 21, 2009, available at https://obamawhitehouse.archives.gov/the-press-office/remarks-president-national-security-5-21-09.

[10] Executive Orders of January 22, 2009, *Ensuring Lawful Interrogations*, 74 Fed. Reg. 4.893 (Jan. 27, 2009) and *Review and Disposition of Individuals Detained at the Guantánamo Bay Naval Base and Closure of Detention Facilities*, 74 Fed. Reg. 4.897 (Jan. 27, 2009). The former Order, *Ensuring Lawful Interrogations,* rescinded President Bush's Order of July 20, 2007, denying any person affiliated with terrorist organizations such as al-Qaeda and the Taliban protections provided by the Third Geneva Convention to prisoners of war, while limiting compliance with the Geneva Conventions in the treatment of detainees held in extrajudicial detention by the Central Intelligence Agency. Barack Obama signed these two Orders two days after swearing in as the 44th President of the United States.

facilities in the territory of the United States, their home country, or third countries.

Two years later, however, President Obama backpedaled by signing an Executive Order[11] that rescinded the Order of January 22, 2009, and effectively retained the Bush administration's policies of indefinite detention without accusation or trial, of trial by military commissions rather than civilian courts, and of denying torture victims access to U.S. courts,[12] while also holding no Bush administration official accountable for the "enhanced interrogation methods" employed on enemy combatants. Further, the transfer of detainees to other U.S. detention facilities was no longer on the table. In addition, 50 Guantánamo detainees deemed to pose a serious threat, for which they were denied a repatriation or resettlement in a third country, were denied a trial in military commissions or in federal court due to evidentiary issues, such as evidence having been obtained by torture not being admissible (Finn and Kornblut 2011, A1).

From the Guantánamo facilities opening in 2002 through 2016, 780 prisoners had been detained there (see Table 1). President Obama left office with 41 detainees remaining at Guantánamo Bay. While the Obama administration reduced the Guantánamo Bay prison population from 242 detainees in 2009, it fell short of the promise to close the facility. The 41 remaining detainees included ten men charged at the war court, 26 indefinite detainees, and five cleared individuals (Rosenberg 2017). In a letter to Congress on his last day in office, President Obama argued for the closure of the Guantánamo detention facilities, as it is "contrary to our values and undermines our standing in the world, and it is long past time to end this chapter in our history."[13]

TABLE 1: DETAINEES AT THE U.S. NAVAL BASE GUANTÁNAMO BAY (2002–2016)

	Year	Arrived Detainees at Guantánamo		Transferred or Released Detainees from Guantánamo		Died Detainees at Guantánamo		Detainee Population at the Naval Base Guantánamo Bay
		Annual	Cumulative	Annual	Cumulative	Annual	Cumulative	
The G George W. Bush Presidency	2002	630	630	6	6	0	0	624
	2003	120	750	91	97	0	0	653
	2004	10	760	119	216	0	0	544
	2005	0	760	48	264	0	0	496
	2006	14	774	111	375	3	3	396
	2007	5	779	122	497	2	5	277
	2008	1	780	36	533	0	5	242
The Barack Obama Presidency	2009	0	780	49	582	1	6	192
	2010	0	780	19	601	0	6	173
	2011	0	780	0	601	2	8	171
	2012	0	780	4	605	1	9	166
	2013	0	780	11	616	0	9	155
	2014	0	780	33	649	0	9	122
	2015	0	780	31	680	0	9	91
	2016	0	780	50	730	0	9	41

Source: The Guantánamo Docket, *New York Times*; Author's calculations.

[11] Executive Order of March 7, 2011, Periodic Review of Individuals Detained at Guantánamo Bay Naval Station Pursuant to the Authorization for Use of Military Force, 74 Fed. Reg. 13.277 (Mar. 10, 2011).

[12] While detainees were given access to defense lawyers and were able to file habeas corpus petitions in U.S. federal courts, evidence obtained by "cruel" or "inhuman" means was not admissible (Owens 2013, 10–11).

[13] *A Letter from the President Obama to the Speaker of the House of Representatives and the President Pro Tempore of the Senate*, January 19, 2017, available at https://obamawhitehouse.archives.gov/the-press-office/2017/01/19/letter-president-report-respect-Guantánamo.

3 THE GUANTÁNAMO DETAINEES' RIGHTS: CONGRESS VS. SUPREME COURT

To what extent, if at all, did the Judiciary and the Legislature rise to the occasion when U.S. detainee policies and practices failed to safeguard Guantánamo detainees' rights? In other words, did the Framers' expectation that "ambition would counteract ambition" by way of the countervailing branches of government - in this case bringing the executive power back within its limits - also serve to protect individual liberty?

In the wake of the 9/11 terrorist attacks, Congress rushed to President's side within three days, passing the 2001 AUMF resolution (S.J Res. 23), which yielded broad new discretionary powers to the President, authorizing the use of "necessary and appropriate force" against those "he determines" were involved in the 9/11 attacks and those who would "harbor" those involved (Corn et al. 2016, 1; Mayer 2008, 45). What followed was a series of unilateral actions by the Executive to shape policies of detention, interrogation, and intelligence collection that carried the assertion that in these cases executive power could not be checked by the Congress or the courts (Porčnik 2016, 92–93).

AUMF was only the beginning of Congress' role in increasing the concentration of power in the presidency after 9/11 by way of its lack of engagement in genuine interbranch deliberation or, even more so, lack of push back on the Bush administration claims (Owens 2010, 50). Specifically, Congress was invisible when President Bush asserted the power to authorize military commissions under the "necessary and appropriate force" of AUMF, even though under the U.S. Constitution Congress holds primary responsibility over military courts, tribunals "inferior to the supreme Court," "Offenses against the Law of Nations", and "Rules concerning Captures on Land and Water." Further, Congress did not object to the Executive's claim that during wartime the Commander in Chief has the power not only to authorize the detention of terrorist suspects but also to hold them indefinitely without process. If anything, Congress was a partner of the Executive, coming to President Bush's rescue every time the Supreme Court ruled against the Executive. While Congress often embraced a passive, reactive role in the period 2001–2008, the executive branch gladly seized the initiative that had been ceded to it (Griffin 2013, 239–240).

On another hand, these issues were litigated in several judicial circuits in the United States, moving from district courts to the Supreme Court and back down again, challenging both the system of detention and military trial authorized by the Order of November 13, 2001, and executive's claimed authority to hold terrorist suspects indefinitely without due process. On June 28, 2004, the Supreme Court made the first two decisions concerning Guantánamo detainees. In *Hamdi v. Rumsfeld* (542 U.S. 507) the Supreme Court, while recognizing the power of the government to detain illegal enemy combatants, ruled that Yaser Esam Hamdi,[14] a detained U.S. citizen, had a right under due process to contest

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[14] Before the Supreme Court heard Hamdi's case, his habeas corpus appeal was heard by several lower courts. Yaser Esam Hamdi, a U.S. citizen, was captured in Afghanistan and held at Guantánamo Bay, before being transferred to a naval brig in Norfolk, Virginia, and later to a brig in Charleston, South Carolina. The Bush administration argued that since Hamdi was caught in arms fighting for the Taliban against the United States, they could detain him as an unlawful enemy combatant and, as such, deny him access to an attorney and the U.S. civilian court system. Through his father, Hamdi filed a habeas petition in District Court, which in its ruling (243 F.

the evidence underlying his detention before an impartial authority. At the same time, the Court (Ibid. 535) stated that presidential constitutional war powers were neither a blank check nor without the possibility of being checked by the other two branches, particularly "when individual liberties are at stake." Following the Court's ruling, Hamdi did not face a military commission at Guantánamo Bay nor was he charged with a crime. Instead, the U.S. government flew him to Saudi Arabia in 2004, where he was released from custody.

In the second decision, *Rasul v. Bush* (542 U.S. 466), the Court ruled that U.S. federal courts have jurisdiction to decide whether non-US citizens' detention at Guantánamo Bay is in violation of the U.S. Constitution, U.S. laws, or treaties of the U.S.[15] Penning the majority opinion, Justice Stevens emphasized that *Johnson v. Eisentrager* is distinguishable on two accounts: i) while the defendants in *Eisentrager* were accorded a trial in a military commission, those held in Guantánamo were denied any form of trial or due process and b) while the defendants in *Eisentrager* were tried and confined abroad, the Guantánamo Bay Naval Base is functionally under the control and sovereignty of the U.S. government (Chemerinsky 2005, 75). Importantly, while the Court in *Rasul* ruled that Guantánamo detainees held for more than two years may challenge their captivity in U.S. courts, the Court did not specify what type of hearing they should be accorded.

Following the *Hamdi* and *Rasul* judgements on the availability of statutory jurisdiction, Guantánamo detainees' habeas petitions at the U.S. federal courts spiked (Huq 2010, 397) (see Figure 1). The Bush administration not only challenged these petitions, arguing that the Supreme Court did not rule the detainees have rights under the U.S. Constitution but only that they have the right to file a petition challenging their detention, but also established Combatant Status Review Tribunals (CSRTs) on July 7, 2004, with an aim to determine whether the Guantánamo detainees should continue being designated enemy combatants.[16] Only a few months after the creation of CSRTs, District Judge James Robertson concluded that they are an inadequate alternative to habeas corpus proceedings in federal courts. Further, the Judge ordered the halting of the trial of Salim Ahmed Hamdan in a military commission, stating that such commissions are flawed. Consequently, a month later, Guantánamo detainees receive news from the Pentagon that they could turn to U.S. federal courts to challenge their

Supp. 2d 527, E.D. Va.) instructed that Hamdi be given access to a federal public defender. The ruling was reversed by the Fourth Circuit Court, which argued that the District Court failed to give deference to the government's "intelligence and security interests." On January 8, 2003, the appeals court (316 F. 3d 450, 4th Cir.) dismissed Hamdi's habeas petition, concluding that the Bush administration adequately demonstrated that Hamdi was an enemy combatant, as he was captured in a zone of active combat. Further, the Court (Ibid. 58) ruled that the broad constitutional presidential war powers under Article II and the principle of separation of powers prevented the courts from probing too deeply into the detention of Hamdi, as such review could interfere with national security. The Court conclusion was that the safeguards U.S. citizens have in criminal prosecutions do not apply in armed conflict cases (Lewis 2003, A1). Hamdi's father appealed to the Supreme Court.

[15] On February 19, 2002, on behalf of Shafiq Rasul, Asif Iqbal, Mamdouh Habib, and David Hicks, two British and two Australia citizens, the Center for Constitutional Rights filed a habeas petition challenging the Bush administration's practice of indefinitely holding non-U.S. citizens at Guantánamo Bay. Citing *Johnson v. Eisentrager*, the District Court (215 F.Supp.2d 55, 62, D.D.C.) dismissed the case and held that U.S. courts have no jurisdiction over cases of non-U.S. citizens held at Guantánamo Bay. Later that year, the Court of Appeals for the District of Columbia Circuit affirmed the lower court's decision. Noteworthy, the Ninth Circuit in *Gherebi v. Bush* (352 F.3d 1278) reached the same decision.

[16] A review of 558 detainees concluded that all but 38 detainees were enemy combatants, which qualified them for a release.

detention (Morrison 2013, 327). Just three days earlier, the Department of Defense established Administrative Review Board hearings on December 14, 2004, to conduct yearly reviews to determine whether the detainees at Guantánamo still posed a danger or had intelligence value, which defined whether they should continue to be held, transferred to the custody of another country, or released (Chambliss 2009, 823).

FIGURE 1: GUANTÁNAMO DETAINEES' HABEAS PETITIONS (MONTHLY, JANUARY 2002–OCTOBER 2008)
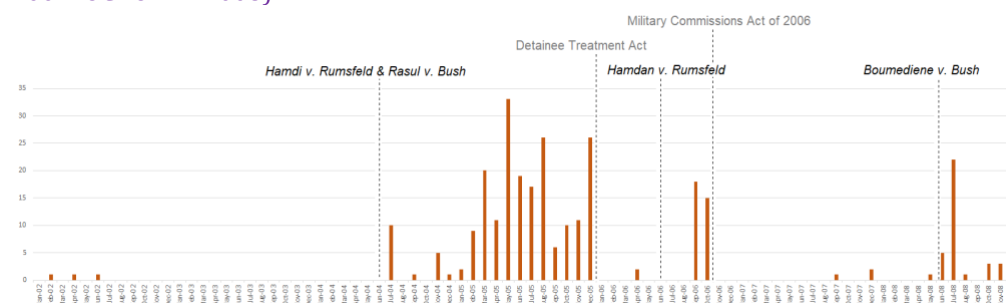
Source: Ní Aoláin (2018).

Judge Robertson's order to halt the military commission's trial of Hamdan unwelcomed by both the Bush administration and also members of the legislative and judicial branches. In 2005, many instances of opposition could be observed. On the judicial side, the first such case was a decision by District Judge Richard Leon on January 19, 2005, dismissing seven Guantánamo detainees' habeas petitions on the basis that it was within the president's war powers to hold enemy combatants and to conduct his own reviews of detentions. Only eleven days later, District Judge Joyce Hens Green ruled the opposite - that Guantánamo detainees had a right to challenge their detention in court and that the CSRTs used to determine the status of prisoners were unlawful in that they violate the due process guaranteed by the U.S. Constitutional, for "Guantánamo Bay must be considered the equivalent of a US territory in which fundamental constitutional rights apply" (Sevastopulo 2005). A Court of Appeals decision and likely later review by the Supreme Court were to follow.[17]

First, the appeals court in July 2005, unanimously upheld President Bush's war power to create a military commission to try Guantánamo detainees, invoking presidential authority for establishing military commissions granted by the 2001 AUMF and Uniform Code of Military Justice (UCMJ). Then, on November 7, 2005, the Supreme Court announced that it would hear *Hamdan v Rumsfeld*. Only three days later, the U.S. Senate voted 49 to 42 to approve an amendment, sponsored by Senator Lindsey Graham (R-SC), that would strip Guantánamo detainees of the right to file habeas petitions at federal courts, an amendment in direct conflict with the Supreme Court's decision in *Rasul v Bush*. Five days later, the Senate approved a revised version of the amendment, restricting review by federal courts of the detainee policy, later attaching it to the National Defense Authorization Act for Fiscal Year 2006. Only a month later, Congress passed the Detainee Treatment Act (DTA), which contained provisions requiring Department of Defense personnel to employ U.S. Army Field Manual guidelines

[17] In the meantime, the Supreme Court on January 18, 2005, declined, without comment, a case that asked Justices to decide if the Bush administration is trying to shortcut the rights of non-U.S. citizens facing military trials at Guantánamo Bay. The dismissal was perceived not to be an endorsement of the Bush administration's detainee policy, rather a recognition that the lower courts were in the process of evaluating these issues, after which the Justices would consider ruling on it.

when interrogating detainees and also banning cruel, inhuman, and degrading treatment or punishment of detainees.[18] These provisions were added to the defense appropriations and authorization bills with amendments introduced by Senator John McCain (R-AR) (Garcia 2009, 1). In sum, Congress established standards for interrogation and banned torture; but, at the same time, they severely curtailed detainees' right to challenge their detention by denying them access to U.S. federal courts to file habeas petitions and allowing limited appeals of status determinations and final decisions of military commissions in the D.C. Circuit Court of Appeals. At that point, more than a hundred petitions for habeas corpus were pending in the court (see Figure 1).

Before ascertaining the merits of the case, the Supreme Court declined to accept the Bush administration's argument that the Court's jurisdiction to hear pending cases, including the case before it, was stripped by the 2005 DTA. On June 29, 2006, the Court in *Hamdan v. Rumsfeld* (548 U.S. 557)[19] held that although the President had the authority to hold enemy combatants for the duration of active hostilities or grave threats to national security, non-U.S. citizens being detained at Guantánamo Bay had a right to challenge the legality of their detention in the federal district court in Washington, D.C. The Court (Ibid. 635) repeatedly emphasized that constitutional war powers are "granted jointly to the President and Congress," and reasoned that the Order of November 13, 2001, exceeded the President's authority to set up military commissions, since "the Executive is bound to comply with the Rule of Law that prevails in this jurisdiction." All eight participating Justices in *Hamdan* followed the canonical tripartite framework set forth by Justice Jackson in his concurrence in *Youngstown* (343 U.S. 579, 634–655). The Court also rejected the Bush administration's argument that through the 2005 DTA Congress authorized military commissions in the creating of federal court review procedures for military commission convictions, explaining that while the DTA recognized commissions, it did not authorize them. The Court (548 U.S. 557, 630) further held that military commissions did not comply with the "law of war" in section 821 of the UCMJ, in particular Common Article 3 of the Geneva Conventions, which prohibited the "passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples." As emphasized in a concurrence by Justice Ginsburg, the Court left open the possibility of the President requesting Congress to grant the necessary authority to create military commissions that depart from the strictures of UCMJ. Moreover, the Court did not provide an opinion on the extent to which the Constitution restricts Congress' authority to establish rules regarding the right of habeas corpus for non-citizen enemy combatants held outside of the U.S. territory.

By enacting the 2006 Military Commissions Act (2006 MCA) on October 17, Congress again rushed to the President's side in authorizing him to convene military commissions to try "unlawful alien combatants" for war crimes and to amend the DTA to further reduce detainees' access to federal courts for all pending and future cases (Elsea and Garcia 2010, 2). In the first military commission trial completed under the authority of the 2006 MCA, on August 6,

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[18] While banning U.S. military personnel from engaging in such interrogation measures, Congress failed to extend that prohibition to civilian agencies, in particular, the Central Intelligence Agency (CIA) (Guiora 2008, 7–8).

[19] As is customary, the case includes only the first-named defendant Secretary of Defense Donald Rumsfeld, while the defendants include several U.S. government officials allegedly responsible for Hamdan's detention.

2008, Hamdan was convicted of providing material support to terrorism (Frohock 2013, 12; van Aggelen 2009, 44).

The most recent Supreme Court decision on the Guantánamo detainee policy was announced on June 12, 2008. In *Boumediene v. Bush* (553 U.S. 723), the Court ruled that detainees had the right under the U.S. Constitution to petition federal courts for habeas corpus challenges, which is why Section 7 of the 2006 MCA was an unconstitutional suspension of the habeas right.[20] Justice Kennedy (Ibid. 771) in the opinion of the Court wrote that the military commissions failed to offer detainees the "fundamental procedural protections of habeas corpus."

At that point, some 200 habeas petitions were awaiting action in the District Court, including those filed by the 37 detainees whose appeals were decided by the Supreme Court in *Boumediene* (Greenhouse 2008) (see Figure 1). In one of those cases (*Boumediene, et al. v. Bush*, Civil Case no. 04-1166 (RJL)), five of the six defendants—Lakhdar Boumediene, Hadj Boudella, Mustafa Ait Idir, Saber Lahmar, and Mohammed Nechla—were in November 2008 found to be held unlawfully at Guantánamo Bay and were supposed to be released forthwith.[21]

In the first district court resolution on a Guantánamo habeas petition (Huq 2010, 398), Judge Richard Leon ruled that the case against the petitioners rested "exclusively on the information contained in a classified document from an unnamed source" and that "to allow enemy competency to rest on so thin a reed would be inconsistent with this court's obligation." In December 2008, the Pentagon announced that Mustafa Ait Idir, Mohamed Nechla, and Hadj Boudella would be transferred to Bosnia and Herzegovina, where they had become citizens before being arrested in 2001 (Kommers et al. 2009, 254), to be taken into protective custody (Sutton 2008).

With President Obama in the White House, his promise to bring the United States back on course after the contentious Bush administration detainee policies and practices faced a series of unexpected congressional enactments limiting executive discretion: a) to release or transfer Guantánamo detainees into the United States (22 legislative limitations); b) to assist in the transfer of these detainees into other countries (19 legislative limitations); c) to construct or modify facilities in the United States to house Guantánamo detainees (15 legislative limitations); and d) to close or abandon detention facilities at Guantánamo Bay (4 legislative limitations) (see Table 2). Limitations grew with time: in the period 2009–2010 they applied to the release or transfer of Guantánamo detainees into the United States or other countries; in the period 2011–2014 they also included construction or modification of facilities in the United States to house Guantánamo detainees; and in the period 2015–2016, a limitation to the closure or abandonment of the detention facilities at Guantánamo Bay.

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[20] Lakhdar Boumediene, a naturalized citizen of Bosnia and Herzegovina, was held at Guantánamo Bay. The Boumediene case challenged the legality of his detention as well as the constitutionality of the 2006 MCA. In February 2007, the appeals court (476 F.3d 981, D.C. Cir.) upheld Congress' authority to quash habeas petitions by way of passing the 2006 MCA. On June 29, 2007, the Supreme Court granted a writ of certiorari to Boumediene and his co-defendants. The case was consolidated with the habeas petition *Al Odah v. United States* (Elsea and Garcia 2010, 33)

[21] Huq (2017, 559–562) identified 408 Guantánamo detainees who filed habeas petitions. Out of petitioners who litigated their cases to final judgment, 49 percent (33) of them prevailed.

TABLE 2: LEGISLATIVE LIMITATIONS ON RELEASE / TRANSFER OF THE GUANTÁNAMO DETAINEES AND THE CLOSURE / ABANDONMENT OF GUANTÁNAMO FACILITIES DURING THE OBAMA PRESIDENCY (2009–2015)

LEGISLATION	PASSED ON	PASSED BY	Releasing Guantánamo detainees into the United States	Releasing / transferring Guantánamo detainees to other countries	Constructing / modifying facilities in the U.S. to house Guantánamo detainees	Closing / abandoning detention facilities at Guantánamo Bay
Supplemental Appropriations Act, 2009 (H.R.2346)	Jun 24, 2009	111th Congress	●	●		
Legislative Branch Appropriations Act, 2010 (H.R.2918)	Oct 1, 2009	111th Congress	●	●		
National Defense Authorization Act for FY2010 (H.R.2647)	Oct 28, 2009	111th Congress	●	●		
Department of Homeland Security Appropriations Act, 2010 (H.R.2892)	Oct 28, 2009	111th Congress	●	●		
Department of the Interior, Environment, and Related Agencies Appropriations Act, 2010 (H.R.2996)	Oct 30, 2009	111th Congress	●	●		
Consolidated Appropriations Act, 2010 (H.R.3288)	Dec 16, 2009	111th Congress	●	●		
Department of Defense Appropriations Act, 2010 (H.R.3326)	Dec 19, 2009	111th Congress	●	●		
Ike Skelton National Defense Authorization Act for FY2011 (H.R.6523)	Jan 7, 2011	111th Congress	●	●	●	
Department of Defense and Full-Year Continuing Appropriations Act, 2011 (H.R.1473)	Apr 15, 2011	112th Congress	●	●	●	
Consolidated and Further Continuing Appropriations Act, 2012 (H.R.2112)	Nov 18, 2011	112th Congress	●		●	
Consolidated Appropriations Act, 2012 (H.R.2055)	Dec 23, 2011	112th Congress	●	●	●	
National Defense Authorization Act for FY2012 (H.R.1540)	Dec 31, 2011	112th Congress	●	●	●	
National Defense Authorization Act for FY2013 (H.R.4310)	Jan 2, 2013	112th Congress	●	●	●	
Consolidated and Further Continuing Appropriations Act, 2013 (H.R.933)	Mar 26, 2013	113th Congress	●	●	●	
National Defense Authorization Act for Fiscal Year 2014 (H.R.3304)	Dec 26, 2013	113th Congress	●	●	●	
Consolidated Appropriations Act, 2014 (H.R.3547)	Jan 17, 2014	113th Congress	●	●	●	
Consolidated and Further Continuing Appropriations Act, 2015 (H.R.83)	Dec 16, 2014	113th Congress	●	●	●	
Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (H.R.3979)	Dec 19, 2014	113th Congress	●		●	
Department of Homeland Security Appropriations Act, 2015 (H.R.240)	Mar 04, 2015	114th Congress	●			
National Defense Authorization Act for Fiscal Year 2016 (S.1356)	Nov 25, 2015	114th Congress	●	●	●	●
Consolidated Appropriations Act, 2016 (H.R.2029)	Dec 18, 2015	114th Congress	●	●	●	●
Continuing Appropriations and Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2017, and Zika Response and Preparedness Act (H.R.5325)	Sep 29, 2016	114th Congress			●	●
National Defense Authorization Act for Fiscal Year 2017 (S.2943)	Dec 23, 2016	114th Congress	●	●	●	●

Source: www.congress.gov.

In this case, legislative exercise of its constitutional check on the Executive did not protect individual liberty with the acts enumerated in Table 2 but rather provided the ground for Guantánamo detainees to remain in indefinite detention or to be detained even though they had been cleared for release, while also keeping the Guantánamo detention facility open. In consequence, military tribunals were the only viable forum available to the U.S. government to try Guantánamo detainees for criminal offenses. Upon signing these measures into law, President Obama issued a signing statement avowing that congressional

detainee-related limitations were unconstitutional as they, in his opinion, violated the separation of powers principles.

A part of the Department of Defense Authorization Act for FY2010 was the 2009 Military Commissions Act (2009 MCA), which Congress enacted in the wake of *Boumediene*, amending the 2006 MCA to include procedural safeguards, among which were (Elsea 2014, 43–55):
- "Cruel or inhuman treatment" defined as treatment that constitutes a grave breach of common Article 3 of the Geneva Conventions, irrespective of where the crime takes place or the nationality of the victim;
- Exclusion of statements elicited through torture as well as cruel, inhuman, or degrading treatment;[22]
- Exclusion of irrelevant, cumulative, or prejudicial evidence now expressly a right of the accused rather than an optional rule subject to the discretion of the Secretary of Defense;
- The accused having the right of appeal of a final decision of the military commission with respect to the U.S. Court of Military Commission Review; and that being exhausted, having the right to appeal the final decision to the U.S. Court of Appeals for the D.C. Circuit;
- No expressed prohibition of reviews by civilian courts, including review of petitions of habeas corpus.

In contrast to taking and ruling on four cases involving Guantánamo detainees during the Bush presidency, the Supreme Court did not take even one of such cases during the Obama presidency. The first case was *Kiyemba v. Obama*. Previously, the District Court granted 17 Uighur detainees a motion for release into the United States. As early as 2003, the U.S. government conceded that the men were improperly detained and eligible for release from Guantánamo Bay. Yet, the government refused to release the men into the U.S., even though a transfer to China was illegal as the men would have been at grave risk of torture and persecution and no other country was ready to offer them refuge. The Court of Appeals for the D.C. Circuit reversed and remanded the District Court's judgment, ruling that the courts lack authority to order the executive branch to release Guantánamo detainees into the U.S. Initially, the Supreme Court granted certiorari to their habeas petitions, but after learning that each of the petitioners had received and rejected at least two resettlement offers and that the U.S. government was willing to resettle the men in those countries, the Court denied certiorari in April 2011, leaving intact the lower-court ruling in favor of the U.S. government. Throughout this legal conflict, the Obama administration argued that the right to habeas corpus does not incorporate a right to be released into the United States, even when the only alternative is continued detention at Guantánamo Bay.

In March 2015, the Supreme Court rejected two appeals involving the treatment of Guantánamo detainees, letting stand lower-court rulings in favor of the U.S. government.[23] In the first case, a former detainee from Syria, Abdul Rahim Abdul Razak al Janko, sought to sue the United States for damages stemming from his

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[22] Even before this enactment, the Court in *Brown v. State of Mississippi* (297 U.S. 278) interpreted the Constitution to prohibit the use of physical torture to elicit a confession. In addition, the Court in *Ingraham v. Wright* (430 U.S. 651) stated the Constitution's prohibition of "cruel and unusual punishments" as being applicable to punishments that are corporal in nature, while stating in *in re Kemmler* (136 U.S. 436) that such prohibition applies to methods of execution involving excess brutality upon the body (Lane 2014, 91).

[23] *Janko v. Gates*, U.S. Supreme Court, No. 14-650 and *Center for Constitutional Rights v. CIA*, U.S. Supreme Court, No. 14-658.

alleged mistreatment during seven years at the Guantánamo Bay detention facility. Janko alleged he was tortured and suffered physical and psychological degradation at Guantánamo during the period 2002—2009. The appeals court ruled that based on what Congress had directed, courts do not have the authority to hear lawsuits such as the one filed by Janko. In the second case, the Court declined to take up a case in which the Center for Constitutional Rights was seeking access to videos and photographs of a Saudi detainee, Saudi citizen Mohammed al-Qahtani, allegedly showing his torture. The Court rather left in place a September 2014 decision by the 2nd Circuit Court of Appeals, which ruled the images exempt from disclosure under the Freedom of Information Act, as their release could harm U.S. national security by inciting anti-American sentiment (Hurley 2015).

Finally, in October 2017, the Court refused to hear *Bahlul v. United States*, where the Guantánamo detainee was seeking to challenge the legality of the operations of military commissions at Guantánamo Bay. Ali Hamza Ahmad Suliman al Bahlul was convicted for conspiracy to commit war crimes. Since this is only a U.S. offense but not a violation of international law, Bahlul challenged his conviction with a claim that he should be tried in a U.S. federal court (Stohr 2017).

President Obama left office without a single Supreme Court decision involving Guantánamo detainees. Most importantly, since 41 detainees remained at Guantánamo Bay on January 20, 2017, the President fell short of his January 22, 2009, promise to close the facility after releasing or transferring all detainees (see Figure 2).

FIGURE 2: GUANTÁNAMO BAY POPULATION AND RELEASES / TRANSFERS OF GUANTÁNAMO DETAINEES (BY MONTH, 2002–2018)
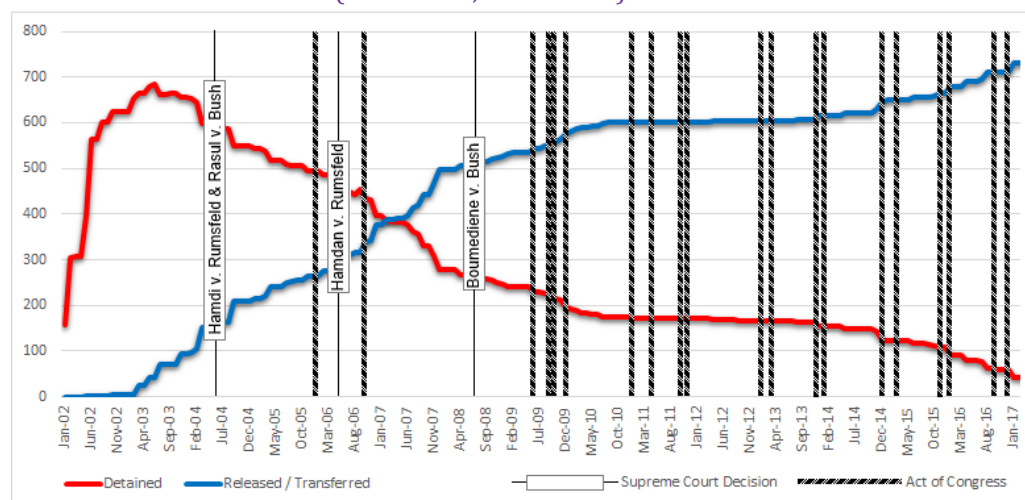
Source: The Guantánamo Docket, *New York Times*; Author's calculations.

4 CONCLUSION

"The Constitution of the United States," the U.S. Supreme Court declared in *ex parte Milligan* (71 U.S. 2, 120), "is a law for rulers and people, equally in war and in peace." As such, war does not strip away the Bill of Rights (Schlesinger 2005, 71), which sets the boundaries for the government in its use of violence against the people (Pinker 2011, 161). An individual cannot simply be swept up to be detained and tortured at the whim of the President. The U.S. constitutional system is set to ensure that the government has a good reason to classify

individuals as enemy combatants while also detaining them only during the armed conflict, treating them humanely during the detention and recognizing their right to habeas corpus. As Justice Kennedy wrote in the opinion of the Court in *Boumediene* (553 U.S. 723, 796–798), "liberty and security can be reconciled; and in our system they are reconciled within the framework of the law. The Framers decided that habeas corpus, a right of first importance, must be a part of that framework, a part of that law."

In the wake of the 9/11 terrorist attacks on the United States, the Bush administration claimed the right to hold detainees indefinitely without being charged, given counsel, or tried, and to authorize the use of military commissions as a legal system parallel to Article III courts but with greater restrictions on defendants' rights. The Guantánamo military commissions have been controversial since their creation, among other things, likely because they challenge the history of military commissions being tribunals of necessity and being used only when traditional tribunals are inappropriate or unavailable. Most importantly, the Guantánamo military commissions do not meet any of William Winthrop's (1920, 836) five criteria for the jurisdiction of military commissions, criteria that have historically been used to determine the suitability of a military commission to try violation of the laws of war. Most worrisome, the creation of the Guantánamo military prison and commissions provided an opportunity for the government to abuse its power to the detriment of the detainees (Mandell 2018, 2). Limiting detainees' rights that are guaranteed by the U.S. Constitution, President Bush exceeded his constitutional authority before calling upon Congress and the federal courts to support his action by resetting constitutional balance.

Traditionally, Congress and the courts have given great deference to the President's wartime decisions. In the case of detention and military trial for suspected terrorists at Guantánamo Bay, analysis shows that Congress lacked concern about the separation of powers when such an issue was raised through executive assertion of unilateral authority in shaping detainee policies and practices. For example, Congress came to President Bush's side on multiple occasions by way of not recognizing Guantánamo detainees' constitutional right to petition U.S. federal courts for habeas corpus challenges. However, Congress did enact statutes that constrain the conduct of U.S. military personnel in interrogating the detainees. Congress' frequent failure to defend its war powers left it to the courts to provide the principal checks on presidential power. With four Supreme Court rulings rejecting the administration's detainee policies and their violation of detainees' rights, judicial check on presidential unilateralism grew increasingly assertive during the Bush presidency. By contrast, during the Obama presidency, the Court did not rule on a single such case but rather denied certiorari in four cases. Congress, on another hand, exercised a constitutional check on the Obama detainee policy 23 times, limiting executive discretion to release or transfer Guantánamo detainees, to construct or modify facilities in the U.S. to house these detainees and to close or abandon detention facilities at Guantánamo Bay.

The role of separation of powers has been indispensable in both recognizing the constitutional right of Guantánamo Bay detainees to petition civilian courts for habeas corpus challenges and in enacting federal statutes that constrain the conduct of U.S. military personnel in interrogating detainees. Conversely, with the legislative action of stripping habeas under the 2005 DTA and 2006 MCA, a system of checks and balances within the separation of powers contributed to

the limiting, if not outright violation, of detainees' rights as part of U.S. detainee policies and practices, all of which points to the failure of the structure of government established by the Constitution to—at all time and in all cases—protect individual liberty.

REFERENCES

Adler, David Gray. 1996. "The Judiciary and Presidential Power in Foreign Affairs: A Critique." *Richmond Journal of Law and Public Interest* 1 (1): 1–38.

Brugger, Winfried. 2001. *Einführung in das öffentliche Recht der USA*. München: C.H. Beck.

Chambliss, Saxby. 2009. "The Future of Detainees in the Global War on Terror: A U.S. Policy Perspective." *University of Richmond Law Review* 43 (3): 821–844.

Chemerinsky, Erwin. 2005. "Enemy Combatants and Separation of Powers." *Journal of National Security Law and Policy* 1: 73–87.

Corn, Geoffrey S., Jimmy Gurule and Jeffrey D. Kahn. 2016. *National Security Law and the Constitution.* New York, NY: Wolters Kluwer.

Dietze, Gottfried. 1960. *The Federalist: A Classic on Federalism and Free Government*. Baltimore: Johns Hopkins Press.

Elsea, Jennifer K. 2014. *The Military Commissions Act of 2009 (MCA 2009): Overview and Legal Issues.* Available at https://fas.org/sgp/crs/natsec/R41163.pdf.

Elsea, Jennifer K. and Michael John Garcia. 2010. *Enemy Combatant Detainees: Habeas Corpus Challenges in Federal Court*. Available at https://fas.org/sgp/crs/natsec/RL33180.pdf.

Finn, Peter and Anne E. Kornblut. 2011. "Obama creates indefinite detention system for prisoners at Guantánamo Bay." *The Washington Post*, 8 March 2011. Available at https://www.washingtonpost.com/world/obama-creates-indefinite-detention-system-for-prisoners-at-Guantánamo-bay/2011/03/07/ABbhqzO_story.html.

Fisher, Louis. 2006. "Detention and Military Trial of Suspected Terrorists: Stretching Presidential Power." *Journal of National Security Law & Policy* 2 (1): 1–51.

Frohock, Christina M. 2013. "The Eyes of the World: Charges, Challenges, and Guantánamo Military Commissions After *Hamdan II*." *University of Miami National Security & Armed Conflict Law Review* 3 (1): 7–25.

Garcia, Michael John. 2009. *Interrogation of Detainees: Requirements of the Detainee Treatment Act*. Available at https://fas.org/sgp/crs/intel/RL33655.pdf.

Greenhouse, Linda. 2008. "Justices, 5-4, Back Detainee Appeals for Guantánamo." *New York Times*, 18 June 2008. Available at https://www.nytimes.com/2008/06/13/washington/13scotus.html.

Griffin, Stephen M. 2013. *Long Wars and the Constitution*. Cambridge, MA: Harvard University Press.

Guiora, Amos N. 2008. *Constitutional Limits on Coercive Interrogation*. Oxford, UK: Oxford University Press.

Hernández–López, Ernesto. 2009. "Boumediene v. Bush and Guantánamo, Cuba: Does the Empire Strike Back." *SMU Law Review* 62 (1): 117–200.

Hersh, Seymour M. 2004. "The Gray Zone: How a secret Pentagon program came to Abu Ghraib." *New Yorker*. 24 May 2004. Available at https://www.newyorker.com/magazine/2004/05/24/the-gray-zone.

Huq, Aziz Z. 2010. "What Good is Habeas?" *Constitutional Commentary* 26 (3): 385–432.

Huq, Aziz Z. 2017. "The President and the Detainees." *University of Pennsylvania Law Review* 165 (3): 499–593.

Hurley, Lawrence. 2015. "Supreme Court rejects cases on Guantánamo detainee treatment." *Reuters*, 9 March 2015. Available at https://www.reuters.com/article/us-usa-court-Guantánamo-idUSKBN0M51CI20150309.

Irons, Peter H. 2005. *War Powers: How the Imperial Presidency Hijacked the Constitution*. New York: Metropolitan Books.

Katyal, Neal K. and Laurence H. Tribe. 2002. "Waging War, Deciding Guilt: Trying the Military Tribunals." *Yale Law Journal* 111 (6): 101–152.

Koh, Harold H. 1988. "Why the President (Almost) Always Wins in Foreign Affairs: Lessons of the Iran–Contra Affair." *The Yale Law Journal* 97 (7): 1255–1342.

Kommers, Donald P., John E. Finn and Gary J. Jacobsohn. 2009. *American Constitutional Law: Essays, Cases, and Comparative Notes, Volume 1: Governmental Powers and Democracy*. Lanham: Rowman & Littlefield Publishers.

Lane, Julie D. 2014. "Reconciling Physical Contact and Bodily Integrity Within the Western Legal Paradigm." *Journal of Comparative Politics* 7 (2): 90–110.

Lewis, Neil A. 2003. "Threats and Responses: The Courts; Detention Upheld in Combatant Case." *New York Times*, 9 January 2003. Available at https://www.nytimes.com/2003/01/09/us/threats-and-responses-the-courts-detention-upheld-in-combatant-case.html.

Lynch, Timothy J. and Robert S. Singh. 2008. *After Bush. The case for continuity in American Foreign Policy*. Cambridge, UK: Cambridge University Press.

Mandell, Daniel. 2018. "The Guantánamo Bay Military Commissions: A Historical Perspective." *National Security Law Review* 6 (1): 1–36.

Mayer, Jane. 2006. "The Hidden Power: The legal mind behind the White House's war on terror." *New Yorker*. 3 July 2006.

Mayer, Jane. 2008. *The Dark Side: The Inside Story of How the War on Terror Turned into a War on American Ideals*. New York, NY: Doubleday.

Morrison, Wayne. 2013. *Criminology, Civilisation and the New World Order*. London: Routledge.

Ní Aoláin, Fionnuala. 2018. "Lawyers, Military Commissions and the Rule of Law in Democratic States." In *Counter-Terrorism, Constitutionalism and Miscarriages of Justice: A Festschrift for Professor Clive Walker*, eds. Lennon, Genevieve, King, Colin and Carole McCartney. Oxford, UK: Hart Publishing.

Overbey, E. Carlisle. 2013. "Bringing Comfort to the Enemy: The Past, Present, and Future of Habeas Corpus Petitions in Light of the Formalistic Application of Boumediene." *Cornell International Law Journal* 46 (2): 401–425.

Owens, John E. 2010. "Congressional acquiescence to presidentialism in the US 'war on terror'. From Bush to Obama." In *The "War on Terror" and the Growth of Executive Power? A Comparative Analysis*, eds. Owens, John E. and Riccardo Pelizzo, 33–86. London and New York: Routledge.

Owens, John E. 2013. "Rivals Only Sometimes. Presidentialism, Unilateralism and Congressional Acquiescence in Obama's "Ongoing Struggle" Against Terrorism." In *Rivals for Power: Presidential-Congressional Relations*, ed. Thurber, James A., 295–322. Lanham, MD: Rowman & Littlefield Publishers.

Padmanbhan, Vijay M. 2012. "Separation of Powers and National Security." In *National security law in the news: a guide for journalists, scholars, and policymakers,* eds. Rosenzweig, Paul, McNulty, Timothy J. and Ellen Shearer, 3–12. Chicago: American Bar Association.

Pinker, Steven. 2011. *The Better Angels of Our Nature: Why Violence Has Declined*. New York, NY: Penguin Group.

Pious, Richard M. 2015. "Obama's Use of Prerogative Powers in the War on Terrorism." In *Obama in Office: The First Two Years*, ed. James A. Thurber, 255–268. New York: Routledge.

Porčnik, Tanja. 2016. *Imperial presidency redux? Presidential war powers and the Bush administration (Povratek imperialnega predsedovanja? Predsednikova vojna pooblastila in Busheva administracija: magistrsko delo).* Ljubljana: Fakulteta za družbene vede.

Rogers, William P. 1971. "Congress, the President, and the War Powers." *California Law Review* 59 (5): 1194–1214.

Rosenberg, Carol. 2017. "Final Obama transfer leaves 41 prisoners at Guantánamo Bay." *Miami Herald*, 19 January 2017. Available at https://www.miamiherald.com/news/nation-world/world/americas/Guantánamo/article127537514.html.

Rudalevige, Andrew. 2005. *The New Imperial Presidency: Renewing Presidential Power after Watergate.* Ann Arbor: University of Michigan Press.

Schaffer, Amanda. 2002. "Life, Liberty, and the Pursuit of Terrorists: An In–Depth Analysis of the Government's Right to Classify United States Citizens Suspected of Terrorism an Enemy Combatants and Try Those Enemy Combatants by Military Commission." *Fordham Urban Law Journal* 30 (4): 1465–1486.

Schlesinger, Arthur M. Jr. 2005. *War and the American Presidency*. New York, NY: W.W. Norton & Company.

Sevastopulo, Demetri. 2005. "US court allows Guantánamo Bay challenge." *Financial Times*, 31 January 2005. Available at https://www.ft.com/content/9ddf1532-73ce-11d9-b705-00000e2511c8.

Slomanson, William. 2011. *Fundamental Perspectives on International Law, Sixth Edition*. Boston, MA: Wadsworth.

Stohr, Greg. 2017. "Supreme Court Rejects Guantánamo Inmate, Won't Curb Military Commissions." *Bloomberg*, 10 October 2017. Available at https://www.bloomberg.com/news/articles/2017-10-10/court-rejects-Guantánamo-inmate-won-t-curb-military-commissions.

Sutton, Jane. 2008. "U.S. sends three Guantánamo men home to Bosnia." *Reuters*, 16 December 2008. Available at http://www.reuters.com/article/us-Guantánamo-bosnia-idUSTRE4BF5BG20081216.

Tribe, Laurence H. 2016. "Transcending the *Youngstown* Triptych: A Multidimensional Reappraisal of Separation of Powers Doctrine." *The Yale Law Journal Forum* 126: 86–106.

Van Aggelen, Johannes. 2009. "The Consequences of Unlawful Preemption and the Legal Duty to Protect the Human Rights of Its Victims." *Case Western Reserve Journal of International Law* 42 (1): 21–89.

Vásquez, Ian and Tanja Porčnik. 2018. *The Human Freedom Index 2018: A Global Measurement of Personal, Civil, and Economic Freedom*. Washington, D.C.: Cato Institute, Fraser Institute, and Friedrich Naumann Foundation for Freedom.

Winthrop, William. 1920. *Military Law and Precedents, 2nd edition*. Washington, DC: GPO.

BOOK REVIEW: THE POLITICS OF BUREAUCRACY

Miro HAČEK[1]

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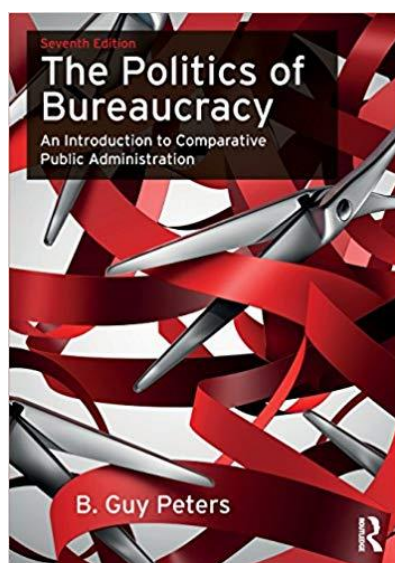
The Politics of Bureaucracy, An Introduction to Comparative Public Administration (Seventh Edition). B. Guy Peters. New York and London: Routledge, 2018. 390 pp.

The conflict between civil servants and politicians has often been described as the basic problem of modern authorities (Aberbach, Putnam and Rockman 1981, 252). For this reason, one must understand and thus research the relationship between these two groups of very influential actors in order to understand the governing process. Heady (1991, 448) defined the relationship between bureaucracy and politics using six configurations, later combined into two basic configurations: in one, politicians, in the pursuance of their political aims, dominate civil servants who have lost much of their independence and are only a tool in their hands. In the other, civil servants have maintained a high degree of their independence and power, which they use in the pursuance of their own aims as opposed to those of politicians.

One of the key books, analysing the relations between very different and often conflicting worlds of politics on the one aside and bureaucracy on the other, is for the few past decades the book of Guy B. Peters, a leading authority in the field and a Maurice Falk professor of American Government at the University of Pittsburgh, USA. In 2018, Routledge published 7th edition of this popular textbook, which provides reader with comprehensive and updated discussion of challenges and recent developments in the field of public bureaucracy. Guy B. Peters is placing modern public administration in its political and intellectual

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context and is analysing its position and roles in skilful and meticulous manner with insights into the challenges and opportunities of big contemporary government.

The structure of the book remains quite specific and unexpected for the first time reader. First four chapters are in essence a mere foundation of next four chapters, that could be considered as centrepiece of the book. In the introducing chapters Guy B. Peters is analysing and explaining the position of modern public administration in the modern government in its environment and its role in the public policy processes, the influence of different political cultures on public administration, the often neglected and especially in non-consolidated democracies very important question of recruiting public personnel and last, but not least, problems of administrative structure.

Then, in key fours chapter (chapters from five to eight), Guy B. Peters is examining the relationship of the politics to the conduct of public administration and to the (lack of) policy decision made by administrators. It is sometimes appealing to think about public administration as just management of public policies, but that would be misleading and short-sighted. Especially important, and sometimes sadly neglected, is the story of the relations between the highest ranking civil servants and politicians, and the quest to the finding of the answer to the question of the boundaries between the worlds of politics and bureaucracy.

The book is without the doubt the essential reading for all academics and students who seek to understand the structures and dynamics of the state, government and governance in diverse, comparative contexts. The seventh edition bring us new coverage of public administration in Latin America and Africa, with special emphasis on the impact of New Public Management and other, newer ideas of administrative reforms; examination of the European Union and its effect of public policy and public administration in member countries, as well as exploration of the EU as a particular type of bureaucracy; assessment of "internationalisation" of bureaucracy and concerns with the role of international pressures on domestic governments and organisation in public sector and coverage of the wide-ranging effects of the 2008 global economic crisis on public bureaucracies and public policies, and a varied success of governmental responses to the crisis.

Drawing on evidence from a wide variety of bureaucratic systems, *The Politics of Bureaucracy (7th edition)* continues to be essential reading for everyone dealing with the government, policy analysis, politics and international relations.

REFERENCES

Aberbach, D. Joel, Robert D. Putnam, and Bert A. Rockman. 1981. *Bureaucrats and politicians in Western democracies.* Cambridge, MA and London: Harvard University Press.
Heady, Ferrel. 2001. *Public administration: A comparative perspective. 6th edition.* New York and Basel: Marcel Dekker Inc.

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