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Where is Europe?

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WHERE IS EUROPE?

Respacing,
Replacing, and
Reordering
Europe

**Edited by Janny de Jong, Marek Neuman, and
Margriet van der Waal**

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Where is Europe? Respacing, Replacing and Reordering Europe

**Selected Papers Presented at
Euroculture Intensive Programme
2018**

**Edited by Janny de Jong, Marek Neuman
and Margriet van der Waal**

With contributions by Martina Adinolfi, Katharina Geiselmann, Magdalena Kohl, Angela Medendorp, Juliane Olliger, Linda Piersma, Giorgia Spolverato and Isabel Toman

Contributors

Martina Adinolfi started volunteering in a social center in Bergamo, her hometown in the north of Italy at the age of 16 and this is also where her passion for the right to the city came about. After obtaining her BA in Modern Humanities at the University of Milan and volunteering in various NGOs in Europe and Brazil, she decided to pursue a Masters in Euroculture to research about human rights, education, urban studies, and cultural and language policies. She is now based in Brussels, where she is writing her final thesis on the temporary occupation of abandoned buildings by self-organized groups.

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Euroculture 2nd university: Georg-August University of Göttingen (Germany)

MA Thesis title: *Filling the Void: Abandoned Buildings and Bottom-Up Place-Making in the City of Brussels*

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Euroculture 1st university: Uppsala University (Sweden)

Euroculture 2nd university: Jagiellonian University (Poland)

MA Thesis title: *Re-Shaping Public Holocaust Commemoration in Austria and Germany in the Face of European Challenges*

Magdalena Kohl obtained a B.A. in European Studies from the University of Bremen in 2016. The participation in a one-year study programme of the Institut d'études politiques de Bordeaux (2015/16) fuelled her interest in issues at the intersection of urban and migration studies. She deepened this focus in the Euroculture programme and started exploring the role of art in democratic societies. Internships in the Genshagen Foundation (2016), the field office of the German Academic Exchange Service in Mexico (2017) and the European Cultural Foundation (2018/19) allowed Magdalena to develop an expertise in the fields of (external) cultural policies, cultural education, and the urban commons as well as to get acquainted with the philanthropic sector and the artistic field in Europe and beyond.

Euroculture 1st university: University of Strasbourg (France)

Euroculture 2nd university: University of Groningen (the Netherlands)

MA Thesis title: *City Air Makes You Free? – The Struggle of Illegalised Migrants for a Right to the City. A Case Study of the Activities of the Group Wij zijn Hier in Amsterdam between 2012 and 2015.*

Angela Medendorp has studied in the MA Euroculture between 2017 and 2019. Before that, she obtained a BA degree in English Language and Culture from the University of Groningen. As part of the Euroculture programme, she has spent a research semester in Indianapolis. In her research, she is continuously exploring the interconnections between culture, language, identity formation, and education.

Euroculture 1st university: University of Groningen (the Netherlands)

Euroculture 2nd university: Uppsala University (Sweden)

MA Thesis title: *Music Moves Europe? The Effects of EU Music Policy on European Identity Formation in Europe's Music Sector.*

Juliane Olliger was born in Germany in 1993. After high school, she completed an internship at a rehabilitation center for drug addicted men in Peru. She then moved to the Netherlands and attained a Bachelor and Master's Degree in Psychology at the University of Groningen. After this she began to study Euroculture. During these studies, she completed an internship at the human rights organization Doctors of the World in Sweden and the Consulate-General of Germany in Australia. In her future, she hopes to combine her passions – psychology and politics – and work for international institutions that promote mental health.

Euroculture 1st university: Uppsala University (Sweden)

Euroculture 2nd university: University of Deusto (Spain)

MA Thesis title: *Improving Health Related Quality of Life of Migrants Living in Sweden - From Theory to Practice*

Linda Piersma graduated cum laude for her Bachelor degree International Relations and International Organisation at the University of Groningen in 2016. Her thesis examined the securitisation process of Syrian refugees on Facebook, for which she received the opportunity to present her research at the Middle East Studies Association (MESA) conference in Boston that same year. During the Euroculture Master Programme, her interest in the workings of the online public sphere intensified. Specifically, her research focuses on the multifaceted dynamic between top-down and bottom-up actors and structures, always analysed from an interdisciplinary perspective.

Euroculture 1st university: University of Groningen (the Netherlands)

Euroculture 2nd university: Uppsala University (Sweden)

MA Thesis title: *The externalisation and internalisation of the Euro-African border.*

Giorgia Spolverato is a 24 year-old Italian student. In June 2019, she completed a two-year Erasmus Mundus Master of Arts, called "Euroculture." Before that, she graduated in International Relations at the University of Milan in July 2017. Since the beginning of her studies, she found the field of Human Rights interesting. Over time, researching and advocating for prisoners' fundamental rights turned into a passion that really animates her.

Euroculture 1st university: University of Udine (Italy)

Euroculture 2nd university: University of Strasbourg (France)

MA Thesis title: *Principles & Standards Regarding Education in Detention Facilities across Europe. Implementation of the European Prison Rules in Belgium and Ireland.*

Isabel Toman obtained a degree in English Language and Literature with a minor in Latin-American Studies at the University of Hamburg in 2017, during which she spent one academic year at the University of Southampton, UK. The MA Euroculture allowed her to focus more on politics and international relations. During her studies, she conducted several internships, one with a German organisation in Mexico City for half a year. After finishing her thesis on the topic of Foreign Cultural Policies, she aims to obtain more professional experience in an international NGO. Her interests include politics, culture and languages, and higher education.

Euroculture 1st university: Georg-August University of Göttingen (Germany)

Euroculture 2nd university: University of Deusto (Spain)

MA Thesis title: *The Role of Foreign Cultural Policies in Public Diplomacy and Soft Power: Germany and the EU in Mexico.*

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Introduction

Janny de Jong, James Leigh, Ine Megens, Marek Neuman, Senka Neuman Stanivuković and Margriet van der Waal

Against the backdrop of unprecedented ecological changes and ensuing challenges to global solidarity, the digitalisation, transnationalisation and automatising of the political and the everyday spheres, and the increasing power of deterritorialized operating systems (such as global financial institutions) in determining political and social realities, it becomes more and more difficult to locate Europe. Contemporary Europe is fluid, deterritorialized, and constantly emerging; as such, it brings into question the analytical strength of categories such as “national,” “regional,” or “global.” Europe nowadays is given meaning and is practised not only in political and media discourses, nor artistic output such as literature, film and installations, but also in infrastructures (roads and bridges), protocols, and security algorithms. It can be located in various places: not only in the institutions and policies of Brussels, but in the practices of migrants, on Facebook discussion boards, or in travelling exhibitions. Accordingly, we asked the participants of the annual Intensive Programme (IP) of the Erasmus Mundus Master Programme *Euroculture: Society, Politics and Culture in a Global Context* to locate Europe by examining how it may be given (multiple) meanings through actors’ practices and experiences, and *where* (meaning the spaces and their material conditions) these practices and experiences are being realized.

The IP of 2018 was developed by the Euroculture programme at the University of Groningen and jointly coordinated with colleagues at Krakow’s Jagiellonian University. The IP featured a broad and exciting programme of lectures, presentations and an excursion related to the main theme. Practice and space were used as analytical categories through which to explore Europe in a new and exciting way. Europe is multifaceted; it is not only “something,” but it is also “somewhere;” it is not only an “idea,” but is also an “act;” it is not only “imaginary,” but is also “material.” To understand Europe’s multifaceted nature, we asked students to explore in their research papers, which they had to present and discuss in a workshop format, *where* Europe is rather than *what* Europe is.

We encouraged students to explore the individual and collective practices and processes through which European spaces are given meaning and governed as a social and political imaginary. We were also interested in research which analyzes how feelings, experiences and emotions define relations between people and their (material) environments. For example, how might we encounter and experience Europe through senses of belonging, love and attachment, or fear? Our approach to space necessitated our students to become aware of how we “produce space” – make meaning of it – in our own interactions with it, and in the kinds of (research) questions we might pose about it.

The main theme – *Where is Europe?* – was divided into three possible means to approaching space. The first potential approach to space considers it to be an environment that we can grasp with our senses, in which agents (human and non-human actors) find themselves, and where they can perform specific actions. This involves seeing spaces as places where individuals and groups engage with the material, visible, and measurable environment (either natural or human-made) that surrounds them. What we have in mind here, thus, is for instance how we make sense of our environment through different spatial categories that we assign and recognize in space: households, public spaces, neighbourhoods, nature, parks, cities, regions, nations, borders, etc.

A second possible approach sees space in line with the ideological intentions imposed upon it. Here, one might consider and investigate how spaces are given meaning and turned into particular places through the work of planners, policymakers, researchers, politicians and other similar actors. The “work” these various actors carry out in order to “produce” particular spaces foresees a specific use of said spaces which is determined and regulated by the conventions, the beliefs, and by the language said actors use to speak about them. In this context, one can think of the impact/effect of maps, plans, regulations, laws, information on pictures, etc., which produce specific statements regarding spaces, and create certain bodies of knowledge about them.

A third possible approach to space is to consider the actual meaningful practices that humans enact in their spatial environments: the “placemaking” processes. How are our direct experiences of the spatial materiality in which we operate mediated by broader socio-economic and political discourses and

expectations? How do we live our daily lives in the spaces that we occupy, and how do we make sense of these spatial experiences? How do we talk about these spaces and how do we represent them?

Of course, we do not in any way suggest that these three approaches to space should be seen as separate, or exhaustive categories. On the contrary, all three analytical levels are intertwined. Rather, we offered this division in order to become aware that space does not just simply exist, but that different dimensions are involved in how any space – in this case, Europe in particular – is given meaning through socio-spatial practice.

Students were asked to approach their research inquisitively and open-mindedly, as a practice of wondering, and to critically reflect upon the intellectual boundaries which are often set between different research fields, methodologies, and analytical dimensions. In other words, we welcomed problem-driven research that is aware of, but not constrained by, disciplinary frontiers. We defined the following subject-based (rather than analytical) subthemes, with each of these reflecting on the conceptual, methodological and empirical dimensions of the question guiding the 2018 Intensive Programme: *Where is Europe?*:

1. **Respacing Europe in the European Public Sphere:** how Europe is given meaning through the emergence of the European public sphere as a place of dialogue and deliberation, but also confrontation and dissent.
2. **Replacing Europe in Everyday Life:** how Europe is given meaning through the experiences and practices of Europeans in their daily lives.
3. **Reordering Europe through Political Practices/Institutions:** how Europe is given meaning and governed as a political space through policy and political discourses and practices.

In this volume, we have collected 8 of the best IP papers, divided over the three subthemes.

1. Subtheme 1: Respacing Europe in the European Public Sphere

Katharina Geiselmann analyses the importance and role of language in European memory politics by investigating discourse around the so-called “Holocaust law” in Poland. This law, making any mentioning of Poles being responsible or complicit in crimes committed during the Nazi-era illegal, was meant as a tool of collective identity formation in Poland. Because of its vague language, Geiselmann argues that the law was never intended to be enforced, but was rather a tool to make a clear political statement. However, it was also an attempt to re-negotiate a common European memory in a manner more inclusive of the Eastern experience. Holocaust memory in the public sphere has the potential of bringing Europe closer together. Politicians and academics can, in other words, respace the European public sphere, and form an inclusive Pan-European memory.

In her respective contribution, Linda Piersma explores how a variety of public and elite actors interact and together constitute a European public sphere, by analysing an online platform called “Debating Europe.” The platform is co-funded by the EU within its “Europe for Citizens Programme” and allegedly brings European leaders and citizens together to discuss issues of common concern. She argues, however, that the socio-political and online context of Debating Europe significantly shapes the discursive process. By doing so, it actually hampers the possibilities for genuine dialogue and fruitful interaction in an inclusive European space.

2. Subtheme 2: Replacing Europe in Everyday Life

Opening this section, Isabel Toman focuses on the impact of European, national and regional language policies on the sociolinguistic reality in the Basque country. Though the number of speakers of Basque has increased over the last two decades, all provinces do not experience this increase to the same extent. She finds the reason for these variances in the lack of legislative frameworks for minority language rights and the relatively free interpretation of the European Charter for Regional or Minority Languages by the respective national governments. Toman points towards a possible discrepancy between legislation and reality, as well as the importance of language hegemony and power concepts in shaping sociolinguistic space.

Martina Adinolfi investigates the practice of squatting: the occupation of empty properties for housing needs and/or for the promotion of social activities. Because squatting generates direct-democratic forms of decision-making, together with autonomous and non-institutional modes of citizen participation and self-managed consensus, it has noticeably influenced urban politics. Based upon her research of squatting in several European countries, Adinolfi argues that grasping the theoretical notion of space behind the place-

making experience of squatting is crucial to understand how the European urban space can be re-shaped from below.

3. Subtheme 3: Reordering Europe through Political Practices/Institutions

Magdalena Kohl, in her contribution, takes yet a different perspective on towns and cities. She investigates how the German Association of Cities and Towns, the Deutscher Städtetag, made use of the refugee crisis in 2015 and 2016 to enhance its power and influence. Though it is not clear if this enhanced position of the urban versus the national and federal sphere will be a change for the long term, the paper shows that recalibration in favour of the urban scale is possible.

Angela Medendorp takes a close look at cultural policy on a European level, by way of the European Border Breakers Awards (EBBAs), the EU prize for popular and contemporary music (2004-2018). To what extent do the EBBAs highlight cultural and linguistic diversity and what are the possible consequences for (the promotion of) European culture? The qualitative analysis sheds more light on the cultural agenda of the EU, the East-West (financial) power divide in Europe and the spread of English as the European lingua franca. The quantitative analysis of EBBA winners between 2004-2018 shows that nearly 80 per cent of the winners perform in English. Furthermore, winners hail predominantly from countries with strong economies. She argues that this leads to an image of European culture which lacks variety and contrasts with the aim of highlighting cultural and linguistic diversity within Europe.

Juliane Olliger examines the challenge of maintaining and, if necessary, promoting European values, by investigating the value of solidarity during the recent migration crisis. Her findings show that enforcement of solidarity only worked partially. Supportive and undecided member states were responsive to the enforcement of political solidarity and increased their acceptance of relocations. However, critical countries were not responsive to political or legal-solidarity-enforcement and refused to accept relocated refugees. She argues that the EU needs to rethink its approaches to enforcing core values, such as solidarity, as it is necessary for the Union to function as a unity, particularly in times of crisis.

In the final contribution to this selection of best student papers, Giorgina Spolverato analyses the judgment of the Court of Justice of the EU (CJEU) in the joined cases *Aranyosi and Căldăraru*. In its decision, the CJEU for the first time decided to interpret the European Arrest Warrant Framework Decision in a way so as to guarantee human rights' protection of the "requested persons." More specifically, the court had to balance two different principles recognized by the EU: on the one hand, the Protection from Inhuman and Degrading Treatment, as in the case at stake, deriving from inadequate detention conditions in the two states (Hungary and Romania respectively); on the other, the Principle of Mutual Trust and Recognition among EU Member States. Spolverato discusses the issue of whether the European Arrest Warrant Framework should be amended and the consequences this might have on the principle of mutual recognition. She further suggests some alternative solutions to enhance human rights' protection in the cross-border fight against crime within EU territory.

We would like to conclude by expressing our gratitude to everyone who made this 2018 edition of the IP a huge success. The event coincided with the celebration of the 20th anniversary of the *Euroculture* Master Programme. As usual, the organisation started more than a year before the actual event took place and entailed many lively and interesting discussions on the theme, the content of the research conference, meetings with alumni, an exhibition on previous IPs, the excursion, the specific project that students would work on during the week, the closing gala dinner and many other things. The Groningen team consisted of, in alphabetical order: Maria Ananchenkova, Janny de Jong, James Leigh, Ine Megens, Marek Neuman, Senka Neuman Stanivuković, Margriet van der Waal and Marloes van der Weij. The team was helped tremendously by colleagues in Krakow: Duszan Augustyn, Karolina Czerska-Shaw, Juan Sarabia and Monika Nowak. We would also like to thank Angela Medendorp for her editing work on this IP student paper publication. Finally, a big thanks to the whole cohort of the Euroculture 2017-2019 group and Euroculture consortium staff who collectively contributed to making the 2018 edition of the IP a great event!

The Importance of Language in European Memory Politics: What the Discourse around the Polish ‘Holocaust Law’ Reveals

Katharina Geiselmann

1. Introduction

Little did he know which consequences it would have, when Barack Obama used the term “Polish death camp” in 2012 on occasion of awarding the presidential Medal of Freedom to Polish war hero Jan Karski.¹ In fact, in February 2018 the Polish Lower House, Sejm, has finally passed an amendment to already existing legislation which would later be colloquially titled the Polish ‘Holocaust law’, officially being an amendment to the ‘Act on the Institute of National Remembrance’ (IPN).² It was supposedly drafted to outlaw using this term, and made it a criminal offense to blame the Polish nation for any crimes committed during the Nazi occupation, being punishable with “a fine or the penalty of imprisonment of up to 3 years”.³ This law sparked a debate about the role of Poles during the Holocaust and the Polish governing Law and Justice party (PiS).⁴ In point of fact, “the new law was promulgated on the 73rd anniversary of the liberation of Auschwitz”, which certainly catalysed the debate.⁵ While responses to the new legislation are the focus of this paper, it should be noted that they are part of a much bigger debate and the law is only one example of the IPN’s work. For example, already in 2012 had the IPN launched a website titled “Truth about German camps”, which is accessible in 8 languages.⁶

Holocaust remembrance became central to the European project after 1989. In fact, German specialist in European Studies Aline Sierp, who has published widely on memory and identity issues, summarises that the Holocaust “seems not to have been of particular importance before the beginning of the 1990s”.⁷ However, her study, using the databank EUR-lex, which includes all kinds of public documents issued by both the EU institutions and the member states, reveals that it “has occupied more space in European documents since 1990 than any other event in European history”.⁸ She also states that all resolutions passed since then by the European Parliament “refer to the importance of the Holocaust in defining the main goals of the European Union, pointing to its role as the new founding act of the EU”.⁹ Other scholars have also brought forward similar theses: For instance, the Holocaust is being considered the founding event of Europe by German historian Dan Diner.¹⁰ Similarly, the Holocaust is proposed to be a negative founding myth as part of a European memory by German political scientist Claus Leggewie.¹¹ Tony Judt, British-American historian, states that “the new Europe is [...] being built upon historical sands at least as shifty in nature as those upon which the postwar edifice was mounted”, thus maybe pointing to the dangers of

¹ Rick Noack, “Obama Once Referred to a ‘Polish Death Camp’. In Poland, That Could Soon Be Punishable by 3 Years in Prison,” *Washington Post*, 17 August 2016, https://www.washingtonpost.com/news/worldviews/wp/2016/08/17/obama-once-referred-to-a-polish-death-camp-in-poland-that-could-soon-be-punishable-by-3-years-in-prison/?noredirect=on&utm_term=.07d19a23230e.

² Institute of National Remembrance, “The Act on the Institute of National Remembrance,” <https://ipn.gov.pl/en/about-the-ipn/documents/327/The-Act-on-the-Institute-of-National-Remembrance.html>.

³ *Ibid.*

⁴ This international backlash eventually led to the law being changed on 27 June 2018 in a special procedure, which made offensive statements civil instead of criminal offenses.

⁵ Sławomir Sierakowski, “Jarosław Kaczyński’s Jewish Question,” *Project Syndicate*, 3 February 2018, <https://www.project-syndicate.org/commentary/poland-holocaust-death-camps-law-by-slawomir-sierakowski-2018-02>.

⁶ Institute of National Remembrance, “German death camps and concentration camps in Nazi occupied Poland 1939-45,” <http://truthaboutcamps.eu>.

⁷ Aline Sierp, *History, Memory, and Trans-European Identity: Unifying Divisions* (Routledge, 2014), 124.

⁸ *Ibid.*, 124.

⁹ *Ibid.*, 124.

¹⁰ Dan Diner, “Haider und der Schutzreflex Europas,” *Die Welt*, 26 February 2000, <https://www.welt.de/print-welt/article504303/Haider-und-der-Schutzreflex-Europas.html>.

¹¹ Claus Leggewie, “A Tour of the Battleground: The Seven Circles of Pan-European Memory,” *Social Research* 75, no. 1 (2008), 219.

drawing identity and legitimacy from history.¹² However, he explicitly states that the EU is built “out of the crematoria of Auschwitz”, and that it “remains forever mortgaged to that past”.¹³ Subsequently, it is important to understand how the past is used in contemporary politics. More specifically, there is a need to understand why PiS drafted this law and how the debate around it was framed by different actors. Leggewie points to a difference in memory politics in Western and Eastern Europe, since the West can look back on a success story after World War II, while the East lived through more suffering due to the Iron Curtain.¹⁴ This hints at the issues that might arise when trying to form one pan-European memory. There are different experiences to be aware of, and different perspectives to be acknowledged. The question arises whether the law is purely part of PiS’s memory politics or can also be interpreted as its attempt to re-negotiate a European memory. Does the debate suggest that the European public sphere served as platform to successfully negotiate Holocaust narratives? Since this is a recent development, there are, to my knowledge, no studies dealing with the law.¹⁵ This gives me the opportunity to shed light on a new issue, but also puts me in a position in which I need to be careful how to interpret it.

The main goals of this paper are twofold: Firstly, it investigates whether the debate can reveal to what extent the law is part of PiS’s memory politics. This will be measured by detecting a tool of memory politics, namely collective-identity-formation through Othering Germans and emphasizing the status of Poles as victims. Secondly, the paper analyses to what extent it could represent an attempt to re-negotiate a European memory. To investigate this aspect, the Polish case will be compared to other Central Eastern European (CEE) countries. The material for this analysis consists of selected statements by academics and by Polish, German, French, and EU-politicians. Thus, the debate can be analysed in the bilateral sphere and the EU-sphere. While solely European politicians were included to focus on the debate inside of Europe, academics conducting research abroad were included because they have been vital to the debate around Polish Holocaust memory. Polish-American scholar Jan Gross, for example, has “created an enormous debate and controversy in Poland” on account of his book *Neighbours*.¹⁶ Implications of this on the possibility of the construction of a pan-European memory in the public sphere by different actors will also be discussed, in addition to exploring if this debate is evidence of the difficulty of integrating Eastern narratives into a common European memory. All in all, this paper shows how language analysis is a valuable tool in analysing memory politics and points to the limits and possibilities of a European public sphere to be a space in which Holocaust memory can be negotiated and thus a European memory - inclusive of different perspectives - formed. Conclusions will then be drawn about if this case points to a Europeanization of public spheres.

2. Analysing the Debate Through a Multidisciplinary Approach

This paper draws on various disciplines such as linguistics, politics, history, and memory studies and thus has a multidisciplinary approach. A linguistic analysis was found to be valuable because there have not been a lot of studies conducted about the role of language in memory politics, even though there is a link between the concept of collective memory and linguistic and narrative phenomena, as according to the Czech sociologist Mlynář “language constitutes the collective nature of memory”.¹⁷ Indeed, collective memory not only “emerges from language”, but is also “structured linguistically”.¹⁸ I will draw on Mlynář’s way of analysing so-called collective narratives from a political viewpoint: According to him, it is possible to observe both “what is narrated and what is not narrated”.¹⁹ Language will furthermore be seen as a cultural tool, which, together with an agent, functions in “distributed remembering”.²⁰ Language is thus used to form collective memories, which “are semiotic sites—simultaneously discursive and spatial—of ongoing debate and contestation”.²¹ Confirming that the law is part of memory politics would be “a stark and overly simple

¹² Tony Judt, “The Past is Another Country: Myth and Memory in Postwar Europe,” *Daedalus* 121, no. 4 (1992), 112.

¹³ Tony Judt, “From the House of the Dead: On Modern European Memory,” *New York Review of Books* 52, no. 15 (2005), 12.

¹⁴ Leggewie, “A Tour of the Battleground: The Seven Circles of Pan-European Memory,” 231.

¹⁵ The law has been analysed after writing this paper by various scholars, e.g. by Marta Bucholc, “Commemorative Lawmaking: Memory Frames of the Democratic Backsliding in Poland After 2015,” *Hague Journal on the Rule of Law* (2018), 1-26.

¹⁶ Janine P. Holc, “Working through Jan Gross’s Neighbors,” *Slavic Review* 61, no. 3 (2002), 453.

¹⁷ Jakub Mlynář, “Language and Collective Memory: Insights from Social Theory,” *Slovak Journal of Political Science* 14, no. 3 (2014), 220.

¹⁸ *Ibid.*, 218.

¹⁹ *Ibid.*, 228.

²⁰ James V. Wertsch and Henry L. Roediger III, “Collective Memory: Conceptual Foundations and Theoretical Approaches,” *Memory* 16, no. 3 (2008), 320.

²¹ Brigittine M. French, “The Semiotics of Collective Memories,” *Annual Review of Anthropology* 41 (2012), 343.

opposition, one that would lead to ‘an all-too antiseptic conception of ‘pure fact’”.²² However, the “simplifying, subjective approach” of collective memory is crucial in forming identities.²³ I conclude that a simplified governmental narrative would be an argument for the law having been drafted in order to strengthen national identity, or at least the discourse in the debate would suggest so. There are “different temporal and spatial locations in which national identities are configured”, for example in the public sphere.²⁴ Thus, looking at the temporal deixis in this paper should be helpful in determining to what extent the discourses focus on the past and are thus part of memory politics. Further, the person deixis, meaning how the speaker positions him- or herself in the context through, for example, personal pronouns, helps detecting Othering in the statements (often visible through *us* versus *them*-constructions), but also how the Polish government positions itself in Europe and the world. Othering is important in identity-construction as “national identities are imagined communities but also, and perhaps more important, they are formations constructed on the basis of difference and inequality”.²⁵ Concluding, looking at the language of this debate will help analyse if the governmental narrative employs Othering and focusses on certain events in order to form a Polish collective identity in the public sphere.

Memory politics is defined as the “struggle of different groups to give public articulation to, and hence gain recognition for, certain memories and the narratives”.²⁶ Thus, the public sphere can be a platform for “the playing out of domestic memory and identity struggles”.²⁷ American literature and cultures studies scholar Michael Rothberg, also proposes collective memory to be multidirectional, and thus “as a subject to ongoing negotiation, cross-referencing, and borrowing”.²⁸ In this way, Holocaust memory can be re-negotiated in the public sphere. German political scientist Eva-Clarita Onken developed a framework to analyse memory politics in three spheres: the domestic, bilateral, and EU-sphere.²⁹ However, due to the language barrier the focus in this paper will be on the two latter spheres. The assumption, that public spheres are Europeanizing, has been criticized. This paper will not be able to answer this question, but approaches the sphere structurally to assess if this debate rather points to a vertical Europeanization of public spheres, “where communicative links develop between the national and EU level”, or to a horizontal Europeanization, which “focuses on the communicative linkages between European countries”.³⁰

As mentioned above, the Holocaust has been said to be essential to a European memory, being seen as a definitional myth for the European project and its identity.³¹ At the same time, Polish sociologist Kucia points to the fact that while the vision of the Holocaust in Western Europe is rather homogenous, it is quite diverse and a national matter in Eastern Europe.³² It is thus important to analyse if Holocaust remembrance is framed as a national or transnational matter. Holocaust remembrance is, alongside its communist past and discourses about Germans and Germany one of the three strands of Polish collective memory.³³ Killingsworth et al. sum up the role which Poles perceive for themselves, namely as “the martyr and saviour, a country that had suffered for the greater good of Europe”.³⁴ They also underline that in terms of the Second World War, it was “the Poles who suffered the most” and that this “weighs heaviest on and delineates Polish national memory”.³⁵ Furthermore, the authors speak of a history in Poland in which

²² Wertsch and Roediger III, “Collective Memory,” 321.

²³ *Ibid.*, 321.

²⁴ Carlos Sandoval-García, *Threatening Others: Nicaraguans and the Formation of National Identities in Costa Rica* (Athens: Ohio University Press, 2014), 1.

²⁵ *Ibid.*, 1.

²⁶ Timothy G. Ashplant, Graham Dawson and Michael Roper, eds., *The Politics of War Memory and Commemoration* (Routledge, 2013), 16.

²⁷ Annabelle Littoz-Monnet, “Explaining Policy Conflict across Institutional Venues: European Union-Level Struggles over the Memory of the Holocaust,” *JCMS: Journal of Common Market Studies* 51, no. 3 (2013), 491.

²⁸ Michael Rothberg, *Multidirectional Memory: Remembering the Holocaust in the Age of Decolonization* (Stanford: Stanford University Press, 2009), 3.

²⁹ Eva-Clarita Onken, “The Baltic States and Moscow’s 9 May Commemoration: Analysing Memory Politics in Europe,” *Europe-Asia Studies* 59, no. 1 (2007), 23-46.

³⁰ Markus Ketola, “The Everyday Politics of the European Public Sphere: Moving beyond EU Policy Perspectives,” *Journal of Civil Society* 8, no. 3 (2012), 217.

³¹ Littoz-Monnet, “Explaining Policy Conflict,” 489.

³² Marek Kucia, “The Europeanization of Holocaust Memory and Eastern Europe,” *East European Politics and Societies* 30, no. 1 (2016), 114.

³³ Eric Langenbacher, “Twenty-First Century Memory Regimes in Germany and Poland. An Analysis of Elite Discourses and Public Opinion,” *German Politics & Society* 26, no. 4 (2008), 60.

³⁴ Matt Killingsworth, Malgorzata Klatt and Stefan Auer, “Where Does Poland Fit in Europe? How Political Memory Influences Polish MEPs’ Perceptions of Poland’s Place in Europe,” *Perspectives on European Politics and Society* 11, no. 4 (2010), 360.

³⁵ *Ibid.*, 363.

“historical debate was controlled, and largely appropriated for its own purposes, by the party-state”.³⁶ Interestingly, they specifically mention the “urgent need” felt by Polish MEPs to “rectify historical truths and to re-educate Western society”.³⁷ It will be analysed if this is also the case for Polish politicians in this debate. In general, due to the Holocaust as definitional myth of the EU it is important to consider how Holocaust memory is constructed in the public sphere. Indeed, an inclusive European Holocaust memory should have great potential of bringing Europe closer together and could be seen as a result of a Europeanised public sphere.

3. Methodology

Keeping Onken’s framework in mind, discourses on two spheres were considered. Since responses on the EU-level have been scarce (which might be related to the ongoing legal proceedings against Poland), only two short comments about the topic made by EU-politicians Donald Tusk and Frans Timmermans were included. Donald Tusk is particularly interesting in this context as he is Polish but momentarily the President of the European Council. The investigation of the EU-sphere was thus limited, while the bilateral sphere was analysed more in depth, as I chose to include statements made by Polish politicians and officials (such as the Polish Foreign Minister and Ambassadors) and by two other European politicians (Emmanuel Macron and Sigmar Gabriel). Whilst these have been included partially on the basis that they were some of the few statements available on the topic, the German perspective is essentially functioning as contrast to the Polish viewpoint. Furthermore, academic responses were included, since academics have been crucial in the debates relating to Polish Holocaust memory. They have been quite active in this debate, unarguably also because they themselves were targeted by the law’s clause on Holocaust research.³⁸ The academics included were Jan Tomasz Gross, Jan Grabowski, Sławomir Sierakowski, Joan Sangster, Robert Frost and Andrzej Nowak. Thus, the statements used as source material have been selected through purposive, non-probability sampling. Press releases and letters published in newspapers, alongside in one instance an interview, and a video which was transcribed by the author of this paper are included in the dataset. In total, it consisted of sixteen texts, by six Polish politicians, one German politician, one French politician, two EU-politicians, and six scholars.

The distinction between national politicians and EU-politicians was drawn by considering their primary political function (Gabriel as German Foreign Minister, Macron as French President, Tusk as President of the European Council, Timmermans as the Vice-President of the European Council) and thus if they primarily serve a national or transnational function. While this does not mean that they do not inhibit other functions or that they are not involved in both national and transnational politics in some way, it was expected that EU-politicians frame the issue at-hand more as a European issue considering their function, while national politicians might speak more from a national standpoint and focus more on bilateral relations.

After conducting summative content analysis, a quantity of coding categories was adopted, showing the multidimensional approach needed for this paper. Firstly, nouns, verbs, adjectives and anything else referring to Poles or Poland and Germans or Germany were counted. Usually focussing on subject-verb-object structures, this approach is a derivation of classical semantical analysis used in linguistics and allowed me to analyse the Othering of Germans and enforcement of a victimhood narrative in more detail. Bridging the connection between victimhood narratives and collective identity, identification markers such as pronouns were also detected. To locate the focus of the discourse and to what extent death camps have been part of the discourse, I also looked at any mentioning of death camps and the wording of the law. Mentioning of the EU, Europe, and any countries were likewise marked. I further analysed how the different groups framed the Polish-Jewish relationship and how the law was justified or contested. The way in which actors talked about the historical truth or interpreting history was also evaluated. Finally, as the law dealt with the responsibility for crimes, any mentioning of responsibility, perceived duty, and ascribing responsibility to the state vs. individuals were marked.

By examining the focus and framing of arguments of the text, but also counting words, qualitative analysis was combined with quantitative analysis. Thus, I follow the German political scientist

³⁶ Ibid., 363.

³⁷ Ibid., 363.

³⁸ Media discourse has not been included since this would be beyond the scope of this paper; however, it could be an interesting topic for further research to analyse the emotionality of language in media discourse of the Holocaust law in different countries, and what this says about the Holocaust remembrance in those countries.

Langenbacher, who also combines these two approaches in his research on memory regimes in Germany.³⁹ Although qualitative analysis constitutes the bigger part of this paper, the quantitative part was found to be useful to determine the groups' foci. In fact, this approach allowed me to analyse the debate in different ways, even though my study is limited through the language barrier and scarceness of debate, which itself seems interesting when considering the debate as part of the European public sphere.

4. Analysis

4.1. Shifting the Focus to Create a Favourable Narrative

While all groups perceived themselves as having a responsibility regarding Holocaust remembrance, Polish politicians tended to focus on the actions of the innocent state as opposed to individual collaborators. They spoke about their "duty to remind the world".⁴⁰ Academics rather saw an obligation to interfere in this debate. EU-politicians mentioned only that its task is to prevent events as the Holocaust in the future. The extent to which the responsibility lies with the Polish state or individuals has been discussed by all groups. However, it was framed in different ways. Polish politicians focussed mainly on the Polish state, which "defended the life, security, and freedom of all Polish citizens" and tried to shift any mentioning of complicity of Poles towards the innocence of the state.⁴¹ Generally, it was agreed, that the Polish state was not responsible itself. Gabriel, for example, stated that Germany is responsible alone, and "actions of individual collaborators do not alter that fact".⁴² Academics talked about "certain strata of the Polish society" having collaborated.⁴³ EU-politicians had the most balanced, but also distanced position, by stating that "all countries occupied by Nazi-Germany had heroes who fought the occupation but also, sadly, collaborators with the occupiers".⁴⁴ Thus, it becomes clear that while Polish politicians focussed on the innocence of the Polish state, painting a more black-and-white picture of where the responsibility lies within the nation, academics focussed on different segments of the society.

4.2. Regulating the Interpretation of History Legally

Speaking for the importance of the term is the fact that death camps have been mentioned in the discourse by all but the EU-politicians. Especially academics discussed the term extensively, with the term "Polish death camp" being used six times, and "Polish concentration camps" three times. Only Polish politicians employed terms making explicit the camps were run by Germans, such as "German death camps".⁴⁵ While it was usually focussed on what the "Germans" did, Polish politicians also sometimes specified that it was "Nazi-Germany", for example by using the term "Nazi-German concentration camps".⁴⁶ This is interesting as it can be expected that the linguistic nature of collective memory would suggest references to *Germans*, as Polish people experiencing the occupation were perceiving them as the *Germans*. At the same time, one can distance oneself from the past by specifying that it was the Third Reich, Hitler's Germany, or Nazi-Germany. These expressions were scarcely used in the debate.⁴⁷ Death camps thus indeed were part of the discourse, albeit all sides agreed that the term "Polish death camps" can be ambiguous and is not factually correct. The term was also used to justify the law, as there is a need to protect individual Poles, more specifically former

³⁹ Eric Langenbacher, "Changing Memory Regimes in Contemporary Germany?," *German Politics and Society* 21, no. 2 (2003), 46-68.

⁴⁰ Embassy of the Republic of Poland in London, "Statement by Prime Minister Mateusz Morawiecki," 1 February 2018, http://www.london.mfa.gov.pl/en/c/MOBILE/news/statement_by_prime_minister_mateusz_morawiecki.

⁴¹ Ministry of Foreign Affairs Republic of Poland, "Information of the Minister of Foreign Affairs on Polish Foreign Policy Tasks in 2018," https://www.ms.gov.pl/en/ministry/minister/speeches/information_of_the_minister_of_foreign_affairs_on_polish_foreign_policy_tasks_in_2018.

⁴² Federal Foreign Office, "Foreign Minister Gabriel on the Holocaust Legislation in Poland," 4 February 2018, <https://www.auswaertiges-amt.de/en/Newsroom/bm-holocaust-legislation-poland/1432942>.

⁴³ Ibid.

⁴⁴ Mose Apelblat, "Polish 'Holocaust Law' Meets Soft Response by EU," *Brussels Times*, 6 February 2018, <http://www.brusselstimes.com/eu-affairs/10261/polish-holocaust-law-meets-soft-response-by-eu>.

⁴⁵ Arkady Rzegocki, "Polish Holocaust Law Is about the Truth," *The Guardian*, 9 February 2018, <https://www.theguardian.com/world/2018/feb/09/polish-holocaust-law-is-about-the-truth>.

⁴⁶ Embassy of the Republic of Poland in London, "Statement by Prime Minister Mateusz Morawiecki."

⁴⁷ As a matter of fact, in campaigns about the death camps, the colours of the contemporary German flag were often used. The Third Reich having another flag, it seems that these campaigns might have been more about challenging contemporary political issues rather than focusing on the historical truth.

concentration camp prisoners, who must fight against the term. However, the law was justified also by framing it as part of “the existing regulation on Holocaust denial”.⁴⁸ The need for this legislation was also emphasized by explaining that “educational and governmental efforts” were not sufficient.⁴⁹ This stands in contrast to the statements made by academics, who referred to education and research being the only correct and “productive way to confront this ignorance”.⁵⁰ For academics, the two main arguments against the law were that it could “stifle academic research” and is contrary to democratic principles.⁵¹

Another reason mentioned was preserving the historical truth. The interpretation of history and establishing the truth of history have been integral parts of the discourses of Polish politicians and academics. Among Polish politicians, one term that has been used numerous times is “the distortion of truth”, which needs to be prevented. The falsification of history was also referred to, with Holocaust denial as example. Although some terms were also used by the academics, it can be noted the Polish politicians tended to talk more about “the” truth, suggesting there is one singular truth which needs to be spread. Academics focussed more on how history is interpreted, mentioning the “conception” of history.⁵² They also used the term “official histories” to demarcate the influence of the government on the official narrative and the existence of multiple historical narratives.⁵³ Concluding, the law was framed as being complementary to existing Holocaust denial laws in Europe by Polish politicians. A main argument was also the preservation of historical truth, which cannot be achieved only through education and is endangered through the usage of terms such as “Polish death camps”. Mainly academics engaged in the debate by criticizing these two arguments, while the other groups steered clear of commenting on the arguments.

4.3. Holocaust Remembrance: A National Matter?

When looking at how often other countries or Europe was mentioned, it becomes clearer whether the debate and Holocaust remembrance was framed as a national or transnational issue. Other countries were mentioned by almost all groups, but to a greater extent by academics. Here it might also be useful to look at the temporal deixis. Polish politicians focused more on the past, for example on Poland alerting the allies and Western countries during the Holocaust.⁵⁴ They also compared the loss of population of Poland and concluded that it had the highest loss “of any country”.⁵⁵ Here they cleverly centre on the number of Polish victims, a category in which they include Polish Jews. This diverges from Holocaust remembrance in countries in Western Europe, where, usually, the biggest victim group is denoted as being the Jews, and not connected to their nationality or even put in the same category as non-Jewish victims. One Polish politician stated that anti-Semitism is a notion the whole world has to fight, and that the Holocaust should be a lesson for the world.⁵⁶ Academics, in contrast, focused mostly on the present, and on countries such as the US, Germany, and the Ukraine. They specifically mentioned a possible impact on Polish bilateral relations and Poland’s reputation abroad.⁵⁷ Polish politicians surprisingly also deviated from the national focus and mentioned various times that all of Europe was occupied by Germany.⁵⁸ Academics talked about the “destruction of the European Jewry” and showed links to the EU as the European parliament is mentioned.⁵⁹ Speaking of European Jewry clearly de-nationalizes the Jewish victim group and stands in contrast to the Polish politicians’ rhetoric. They also use the EU as an argument against the law, as it is a “dramatic departure from the democratic principles and standards which govern the laws of other members

⁴⁸ Rzegocki, “Polish Holocaust Law Is about the Truth.”

⁴⁹ Ibid.

⁵⁰ Robert Frost and Andrzej Nowak, “Letter to Prime Minister Mateusz Morawiecki from Two Professors of Polish History,” *Notes from Poland*, 24 February 2018, <https://notesfrompoland.com/2018/02/24/letter-to-prime-minister-mateusz-morawiecki-from-two-professors-of-polish-history/#more-3676>.

⁵¹ Jan Grabowski, “The Danger in Poland’s Frontal Attack on its Holocaust History,” *Macleans*, 20 September 2016, <http://www.macleans.ca/news/world/as-poland-re-writes-its-holocaust-history-historians-face-prison/>.

⁵² Sierakowski, “Jarosław Kaczyński’s Jewish Question.”

⁵³ Canadian Historical Association, “Open Letter to the Polish Prime Minister,” 6 December 2016, <http://activehistory.ca/2016/12/canadian-historical-association-open-letter-to-the-polish-prime-minister/>.

⁵⁴ Ministry of Foreign Affairs Republic of Poland, “Information of the Minister of Foreign Affairs.”

⁵⁵ Embassy of the Republic of Poland in London, “Statement by Prime Minister Mateusz Morawiecki.”

⁵⁶ Ibid.

⁵⁷ Frost and Nowak, “Letter to Prime Minister.”

⁵⁸ Embassy of the Republic of Poland in Washington D.C., “Ambassador Piotr Wilczek in The National Interest,” 16 February 2018, http://washington.mfa.gov.pl/en/news/ambassador_piotr_wilczek_in_the_national_interest?searchTag=Piotr+Wilczek&search=true&searchInTags=true.

⁵⁹ Sierakowski, “Jarosław Kaczyński’s Jewish Question.”

of the European Union”.⁶⁰ Similarly, Macron mentioned the “European Union’s fundamental principles”.⁶¹ Gabriel likewise talked about “European Jews”, stressing that the Holocaust was a European event.⁶² They also mentioned reactions from European leaders.⁶³ Timmermans stressed that the Holocaust is the “reality in which the European Union was created”.⁶⁴

Overall, the law was connected to other countries. The Holocaust was emphasized to be a transnational event and the connection to the EU was explicitly mentioned. At the same time, the issue was often framed to be an international issue, not a European issue, by stressing Polish relations with other countries. It was also emphasized that Poland suffered greatly in comparison to other countries, enforcing a victimhood narrative, however it is surprising that Polish politicians simultaneously framed the Holocaust and the connected suffering as European event, thus departing from the focus on the national victimhood narrative.

4.4. Choosing Words to Emphasize What Was Done to “Us” by “Them”

Concerning the nouns used for Poland, Polish politicians often distinguished between “Polish citizens” or “individuals” and the “Polish state and nation”.⁶⁵ They also mentioned “Polish family” and “brothers, sisters, wives, husbands, sons, daughters”.⁶⁶ Academics mentioned the current government more often, and even focused on its different organs (“Polish Sejm”, “ruling Law and Justice part”, “Polish foreign minister”).⁶⁷ That Poland was the centre of the debate becomes obvious when looking at the quantity of verbs used for Poles. It seems that Polish politicians used verbs directed at Poles more often (for example “blame Poland” and “force us”).⁶⁸ Academics and national politicians used modal verbs to a greater extent: Academics used “could have done”, “want to gag”, “needs to regain”, whilst national politicians used “will change”, “should be eradicated”, “can rest assured”, pointing to their evaluating and consultative role.⁶⁹ In general, Polish politicians used more positive verbs such as “alerted” and “volunteered”.⁷⁰ Academics employed more negative verbs such as “accuse”, “criminalizing”, “murdered”, “killed”, and “set on fire”, thus referring to crimes committed by Poles.⁷¹ It becomes clear that Polish politicians again focused more on positive actions of Poles and negative, exterior influences on Poland, again painting a picture of Poland as a victim. Academics in contrast seemed more critical of Poland and the action of Poles. Nouns used for Germans often centred on the crimes committed during the Holocaust. Gabriel talks about “crimes which Germans and Germany committed”, which seems like quite the sober expression compared to the expressions used by Polish politicians.⁷² His explicit mentioning of the state and individuals’ responsibility stands in contrast to the Polish politicians’ rhetoric of focussing on the innocent state. Polish politicians partially used the same terms, for example “Nazi terror”, and “German crimes”.⁷³ The latter term seems to have been used interchangeably with the term “Nazi-German crimes”.⁷⁴ Verbs used for Germans by all groups could be divided into neutral and negative words. Neutral verbs included “established” and “carry out”.⁷⁵ Negative verbs such as “exterminated”, “eliminate”, “murdered” were used mostly by Polish politicians.⁷⁶ For example, the following sentence exemplifies how a Polish Ambassador underlines what was done by Germans to Poles: “The Germans murdered indiscriminately, all in an effort to eliminate Polish national identity”.⁷⁷ It also illustrates how Polish identity is explicitly linked to the Holocaust. They generally employed more negative verbs to refer to the actions of Germans. However, they also used most verbs for

⁶⁰ Grabowski, “The Danger in Poland’s Frontal Attack on its Holocaust History.”

⁶¹ Embassy of France in London, “Minister Calls Poland’s Holocaust Legislation ‘Inappropriate’,” 7 February 2018, <https://uk.ambafrance.org/Minister-calls-Poland-s-Holocaust-legislation-inappropriate>.

⁶² Federal Foreign Office, “Foreign Minister Gabriel on the Holocaust Legislation in Poland.”

⁶³ Embassy of France in London, “Minister Calls Poland’s Holocaust Legislation ‘Inappropriate’.”

⁶⁴ Apelblat, “Polish ‘Holocaust Law’ Meets Soft Response by EU.”

⁶⁵ Embassy of the Republic of Poland in Washington D.C., “Ambassador Piotr Wilczek.”

⁶⁶ Embassy of the Republic of Poland in London, “Statement by Prime Minister Mateusz Morawiecki.”

⁶⁷ Sierakowski, “Jarosław Kaczyński’s Jewish Question.”

⁶⁸ Embassy of the Republic of Poland in Washington D.C., “Ambassador Piotr Wilczek.”

⁶⁹ Federal Foreign Office, “Foreign Minister Gabriel on the Holocaust Legislation in Poland.”

⁷⁰ Ministry of Foreign Affairs Republic of Poland, “Information of the Minister of Foreign Affairs.”

⁷¹ Grabowski, “The Danger in Poland’s Frontal Attack on its Holocaust History.”

⁷² Federal Foreign Office, “Foreign Minister Gabriel on the Holocaust Legislation in Poland.”

⁷³ Embassy of the Republic of Poland in London, “Statement by Prime Minister Mateusz Morawiecki.”

⁷⁴ Embassy of the Republic of Poland in Washington D.C., “Ambassador Piotr Wilczek.”

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Ibid.

Germans quantitatively. Generally, they focused most on Germans and Germany, for example by employing many verbs with past reference for Germans, suggesting that they were othering Germans and Germany in their narrative as part of memory politics. Especially academics focused more on Poland by using more balanced verbs to describe their actions, trying to establish a more balanced narrative, but also expressing much more criticism towards Polish actors compared to the other groups. They also used more present tense, suggesting a focus on current actions, in contrast to Polish politicians.

4.5. Vague Language – an Argument For or Against the Law?

Finally, it is worth mentioning that language was even discussed in the discourse. Polish politicians expressed concern that some have “misinterpreted the wording of the legislation”.⁷⁸ Academics, on the other hand, criticized the “ambiguous and imprecise wording” of the law.⁷⁹ One Polish politician even mentioned language to be the reason why the law is necessary, as with “vague, nondescript language, the lines between perpetrators, bystanders and victim are being blurred”.⁸⁰ This is one example of how the same issues were constructed as contradictory arguments by Polish politicians and academics. More examples will be mentioned in the following part of this paper.

5. Discussion

5.1. The Term “Polish Death Camps”: Used to Justify the Law, Revealing the Politics Behind It

Firstly, it is important to discuss the role the term “Polish death camps” played in the debate. There seemed to be a consensus that the term can be misleading, and academics even stressed that prohibiting this term is understandable. Here I would like to highlight the assumption that the term was used out of “ignorance rather than deliberate ill-will”.⁸¹ This ignorance might partly also be due to a linguistic issue. Semantically, “Polish death camps” can carry two meanings in English: death camps run by Poles, or death camps located in Poland. In Polish, these meanings might vary, rather being interpreted as the first. This hypothesis requires further testing. If positive, this would be an example of how complex memory politics in Europe may be due to the multilingual setting. However, because the term can denote both geographical location and who the camp was run by, it is also difficult for the law to be enforced. Anyone could argue that when using the term, they did not imply who was running the camps. This, and the fact that death camps were not specifically mentioned in the law, suggests that it was not necessarily made to be enforced, but rather as a political statement. As Jan Gross puts it, “if the law’s backers wanted to penalize [the] use of the phrase, they would have included it in the legislation”.⁸²

5.2. A Clash Between the Polish Government and Academics?

It was interesting to see that both academics and Polish politicians used Holocaust denial laws for their argumentation. Polish politicians argued for the law to prevent Holocaust denial, while academics classified the law as contributing to Holocaust denial. Similarly, both groups used vague language as an argument. While Polish politicians stated that there is a need for the law because vague language makes it easy to confuse perpetrators with victims, EU-politicians criticized the vague language the law was written in. That Polish politicians and academics used Holocaust denial laws and vague language as arguments in opposite ways suggests that academics were more engaged in the debate than the other groups, and actually referred to arguments of the Polish government. This then means that specifically historians might have the biggest potential in forming a European memory in the public sphere.⁸³ In this debate, it was mostly academics fighting for these balanced narratives by bringing forward arguments against the new legislation. Many of the academics involved in this debate, but also other debates dealing with Polish Holocaust memory, have Polish roots but conduct research abroad. For example, Jan Gross emigrated to the United States in 1969,

⁷⁸ Embassy of the Republic of Poland in Washington D.C., “Ambassador Piotr Wilczek.”

⁷⁹ Canadian Historical Association, “Open Letter to the Polish Prime Minister.”

⁸⁰ Embassy of the Republic of Poland in Washington D.C., “Ambassador Piotr Wilczek.”

⁸¹ Frost and Nowak, “Letter to Prime Minister.”

⁸² Sławomir Sierakowski, “Criminalising the Truth,” *Project Syndicate*, 9 February 2018, <https://www.project-syndicate.org/onpoint/criminalizing-the-truth-by-slawomir-sierakowski-2018-02?barrier=accesspaylog>.

⁸³ Janny de Jong, “Reframing the Past? Myths, Amnesia and the Role of Historians in Contemporary Europe,” Conference Paper, Publication Forthcoming.

started his academic career there, and still teaches there.⁸⁴ Similarly, Jan Grabowski emigrated to Canada where he obtained his PhD in 1994 and is now conducting research.⁸⁵ These two examples perfectly show that due to the emigration of scholars during communism important research about Poland is being conducted outside of Poland. This means that it is not influenced by the government's restrictions, but also that these scholars bring a non-European factor to the equation, questioning the assumption that European memory is being formed by solely European actors. Paradoxically, the 'Holocaust law' or any other legislation restricting research inside of Poland will thus only contribute to the formation of a debate, and thus maybe also memory, outside of Poland, and Europe. However, the question arises to what extent a Polish debate is being exported rather than being opened to international actors. For example, some data used for this study shows that partially, the former seems to be the case. Jan Grabowski, researching at the University of Ottawa, responded to the law, and as a reaction the Embassy of Poland in Ottawa issued a statement. Maybe what has to be analysed then is not only who shapes European memory, but also where it is shaped.

5.3. Enforcing a National Narrative of Victimhood versus Framing the Holocaust as European Event

The focus of Polish politicians on the innocence of the Polish state is proof of the attempt of establishing a victimhood narrative. That academics drew more distinctions, mentioning different actors of the state, shows they critically analyse the politics of Poland, and the different Polish actors involved. Polish politicians focused most on the state, stressing its innocence during the Holocaust. In addition, Poles were humanized by mentioning the families and different family members, but also victimized by referring to their suffering. The victimhood narrative was further enforced by Polish politicians by using verbs directed at Poles. In contrast, it is made sure to use many action verbs for Germans, to stress their role as perpetrators. While this is historically correct, it seems the extent to which Polish politicians focused on German actions is part of Othering. This is one strand of Polish collective memory, suggesting that this debate was also about shaping it, which is interesting considering the discourse analysed was in the bilateral and EU-sphere. Thus, it seems that even if the law was directed at the domestic audience primarily, it was important to Polish actors to enforce the Polish identity and role and have this recognized by others from the outside.

In addition, the setting up of English campaign, websites, and videos also points to the wish to target the international audience. Whether this is due to a wish to have their suffering recognized is uncertain. Academics did not employ that many negative verbs for Germans, because the focus was on the actions of Poles as well and were more balanced by using negative verbs for both Poles and Germans. Particularly the verbs used for Poles show a contrast to the ones used by academics, because they include much more negative verbs, while Polish politicians used more positive ones. This is because Polish politicians focused on the positive actions of Poles in the past, while academics focused more on the negative ones. Ironically, by focusing on the past, the government wants to strengthen contemporary Polish identity, as "the law concerns the present – namely, PiS's need for a legitimating myth – much more than the past".⁸⁶

The same goes for the Polish actors mentioned. It is no coincidence that the Polish narrative mentioned Polish heroes. By focusing on persons such as Jan Karski, Witold Pilecki, and the Righteous among the Nations, a narrative is created which suggests the entire Polish society actively tried to fight the Nazi regime.⁸⁷ Even the wording of the law creates this one-sided narrative by speaking of the innocence of the whole 'Polish nation'.⁸⁸ Academics criticized this for being part of constructing a narrative which benefits Poland but does not paint the whole picture. Grabowski, for example, states in an interview that "there is no such notion that 'all Polish people' are responsible", to explain that equally as with the heroism, also the responsibility or collaboration was not a phenomenon inherit to the entire society.⁸⁹

⁸⁴ "Jan Tomasz Gross," *Princeton University*, <https://history.princeton.edu/people/jan-tomasz-gross>.

⁸⁵ "Jan Grabowski," *uOttawa*, <https://uniweb.uottawa.ca/members/546>.

⁸⁶ Sierakowski, "Criminalising the Truth."

⁸⁷ The Righteous among the Nations are people who risked their lives to save Jews during the Holocaust and are chosen and awarded this title (as well as other benefits such as honorary citizenship from Israel) by Yad Vashem. While statistics about the nationalities of the awarded persons exist, it must be born in mind that due to the difference in availability of documents proofing someone is worthy of this award in different countries, future research might be able to change the statistics considerably.

⁸⁸ The term 'Polish nation' is also inappropriate in judicial context as it is extremely difficult to define who belongs to a nation.

⁸⁹ "We Need to Understand Why People Were So Afraid to Help the Jews," *TVN24*, 13 April 2018, <https://www.tvn24.pl/tvn24-news-in-english,157,m/professor-jan-grabowski-we-have-to-know-why-these-people-were-afraid-to-help-to-jews,829250.html>.

The question arises, whether different Holocaust narratives make a common European memory impossible. On one hand, this debate shows that the Polish Holocaust narrative, as promoted by PiS and the IPN, is indeed focused very much on the national suffering, and is thus very particular to the Polish nation, as well as the focus on Germans/ Germany as the Other, also suggesting a possible impact of their memory politics on bilateral relations. On the other hand, there was a focus on the Holocaust as European event: Polish politicians also talked about the occupation of Europe. This might be to make the Polish experience more relatable to other countries' experiences but could also be evidence of a need for Poland to have its history recognized by the rest of Europe, stressing that the national history is part of a nuanced and balanced European history.

Are different Holocaust narratives then impeding a pan-European Holocaust memory? Dutch historian De Jong states that "overcoming the tensions between the various national memories has proven to be difficult".⁹⁰ At the same time, the German response suggests that narratives might not be completely contradictory, but rather have different foci concerning the responsibility of the country. The key is then to discuss narratives, which makes it problematic that European and EU-politicians have not been engaged very deeply in the debate. Of course it needs to be mentioned that the debate around the Holocaust law is only part of the bigger picture. After "two years of Polish government policies that have damaged the rule of law", the European Commission has decided to invoke Article 7 of the Treaty of the European Union against Poland.⁹¹ Thus, the response to the memory politics have been surely part of a bigger strategy of the EU's and member states' politicians.

5.4. Part of a Bigger Issue? Memory Politics in Central Eastern Europe and the Focus on the Past

Another point where Polish politicians and academics displayed opposite viewpoints is when it comes to the Polish-Jewish relationship. Apart from categorizing Jewish victims in the same group as Polish victims, Polish politicians painted a simplified, positive picture of this relationship by talking about "Polish Jewish brothers". Academics, in contrast, focused on the negative side of this relationship. That Polish politicians only focused on the positive side of the relationship and even frame anti-Semitism as being a global issue, not specific to Poland, shows the one-sidedness of this narrative. Here one can draw many parallels to the memory politics of Hungary's Fidesz, such as trying to clean up the past by "covering [...] [the] active collaboration with Nazi officials".⁹² Additionally, their Veritas Institute seems to be similar to the National Institute of Remembrance, as it was also founded in order to rebalance history. In fact, Ukraine likewise opened the Institute of National Memory, following Poland. Finally, they also talked about the need "to establish historical truth".⁹³ Polish politicians in the debate tried to establish one historical narrative, often mentioning "the historical truth", and how people falsify history, or create a "lie" about history, denying German crimes. Academics, however, focused on how facts are not to be interpreted, while history is complex and has different narratives. They especially criticized the narrative established by the Polish government for being the "official, feel-good version of the country's own national past".⁹⁴ Similarly, Russia has introduced "attempts to establish the 'regime of truth' using legislative means" and created "a bureaucratic institution to fight the 'falsifications of history'".⁹⁵ Historian Torbakov even speaks about a wider "trend toward politicizing and instrumentalizing of history", with two main objectives: "the construction of a maximally cohesive national identity and rallying the society around the powers that be" and "eschewing the problem of guilt".⁹⁶ While the comparison between Poland and Russia might be an uneasy and potentially problematic approach, Grabowski goes so far to compare Poland's introduction of memory legislation to Turkey's legislation dealing with their responsibility in the Armenian genocide.⁹⁷

⁹⁰ De Jong, "Reframing the Past?" 11.

⁹¹ Marek Tatala, "The EU Invokes Article 7 Against Poland, But Only Poles Can Defend Their Liberty," *Acton Institute*, 5 January 2018, <https://acton.org/publications/transatlantic/2018/01/05/eu-invokes-article-7-against-poland-only-poles-can-defend>.

⁹² Simone Benazzo, "Not All the Past Needs to Be Used: Features of Fidesz's Politics of Memory," *Journal of Nationalism, Memory & Language Politics* 11, no. 2 (2017), 204.

⁹³ *Ibid.*, 208.

⁹⁴ Grabowski, "The Danger in Poland's Frontal Attack on its Holocaust History."

⁹⁵ Igor Torbakov, "History, Memory and National Identity: Understanding the Politics of History and Memory Wars in Post-Soviet Lands," *Demokratizatsiya* 19, no. 3 (2011), 210.

⁹⁶ *Ibid.*

⁹⁷ Grabowski, "The Danger in Poland's Frontal Attack on its Holocaust History."

It thus seems that a study dealing with memory politics beyond CEE countries would be extremely interesting for further research. For now, this law as part of the Polish IPN can be said to fit into a larger trend of memory politics in CEE countries, constructing a narrative with the focus on oppression in the past.⁹⁸ While many facts are drawn upon to emphasize the Polish narrative of victimhood, it is remarkable that the Polish Foreign Minister labels Poland as “the first victim of the Third Reich during the war”.⁹⁹ This is a gross clash with the consensus in Western Europe that *de facto* Austria was the first victim. After 1945 it “was the universally-acknowledged claim that responsibility for the war, its sufferings and its crimes, lay with the Germans”.¹⁰⁰ Thus, “beginning with the Moscow Declaration of 1943, Austria was established as the ‘first victim’ of Nazi aggression”.¹⁰¹ While Austria has since worked through its past by acknowledging some responsibility, the Polish government now trying to claim this title seems interesting at least. Also taking the diverging categorization of victims into account, there seem to be various aspects that differ in the Holocaust narratives. While a European memory can incorporate different narratives, it seems there should be a consensus negotiated on important aspects as these. This points to the fact that at least the Polish narrative does not seem to be integrated.

Apart from Poland, the common trend of memory politics focussing on oppression in the past is something that is somehow particular for post-communist countries.¹⁰² Tony Judt states that while the past is “bubbling its half-digested way back into the throats of politicians and journalists” in the West, this “has been as nothing compared to the dramatic implications of the recovery of memory in Central and Eastern Europe”.¹⁰³ In fact, Torbakov argues that “it is precisely Eastern Europe’s devastating war experience that needs to be “recovered” and reintegrated into a European historical narrative” after being marginalized from a pan-European narrative.¹⁰⁴ He further speaks of the failure of integrating national histories from the East, even after the EU-enlargement.¹⁰⁵ This seems to be confirmed by the fact that Holocaust memory is contested by PiS in the public sphere, but the discussion seems to only come to a consensus when it comes to the fact that the Polish state is innocent. Other than that, the lack of engagement in the debate of EU-politicians and other European politicians suggests that there is little effort to incorporate Eastern narratives. It is thus not surprising that at a landmark event in 2009 about European histories, the “participants agreed that a comprehensive 20th century European history has yet to be crafted, and that the first step toward this goal should be the integration of Eastern Europe’s tragic totalitarian experience into the overall European narrative”.¹⁰⁶ While the discourse around the law tried to enforce a Polish collective identity by telling a national narrative of the Holocaust, the law also fits a larger trend in CEE and thus suggests that Eastern narratives are not yet incorporated into a pan-European memory. However, considering the scarce response by European and EU-politicians, it seems this debate does not speak for either a visible horizontal or vertical Europeanisation of the public sphere.

6. Conclusion

The law was proven to be part of the government’s memory politics, since firstly, the term “Polish death camps” is not mentioned in the law, and secondly, the vague wording of the law was not only used as an argument in the debate, but also proves that the law, being thus extremely difficult to enforce, is a political statement. A focus on a victimhood narrative was detected, also including Othering Germans and Germany, in order to strengthen a collective Polish identity. Although part of PiS’s memory politics, the law also hints at the lack of inclusion of Eastern narratives in a European memory. As the Polish government’s narrative deviates from the Western European one in some crucial aspects, a debate in the public sphere seems essential to create a more inclusive European memory. However, the debate seems to have been quite one-

⁹⁸ While scholars such as Torbakov refer to totalitarianism in CEE countries, I chose to adopt the more general term of oppression after receiving helpful feedback from Wiebke Keim. The term totalitarianism is part of a much broader debate than can be dealt with in this paper.

⁹⁹ Embassy of the Republic of Poland in London, “Statement by Prime Minister Mateusz Morawiecki.”

¹⁰⁰ István Deák, Jan T. Gross and Tony Judt, eds., *The Politics of Retribution in Europe: World War II and Its Aftermath* (Princeton: Princeton University Press, 2009), 296.

¹⁰¹ *Ibid.*, 296.

¹⁰² Torbakov, “History, Memory and National Identity: Understanding the Politics of History and Memory Wars in Post-Soviet Lands,” 213.

¹⁰³ Judt, “The Past is Another Country: Myth and Memory in Postwar Europe,” *Daedalus* 121, no. 4 (1992), 99.

¹⁰⁴ Torbakov, “History, Memory and National Identity,” 215.

¹⁰⁵ *Ibid.*, 215.

¹⁰⁶ *Ibid.*, 212.

sided in the bilateral sphere, suggesting that the public sphere here served as a space of contestation, but not discussion. Further, the scarce debate in the bilateral and EU-sphere shows that a vertical and horizontal Europeanization has barely been visible in this case. The fact that scholars outside of the EU were engaged in the debate raises the question of whether Holocaust memory is shaped exclusively by European actors and in a European public sphere. In this case, it seems that the debate was definitively exported outside of Europe, but most actors engaged had at least ties to Poland. I proposed that this law as part of a trend in Central Eastern Europe to focus on oppression in the past in memory politics shows that there is a need felt to have this past recognized and included in the European memory. The role of academics in this debate was crucial, and I suggested that historians can play a major role when it comes to shaping European Holocaust memory. Analysing the role of different groups in the debate, but also the language used by them, rather pointed to a lack of Europeanization of public spheres, but that there is much potential to form a European memory. This paper underscores the need to look beyond memory politics and for politicians to engage deeper in debates about memory.

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Dialogue or Separate Realities? An Analysis of *Debating Europe* in the European Public Sphere

Linda Piersma

1. Introduction

Since the 1990s, the European Union (EU) has increasingly responded to the so-called “democratic deficit” by introducing several strategies aimed at stimulating a sense of European belonging, dialogue and identification.¹ In the beginning, EU communication policies were mostly focused on a one-way process of providing information and “educating” the public.² However, since the mid-2000s, the EU has committed itself to stimulating “genuine dialogue” and a two-way process of mutual engagement.³ It increasingly started to use the internet for that purpose, to create a direct relationship between the EU and its citizens.⁴ Online forums were set up by the EU, like *Futurum* in 2001,⁵ and *Debate Europe* in 2006.⁶ However, these online forums often only succeeded in engaging an already interested minority,⁷ and *Debate Europe* and *Futurum* have been archived in 2010 and 2011 respectively.⁸

Through the *Europe for Citizens Programme* (EfCP), the EU now supports various external projects to encourage democratic participation and feelings of common history and belonging.⁹ The website *Debating Europe* (DE) received funding for several of its debates, in which it seeks to stimulate conversation between European citizens and politicians by directly connecting them on their online platform.¹⁰ Citizens can engage in a debate about European issues by sending in questions or posting comments. *Debating Europe* then takes these questions to certain “European leaders” like MEPs, policy-makers, academic experts or NGOs to respond to. *Debating Europe* is also active on Twitter and Facebook and regularly posts debates and other material on these platforms.¹¹ Since 2011, it claims to have hosted around 155.000 comments and reactions from over 2.500 European leaders.¹²

This paper will explore the online platform *Debating Europe* within the conceptual framework of the European public sphere; a central concept to discuss issues of European democracy and identity. Within academic debate on the term, much research has been devoted to understanding EU institutional structures

¹ Asimina Michailidou, “Vertical Europeanisation of Online Public Dialogue: EU Public Communication Policy and Online Implementation,” in *Mapping the European Public Sphere: Institutions, Media and Civil Society*, ed. Cristiano Bee and Emanuela Bozzini (Surrey: Ashgate, 2010), 65.

² *Ibid.*, 70.

³ Cristiano Bee, “Understanding the EU’s Institutional Communication: Principles and Structure of a Contested Policy,” in *Mapping the European Public Sphere: Institutions, Media and Civil Society*, ed. Cristiano Bee and Emanuela Bozzini (Surrey: Ashgate Publishing Limited, 2010), 85, 87-90.

⁴ Michailidou, “Vertical Europeanisation,” 81.

⁵ “Inauguration of the Web-Site ‘FUTURUM’,” European Commission, http://europa.eu/rapid/press-release_IP-01-328_en.htm; Scott Wright, “A Virtual European Public Sphere? The Futurum Discussion Forum,” *Journal of European Public Policy* 14, no. 8 (2007), 1167-1185.

⁶ Michailidou, “Vertical Europeanisation,” 82.

⁷ A. Hepp et al., ed. *The Communicative Construction of Europe: Cultures of Political Discourse, Public Sphere, and the Euro Crisis* (Basingstoke: Palgrave Macmillan, 2016), 111.

⁸ *Debate Europe*, see: “Democracy, Dialogue, Debate,” *Europa*, http://ec.europa.eu/archives/debateeurope/index_en.htm.

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⁹ “Europe for Citizens,” *EACEA*, European Commission, https://eacea.ec.europa.eu/europe-for-citizens_en.

¹⁰ “Welcome to *Debating Europe* – The Platform that Lets You Discuss Your Ideas YOUR Ideas with Europe’s Leaders,” *Debating Europe*, <http://www.debatingeurope.eu/about/>.

¹¹ “*Debating Europe*,” *Facebook*, <https://www.facebook.com/debatingeurope/>. See also: “*Debating Europe*,” *Twitter*, <https://twitter.com/debatingeurope?lang=nl>.

¹² “Welcome to *Debating Europe*.”

and its interaction with civil society.¹³ Others have rather focused upon transnational media discourses,¹⁴ or more bottom-up understandings of everyday life experiences of European citizens.¹⁵ However, there is a need to connect these top-down and bottom-up studies more explicitly. Various actors, from EU representative bodies, the media and civil society to the European citizenry, are involved in the construction of a European public sphere. Especially in today's digital society, these localities cannot be so easily separated and it is necessary to better understand discursive interaction online.

Therefore, this research paper will ask the following question: How is the interactive process shaped between European leaders and European citizens on the online platform *Debating Europe* in the European public sphere? By answering this question, this research aims to contribute to a deeper understanding of the European public sphere by critically examining the way various voices interact in online discourse. The online platform *Debating Europe* has been chosen because of its intended purpose of bringing together European leaders and their citizens. It therefore provides a unique case to analyse interactive dynamics between institutional structures, its representatives and citizen participation online. Particularly, this paper will argue that the socio-political and online context of the digital public sphere significantly shape the discursive process and hamper the possibilities for genuine dialogue and fruitful interaction in an inclusive European space.

The paper is structured as follows. The first section conceptualizes the European public sphere as a network of meaning-making in interaction and emphasizes the importance of studying online interactive processes to grasp the contours of this European space. The second section introduces the method of Angouri and Wodak, which is a combination of Critical Discourse Analysis (CDA) and interaction analysis, as a suitable approach to understand the relation between online context and discourse on *Debating Europe*. The third section makes up the analytical part of the paper, wherein the policy and online context, as well as the interactive process within one debate is analysed in-depth to understand the construction of questions, answers and comments. The conclusion answers the question whether *Debating Europe* stimulates dialogue or rather upholds a separation between Brussels and its citizens in the European public sphere.

2. Networks and Interactive Processes in the European Public Sphere

In his world-renowned book, *The Structural Transformation of the Public Sphere*, Jürgen Habermas explores citizens' political involvement in 18th and 19th century coffee houses to describe the rise and demise of the bourgeois public sphere.¹⁶ Ideally, the public sphere is conceived as a communicative space accessible to all in which citizens would come together to rationally and critically discuss issues of common concern. Such public deliberations would encourage political participation and pressure the state to adhere to democratic principles.¹⁷ This work of Habermas has inspired an abundance of research and many fruitful applications, but also criticism and reform – especially so after the book's translation into English in 1989.¹⁸

Within the European context, the concept stimulated research on the potential nature of a European public sphere. The resultant literature has been difficult to pin down. The problem seems to primarily lie with the inherently idealized nature of the concept that makes it very hard to separate normative standards and empirical reality.¹⁹ Consequently, questions of whether a European public sphere exists, what it would/should look like and how it needs to be studied, are often intertwined.

For the purposes of this paper, it is useful to roughly outline three areas of research. First, since the 1990s, academic literature on the European public sphere has increasingly concentrated on EU institutional

¹³ See for example: Michael Brüggemann, "How the EU Constructs the European Public Sphere: Seven Strategies of Information Policy," *Javnost* 12, no. 2 (2005), 57-73.

¹⁴ Caroline de la Porte and Arjen van Dalen, "Europeanization of National Public Spheres? Cross-National Media Debates about the European Union's Socio-Economic Strategy," *European Politics and Society* 17, no. 3 (2016), 279-293.

¹⁵ Markus Ketola, "The Everyday Politics of the European Public Sphere: Moving Beyond EU Policy Perspectives," *Journal of Civil Society* 8, no. 3 (2012), 219.

¹⁶ Jürgen Habermas, *The Structural Transformation of the Public Sphere*, transl. Thomas Burger and Frederick Lawrence (Cambridge: MIT Press, 1991).

¹⁷ Hans-Jörg Trenz, "Public Sphere," in *The International Encyclopedia of Political Communication*, ed. Gianpietro Mazzoleni (John Wiley, 2015), 1-2.

¹⁸ For critique, see Nancy Fraser, "Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy," *Social Text*, no. 25/26 (1990), 56-80, and Craig Calhoun, ed., *Habermas and the Public Sphere* (Cambridge, London: MIT Press, 1992). For an overview of subsequent adaptations by Habermas, see Peter Lunt and Sonia Livingstone, "Media Studies' Fascination with the Concept of the Public Sphere: Critical Reflections and Emerging Debates," *Media, Culture and Society* 35, no. 1 (2013), 87-96.

¹⁹ Trenz, "Public Sphere," 3.

structures and policies, and their role in shaping the European public sphere.²⁰ Michael Brüggemann has for example focused upon the information policy of the EU to understand how the EU promotes certain policy narratives and attempts to persuade the public through propagandistic means.²¹ By contrast, Yasemin Nuhoglu Soysal draws attention to more informal European institutional structures to understand the formation of a European space through school textbooks and curricula.²² These studies thus aim at uncovering the ways in which various elite actors are involved in shaping a European public sphere through carefully devised narratives about Europe and European issues.

A second strand of research locates the European public sphere in transnational media discourses rather than institutional structures. These studies see a strong media sphere as a vital indicator of a public sphere as the media informs the public, and allows for critical evaluation and potential input into the political process.²³ Subsequently, some argue against the existence of a European public sphere altogether due to the (perceived) lack of strong European media, while others rather focus on the degree of supranational, vertical and horizontal Europeanization of national public spheres.²⁴ This has resulted in interesting research on European political communication in national quality newspapers,²⁵ and explorations of transnational media like *Euronews* and *Eurozine*.²⁶

In critique of these approaches, the third strand of research has sought to diverge from this consensual top-down perspective on the public sphere and rather focus upon the way citizens' everyday life experiences and contestations give rise to a European public sphere.²⁷ As advanced by social scientist Markus Ketola, an ethnographic approach would allow for an understanding of the plurality of voices and local conflicts that underlie the European social space.²⁸ In that spirit, some have already sought to understand the connection between these institutional, media and citizens' discourses.²⁹ Specifically, with the rise of online media, recent research has become more sensitive to the ways various actors interact in the European public sphere.³⁰

However, although these accounts provide relevant insights into how EU policies affect and are received by the larger public, there is a need to connect these top-down and bottom-up discourses more explicitly,

²⁰ Michailidou, "Vertical Europeanisation," 65.

²¹ Brüggemann, "How the EU Constructs." See also his updated work in: Michael Brüggemann, "Information Policy and the Public Sphere: EU Communications and the Promises of Dialogue and Transparency," *Javnost* 17, no. 1 (2010), 5-21.

²² Yasemin Nuhoglu Soysal, "Locating Europe," *European Societies* 4, no. 3 (2002), 265-284.

²³ Paul Statham, "Introduction: Europe's Search for a Public," in *The Making of a European Public Sphere: Media Discourse and Political Contention*, ed. Ruud Koopmans and Paul Statham (Cambridge: Cambridge University Press, 2010), 4-5.

²⁴ Ruud Koopmans and Jessica Erbe, "Towards a European Public Sphere? Vertical and Horizontal Dimensions of Europeanized Political Communication," *Innovation* 17, no. 2 (2004): 99, 101. Other outlines on why it would or would not exist: Jos de Beus, "The European Union and the Public Sphere," in *The Making of a European Public Sphere: Media Discourse and Political Contention*, ed. Ruud Koopmans and Paul Statham (Cambridge: Cambridge University Press, 2010), 15.

²⁵ Hans-Jörg Trenz, "Media Coverage on European Governance: Exploring the European Public Sphere in National Quality Newspapers," *European Journal of Communication* 19, no. 3 (2004), 291-319.

²⁶ Euronews: Inaki Garcia-Blanco and Stephen Cushion, "A Partial Europe Without Citizens or EU-level Political Institutions," *Journalism Studies* 11, no. 3 (2010): 393-411. Eurozine: Tessa Hauswedell, "Writing the New European Identities? The Case of the European Cultural Journal Eurozine," in *Media, Democracy and European Culture*, ed. Peter Madsen and Ib Bondebjerg (Bristol: Intellect Books, 2008), 237-252.

²⁷ Ketola, "The Everyday Politics," 214-215. See also: Jim McGuigan, "The Cultural Public Sphere," *European Journal of Cultural Studies* 8, no. 4 (2005), 434-435. Rebecca Adler-Nissen, "Towards a Practice Turn in EU Studies: The Everyday of European Integration," *Journal of Common Market Studies* 54, no. 1 (2016), 87-103.

²⁸ Ketola, "The Everyday Politics," 219, 225.

²⁹ De la Porte and Van Dalen have studied how the media covers the introduction and execution of European policies and to what degree it encourages critical cross-national debate, see: De la Porte and Van Dalen, "Europeanization of National Public Spheres?," 279-280. Others have analysed the relationship between institutional structures and everyday banal and cultural experiences more broadly, see: Ib Bondebjerg, "The European Imaginary: Media Fictions, Democracy and Cultural Identities," in *Media, Democracy and European Culture*, ed. Peter Madsen and Ib Bondebjerg (Bristol: Intellect Books, 2008), 216-217. Caitriona Carter, Richard Freeman and Martin Lawn, "Introduction: Governing Europe's Spaces: European Union Re-Imagined," in *Governing Europe's Spaces: European Union Re-Imagined*, ed. Caitriona Carter and Martin Lawn (Manchester: Manchester University Press, 2015), 10.

³⁰ Wright, for example, has researched the interaction between citizens and politicians on Futurum, an online institutionally-led forum which is linked to the Convention on the Future of Europe: Wright, "A Virtual European Public Sphere?" Michailidou has researched vertical EU communication strategies (Michailidou, "Vertical Europeanisation," 68, 81). Other studies have sought to understand citizen engagement with the Eurocrisis in comment sections of online news media, see: Johannes Kaiser and Katharina Kleinen-von Königslöw, "The Framing of the Euro Crisis in German and Spanish Online News Media between 2010 and 2014: Does a Common European Public Discourse Emerge?" *Journal of Common Market Studies* 55, no. 4 (2017), 798-814. Hepp et al., *The Communicative Construction*, 109-140.

and to take the interactive process between European citizens and various media and institutional actors as the central object of analysis. As has been argued by Thomas Risse and Nilüfer Göle, it is within interaction and through contestation between various actors that the European public sphere is discursively constituted and becomes visible.³¹ Especially in current-day digital society, traditional media, political actors and regular citizens are all involved in the online ‘production, distribution, consumption and discussion of political content on issues of societal relevance.’³² It is thus necessary to better understand the various ways in which elite actors and citizens together give meaning to the European public sphere through their online discursive interactions.

At the same time, some scholars have been critical of the online public sphere. Although it might enhance possibilities for people to raise their voice, this increased heterogeneity would also lead to fragmentation of the public sphere.³³ Moreover, due to various algorithms and the possibilities for selecting personal content, people would be less exposed to different views and live in ‘echo chambers.’³⁴ In this way, rather than stimulating public dialogue and contestation, online media would discourage the exchange of different opinions.

However, fragmentation of the online sphere does not a priori exclude the possibility of meaningful interaction.³⁵ Rather, the European public sphere should be seen as a network of online and offline interaction between various actors and groups, characterized by fragmentation, conflict and disagreement.³⁶ Discourses interconnect in several ways, allowing for the creation of meanings and the enrichment of debate and discussion.³⁷ At the same time, as has been argued by critical theorists Nancy Fraser and Chantal Mouffe, not everyone has equal access to this sphere and some have more power to influence the discourse than others.³⁸ Therefore, this paper will take a critical approach to the European public sphere, to uncover how the interactive process is shaped between European leaders and the European public on the online platform Debating Europe. The next section explains how this online discursive process is approached and analysed.

3. The Online Public Sphere: CDA and Interaction Analysis

For more than a decade, academic literature has tried to grasp the meaning of the internet for the public sphere.³⁹ The online public sphere is made up of many websites, social media platforms, and online forums that make it possible for individuals and organizations to exchange ideas and opinions.⁴⁰ In this sphere, people are increasingly involved both as passive audiences and active participants,⁴¹ who read, comment

³¹ Thomas Risse, “An Emerging Public Sphere? Theoretical Clarifications and Empirical Indicators,” paper read at Annual Meeting of the European Union Studies Association (EUSA), 2, 5, 27-30 March 2003, at Nashville, TN. Göle, “Turkish Delight in Vienna: Art, Islam, and European Public Culture,” *Cultural Politics* 5, no. 3 (2009): 290, 296.

³² Dennis Nguyen, “Analysing Transnational Web Spheres: The European Example During the Eurozone Crisis,” in *The Digital Transformation of the Public Sphere: Conflict, Migration, Crisis and Culture in Digital Networks*, ed. Athina Karatzogianni, Dennis Nguyen and Elisa Serafinelli (London: Palgrave Macmillan, 2016), 213-214. See also: Anton Törnberg and Petter Törnberg, “Combining CDA and Topic Modeling: Analyzing Discursive Connections between Islamophobia and Anti-Feminism on an Online Forum,” *Discourse and Society* 27, no. 4 (2016), 403.

³³ Terje Rasmussen, “Internet-Based Media, Europe and the Political Public Sphere,” *Media, Culture and Society* 35, no. 1 (2013), 98, 101. Trenz, “Public Sphere,” 10.

³⁴ Dominik Batorski and Ilona Grzywinska, “Three Dimensions of the Public Sphere on Facebook,” *Information, Communication & Society* 21, no. 3 (2018), 359-360.

³⁵ Risse explains how fragmentation on the national level is common as well, but that few would say that there is no meaningful communication possible, see: Risse, “An Emerging Public Sphere?,” 4.

³⁶ Hannu Nieminen, “Social Networks and the European Public Sphere,” in *Media, Democracy and European Culture*, ed. Peter Madsen and Ib Bondebjerg (Bristol: Intellect Books, 2008), 66. Within this network, the local, national and transnational cannot always be clearly separated, rather, they are integrated structures that are constitutive of one another. See Soysal, “Locating Europe,” 273.

³⁷ Nieminen, “Social Networks,” 66.

³⁸ Chantal Mouffe, “Deliberative Democracy or Agonistic Pluralism,” *Political Science Series Working Paper* 72 (2000), 13-14. Fraser, “Rethinking the Public Sphere,” 67.

³⁹ Zizi Papacharissi, “The Virtual Sphere: The Internet as a Public Sphere,” *New Media and Society* 4, no. 1 (2002), 9-27. Peter Dahlgren, “The Internet, Public Spheres, and Political Communication: Dispersion and Deliberation,” *Political Communication* 22, no. 2 (2005), 151-152.

⁴⁰ Törnberg and Törnberg, “Combining CDA and Topic Modeling,” 403.

⁴¹ Trenz, “Public Sphere,” 8.

and constitute their perceptions and identities through online engagement.⁴² Specific technological features like commenting, sharing, and tagging ‘reconfigure the relationship between interactive participants in varying ways,’⁴³ and thereby impact upon the meaning-making process. Therefore, any analysis of the online public sphere needs to pay attention to the specific online context in which interaction takes place.⁴⁴

Although methods for studying online discourses are still very much in development,⁴⁵ this paper will use the promising design by Angouri and Wodak, which combines a form of Critical Discourse Analysis and interaction analysis, to understand how the interactive process between citizens and European leaders is shaped on Debating Europe.⁴⁶ Discourse analysis focuses on generating an in-depth understanding of oral and written texts by looking into how certain issues and subjects are constructed and intersubjective meanings are created in interaction.⁴⁷ CDA is a well-known strand of discourse analysis that emphasizes the importance of social and discursive context to understand how meaning is created.⁴⁸ Within the method by Angouri and Wodak for analysing online discourse, particular attention is paid to how the broader socio-political context and the specific workings of the online platform tend to affect interactive processes and the construction of meaning.⁴⁹

For that purpose, the data that will be analysed consists of two elements. First, various policy documents and mission statements of the EfCP and Debating Europe will be analysed as well as the design and workings of Debating Europe to understand in what socio-political and discursive context the interactive processes take place. Specifically, this means looking into the defined aims, funding, technological features, online rules and moderation policies.⁵⁰ Second, the interactive process in one debate will be analysed in-depth. Particularly, the analysis will focus on how the debate is introduced by the website, what European leaders are invited to respond, what comments are used for that purpose, how these leaders answer, and how the issue is constructed in the comments by European citizens themselves. By focusing upon who gets to talk, about what and in what way, an understanding arises of how various actors are involved in defining what is meaningful to discuss and what topics are excluded from consideration.

The chosen debate concerns Hungarian fence-building and is part of a larger debate series on Cities & Refugees that was explicitly co-funded by the EfCP.⁵¹ The project ran between 6 October 2016 and 31 August 2017 in four European cities, involving 25 online and 4 offline debates and allegedly reaching over 800 000 citizens.⁵² The debate on Hungarian fence-building was published on 28 August 2017, had one update on the 17 January 2018 and it generated a total of 223 comments by 121 people.⁵³ This particular debate has been selected because of its sponsored nature within the EfCP, which allows for a more comprehensive analysis of how various actors are involved on the platform. Furthermore, the debate has generated enough comments to be able to conduct an in-depth analysis, and is relatively recent, yet enough time has passed for the discussion to have ended.

⁴² Not everyone that visits a particular platform also comments, see: Hepp et al., *The Communicative Construction*, 110. However, also those that do not actively comment are still impacted by reading other people’s views, see: Florian Toepfl and Eunike Piwoni, “Public Spheres in Interaction: Comment Sections of News Websites as Counterpublic Spaces,” *Journal of Communication* 65 (2015), 467. Through participation, feelings of identity are affected as well, see: Dahlgren, “The Internet, Public Spheres,” 159; Ruth E. Page, *Stories and Social Media: Identities and Interaction* (New York: Routledge, 2012), 17.

⁴³ Page, *Stories and Social Media*, 8.

⁴⁴ Jo Angouri and Ruth Wodak, “‘They Became Big in the Shadow of the Crisis’. The Greek Success Story and the Rise of the Far Right,” *Discourse & Society* 25, no. 4 (2014), 542.

⁴⁵ Alexandra Georgakopoulou, “Small Stories Transposition and Social Media: A Micro-Perspective on the ‘Greek Crisis’,” *Discourse and Society* 25, no. 4 (2014), 521-522.

⁴⁶ They specifically refer to the discourse-historical approach (as a part of CDA) and interaction analysis. However, as this paper will not focus so much on the historical context, it was deemed more appropriate to mention CDA rather than DHA.

⁴⁷ On the various forms of text: Johannes Angermüller, Dominique Maingueneau and Ruth Wodak, “Introduction,” in *The Discourse Studies Reader: Main Currents in Theory and Analysis* (Amsterdam: John Benjamins, 2014), 7. On intersubjective meaning-making: Norman Fairclough, *Analysing Discourse: Textual Analysis for Social Research* (London: Routledge, 2003), 10.

⁴⁸ Ruth Wodak and Michael Meyer, ed., *Methods of Critical Discourse Analysis* (London: SAGE, 2001), 2-3.

⁴⁹ Angouri and Wodak, “They Became Big,” 542, 546-547.

⁵⁰ See for example the approach of: Wright, “A Virtual European Public Sphere?,” 1170-1171.

⁵¹ Another significant project funded by the EfCP is: “Towards a European Public Sphere,” *Debating Europe*, <http://www.debatingeurope.eu/focus/towards-a-european-public-sphere/#.Wu15kqSFPIU>.

⁵² “The Project ‘Debating Europe Cities & Refugees’ Was Funded with the Support of the European Union under the Programme ‘Europe for Citizens’,” *Debating Europe*, http://www.debatingeurope.eu/wp-content/uploads/2016/10/EC_report_cities-and-refugees.pdf.

⁵³ “Should More European Countries Build Fences to Keep out Refugees?,” *Debating Europe*, <http://www.debatingeurope.eu/2017/08/28/european-countries-build-fences-keep-refugees/#.WuldPqSFPIV>.

Several scholars have raised concerns about analysing one forum and “cherry-picking” texts, as it would not be representative of the entire online public sphere.⁵⁴ Yet, the aim of this paper is not to give definite answers to the formation and structure of the entire online sphere; rather the intention is to come closer to understanding the complexity of online interaction. In other words, this case study is meant to illustrate the role of various actors and potential obstacles to open and honest debate between them in the European online sphere.

The analytical section is structured as follows. The *EfCP* is explored first to gain an understanding of the larger policy context of the debate. Thereafter, the workings of *Debating Europe* are analysed to understand the online context in which interaction takes place. Finally, the interactive process within the debate is examined.

4. Debating Europe

4.1. Policy Context: Europe for Citizens Programme

The current program of the *EfCP* runs from 2014 to 2020 and consists of two strands: ‘European remembrance’ and ‘Democratic engagement and civic participation’.⁵⁵ A total budget of over 185 million euros was made available for the program,⁵⁶ of which *Friends of Europe* (the overarching organization of which *Debating Europe* is a part)⁵⁷ received 150.000 euros both in 2015 and 2016 within strand 2.3 (Civil Society Projects) for its website *Debating Europe*,⁵⁸ and an operating grant of 350.000 euros in 2018.⁵⁹

When applying for grants, applicants must define the purpose of the project with regard to the general objectives of the program as well as the specific goals of the strand and measure, and the activities must specifically contribute to their designated outcomes.⁶⁰ The general objectives are described as contributing to ‘citizens’ understanding of the Union, its history and diversity’ and ‘to foster European citizenship and to improve conditions for civic and democratic participation at Union level,’⁶¹ in order to ‘[enable] them to participate in the construction of an ever closer Europe.’⁶² Especially the connection between the local and the transnational is considered important, whereby intercultural dialogue should foster ‘mutual understanding’ and the formation of a European identity.⁶³

The applications for strand 2.3 should particularly allow for citizens’ actual engagement with European issues and policy-making to encourage common solutions at the European level.⁶⁴ In addition, in its priorities of 2015 and 2016, the European Commission encouraged applicants to enter into debate with Eurosceptics to understand their concerns as well as to ‘explain the benefits of EU policies, acknowledge difficulties met and challenges ahead, as well as to put forward EU achievements and the cost of no Europe.’⁶⁵ Other priorities of the framework focus on stimulating solidarity, and combatting the othering

⁵⁴ Törnberg and Törnberg, “Combining CDA and Topic Modeling,” 404.

⁵⁵ “Europe for Citizens.” Current legal framework: “Council Regulation (EU) No 390/2014,” *Official Journal of the European Union*, 14 April 2014, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0390&from=EN>.

⁵⁶ “Europe for Citizens Programme Guide: Valid as of January 2014,” *EACEA*, European Commission (2014), 4, <https://eacea.ec.europa.eu/sites/eacea-site/files/documents/comm2013003670000en.pdf>.

⁵⁷ *Debating Europe* is part of an alliance with the think tank *Friends of Europe* and a policy journal *Europe’s World*. The director of *Debating Europe* is also part of the management team of *Friends of Europe*. “Who We Are,” *Friends of Europe*, https://www.friendsofeurope.org/about-us/about-us?tab=who_we_are.

⁵⁸ For 2015, see: “Europe for Citizens Programme, Strand 2 Measure 3, Civil Society Projects 2015, List of the Projects Granted,” *EACEA*, European Commission, https://eacea.ec.europa.eu/sites/eacea-site/files/efc_civil_society_projects_list_for_project_results_2015_en.pdf. For 2016, see: “Europe for Citizens Programme, Strand 2: Civil Society Projects, Selection 2016, List of Projects Granted,” *EACEA*, European Commission, https://eacea.ec.europa.eu/sites/eacea-site/files/list_of_selected_projects_1.pdf.

⁵⁹ “Europe for Citizens Programme, EACEA-33/2017, Operating Grants 2018-2020, List of Successful Applicants,” *EACEA*, European Commission, https://eacea.ec.europa.eu/sites/eacea-site/files/annex_to_decision_og_2018_-_successful_applicants.pdf.

⁶⁰ “Europe for Citizens Programme Guide,” 15-16.

⁶¹ *Ibid.*, 5.

⁶² *Ibid.*, 4.

⁶³ *Ibid.*, 5-6.

⁶⁴ *Ibid.*, 18, 20-21.

⁶⁵ “Priorities of the Programme 2016,” *EACEA*, European Commission, https://eacea.ec.europa.eu/sites/eacea-site/files/priorities_2016_en_full_text_en.pdf. See also: “Priorities of the Programme 2015,” *EACEA*, European Commission, https://eacea.ec.europa.eu/sites/eacea-site/files/priorities_for_2015.pdf.

and stereotyping of immigrants to foster mutual understanding and prevent populist and xenophobic discourses, ideally through the use of online instruments and social media.⁶⁶

With these requirements, it becomes clear that although the EU intends to facilitate citizen engagement on European issues, it does propagate a European framework to legitimize its own existence and work. This “persuasive communication” limits possibilities for open dialogue constituted by a mutual exchange of talking and listening.⁶⁷ DE is in that sense positioned as an intermediate actor. When applying for funding, it had to specifically reflect upon these objectives and describe the purposes of its projects. With Cities & Refugees, it intended to connect everyday experiences of citizens in Europe with the policy-making process in Brussels in order to ‘foster a Europe-wide dialogue between citizens, refugees and asylum seekers, NGOs, politicians, and European leaders,’ and to encourage the sharing of common problems and successful solutions.⁶⁸ The next section will look at the workings of *Debating Europe* to understand how DE intends to stimulate such conversation.

5. Online Context: The Workings of *Debating Europe*

On *Debating Europe* (DE), citizens can engage in a direct conversation with their European leaders by sending in questions or posting comments on debates. Next to certain co-funded debate series,⁶⁹ DE also facilitates regular and ‘student-led’ debates. Student-led debates create the opportunity for schools and colleges to connect with other students in Europe and learn about the workings of the EU.⁷⁰ Once posted on the website, other visitors can also engage in these debates. The student-led debates are rather transparent with regard to the degree to which suggested questions and debates are actually posted on the website.⁷¹ Citizens can also suggest debates themselves by sending in a video or a text message, but then it is somewhat less clear whether the debates are actually taken on and published on the platform, as debates do not specifically mention whether they have been proposed by particular users or not.

Despite the origins of some of its funding, DE describes itself as an ‘editorially independent’ platform that decides over its own content and tries to be as inclusive of various views as possible.⁷² At the same time, a European outlook on problems seems to be preferred.⁷³ Umbrella organization, *Friends of Europe*, also considers itself to be neutral and independent, but it does adhere to basic values of the EU and the idea that problems facing Europe should be solved together, seeing itself as an ‘advocate of the European project.’⁷⁴ Concerning online rules,⁷⁵ DE has the right to remove any uncivil comments that incite hate speech or are unnecessarily offensive. It also reserves itself the right to delete any comments that diverge from the topic of the debate. After writing a response on a debate, the comment is also not immediately visible, but ‘awaiting moderation’, a process that usually takes at least a day.⁷⁶

DE holds the same discretion with regard to comments placed on Facebook. A significant number of the comments published on DE are actually directly taken from their Facebook page, but it usually takes a couple of hours or even days before the submissions are transferred.⁷⁷ Therefore, although their activities on Facebook do allow for a relatively faster pace of discussion (as comments are immediately visible there) and a bigger outreach to the public,⁷⁸ DE’s moderation policy stimulates a situation in which debates are inclined to become more fragmented, dispersed and separate from one another. The workings of *Debating Europe* are thus closely linked to the dynamics of other platforms.

⁶⁶ “Priorities of the Programme 2016.”

⁶⁷ Brüggemann, “Information Policy,” 63-64, 68.

⁶⁸ “Cities & Refugees,” *Debating Europe*, <http://www.debatingeurope.eu/focus/cities-refugees/#.Wu15mKSFPIU>.

⁶⁹ For all the strategic partners, see: “Partners,” *Debating Europe*, <http://www.debatingeurope.eu/partners/>.

⁷⁰ “Schools,” *Debating Europe*, <http://www.debatingeurope.eu/focus/schools/#.WuwPW6SFPIU>.

⁷¹ See for example the student-led debate in Italy: “Debating Europe Schools: Italy,” *Debating Europe*, <http://www.debatingeurope.eu/2013/06/24/debating-europe-schools-italy/#.WuwX8KSFPIU>.

⁷² “Frequently Asked Questions,” *Debating Europe*, <http://www.debatingeurope.eu/faq/>.

⁷³ “Welcome to Debating Europe.”

⁷⁴ “Frequently Asked Questions,” *Friends of Europe*, <https://www.friendsofeurope.org/about-us/about-us?tab=faqs>. And: “Who we are.”

⁷⁵ “Terms of Use: Code of Conduct,” *Debating Europe*, <http://www.debatingeurope.eu/terms/>.

⁷⁶ As a test, I responded to several debates, and depending on whether it was the weekend or not, my comments only became visible one or two days later. It is unknown whether a computer or a person makes the decision to moderate or not.

⁷⁷ I have watched the process of new debate entries on Facebook and DE to understand the process. In addition, I posted a comment on a debate on Facebook myself, which took a full day before it became visible on *Debating Europe*.

⁷⁸ Their Facebook page has over 200.000 likes and followers (18 May 2018): “Debating Europe,” *Facebook*.

In short, *DE* tries to act as a neutral intermediate between elite actors and European citizens by stimulating civil and constructive debate about European issues on its platform. At the same time, it does seem to prefer a European integrationist perspective to find common solutions to European problems. Moreover, it reserves the right to remove certain comments if they are not in line with their Code of Conduct. The next section will look specifically into the interactive process to see how various actors are involved in the construction of meaning on Hungarian fence-building.

6. Interactive Process: Hungarian Fence-Building

The debate concerns the question: ‘Should more European countries build fences to keep out refugees?’⁷⁹ *DE* describes the case of a village in Hungary where a fence was built in 2015 to prevent illegal crossings along the Serbo-Hungarian border. In its introductory text, besides referring to potential environmental hazards, *DE* constructs the issue mainly as one of effectiveness. It points at the falling numbers of refugees who cross the border every day while explaining the critical viewpoint that it only diverts refugees’ routes, thereby stimulating riskier crossings and putting greater pressure on other countries. Via hyperlinks to articles from *The Guardian* and the UNHCR, the problems surrounding the fence are exemplified.

Subsequently, *DE* uses a comment from Maia in which she explains why a fence would be a good solution. At first, it was not possible to see where such comments were taken from. However, recently, *DE* has introduced hyperlinks, which makes it possible to see that this particular comment is taken from a debate on the EU’s refugee crisis that stems from 15 October 2015; at that time almost two years ago.⁸⁰ Comments from previous debates are thus used to exemplify certain viewpoints that the European leaders subsequently have to respond to. An associate professor in international relations and refugee law was asked to respond to Maia’s comment. He constructs the fence-building not as a solution but as a disaster, again pointing mostly at the ineffectiveness of the measure, as ‘it [pushes] the buck on someone else.’⁸¹ Thereafter, the issues of morality and values are introduced with a comment from Antonios, who refers to the irony that a couple of decades ago, it was the populations of (now former) Soviet states that fled to the West by crossing fences. This comment stems from a debate from early 2017 about Cologne’s New Year’s Eve assaults.⁸² According to the associate professor, Eastern and Central European states ‘have a moral and historic duty’ to help as these people are now suffering under a similar oppressive regime like communism back in the day.⁸³

On 17 January 2018, the debate received an update, whereby the same questions were taken to a spokesman in the government of Prime Minister Viktor Orbán, and to a representative of an NGO on human rights. On the question of effectiveness, the spokesman of Orbán adds a new perspective to the debate by representing the issue as one of obedience. Hungary is just trying to ‘fulfil [their] duties’ within the Schengen scheme to prevent illegal entry, while other European countries ‘basically promote and prolong what is happening.’⁸⁴ The NGO representative then responds by questioning the efficiency of the fence as it would only divert their routes and fuel the migration industry. She also points at the refusal of Hungary to cooperate in many relocation schemes.⁸⁵

Finally, these European leaders also reflect on the morality of the fence and Europe’s history with division. According to the spokesman, the history of the Cold War cannot be compared to today’s situation, because it concerns protection from an external threat, constituted by Muslims who represent a ‘different world.’⁸⁶ The NGO representative gets the final say on the issue and again emphasizes Hungary’s past as a country people were fleeing from during the Cold War, and whose refugees were taken in by other countries in Europe. In sum, with its introductory text and the contributions of the European leaders, *DE* mainly constructs the issue as a question of European effectiveness and historical morality. As will become clear, these constructions only receive limited resonance in the comment section.

⁷⁹ “Should More European Countries,” *Debating Europe*.

⁸⁰ “How Would You Solve the EU’s Refugee Crisis,” *Debating Europe*, <http://www.debatingeurope.eu/2015/10/15/how-would-you-solve-the-eus-refugee-crisis/#comment-273915>.

⁸¹ “Should More European Countries,” *Debating Europe*.

⁸² “Can Cologne Rebuild Trust after the New Year’s Eve Assaults,” *Debating Europe*, <http://www.debatingeurope.eu/2017/02/28/can-cologne-rebuild-trust-new-years-eve-assaults/#comment-368554>.

⁸³ “Should more European countries.”

⁸⁴ *Ibid.*; see also the chapter by Olliger in this volume.

⁸⁵ “Can Cologne Rebuild Trust after the New Year’s Eve Assaults,” *Debating Europe*.

⁸⁶ *Ibid.*

As can be seen in Table 1, a significant number of comments has been directly taken from two Facebook updates and have been transferred by *DE* to their website. Of the 68 reactions that were not visible on Facebook, around sixteen appear to have been there first, but were removed.⁸⁷ In turn, around eighteen comments are on Facebook, but not on *DE*. It is very difficult to determine what the exact policy is surrounding transfer, but it appears that most of the public debate actually occurred on Facebook and not on *DE*'s website. This also means that Facebook users would have had to press the link first, before being able to see the opinions of European leaders. With regard to the content of the comments, the analysis will focus on the discussion as a whole, as both updates are grouped together on *DE* and several of the same people are involved in both.

| | Update 1 | Update 2 | Total |
|---|-----------------------------------|------------------------------|---------------------|
| Date | 28 August 2017 | 17 January 2018 | |
| Comments posted between | 28 August – 7 October 2017 | 18 January – 22 January 2018 | |
| Number of comments on <i>DE</i> | 161 | 62 | 223 |
| Of which from Facebook | 98 | 57 | 155 |
| Of which not on Facebook | 63 (42 single ones) ⁸⁸ | 5 | 68 (49 single ones) |
| Of which were on Facebook before | 15 | 1 | 16 |
| Number that is on Facebook but not on <i>DE</i> | 2 | 16 | 18 |

Table 1. Division of comments

Specifically, a division is visible between those in favour of the fence and those against. Various arguments are made back-and-forth and claims are countered from both sides. The main discursive strategies will now be discussed.⁸⁹ Table 2 provides an exemplary overview of the different categories of comments and the striking modes of communication.

On the pro-fence side, the need for control is a prominent argument. Some see this as a European or Schengen responsibility (comment 19), while others particularly point at the rights of a nation to take back control of its borders (comment 16). In this way, fence-building is not the only topic under discussion as commentators are also divided on the desired degree of EU involvement. The idea of national sovereignty is strengthened by the perceived ineffectiveness of the EU in handling the crisis and its ignorance with the everyday reality on the streets in Europe (comments 54 and 69). The sentiment exists that the EU, and particularly Germany, illegitimately enforces its ideology on the rest of Europe and its citizens, thereby 'assisting the invasion of [its] own continent instead of protecting it' (comment 197).

⁸⁷ This can be discerned from the way the interactive process develops as people specifically respond to what someone has said earlier.

⁸⁸ Certain comments appear multiple times on *DE*. This will be discussed later on.

⁸⁹ The comments will be shown in their original format, unless indicated otherwise (so potentially with spelling mistakes).

| Pro-fencing | Contra-fencing | About each other | Forms of communication |
|--|--|---|--|
| <p><u>Need for control</u> <i>European responsibility</i> - Traffic over the outer border has to be controlled and if the people do not use the legal border crossing stations for entering Schengen, then fencing is needed. (19)</p> <p><i>National responsibility</i> - No they are not. The borders of those countries are their borders, their duty and their right. The EU is a supranational institution just like the UN. None have borders or any right to say what to do with them. (16)</p> <p><i>Ineffective EU and enforced ideologies</i> - It already has one called Frontex. The fact it is totally ineffective in what it does is just typical of most EU agencies. (54) - I think my country should build “a big fat wall”, not to protect form refugees but from Europhiles, eurocrats and eurocorrupts... (69) - On top of it, Germany expects other European countries to take responsibility and host the guests that it invited. This kind of dictatorship has nothing to do with European values either. It is not solidarity, but imposing German migrant policies on other countries. (147) - EU leaders are betraying Europe and its citizens! It’s a shame that the EP is assisting the invasion of it’s own continent instead of protecting it!!! (197)</p> <p><i>Country as a house and refugees as animals</i> - you don’t lock your doors? (20) - You can indeed compare a country with a house.</p> | <p><u>Effectiveness of fences</u> <i>No long-term solution</i> - Fences will only temporary be an agent of hinderance for people on the move. (84)</p> <p><i>Unfair burden</i> - It is unfair for countries like Italy and Greece to carry the burden of refugees...even if EU is paying for their staying it is a burden for the environment and for the permanent residents Italian and Greeks...criminality has raised and the economic disaster (especially for Greece islands) is unbelievable...in some islands the number of refugees is higher then the residents!!! (113)</p> <p><i>Other means</i> - I believe we can assure border controls and immigration control through others means (like having clearer legal procedures to enter and supporting development in may ‘critical’ countries etc) then fences and walls. (28)</p> <p><i>Source of the problem</i> - No. we should intervene to stop wars. There is no refugees if there is no wars. (108)</p> <p><u>Historic responsibility</u> - Should we look who is exploiting Africa and his poor countries, shall we ask ourselves why third world countries are full of resources [which] are fundamental for the first world industry, but they keep to be poor? Shall we ask ourselves why so many political coups have been brought forward inside that continent? Who give money to buy weapons? And why? Or</p> | <p><u>Delusional/naïve vs. rational/informed</u> - fail to see or accept what happens in your own backyard. (5) - At first I was like many others, ready to accept them with open arms. Then I kept myself informed, watched and studied who they are, how many, and compared that with what the media told us. All lies. (7) - You like majority of followers of western europes left seem to be delusional. (18)</p> <p><u>Well-informed vs. fearful and ignorant</u> - you are just full of fear and prejudices. (26) - you seem to be a smart guy, yet, you manage you manage it to be completely ignorant and stupid...Syrians tried to make their country better, they got shot down by Assads army, remember? (191)</p> <p><u>Critique on Debating Europe</u> - I’m unfollowing this page. It’s just angry-making for no potential benefit at all. I don’t know whether you’re actually aiming to promote far right populism with these questions framed to provoke ethno-nationalist populist reactions or just have the most incredibly stupid and counterproductive communications strategy ever, but either way it’s having the same effect. (145)</p> | <p><u>Sarcasm</u> - Yes, I agree with you. Let all the rapists and murderers come in without any control. (24)</p> <p><u>Insults and hateful speech</u> - :) – or you could be less of a moron (36) - kill yourself, do a favour to the humanity (44)</p> <p><u>Movie references</u> - then you’d better brace yourself for the muslim clone army of Darth Soros who’ll turn Europe into Eurabia :- (... (67)</p> |

| | | | |
|---|---|--|--|
| <p>Ex: You love dogs and you decide to adopt tree dogs. One day, you go in the street and you see a pack of 10 starving dogs. You feel sorry for them, you may even cry a little, but you turn your face the other way and start walking because you know you can't rescue all of them. (29)</p> <p>- However, the story is, the German people are getting ready to re-elect Merkel in a couple of months. Which, whether they realise it or not, will give her permission to fill Germany with millions more cheap fodder they will have to work to feed for life. (144)</p> <p>- It looks like feeding apes..they will never have the chance to be men.. (149)</p> <p><u>Illegal vs. legal / economic vs. real</u></p> <p>- Yes!!! Especially the illegal terrorists, who are posing as "refuges". (72)</p> <p>- People that are flooding Europe are not refugees but immigrants mostly looking for an easy life thanks to European social benefits. (167)</p> <p><u>Other values</u></p> <p>- Yes. Europe should not turn into an Arab or African state. There is a limit. (208)</p> <p>- Germany invited the migrants, but failed to offer them safe transport to reach the country. In this way it encouraged them to travel in a dangerous way, resulting in thousands drowning en route to Germany. This is cruelty which absolutely violates European values and any human rights...What utter disrespect for human life, disguised hypocritically as compassion... (147)</p> | <p>we shall just try to stop them like the Eastern European countries like to do? Building a new Berlin wall? (180)</p> <p>- Directly or not, migrations are a consequence of global inequality! Rich countries citizens must help undeveloped world citizens to have education housing and a basic income...paying a fair price for the resources they take! (125)</p> <p>- We should actually put a major economic boycott to the countries which are doing that! Hungary for example. They forgot that over a million refugees fled Hungary because of the Soviets. (216)</p> <p><u>Solidarity and fairness</u></p> <p>- Its how the world moves. And what moves the world. (2)</p> <p>- ... But we Europeans are apparently already spoiled. Enjoying our own freedom of movement and being economic migrants...but stopping other people from doing so. (191)</p> <p>- There would be no need of fences if those people were provided in their country with what is necessary for a decent living...+ running water, drinkable water, electricity. Nobody likes to be a refugee or a forced migrant. (209)</p> | | |
|---|---|--|--|

| | | | |
|---|--|--|--|
| <u>Effectiveness of fences</u> - Actually, the wall worked very well. Only about 5000 people have escaped. An estimated 2.6 million East Germans have fled to the West before construction...(183) | | | |
|---|--|--|--|

Table 2: Exemplary overview of different categories of comments.

The need for protection is exemplified by a comparison of a country to a house/home (comment 29). By means of this comparison, the position is taken that it is justified to keep out refugees as one has the right to decide who enters one's house and to 'lock [the] doors' if necessary (comment 20). In that regard, refugees are often compared to animals, for whom you would 'have to work to feed for life' (comment 144). In addition, many commentators believe the fence is legitimate, because these so-called "refugees" are not 'real' but rather economic immigrants who try to enter Europe illegally and are 'looking for an easy life thanks to European social benefits' (comment 72 and 167).

Morally speaking, the fences are justifiable for some as they safeguard European values and civilization and prevent Europe from turning into "an Arab or African state" (comment 208). This is mentioned both before and after the contribution by the Orbán spokesman. At the same time, some also see the possible lack of a fence as against European values and basic human rights, as it encourages people to take dangerous routes to come there without any protection (comment 147). The efficiency of walls and fences is only minimally discussed by the pro-fencers, mainly by referring to the workings of the Berlin Wall (comment 183).

However, the effectiveness of fences is more extensively mentioned by the contra-fencers. Fences are seen as only a temporary relief rather than a long-term solution as people will find other ways to reach their destination, which will only lead to an unfair burden on other border states (comments 84 and 113). They believe that there are other, more effective, means available to restore control and solve the crisis (comment 28). In addition, some consider it important to focus particularly on the source of the problem (comment 108).

For other contra-fencers, Western interference actually constitutes the main problem, leading to exploitation of third world countries and stimulation of conflicts (comment 180). In this way, Europe is seen as having a historical responsibility to help refugees in exchange for past and current behaviour (comment 125). In that light, the Soviet past of Hungary and the resultant flow of Hungarian refugees is also reiterated to delegitimize the return of fences and walls (comment 216).

Hungarian fence-building is not only constructed by the contra-fencers as an issue of effectiveness and historical responsibility, but also as a matter of solidarity and fairness. Migration is seen as part of life, 'its [sic] how the world moves. And what moves the world' (comment 2). To restrict (economic) migration is thus seen as hypocritical (comment 191), and these people coming to Europe have the right to move freely to secure a decent life (comment 209).

These discursive strategies are visible in multiple threads of communication, in which people directly respond to each other in a relatively short period of time. Certain participants tend to be more visible and prominent than others and become influential in leading the discussion. The longest thread has 28 reactions and is particularly significant as one contra-fencer and multiple pro-fencers engage in a direct discussion with each other about the right to freedom of movement and the willingness to allow refugees to enter European societies.

Within such discussions, pro-fencers delegitimize the arguments by the contra-fencers by calling them 'delusional' and 'naïve', not facing the reality that is going on 'in [their] own backyard' (comment 5). By contrast, the contra-fencers construct the pro-fencers as ignorant and guided by fear (comments 26 and 191). Others attempt to mediate by disseminating information to the commenting public. To prove their points, they not only make use of arguments, but also sarcasm, jokes and insults.⁹⁰ Some people are straight-up hateful (comment 44).

Many of these comments would arguably go against the code of conduct, but only one comment has been removed by the moderators. What is also peculiar is how there are multiple comments that are posted

⁹⁰ See last column of table 2.

more than once, yet none of these double comments have been removed. In turn, various people direct their attention to DE and criticize it for provoking hateful speech and discouraging the possibility of rational debate with its question (comment 145). The next section will further reflect on the kind of debate that DE stimulates.

7. Discussion

With the *EjCP*'s funding for the Cities & Refugees project, *DE* intended to foster genuine dialogue and mutual understanding between politicians, civil society and citizens on its platform, and encourage the sharing of European solutions to the refugee crisis. By uploading various debates with responses of European leaders, citizens would be able to engage in a fruitful discussion on European issues online. In the debate on Hungarian fence-building, *DE* invited responses from various sides to the discussion and a relatively open, critical and oppositional debate developed in the comment section in which *DE* is even criticized on various occasions. However, by carefully selecting comments from previous debates to frame its current debate, *DE* constructs the issue of Hungarian fence-building as mainly concerning questions of effectiveness and historical morality, while the pro-fencers, for example, associate the question with matters of national sovereignty and preventing "imposters" from illegally entering Europe. Although *DE* does give a platform for these viewpoints, the European leaders do not get a chance to respond to their public directly and therefore they engage little with citizen's opinions and concerns about the topic. Open dialogue between European leaders and citizens is thus severely hampered, which results in a lack of opportunity to directly address and connect to citizens' concerns.

Moreover, the combination of its moderation policy and the transfer of Facebook comments to create a situation in which the pace of interaction on the website is slowed down and most discussions do not even take place on *DE*, but on Facebook. Although this might positively affect the outreach and intensity of the debate, it could foster further separation between citizens and leaders' discourses, as participants are more inclined to interact with each other, rather than engaging with the viewpoints of European leaders.

To be sure, there are other ways for citizens to become more involved on *DE*, for example by engaging in student-led debates, whereby more direct communication between students and leaders is possible. In addition, it would be necessary to analyse more debates in order to fully grasp online interaction on *DE*. This would have to involve an exploration of who actually participates in these debates to determine its wider significance. Overall, this analysis has illustrated the complexity of the interactive process in an online context by means of an in-depth case study. Thereby, the analysis has shown relevant online dynamics and it has pointed at some considerations when actors attempt to foster European connections through online communication. For future research, it is necessary to look beyond *Debating Europe* to better grasp the multidimensional character of online communication in the European public sphere.

8. Conclusion

This paper has argued in favour of studying the interactive process between institutional, media and citizens' discourses in the European public sphere. Especially with the increasing presence of digital media in our daily life, it has become vital to understand how various actors give meaning to the European public sphere through their online discursive interactions. A combination of CDA and interaction analysis has been used to understand how the discursive process is shaped on *DE*: a platform that intends to bring together European leaders and their citizens to discuss issues of common concern.

The analysis has demonstrated how the interactive process on *DE* is shaped by a variety of actors in a network of online meaning-making. The EU, *DE*, European leaders and citizens are connected directly and indirectly via the platform and other social media, and together construct the debate on Hungarian fence-building. In this process, the EU performs as a persuasive actor, intended to convince people of its value and importance. It creates an overarching framework for discussion by funding intermediate structures like *DE*. Although *DE* allows for a multitude of opinions to be represented on its website, its selection process of comments and respondents results in a lack of connection to citizens' concerns. Its transfer and moderation policies further limit opportunities for fruitful two-way dialogue. Therefore, *DE* does not fully succeed in bridging the gap between European leaders and citizens.

These findings are relevant to the study of the European public sphere as it shows the importance of understanding the way the socio-political and online context shape discursive processes and affect the possibility for open and inclusive dialogue. It also conveys how certain actors are in a potentially more influential position to affect discourses than others; the EU through its grant framework and *Debating Europe*

through constructing and setting debates. These issues raise important questions with regard to EU policies and the way it uses intermediate structures to enhance its own legitimacy. Further research could particularly focus upon evaluating the reach and impact of these policies and determine whether online engagement on European issues encourages the EU's desired feelings of community and transnational identification.

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The Case of Euskara: Differences in and Impact of Multi-Level Language Policies within the Basque Provinces of Spain and France

Isabel Toman

1. Introduction

Living in Bilbao, the biggest city of the Basque Autonomous Community (BAC), every-day confrontation with *Euskara*, the Basque Language, is inevitable. Apart from hearing the language on the streets, it is used for official contexts, including bilingual signs, administrative services, and educational contexts. New developments in Basque culture, such as literature, art and websites, are promoted by organisations such as the *Etxeparre Basque Institute*¹ or events like the “International day of Basque” (*Dia Internacional de Euskera*), causing a rise in popularity of language and culture amongst young people.² The situation of the Basque language has changed significantly in the last decades, due to changes in policies and attitude, but it varies in the different provinces up to this day. Basque can be considered a ‘unique’ minority language which is spoken in one or more than one state, however, it is not the majority language in any.³ It is spoken in different regions within different nation states, in the BAC and Navarra in Spain and Iparralde in France, but is in neither country fully classified as an official state language.

Looking at the bigger picture, the European Union lists a total of 24 official languages on its website, as well as mentioning “over 60 indigenous regional or minority languages, spoken by some 40 million people. They include Basque, Catalan, Frisian, Saami, Welsh and Yiddish.”⁴ Another framework frequently referred to is the UNESCO Atlas of the World languages in Danger, which lists Basque as one out of five official minority languages in Spain, and assesses its vitality status as “vulnerable”.⁵ In the French Basque provinces, the status is even considered “severely endangered” due to the low number of speakers.⁶ If only a few people speak the language, it is in danger of extinction. Speaker numbers and usage, in this paper further referred to under the umbrella term “sociolinguistic reality”, are heavily influenced by language policies, amongst other factors. This paper aims to show how legal protection (or lack of such) makes a crucial difference for a minority language. One could say “language-policy debates are always about more than language.”⁷ In other words, these policies have a crucial influence on political, economic and social realities. My interest is mainly the last one, the social, however, the various aspects are often overlapping.

My research is motivated by the question of how language policies influence sociolinguistic space, which was part of the IP conference subtheme 2: *replacing Europe in everyday life*, where this paper was originally presented. Linguistic variety is a key characteristic of Europe; for this reason, I argue that Europe can be found in its languages. I have decided to look at policies, because the legal situation, and in particular changes in such, have the power to replace a former status quo and reshape sociolinguistic reality. Therefore, my research question is the following: What is the impact of European, national and regional language policies

¹ See <http://www.etxepare.eus/en>.

² Sergio Vinas, “Vivir en Euskera, el Gran Desafío de un Idioma en Continuo Crecimiento,” *El Mundo*, 3 December 2017, <http://www.elmundo.es/pais-vasco/2017/12/03/5a22f3e7268e3e7e518b45c7.html>.

³ Durk Gorter and Jasone Cenoz, “Multilingual Education for European Minority Languages: the Basque Country and Friesland,” *International Review of Education* 57 (2011), 655.

⁴ European Union, “Multilingualism,” https://europa.eu/european-union/topics/multilingualism_en#regional_&_minority_languages.

⁵ Christopher Moseley, ed., *Atlas of the World's Languages in Danger*, 3rd ed. (Paris: UNESCO Publishing, 2010), <http://www.unesco.org/culture/en/endangeredlanguages/atlas>.

⁶ UNESCO's Language Vitality and Endangerment Framework (2002/2003) provides six degrees of endangerment. *Vulnerable* is described as “most children speak the language, but it may be restricted to certain domains (e.g., home)”, and *severely endangered* states that the “language is spoken by grandparents and older generations; while the parent generation may understand it, they do not speak it to children or among themselves”. See Moseley, *Atlas of the World's Languages in Danger*.

⁷ Thomas Ricento, *An Introduction to Language Policy: Theory and Method* (John Wiley: 2009), 8.

on the sociolinguistic reality in the Basque country and how does the legal framework differ within this region?

Within this question, the paper will also investigate the questions of how different legislative frameworks concerning (minority) languages are implemented on a regional level, which sociolinguistic differences exist in the different provinces of the Basque country in Spain and France and if these can be explained regarding the impact of language policies on sociolinguistic space and power (referring to the concept of language hegemony). Still, it should be kept in mind that more factors than policies are shaping linguistic reality and while this paper is not analysing economic or ideologic factors in detail, it does not neglect their importance. Moreover, this paper is attempting to find the importance of policies in a complex interplay of various factors.

This paper will begin by clarifying some important terms and providing a short historic discourse on the case study. In a next step, the methodology will be outlined. In connection to that, a theoretic framework will be briefly established before the actual analysis looks at language policies in the different regions and different legislative levels. Information on the sociolinguistic reality is derived from statistical data, more specifically the Sociolinguistic Survey of 2016. Leading from the analysis and linking to concepts, the discussion will try to assess the situation of language policies in the Basque country.

2. Background

2.1. Terminology

Before we move on to the actual analysis, it is important that we clarify some of the concepts that are central to this research. In general, language policies include legislative texts, frameworks, or guidelines that are related to language rights, teaching, usage and preservation. Fernand de Varennes, human rights expert and United Nations Special Rapporteur on Minority Issues, states that “the expression ‘language rights’ or ‘linguistic rights’ is one that may involve very different or even contradictory meanings, depending on whether a sociolinguist, a philosopher or an educator is using the term.”⁸ He also stresses the fact that, depending on the case in which language issues are being discussed, they are motivated by different reasons and objectives for the legal situation.⁹ ‘Linguistic reality’, the product of language policies, is describing the space in which the language is used, mainly administration, education and everyday life. The most important indicator of linguistic reality are speaker numbers of the languages within a specific territory (or group). The term ‘sociolinguistic reality’ – a term used in this paper – extends speaker numbers to factors linked to language use such as social status, identity, bilingualism.¹⁰

In this context, it is important to stress the difference between human rights, which “have a claim to universality” and linguistic rights, which are “necessarily group-related” as expert in Basque studies and linguist, Viola Miglio, makes clear.¹¹ Important when talking about language rights and policies is that these may “benefit one group to the exclusion of another.”¹² Thus, when referring to ‘minority language,’ the term implies the existence of a ‘majority language’, usually distinguished by the number of speakers each language has in a region. There are many definitions for ‘minority language,’¹³ this paper, however, adopts the one provided by the European Commission’s *Euromosaic* study, as it includes the issue of power that will become important later in the discussion:

“The concept of minority by reference to language groups does not refer to empirical measures, but rather to issues of power. That is, they are language groups, conceived of as social groups, marked by a specific language and culture, that exist within wider societies and states but which lack the political institutional and ideological structures which can guarantee the relevance of those languages for everyday life of members of such groups.”¹⁴

⁸ Fernand de Varennes, “The Language Rights of Minorities in Europe: A Critical Look at the Law and Practice,” in *Language Rights and Cultural Diversity*, ed. Xabier Irujo and Viola Miglio (Center for Basque Studies Nevada, 2013), 95.

⁹ *Ibid.*, 97.

¹⁰ Oxford Dictionary, “Sociolinguistics,” <https://en.oxforddictionaries.com/definition/sociolinguistics>.

¹¹ Viola Miglio, “Endangered Languages and Self-Determination,” in *Language Rights and Cultural Diversity*, ed. Xabier Irujo and Viola Miglio (Center for Basque Studies Nevada, 2013), 36.

¹² *Ibid.*, 36.

¹³ Niamh Nic Shuibhne, *EC Law and Minority Language Policy: Culture, Citizenship and Fundamental Rights* (Kluwer Law International, 2002), 48 ff.

¹⁴ European Commission, *Euromosaic*, 1, as cited in Shuibhne, 50.

With reference to the case study, the usage of the term 'Basque Country' in this paper includes the greater area of the Basque Country (called *Euskal Herria* in Basque), four historic provinces (Bizkaia, Gipuzkoa, Araba and Navarra) in the North of Spain and three provinces (Lower Navarra, Lapurdi, Zuberoa) in the South of France.¹⁵ As this paper focuses on legislation, it uses the official administrative units instead of the historic provinces. These are: the Basque Autonomous Community (BAC), which includes Bizkaia, Gipuzkoa and Araba, and Navarra, which opted to be an independent unit and will thus be treated separately in the analysis. Both are part of Spain's seventeen autonomous regions. As the French Basque provinces are not an official administrative unit in the French state, they are referred to as Northern Basque Country or Iparralde.¹⁶ How closely regional belonging and language are, shows the example of the adjective for "basque", which is "eskalduna"; this is at the same time the term for "a person who speaks Basque".¹⁷

2.2. Historic Background

The origin of the Basque language is still discussed amongst linguists. However, it is the only surviving non-Indo-European Language in Western Europe, with approximately 600.000 speakers.¹⁸ It is also an autochthonous language, meaning that it originated in the area where it is still spoken.¹⁹ A standardized form *Euskara batua* was developed by the Academy of the Basque language in the 1960s.²⁰

Historically, language rights and the creation of the nation-state are closely interlinked. The case of Basque is exemplary for many regional and minority languages that were oppressed to make way for the unification of a state. In Spain, and even more in post-1789 France, proclaiming a common language created parts of national identity. Sharing a common language determines the belonging to a group, and thereby contributes significantly to group identity. Hence, regional identity was supposedly "detrimental to national unification" because it conflicted with the idea of national unity claiming all citizens to "be equal, and by extension homogenous."²¹ Furthermore, scholars Irujo and Miglio argue that by portraying regional languages as "enemies of progress" and not allowing them any space in the institutional design of the new states, the national governments followed a strategy that resulted in a "loss of prestige" of these languages.²² As a consequence, a growing number of speakers abandoned their regional language to have better possibilities for social improvement and participation in the state. The French revolution demanded human rights, but not linguistic rights. French as a language was used to reach equality and unity, and 'cultural genocide or linguicide' was regarded as a necessary part of the language policies implemented by the French government at that time.²³ The planned destruction of regional languages such as Breton, Basque and Catalan served to spread the French language and strengthen its position. The goal of "unity of the state through monolingualism,"²⁴ was reflected in policies and strategies in education, e.g. the punishing of students not speaking French but a regional language in schools. Similar processes were observed in Spain, but only reached its extreme later under the Franco dictatorship.

By the end of the nineteenth century, a 'Basque Renaissance' started to develop, producing Basque literature and giving an increased value to Basque culture and language, predominately in the Bilbao and San Sebastián area, with important figures such as philosopher and writer Miguel de Unamuno, and politician and writer Sabino Arana.²⁵ Spanish Basque provinces (except Navarra) first received autonomy in 1936, a historic moment for Basque nationalism and also for the Basque language, which started to be included in the school curriculum.²⁶ Unfortunately, autonomy did not last long, as General Franco took over power in Spain and suppressed regional movements. Under his dictatorship (1939-1975), discrimination of Basque

¹⁵ Xabier Zabaltza and Iván Igartua, *A Brief History of the Basque Language* (Etxepare Basque Institute: 2016), <http://www.etxepare.net/en/basque>.

¹⁶ William A. Douglass and Pedro Güell, "A Basque Referendum: Resolution of Political Conflict or the Promised Land of Error?," *Empire & Terror: Nationalism/Postnationalism in the New Millennium* (Center for Basque Studies Nevada, 2004), 138.

¹⁷ Estibaliz Amorrortu, *Basque Sociolinguistics: Language, Society, and Culture*. (University of Nevada Press, 2003), 12.

¹⁸ Gorter and Cenoz, "Multilingual Education for European Minority Languages," 655.

¹⁹ *Ibid.*, 663.

²⁰ Amorrortu, *Basque Sociolinguistics*, 24.

²¹ Xabier Irujo and Viola Miglio, "Introduction: The Lack of Legal Status," in *Language Rights and Cultural Diversity*, ed. Xabier Irujo and Viola Miglio (Center for Basque Studies Nevada, 2013), 22.

²² *Ibid.*, 24.

²³ *Ibid.*, 17-19.

²⁴ *Ibid.*, 20.

²⁵ See Mark Kurlansky, *The Basque History of the World* (London: Vintage Books, 2000), 158 ff.

²⁶ *Ibid.*, 190 ff.

and other regional languages in Spain was part of his regime and an important instrument to exercise power (thus legitimizing his regime and nationalist discourse). During the Francoist occupation of the Basque Country, Spanish was promoted as the superior language. Kurlansky, a journalist who published a book on Basques and their history, reports that Basques were told to “speak Christian”, meaning Spanish as the language of the Catholic Church and the nation Spain.²⁷ Other actions to diminish the status of the Basque language included the reversal of tax regulations, public burning of books in Basque, replacement of Basques as teachers and public servants, and a ban on Basque names, with the justification that these “would present an offence to the national unity.”²⁸ Not only was the usage of language prohibited, owning anything written in Basque or pictures showing Basque leaders, was punished with fines or even imprisonment.²⁹ This strategy was “aimed at robbing Basque of its role as preferred means of expression of the Basque people, a fundamental pillar of their identity.”³⁰ Paradoxically, as historian Núñez Seixas notes, strategies for cultural assimilation and promotion of Castilian Spanish did not cause the disappearance of minority languages.³¹

Since the end of the Francoist regime, the Basque language has recovered from repression, thanks to successful revitalization strategies, e.g. in the form of legislation and language promotion. These measures have had a significant impact on the number of Basque speakers, which have risen from around 528.000 in 1991 to more than 751.000 in 2016, a rise of more than 40%, in the past 25 years. Whereas in 1991, 22.3% of the overall population spoke Basque, this number has risen to 28.4% by 2016 (see Figure 1).

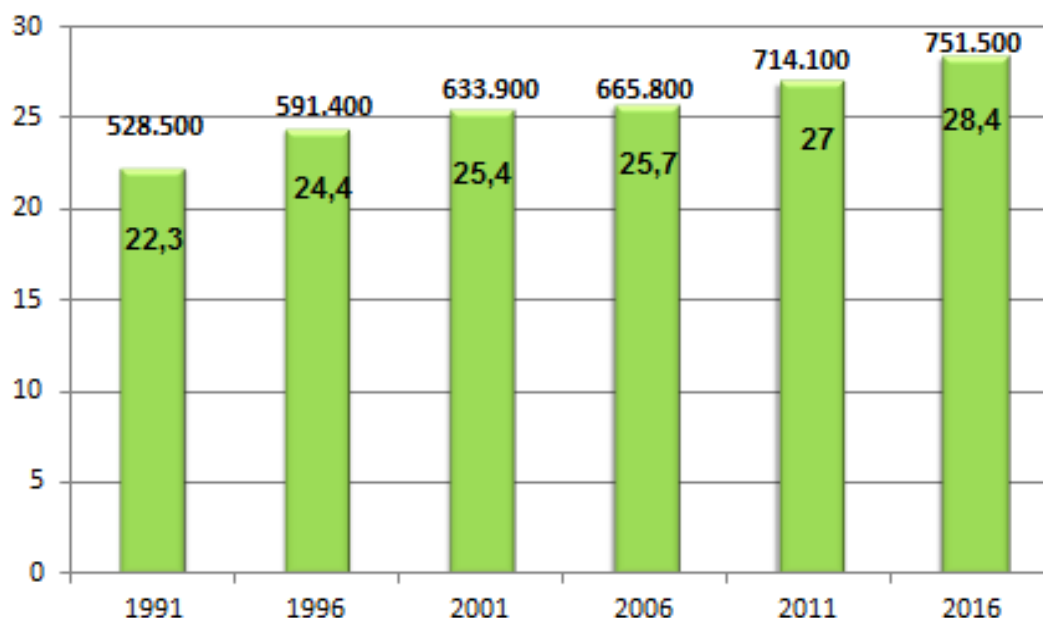


Figure 1: Development of Speaker numbers in the Basque country (all provinces), 1991-2016. *Source:* Sociolinguistic Survey 2016.

The analysis of policy documents below will show differences in legislation within the different countries and administrative units. It will also link these to linguistic/ sociolinguistic reality, including speaker numbers, in more detail.

²⁷ Kurlansky, *The Basque History of the World*, 227.

²⁸ Miglio, “Endangered Languages and Self-Determination,” 43-44.

²⁹ *Ibid.*, 45.

³⁰ *Ibid.*, 45.

³¹ Xosé M. Núñez Seixas, “The Iberian Languages and Spanish Nationalism,” in *Language Rights and Cultural Diversity*, ed. Xabier Irujo and Viola Miglio (Center for Basque Studies Nevada, 2013), 183.

3. Methodology and Theoretical Framework

3.1. Methodology

This paper uses an interdisciplinary approach to link the sociolinguistic reality to legal frameworks on different governmental/administrative levels (European, national, regional) in the Basque Country. Language policies will be compared on both sides of the border (French and Spanish Basque provinces), and between the BAC and Navarra. The differences identified will be connected to most recent statistics (Sociolinguistic Survey 2016), and the findings will serve to evaluate the impact of language policies within a theoretical framework of power of language policies and consequences for a minority language. These two variables, legislation and sociolinguistic data, are necessary to answer the twofold research question presented above.

The method I will be using is a comparative analysis of language policies and their implementation in a trans-border region with a linguistic minority (the Basque Country). By reviewing the material and using qualitative content analysis of legal and secondary texts, similarities and differences not only between the two sides of the border, but also between different legislative levels with regard to minority language policies will be contrasted and explained, if possible. For a more detailed analysis, I developed three categories for comparison: official status of the minority language (Basque) compared to the majority language (Spanish/French), accessibility of public services in the minority language; and education in minority language. These categories were chosen because they are fields shaped by language policies and directly impacting the sociolinguistic reality. Then, the conceptual data developed by the analysis of empirical data concerning the two cases (Spain and France) and the results of the sociolinguistic survey will be related to relevant theories (language hegemony and power). The discussion serves to bring the results of the analysis together with the concepts and contributions of other authors on the topic.

3.2. Theoretical Concepts

This section presents key variables of interest for the analysis, identified by the author and other scholars, as well as theories of power and language hegemony. Due to the scope of this paper, the review of related theories can only be selective.

To begin with, the key variables that influence the sociolinguistic reality and the status of language in the Basque country are: politics, language policies, educational policies, availability of languages for public and private services, media, tradition, and personal preferences.³² Shohamy, an expert on multilingualism and language education, also argues that actual practices are heavily influenced by mechanisms that are steered by language policies, such as education, street signs, and more.³³ While individual factors such as personal influence and tradition vary, and private services and media are demand-orientated, general factors such as legislation and public services are constant and ubiquitous. Accordingly, this prevalence makes legislation and public services the most important variables influencing the social, including sociolinguistic, reality. To be able to exert influence on something is a demonstration of power, therefore this paper will be working with concepts of power and language hegemony mainly. When explaining reasons for language attrition and death, Irujo and Miglio argue that not only language policies, but also “sociological, cultural and even economic [...] factors have their origin in political manipulation at the hands of one linguistic community (usually a majority) over others (usually the minorities).”³⁴ Here, the overt or covert influence of the group in power (politically) controls the situation of the other group in many ways, not only concerning language. Therefore, it can be said that power (as in political power) is the primary factor determining the status of a language. Economic power might become political power; however, this goes beyond the focus of this section.³⁵

DePalma and Teasley, both scholars who intensively researched bilingualism and education practices, argue that social factors such as status and perception of a language also reinforce the majority language, using the contrast of Spanish in Spain and Spanish in the United States:

[T]he language or dialect that is used by a *powerful* group becomes part of this cultural capital. In this sense, ‘free’ choice can become an unwitting instrument of *hegemony*, as speakers of

³² See for instance Amorrortu, *Basque Sociolinguistics*, 64 ff.

³³ Elana Shohamy, *Language Policy: Hidden Agendas and New Approaches* (Routledge: 2006), xv.

³⁴ Irujo and Miglio, “Introduction: The Lack of Legal Status,” 21.

³⁵ See for more on these factors: Abram de Swaan, *Words of the world: The Global Language System* (John Wiley, 2013).

minority languages, whether Spanish-speakers in the US or speakers of other languages in Spain, may become convinced that rejecting their minority language is the most expedient path to acquiring the *more powerful* and promising majority language, including all the cultural capital that is thought to come with it.³⁶

This observation shows that not only power decides which language is used more, but also that speakers make the choice for the language they perceive as more powerful, thereby enhancing its power further. Also, personal preference or political orientation influences this decision. Thus, depending on established political power structures, a construction of language status takes place in the social sphere. The existing structures often can be traced back to historic developments and strategies to discriminate minority languages, as described in the section above under the Franco dictatorship. We can see that during the expansion of Spanish on the Iberian peninsula in the last century, a “subtle *hegemony* of Spanish [was] fostered by neoliberal discourses on educational choice, flexibility and competition, and by the lingering prejudices about languages that are conditioned by attitudes towards their speakers.”³⁷ While one might refer to the possibility of the speaker’s free choice, this observation suggests that, ultimately, the linguistic reality is steered by notions of power and hegemony, which can still be applied to the situation today. Additionally, this means that liberal language policies can also further the hegemony of one language, if language ideologies are used as a power instrument, they influence the “neoliberal discourse” and cause that the free choice of the individual is often in favour of the majority language.³⁸

This raises the question if a balanced situation between two languages competing in a region is possible at all. As DePalma and Teasley critically acknowledge, even “[i]gnoring these historical processes can leave us open to neoliberal discourses of personal choice, equal balance, language as personal commodity and, in some political arenas, to protest-rhetoric involving reverse discrimination and imposition.”³⁹ In consequence, policies can be seen as a power instrument that decides principally over the extent a language is given in social space, while moving on a narrow line between equality and (positive) discrimination.

4. Analysis

4.1. Legal Frameworks on the European Level

This first section of the analysis investigates linguistic rights and linguistic diversity on the European level, with the EU and the Council of Europe being selected here more specifically. However, it does not claim to list all frameworks linked to this issue, as this exceeds the scope of this paper. When broadly speaking of legislation on the European level, this can in principle refer to different supranational institutions. This section will briefly present the main legislative texts linked to linguistic diversity and language rights, and then concentrate on one example that is considered most relevant for approaching the research questions posed above.

To begin with, the legislation of the European Union provides some guidelines for language policies in its 28 member states. The Treaty of the European Union (TEU), signed in Maastricht in 1992, states in Chapter 3, Art. 126:

I. The Community shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the Member States for the content of teaching and the organization of education systems and their cultural and linguistic diversity.⁴⁰

Apart from stressing the need of member states to become active and the importance of education, the concept of cultural and linguistic diversity is pointed out. It remains open to interpretation if the notion of ‘community’ language includes minority languages that are not officially state languages. EU legislative texts leave the implementation to the members and lack concreteness.

More concrete than the EU legislation is the Council of Europe’s European Charter for Regional or Minority Languages (ECRML) from 1992, which aims to “protect and promote historical regional and

³⁶ Renée DePalma and Cathryn Teasley, “Constructing Spanish,” in *Education, Dominance and Identity*, (SensePublishers, 2013), 101-102. Italics by author.

³⁷ *Ibid.*, 102. Italics by author.

³⁸ *Ibid.*, 111.

³⁹ *Ibid.*, 115.

⁴⁰ Treaty of the European Union, 1992.

minority languages in Europe.”⁴¹ Spain ratified it in 2001 for 6 minority languages, including Basque. As the Charter is content-wise more relevant and explicit when it comes to minority language rights, it will be used here for means of comparison of a legal framework on the supranational level.

The Charter aims to protect and promote linguistic diversity (Article 7, 10), not only endangered languages. It can be considered an instrument that “does not create any right that individuals or communities can exercise directly, rather they create obligations for ratifying states to take steps in favor [sic] of the maintenance of languages in general — and not only those on the verge of extinction.”⁴² However, the Charter also has its drawbacks when it comes to the implementation by nation states. In theory, it can impose legal duties on governments, e.g. in the field of education.⁴³ Even though the Charter is a treaty in international law, individuals cannot bring issues up to any court, therefore problems occur with practice and enforcement. National governments, possibly pushed by civic society movements, must take action. Other limitations constraining the application of this law include the fact that not all languages are covered, and case-specific factors such as territory, numbers of speakers, situational context and capacities of public authorities have to be taken into account.⁴⁴

As a result, cases cannot be brought before the European Court of Human Rights, and the only enforcement mechanism available is an advisory committee, that gives recommendations – but only rarely criticism – on individual cases.⁴⁵ In conclusion, legal frameworks on a European level in this matter are not as influential on a national level as one might assume. As described before, content and national responsibilities connected to them are too weak. Both frameworks, the TEU and the ECRML, lack concrete definitions of which languages are included (or in which context a language can be considered a minority language), how concrete measures by governments should look like, how governments that do not even officially acknowledge a minority language as such can be motivated to do so, and which consequences will follow if they do not comply with the regulations of the legislative framework.

4.2. National Levels: Spain and France

As shown previously, the strong historic link between language and the nation state has had important consequences for languages not declared official state language(s). Additionally, the EU lacks a common language policy, as discussed above. Therefore, this policy field is still largely the responsibility of national governments. This section looks at the main legislative frameworks at the national levels guiding language policies in the regions of the Basque country.

In the case of Spain, the constitution gave the 17 different regions the possibility to determine the design of regional government individually, resulting in varied degrees of autonomy. This liberty on the regional level might also explain the differences between legislation in the BAC and Navarra described in more detail below.⁴⁶ Regarding language, the “constitution introduces factors of inequality, including a generalized duty to know Spanish”.⁴⁷ Thus, the Spanish constitution underlines the dominant position of Spanish as the official language. As a consequence of this constitutional design and the strong position of the Spanish nation state, other restrictions for Basque (and other regional languages in Spain) emerge, such as territorial limitation, dependence on regional politics, and most importantly, the strong position of Spanish guaranteed by the constitution (despite the fact that the number of speakers might not always confirm this). This “legal superiority”⁴⁸ is also reflected in access to public services and education: Spanish must be used for official purposes and taught in all schools in Spain.

In France, the constitution does not allow any space for regional minorities and their languages, even though their existence in Brittany, Corsica, Iparralde (Northern Basque Country) and others is undeniable.

⁴¹ *European Charter for Regional or Minority Languages*, <https://www.coe.int/en/web/european-charter-regional-or-minority-languages>.

⁴² De Varennes, “The Language Rights of Minorities,” 101.

⁴³ *Ibid.*, 103.

⁴⁴ *Ibid.*, 109-110.

⁴⁵ *Ibid.*, 110.

⁴⁶ Kurlansky, *The Basque History of the World*, 273.

⁴⁷ Xabier Irujo, and Iñigo Urrutia, “Basque in the Foral Community of Navarre (CFN),” in *The Legal Status of the Basque Language Today: One Language, Three Administrations, Seven Different Geographies and a Diaspora*, ed. Gloria Toticagüena and Iñigo Urrutia (Center for Basque Studies Nevada, 2008), 198.

⁴⁸ *Ibid.*, 198.

It is clearly stated in the second article of the 1958 constitution: “The language of the republic is French”.⁴⁹ Declaring French the only official language follows the emphasis on equality of all citizens in Article 1 and does not mention nor leave space for minority/regional languages. This monolingual state constitution is also reflected when looking at the UNESCO endangered languages list, which considers 26 languages in France as endangered, as opposed to only 6 in Spain.⁵⁰

France has furthermore not ratified the Council of Europe’s European Charter for Regional or Minority Languages, whereas Spain has. Linked to the outstanding ratification by France, an initiative by the French parliament in 2006 attempted to make amendments to the constitution and grant regional minority languages in France official status. It was rejected by the French National Assembly, with reference to Article 2 of the constitution and the argument that such a change would threaten “the unity of the French people” as well as potentially cause “serious communitarian drifts.”⁵¹

4.3. Basque Provinces

Basque Autonomous Community

In the BAC, the *Statute of Autonomy* (1979), as well as the *Euskera Act* (1982) present the main legal texts. Article 6 of the Statute of Autonomy addresses language issues, Basque and Spanish are co-official: “All its inhabitants have the right to know and use both languages,”⁵² which is in a strong contrast to the Spanish constitution of 1978, where citizens have the right to know the languages of their respective autonomous communities (Basque, Catalan, and Galician), but “the right and duty” to know Spanish.⁵³ Other important articles are: Art. 6.2. Access to the languages guaranteed by public authorities and Art. 6.3. No discrimination for speakers of either of the two languages.⁵⁴

One example of flexible language policies in the BAC is the educational system, offering three types of immersion programs for schools as part of its revitalization strategies of Basque language:⁵⁵ Firstly, mainly Spanish as the language of instruction for all subjects, Basque language as subject. Secondly, both languages as medium of instruction and as subjects, and thirdly, mainly Basque instruction, Spanish as subject.⁵⁶ Because of this concept, a transformation in language use amongst students and teachers can be observed. For instance, while in 1979 less than 5% of all teachers were able to teach Basque, in 2011 it was more than 80%.⁵⁷

Navarra

In the Foral Community of Navarre, (CFN), the legal situation is different than in the BAC. Even though supported by various parties and discussed in the regional parliament, Basque was not declared an official language next to Spanish.⁵⁸ Spanish is mentioned first, then Basque. Basque does not have co-official status everywhere in Navarre, only in some parts. The important document here is the 1982 CFN autonomy statute, particularly Article 9, which reads:

1. Spanish is the official language in Navarre.
2. Vascuence will also have official status in Basque speaking areas of Navarre. A Foral law will determine these areas, regulate the official use of Basque, and within the framework of general state legislation, organize teaching of this language.⁵⁹

⁴⁹ French Constitution, Art. 2 “La langue de la République est le français,” 1958.
<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006071194>.

⁵⁰ Irujo and Miglio, “Introduction: The Lack of Legal Status,” 28.

⁵¹ Original phrase in Spanish: “El Gobierno de centro-derecha se opuso a la medida por considerarla atentatoria a «la unidad del pueblo francés» y un germen potencial de «graves derivas comunitaristas.»” Source: Fernando Iturrigaría, “Paris dice que hacer oficial el euskera ataca la unidad francesa,” *El Correo*, 22 December 2006,
http://www.elcorreo.com/vizcaya/prensa/20061222/politica/paris-dice-hacer-oficial_20061222.html.

⁵² BAC Statute of Autonomy 1979, Art. 6.1.

⁵³ Miglio, “Endangered Languages and Self-Determination,” 47.

⁵⁴ BAC Statute of Autonomy 1979, Art. 6.2, 6.3.

⁵⁵ Revitalisation strategies generally refer to strategies that promote a language and aim to increase its speaker numbers. These are usually used to prevent languages from extinction.

⁵⁶ Miglio, “Endangered Languages and Self-Determination,” 47.

⁵⁷ Gorter and Cenoz, “Multilingual Education for European Minority Languages,” 651.

⁵⁸ See Irujo and Urrutia, “Basque in the Foral Community,” 199.

⁵⁹ Ley Orgánica 13/1982, dated 10th August, for Reintegration and Improvement of the Foral

Thus, Basque is only acknowledged in the regions where it is already spoken. Interesting, as Irujo and Urrutia point out, is that the choice of words in the statute already has a different connotation than in similar contexts in the neighbouring BAC, using the Spanish word *Vascuence* instead of Basque *Euskara*. Hence the “law reveals clear political interest” as it “recognizes *Vascuence*, but it does not mention *Euskara* which it believes belongs in the Basque Autonomous Community.”⁶⁰ Therefore, it is not surprising, that speakers of Basque lack language rights while the law from this region has a connotation that Basque is something foreign requiring translation, thus placing *Euskara* (Basque) outside Navarra, and that there is no indication of language policies aimed to actively promote and revitalize the language.

So far, legislation in Navarra is different from the legislation and co-officiality in the BAC described above, showing less identification with the language, and a stronger sign of power of the national constitution of Spain and the regional government of Navarra following this line. However, this changed in 1986 after the Spanish government also acknowledged the status of minority languages within Spain, and Law 18/1986 created the possibility for co-officiality for Basque. Yet, this was only put into use in those areas of Navarra where this language is predominantly used, i.e. the north.⁶¹ Thus, it does not represent a major shift to the previous law and the recognition of Basque in Navarra is still limited, as described above. It adds measures for the presence and protection of the language, including its presence in media, access to administration, and education, in respective Basque areas.

Miglio also notices that the “vagueness of statements” about Basque language rights in mixed regions in Navarra could become problematic for Basque speakers to rely on.⁶² Compared to the legislation in the neighbouring region of the BAC, Basque speakers in Navarra have significantly fewer possibilities to use the language in official contexts, especially when moving within the region. The language itself is maintained but not promoted, thus speaker numbers are unlikely to increase.

Irujo and Urrutia find the “legal and social situation of Euskara [to be] much more precarious”⁶³ than in other regions and criticise a “zoning of linguistic rights [...] which divides citizens into three large groups according to their place of residence.”⁶⁴ Especially in the mixed zone, this vagueness is confusing, particularly concerning access to public services and administration for monolingual speakers of Basque, as these services might only be offered in Spanish. Rights for speakers of Basque in third zones are non-existent, Basque has no co-official status, consequently “Basque does not legally exist in this zone.”⁶⁵ In the field of education, the principle of zones is also applied: Basque is a subject in the “Basque zone”, a voluntary option in the mixed zone, and not offered or only as an elective in schools in the non-Basque zone. In all zones, there is no primary instruction in Basque, as seen in the model of the BAC.⁶⁶ Since 2000, a regression of language politics in Navarra can be observed, which is considered a “step backward”⁶⁷, in addition to the already prevalent lack of linguistic rights and obstacles to equal access. This could be linked to the language’s loss of relevance in official contexts as well, and it not being compulsory in all schools.

Iparralde

Speakers of Euskara in the Basque provinces in France (Iparralde) have significantly different language rights compared to their Spanish neighbours. There is no legal framework on the regional level in Iparralde. As the French constitution does not give any legal space to other languages than French, no language policy that could be analysed in this subsection exists. Promoting and maintaining Basque in the Northern Basque Country, therefore, is only done by community efforts and organisations such as the Public Office of the Basque Language in Bayonne, France.⁶⁸

4.4. Sociolinguistic Reality

To assess the effectiveness of language policies and to measure the sociolinguistic impact of the different legal provisions in the Basque country, it is necessary to compare these in terms of statistical data. This

Regime in Navarre (LORAFNA), article 9.

⁶⁰ Irujo and Urrutia, “Basque in the Foral Community,” 199.

⁶¹ *Ibid.*, 201.

⁶² Miglio, “Endangered Languages and Self-Determination,” 50.

⁶³ Irujo and Urrutia, “Basque in the Foral Community,” 204.

⁶⁴ *Ibid.*, 205.

⁶⁵ *Ibid.*, 205.

⁶⁶ *Ibid.*, 208.

⁶⁷ *Ibid.*, 213.

⁶⁸ See Public Office of the Basque Language, <http://www.mintzaira.fr/>.

subsection will recap the findings of the 2016 sociolinguistic survey, looking at the following indicators: speaker numbers (Figure 2), age, and use of the language.

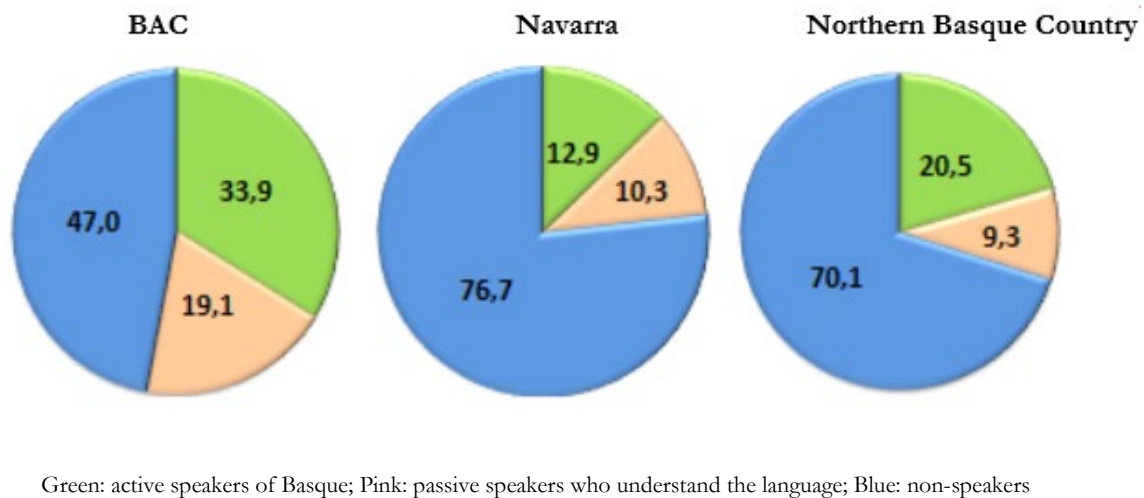


Figure 2: Linguistic competence in the different provinces of the Basque Country, *Source*: Sociolinguistic Survey 2016. Translated from original by author ⁶⁹

As visible in Figure 2, total speaker numbers (active and passive) were the highest in the BAC with 53%, 29,5% in Northern Basque country, and lowest in Navarra with 23,2%. Looking at the factor age, we notice a very high percentage of young people that are active speakers of Basque in the BAC (71,4) and Navarra (25,8%). In the Northern Basque country, the population 65 years or older has the highest speaker rate of Basque.⁷⁰ This is possibly a result of changed education policies in BAC and Navarra, of which the young generation profited from. Asked which language they use most intensively, 20,1% of respondents in BAC, 6,6% in Navarra, and 8,1% in Northern Basque country said they prefer Basque.⁷¹

5. Discussion

This part serves to summarise and interpret the findings in this paper. The analysis of selected legal and policy documents has shown that Basque has its strongest position in the BAC provinces, due to the co-official status of Basque and Spanish in this administrative region. In Navarra, Basque is only co-official in sub-zones in which it has had historically high speaker numbers. In the Basque province in France, however, the language lacks official status, as the recognition of this minority language (and other languages) is absent in the French constitution, and thus the language is not officially dealt with by regional authorities. Still, the national legislation in Spain shows a certain “legal asymmetry”, as Spanish citizens have the “*duty* to know Castilian, but only the *right* to use and know the sub-state languages” [sic].⁷² Especially because provinces vary in their degree of self-government, the policies and strategies for language promotion (which is linked to ideology and a general political position towards the minority language, but could not be treated in more detail in this paper) are decisive. The contrast between BAC and Navarra illustrates this best. Irujo and Miglio explain why the differing legislations are so problematic and will crucially determine the language’s future:

Reducing a language to the brink of extinction implies a lack of legal status, because legal status is one of the main guarantors of social prestige. The status of endangerment of a minority language is mainly due to its lack of officiality (or recognition of legal status) in the past and its level of endangerment is directly proportional to the level of legal recognition that the language has now and has had in the past.⁷³

⁶⁹ Note: There are also differences within administrative units, which are not specified here.

⁷⁰ Gobierno Vasco, Gobierno de Navarra, and Office Publique de la Langue Basque, *VI Encuesta Sociolingüística del conjunto del territorio del euskera* (Sociolinguistic Survey), 2016, 8.

⁷¹ *Ibid.*, 22.

⁷² Núñez Seixas, “The Iberian Languages,” 188.

⁷³ Irujo and Miglio, “Introduction: The Lack of Legal Status,” 28-29.

They argue that legal representation is the only way to sustain a minority language. This includes factors such as bilingual administration and an inclusive, bilingual education system, based on the acceptance of cultural and linguistic diversity.

The most recent sociolinguistic survey from 2016, published jointly by the Basque Government (BAC), the Government of Navarra, and the Public Office of the Basque Language (NGO, Bayonne, France) allows for optimism (Fig.1, Fig.2). The numbers reflect how inclusive policies (in BAC) have a more positive impact, i.e. growing speaker numbers of an endangered language, than more restricted (Navarra) or non-existent ones (Iparralde). Especially educational policies have an impact, as Miglio argues for the importance of a young generation of Basques in the recovery process, particularly amongst so-called *euskaldun berriak*, new speakers of Basque that learn the language at school instead of at their home.⁷⁴ But also the numbers of students in immersion schools differ heavily in the different Basque regions, as Miglio shows: 63% in BAC, 27 % in Navarra, only 9% in Iparralde (immersion programs).⁷⁵ Next to education, it can be stated that “political and legal factors contribute to a language’s fate, as well as social prestige in the broadest possible sense as the status of a language in so far as it provides its speakers with the opportunities for economic and social advancement.”⁷⁶

However, it should be kept in mind that policies cannot be the only indicator for the extent a minority language is used in social space. As the results of the sociolinguistic survey showed (Fig.2), the number of speakers in the Northern Basque country (29,5%) is surprising, considering that the analysis showed that this area lacks any legal status for Basque, compared to Navarra with only 23,2%. Thus, legislation is only one element, possible factors such as tradition, ideology and non-official attempts to promote a language can also have a positive impact on speaker numbers. Without a doubt, social realities – for instance contexts and spaces where language is used (formal/informal) – have to be taken into account. Hence, speaker numbers can be misleading, as they sometimes include passive speakers and bilinguals in the same category as monolinguals. But, as argued by Gorter and Cenoz, speakers of a minority languages need to be multilingual, thus at least speak also the majority language they are in contact with, to have equal access to public services and equal possibilities.⁷⁷ Monolingual speakers of a minority language are faced with several obstacles, if these services are not offered in the minority language, as in the case of Basque in Iparralde. Hence multilingualism in these regions is more common. In this context, the argument of Debra Suarez, expert on multilingualism, could present an explanation to assess the attempts to maintain the minority language.⁷⁸ Suarez claims that a struggle for linguistic hegemony occurs rather through bilingualism than monolingualism in the minority language.⁷⁹ Her argument is that for monolingual speakers, only one language is available, whilst for bi- or multilinguals, a decision which language to use has to be made, consciously or unconsciously, in private and public contexts. Resulting from this, the multilingual speaker is likely to choose the ‘easier’ language (the majority language) and neglect the lesser used language. This could serve as an explanation for heritage language maintenance and revitalization of Euskara in the BAC as resistance to linguistic hegemony, but also with regard to ‘inevitable’ bilingualism in Navarra or Iparralde.

Concerning the supranational level, the existing legislation is not directly influencing regional ones, as far as this paper could find out. Furthermore, because of the links of minority languages to regional identity and culture, and often also nationalism, it is difficult to propose a ‘one solution fits all’ approach. Thus, individual developments and decisions on a regional level are inevitable. Regional varieties are rarely granted legal status on a national level, therefore a European level could fill this void. Irujo and Miglio argue that, compared to the sociolinguistic reality and including variations and dialects, only around 10% of the languages spoken in EU countries also have official status, often as national language, granted by national governments.⁸⁰ They also identify a connection between “language loss, dialect attrition — and the lack of legal protection and therefore official representation afforded to minority languages.”⁸¹ Hence, there is a need for more concrete legislation and mechanisms for implementation on this level.

⁷⁴ Miglio, “Endangered Languages and Self-Determination,” 46.

⁷⁵ Ibid., 52.

⁷⁶ Irujo and Miglio, “Introduction: The Lack of Legal Status,” 8.

⁷⁷ Gorter and Cenoz, “Multilingual Education for European Minority Languages,” 655.

⁷⁸ Debra Suarez, “The Paradox of Linguistic Hegemony and the Maintenance of Spanish as a Heritage Language in the United States,” *Journal of Multilingual and Multicultural Development* 23, no. 6 (2002), 512-530.

⁷⁹ Ibid., 515.

⁸⁰ Irujo and Miglio, “Introduction: The Lack of Legal Status,” 2.

⁸¹ Ibid., 2.

Whereas Gorter and Cenoz argue that the legal framework provided by the EU and the Council of Europe (ECRML) can have a positive impact to promote and protect cultural heritage of languages in Europe,⁸² Miglio concludes that “international law can only help in a marginal way.”⁸³ As a main reason for this limitation of supranational legislative influence, the scholar stresses that linguistic rights are considered a “part of cultural rights, rather than fundamental human rights.”⁸⁴ The distinction is important and explains the attention language rights receive when ‘competing’ with other issues on a political level. Thus, it is fundamental that minority groups actively claim their rights to achieve changes in legislation and implementation practices. In the introduction of this paper, the distinction between human rights and linguistic rights was made. Consequently, if rights, cultural or linguistic, “benefit one group to the exclusion of another”⁸⁵, we are dealing with a complex set of power relations between minority and majority. This, in turn, raises the question of the extent to which a majority must acknowledge the rights of a minority. Even though not the focus of this paper, it should be noted that this does not only refer to language rights, but can also be extended to freedom of speech, movement, religion, and more. This can also be applied to DePalma and Teasley’s conception of power (see above). Consequently, regional and national authorities have the power to decide over the fate of the minority language. They can either decide to empower the regional language or weaken its position (also by not acting).

6. Conclusions

This paper has shown that language policies and the resulting legal status are very important for a minority language to maintain its speaker numbers and serves as a valuable basis for possible revitalisation strategies, as in the BAC. It also emphasized how the theoretical concept of power can express itself in political power and thus influences legislation and sociolinguistic reality. Nevertheless, it should be kept in mind that language usage and hegemony also develop from previous legal status and linguistic strategies, as well as economic, social and cultural factors that this paper did not analyse in detail. To sum up, while the 1978 Spanish constitution acknowledges multilingualism in Spain to some degree, language rights are still not equally granted. In the BAC, since the 1979 Statute of Autonomy, followed by the 1982 Act of normalization of Basque Language, Basque and Spanish have equal rights and must be used by public institutions as such.⁸⁶ In Navarra, the Basque Act of 1986 provides limited rights to Basque speakers in territorially limited areas. Also, no revitalization or promotion strategies are employed, and the speaker number is mainly kept on a constant level.⁸⁷ On the French side, in Iparralde, Basque is not even recognized as an official language, due to the limitations stemming from the design of the French constitution. The analysis and discussion have shown that there is still room for improvement of minority language rights. The void in European legislation allowing national governments to decide if and how minority language rights are granted causes significant variation in legal status, even within a country as shown by the examples of the BAC and Navarra in Spain, and even more on the other side of the border in Iparralde in France. The scope of this paper did not allow more comparisons, however, there are various examples of minority languages in European countries struggling for recognition and legal status. Therefore, I believe the topic of minority languages and language policies will gain more prominence in a European context in the future. Coming back to the IP theme “Where is Europe?”, the findings of this paper support the notion that Europe can be found in linguistic diversity, as already indicated in the introduction. Institutions and language policies shape the sociolinguistic reality and determine how much space a language comprises in contrast to another, thus having a significant impact on everyday life in Europe.

⁸² Gorter and Cenoz, “Multilingual Education for European Minority Languages,” 663.

⁸³ Miglio, “Endangered Languages and Self-Determination,” 64.

⁸⁴ *Ibid.*, 64.

⁸⁵ Miglio, “Endangered Languages and Self-Determination,” 36. Italics by author.

⁸⁶ See Amorrortu, *Basque Sociolinguistics*, 42 ff.

⁸⁷ *Ibid.*, 44.

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The Squatting Effect: From Urban Removal to Urban Renewal

Martina Adinolfi

1. Introduction

Squatting is an action repertoire consisting in using void or abandoned properties for housing purposes and/or for the promotion of social activities; and simultaneously an *autonomous* and *radical* urban movement with a pragmatic orientation.¹ Whereas squatting of vacant properties without legal permission has always existed, this paper will focus on Urban Squatting as a cultural and political phenomenon, organised or inspired by social movements. Not only has squatting been a widespread place-making practice all over Europe since the 1970s, it has also grown so multifaceted, multi-nuanced and heterogeneous that the sociologists such as Hans Pruijt has developed a typological categorisation of it.

Those who have been defined as “Conservational Squatters”² represent the starting point for this research. By holding that “it is better to squat and mend than to own and destroy”,³ conservational squatters strive to collectively re-imagine, rebuild and rehabilitate the urban space. The city and its empty spaces are thus reclaimed as an arena of social transformation, experimentation and endurance, where abandoned, vacant buildings become an opportunity to foster autonomous and non-institutional modes of citizen participation. Squatting is one of them: it embodies a grassroots, intervention-driven practice which, by generating direct-democratic forms of decision-making, collective engagement, and horizontal consensus challenges the bourgeois logics of urban speculation, ownership, and consumerism. As such, squatting is naturally political—and intrinsically politicised. To the cry of “Right to the City!”, conservational squatters reclaim a more sustainable understanding of the urban space, advocating for urban renewal as an ethical alternative to urban removal.

Arguing that it is the everyday experience of living the city that entitles one to the “Right to the City”, the squatters take up the motto of the French intellectual Henri Lefebvre. The Lefebvrian notions of urban re-appropriation, ‘autogestion’ and political awakening are indeed embraced by conservational squatters, and represent the theoretical framework for their practice of place-making. Nevertheless, squatters’ conceptualisation of the urban space also goes beyond Lefebvre’s notion. While the city is outlined by the former as a collectively elaborated ‘social space’—where a political-economic order is forged and maintained—rather than as a *socialised* one, the squatted urban is also a *transformed* space, conceived from a more non-hierarchic and horizontal angle.

In the aftermath of Lefebvre’s conceptualisation, this paper grasps the new theorisation of urban space developed by squatters. In particular, the aim of this essay is investigating how the notion of urban space has been re-conceptualised by conservational squatters to serve as a ground for their place-making practice in Europe. Practical examples will be simultaneously linked to theoretical assumptions from Critical Urban Theory and Urban Social Theory. Empirical evidence from some marginal, not-gentrified⁴ European squats—Casaloca in Milan, Italy; Rhino squat in Geneva, Switzerland; and ROG Factory in Ljubljana, Slovenia⁵—will be presented with the purpose, on the one hand, of depicting the place-making experience of squatting in Europe; on the other hand, of illustrating how studying European squats may offer an answer to the question “Where is Europe?”.

Serving as a catalyst of anti-capitalist values, squatting has become an incubator of more sustainable structures of organizing, sharing and living. While investigating the intimate experience of meaning-making in squatting as a socially constructed practice is fundamental to this research, it is primarily important to grasp the theoretical notion of space lying behind and developed through Conservational Squatting. The

¹ Miguel A. Martínez López, “The Squatters’ Movement in Europe: A Durable Struggle for Social Autonomy in Urban Politics,” *Antipode* 45, no. 4 (2013), 866-887.

² Hans Pruijt, “The Logic of Urban Squatting,” *International Journal of Urban and Regional Research* 37, no. 1 (2013): 19-45, 16.

³ Alexander Vasudevan, “Squatting the City. Developing Alternatives to Mainstream Forms of Urban Regeneration,” *Architectural Review* 1443 (2017), 11.

⁴ European squats have been predominantly experiencing an increasing gentrification in the last years. The analysis of those squats which, according to studies by SqEK, have not undertaken the process of gentrification years here to capture—and afterwards discuss—the “original” essence of squatting, as an anti-capitalist practice beyond state and market.

⁵ Whereas Casaloca and ROG are still occupied and open, Rhino has been evicted in July 2007.

ultimate purpose of this paper is therefore contributing to developing a deeper knowledge of this widespread grassroots practice. Understanding squatting also means exemplifying how the European urban space has been re-shaped, and more crucially how the European urban space *can* be re-shaped from below.

2. Methodology

In order to tackle the re-conceptualisation of the urban space developed by the squatters, and additionally present practical examples from the three European squats, an *ad hoc* methodology—that is, the triangulation of grounded theory and qualitative content analysis—has been adopted. Originally developed by Barney Glaser and Anselm Strauss, grounded theory consists in the progressive identification and integration of categories of meaning from a corpus of data. Grounded theory offers guidelines on how to identify categories and how to establish relationships between them, thereby paving the way for the development of new, contextualised theories.

In this paper, grounded theory methodology has been used to highlight and problematise the concepts of space and squatting—the former tackled both from a Lefebvrian and a “beyond Lefebvre” angle. Theoretical assumptions (Lefebvre’s “Production of Space”, and Harvey’s understanding of Lefebvre’s “Right to the City”; Quilligan’s approach to the Commons; Featherstone’s study on “Spatial Relations of Solidarity”; and Leach and Hauss’ theory of “Movement Scenes”) which represent the cornerstone of conservational squatters’ conceptualisation of space, embody the explanatory theoretical framework through which to understand the spatial quest. Devised to substantiate the theoretical framework, practical examples—from Milan, Geneva and Ljubljana’s squats—provide a multi-dimensional perspective on how space may be interpreted, organised and self-managed in the three European squats. In this case, the embraced methodology has consisted in qualitative content analysis designed to illustrate—and eventually disentangle—the complexity of spatio-social situations. Qualitative content analysis has involved secondary sources, both textual and visual artifacts. The former includes newspaper articles and websites respectively released and created by activists of the three squats either in English, Italian or French; the latter includes pictures from the squats (with a specific focus on graffiti, flyers and murales), zines, press releases and movie clips realised by the squatters of Casaloca, Rhino and ROG and accessible online. This selected material has been analyzed because, in both textual and iconographic forms, it acts as visual vehicle to convey ideological and theoretical messages.

All in all, the triangulation of grounded theory and qualitative content analysis has successfully served the two-fold goal of, on the one hand, developing a theoretically grounded understanding of urban spatiality and, on the other hand, of encouraging a more holistic insight on squatting in Europe. In view of further research, nevertheless, an inquisitive methodological approach—based on ethnographic research—may pave the way for a more overarching analysis, besides enriching a purely theoretical overview with a perhaps necessary pragmatism.

3. Urban Space and Squatting

3.1. The Urban Space

According to the Oxford Dictionary, space is “a continuous area or expanse which is free, available, or unoccupied”.⁶ However this is just the first of 17 definitions. Despite its clear etymology—from the Latin *spatium*, which in French becomes *espace* and *spazio* in Italian—it is emblematic that there is no precise definition of the word. Space has been indeed variously re-appropriated by scholars, becoming a metaphor for innumerable abstract concepts, furthermore acquiring disparate meanings in relation to the accompanying adjectives.⁷ Space could be open, dimensional or rural; it could be visual, imaginary; public, or infinite. Space might also be urban and wasted. This is the framework where the squatting practice occurs.

While urban space—alternatively referable to as a noun, ‘the urban’—generally denotes a town or a city, the very definition of urban is rather controversial. On the one hand, this has been conceived in terms of its multi-scalar outline and its interconnections to other spaces. Triggered from a critique of political economy, this idea conceives urbanisation as a global phenomenon that links various places and scales with each other, from the local to the global.⁸ On the other hand, scholars have studied the urban space as the

⁶ *Oxford Dictionaries*, “Space,” <https://en.oxforddictionaries.com/definition/space>.

⁷ Rob Shields, “Spatialisations,” in *Spatial Questions: Cultural Topologies and Social Spatialisation* (Los Angeles/London: Sage, 2013), 15.

⁸ Mary Dellenbaugh, Markus Kip, Majken Bieniok, Agnes Katharina Müller, and Martin Schwegmann, eds. *Urban Commons: Moving Beyond State and Market*, Bauwelt Fundamente, V. 154 (Basel/Berlin/Boston: Birkhäuser, 2015).

realm of the (modern) everyday activity. From this sociological perspective, the city is understood as an arena of encounters, nest of action and incubator of ideologies. In the city, peoples of all cultures and classes mingle, albeit reluctantly and agonistically, to generate a common of perpetually changing and transitory life.⁹ In his book “La Production de l’Espace”¹⁰, the French intellectual Henri Lefebvre embraces this very second concept. Rejecting the idea that the economic base of society is what determines space,¹¹ Lefebvre delves into the urban space to break open the limits of an economist approach.¹² As it will be shown, his theoretical definition of the urban as an autonomous, all-encompassing entity holds pivotal relevance in the urban studies disciplines, preparing the ground for squatters’ place making practice.

The city, nevertheless, is also a site where abandoned buildings, empty properties and vacant homes abound. Used carelessly, squandered, ruined, or let lapsed,¹³ these incongruous ‘wasted’ spaces amounted, in 2014, to around 11 million across the EU.¹⁴ They are the result of various phenomena—such as deindustrialisation, war damage, or incomplete urban projects. Whatever the case, the destiny of these wasted spaces could follow a twofold path. They could remain involuntary exceptions, barren patches, bereft of uses and sense,¹⁵ lying uncultivated and unoccupied, absences of city within the city. Or, void could acquire a new significance. The emptiness of European “in-betweens”¹⁶ may offer the opportunity to recover urban gaps, to enrich them with new unimagined attributes; what is wasted would become cradle of endurance and experimentation, subversion and struggle.¹⁷ Here is where squatting comes about.

3.2. Squatting: What, Where, When, and Why

Today, more than 2400 squats exist in Europe.¹⁸ Squatting is the appropriation of empty or unused properties for housing needs and/or for the promotion of cultural and social activities.¹⁹ While the tenancy of occupying a property without legal permission has always existed,²⁰ urban squatting is a child of our time. It is not a contingency that it has started blossoming in Europe in the 70s, few years after May 1968 and immediately after the publication of Lefebvre’s masterpiece, *La Production de l’Espace*.

In 1968, the Italian pop singer Adriano Celentano competed in the Sanremo Festival²¹ with the song “I Ragazzi della via Gluck”²². By singing “where there was grass; now, a city” (là dove c’era l’erba ora c’è, una città) the song bitterly described the massive urban speculation of the 1960s that had drastically changed the urban identity of Milan. In the same years, along with majestic grey buildings and smoky factories, the first squats—Haffenstrasse in Hamburg and Mainzer Strasse in Berlin, Grote Keyser in Amsterdam and Christiana in Copenhagen—started mushrooming in numerous European cities. In the late 1970s, Geneva was supposedly the most squatted city in Europe, with roughly 120 buildings occupied by around 2,800 inhabitants.²³ In the wake of May 1968, the squatting movements which had sprung up in such an

⁹ Dellenbaugh et al., *Urban Commons*, 16.

¹⁰ Henri Lefebvre, *La Production de l’Espace* (Paris: Éditions Anthropos, 1974).

¹¹ Shields, “Spatialisations,” 16.

¹² *Ibid.*, 16.

¹³ Following the definition of “waste” by the geographer Vinai Gidwani; Laura Bliss, “What Squatting Can Teach Us About Wasted Space,” *Citylab*, 17 February 2017, <https://www.citylab.com/equity/2017/02/what-squatting-can-teach-us-about-wasted-space/516795>.

¹⁴ Rupert Neate, “Scandal of Europe’s 11m Empty Homes,” *The Guardian*, 23 February 2014, <https://www.theguardian.com/society/2014/feb/23/europe-11m-empty-properties-enough-house-homeless-continent-twice>.

¹⁵ Judit Carrera, “Polis: 7 Lessons from the European Prize for Urban Public Space,” *Public Space*, November 2017, <https://www.centerforarchitecture.org/press-releases/center-for-architecture-opening-polis-7-lessons-from-the-european-prize-for-urban-public-space-2000-2012-march-27-2014/>.

¹⁶ Temporary and transitional, “in between” are spaces of intersection, hybridity and possibility.

¹⁷ Mark Purcell, “Excavating Lefebvre: The Right to the City and Its Urban Politics of the Inhabitant,” *Geojournal: An International Journal on Human Geography and Environmental Sciences* 58, no. 2-3 (2002), 99-108.

¹⁸ Data by Squatting Europe Kollektive (SqEK). SqEK is an open, transnational research network which aims to produce fine-grained knowledge about the squatting movement in Europe. “Map Data,” Squatting Europe Kollektive, <https://maps.squat.net/en/cities>.

¹⁹ Thomas Aguilera, *The Squatters’ Movement in Europe: Commons and Autonomy as Alternatives to Capitalism*, ed. Claudio Cattaneo and Miguel A. Martínez. Squatting Europe Kollektive, (London: Pluto Press, 2014), 10.

²⁰ Pruijt, “The Logic of Urban Squatting,” 1.

²¹ The Festival della canzone italiana di Sanremo (in English: *Italian song festival of Sanremo*) is the most popular Italian song contest and awards, held annually in the town of Sanremo, and consisting of a competition amongst previously unreleased songs.

²² Translated: The boys from Gluck street. Via Gluck was the street of Milan where the singer lived as a boy with his family.

²³ Aguilera, *The Squatters’ Movement in Europe*.

“international business hub”²⁴ could be described, according to the urban studies scholar Luca Pattaroni, as “the irruption of a pluralist, burgeoning, slightly off-beat world in the highly ordered universe that is the city of Geneva.”²⁵ Here, squats were a reaction to real estate speculation, and an explicit critique to mainstream cultural production.

Despite a common root, squatting is an extremely heterogeneous phenomenon, triggered by a wide variety of social needs. In order to address the diversity of squatting, a typological categorisation has been developed by the sociologist Hans Pruijt. The resulting five-fold configuration illustrates the disparate potentials of squatting. If deprivation-based squatting tackles problems related to the supply of social housing, squatting as an alternative housing strategy addresses housing shortage, while simultaneously organizing protests against property speculation. Entrepreneurial squatting acts as a response to cultural demands by generating space for encounters and exchange; and political squatting creates a space for engaging in anti-systemic politics.²⁶ Last but not least is the so-called ‘conservational squatting’ which represents the starting point for this paper. Designed to prevent a non-sustainable transformation—and to promote a development in a different direction—conservational squatting serves as a tactic to preserve, and to *conserve*, the European cityscape. Urban, wasted spaces are reclaimed and transformed: residence, events and social centers activities are combined, coexisting in the same building.²⁷

Among the roughly 2400 European squats,²⁸ the conservational squats are relatively few. The cases of not yet gentrified squats are even fewer. Casaloca squat in Milan, Italy and ROG Factory in Ljubljana, Slovenia are some of those. Adopting the acronym “CSOA” (*Centro Sociale Occupato Autogestito*)²⁹ Casaloca squat has blossomed in 2005 in the peripheral, industrial district of Bicocca—on the middle of a popular neighborhood in the north east of Milan. As it will be shown, the Casaloca squat acts as a new laboratory of ideas; here wasted spaces are re-animated and re-shaped aiming at a different understanding of what the city is and how we may live (in) it.³⁰

The conservational squat ROG Factory in Ljubljana, Slovenia, is another peculiar case of conservational squatting. Prior to its occupation in 2006, the space was best known as the gigantic factory where ROG bikes were manufactured between 1953 and 1991.³¹ Located in the center of the city— five minutes walk from Metelkova³², between the central train station and old town—³³ the building was abandoned, neglected and robbed for around 15 years until 2006, when an informal group of youth took the matter into their own hands. After months of collective maintenance and rehabilitation, ROG has been re-generated, becoming a hotbed of the protest generation. Inherently anti-capitalist, it is now a space for people and about people,³⁴ incubator of revolutionary ideas and collective change. By advocating for urban renewal as a sustainable alternative to urban removal, conservational squatters of Casaloca and ROG see empty buildings as an opportunity to be re-imagined and collectively rehabilitated. The famous slogan embraced by the conservational squatters, “It is better to squat and mend than to own and destroy,”³⁵ highlights the uniqueness of their practice, in itself both cultural and political.

The cultural dimension of urban squatting is immediately recognizable in *Instand(be)setzung*, the German word for squatting. Coined in the 1970s by the German activists to describe their actions, *Instand(be)setzung* is indeed a clever combination of the German for maintenance (*Instandsetzung*) and squatting (*Besetzung*).³⁶ Squatting clearly flourished as a makeshift process of repairing and emending void—and often highly

²⁴ With a population of roughly 198 thousand inhabitants, and an urban metropolitan population growth of over 1 percent a year, Geneva is today the second largest city in Switzerland. Being both a city (municipal) and a state (canton), it is not only a fundamental global business center for trade, finance, and commerce; it is also the second most pricy city in the world. Despite a significant number of cultural and artistic centers—museums, galleries, theaters, opera houses—Geneva could not rely on a culture-led regeneration to brand its identity. The economic success of its finance and economy, its increasing internationalised population, and its high living have resulted in a social polarisation of cultural provision. Ibid.

²⁵ Ibid.

²⁶ Pruijt, “The Logic of Urban Squatting,” 15.

²⁷ Bart van der Steen, Ask Katzeff, and Leendert van Hoogenhuijze, *The City Is Ours: Squatting and Autonomous Movements in Europe from the 1970s to the Present* (Oakland: PM Press, 2014), 180.

²⁸ Namely, those which have been identified by the SqEK research network.

²⁹ Acronym identifying conservational squats in Italy. Squatting Europe Collective (eds), *Squatting in Europe. Radical Spaces, Urban Struggles* (Wivenhoe: Minor Compositions, 2013), 89.

³⁰ Bliss, “What Squatting Can Teach Us.”

³¹ Nova, “Tovarna Rog”, *Tovarna*, 7 May 2006, <https://tovarna.org/node/198>.

³² Started in 1993 in a former military barracks, today Metelkova is an autonomous social centre.

³³ “Rog Tovarna,” *Youtube*, 5 August 2016, <https://www.youtube.com/watch?v=8ItG2nKP6aw>.

³⁴ Ibid.

³⁵ Vasudevan, “Squatting the City,” 10.

³⁶ Ibid., 10.

damaged—buildings, which were gradually and painstakingly restored through the combination of DIY³⁷ practices.³⁸ Rot was removed, windows were fixed, roofs patched, electrical and hydraulic systems renovated, and a new space living created. Repair and rehabilitation were a collective practice; architecture a hands-on affair—radical, jury-rigged and experimental,³⁹ but also, inherently ephemeral. That is why squatters became also keen archivists. Magazines, press releases, pamphlets, photographs, videos and films are being produced by the activists; even manuals. It's all part of the story they are creating, of living the city in different ways.⁴⁰ Not only has the DIY ethic been elevated to a tool for radical activism and creative maintenance—and to a veritable form of art contributing to the daily struggle against capitalism—⁴¹ it has also become the starting point for a systematical theoretical elaboration. Published for the first time in Amsterdam in 1969 with the title *Squatters Handbook*, this ‘manual’ for squatters represents a blueprint for an alternative urbanism.⁴² Along with presenting a sharp critique to the ‘institutional’ urban planning, this, and subsequent manuals provide rough and ready instructions about DIY patching strategies. Recycling, dumpster-diving and sharing resources were highlighted as low impacts means to be environmentally friendly in urban settings.⁴³



Fig. 1: Outside ROG Factory: DIY in action
(Rog Factory, *Wikipedia*. 4 December 2017)

In its cultural dimension, squatting thus acts as urban infrastructure, springing from architectural activism that combines community design, activism, and participation with an understanding of the environment as a fuel of perpetual invention.⁴⁴ Conservational squatters re-think and make space differently. They are makeshifts, artists compelled to “give themselves totally to the process by which their works are created”.⁴⁵

Squatting, however, represents far more than a crude exercise of architectonic experimentation. Architecture, art and DIY are not an end in themselves; instead they serve a political purpose, striving to create new participatory forms of living, organizing and working. Because it encourages dwellers to think out of the box of what is dominant, thereby questioning the way the city is thought and inhabited, urban squatting is inherently political—and intrinsically politicised. Holding that the right of use is prior to the absolute ownership, squatters challenge the logics of urban speculation, gentrification, and consumerism, while reclaiming the city as a realm of social transformation and radical resistance.

The structural dynamics behind the squatting movement coherently mirror its political orientation—that is, anarchism. As an autonomous, anarchic movement, squatting embraces “direct-democratic forms of

³⁷ Acronymous for “Do It Yourself”.

³⁸ Vasudevan, “Squatting the City,” 13.

³⁹ *Ibid.*, 13.

⁴⁰ Bliss, “What Squatting Can Teach Us.”

⁴¹ Aguilera, “The Squatters’ Movement in Europe.”

⁴² Vasudevan, “Squatting the City,” 14.

⁴³ *Ibid.*, 15.

⁴⁴ *Ibid.*, 15.

⁴⁵ Shields, “Spatialisations,” 25.

decision-making”, “self-managed consensus” and “spontaneous forms of militant resistance” to domination in all the domains of life, society and politics.⁴⁶ While, among the squatters, “anarchism is the word”⁴⁷, the term used by Deleuze and Guattari to describe the horizontality of the decision-making process is ‘rhizomatic’⁴⁸. Directly derived from the term ‘rhizome’, the adjective pictures a structure that allows for multiple, non-hierarchical entry and exit points in data representation and interpretation.⁴⁹ A ‘rhizomatic’ social movement like urban squatting, then, “presents multiple connections between the ‘nodal points’ of networks, composed of people, ideas, identities and spaces, characterised by non-linear evolution based on ruptures, reconstitutions and alliances, with the opening up of new possibilities for expression, entry and metamorphosis”.⁵⁰ It is through such a non-hierarchical decision-making process that squatters make decisions, embrace ideologies and, overall, confer the space a new, revolutionary significance.

Occupation, resistance and experimentation—these are leitmotifs of squatting as an urban practice. The theoretical foundation of this bottom-up experience, however, is rooted in a clear academic tradition pioneered by the French scholar Henri Lefebvre. In his writings on the City, Lefebvre has contributed to developing a first conceptualisation of the urban space as a locus of political struggle—definition which has been embraced and further extended by conversational squatters. The next session will shed light on Lefebvre’s theoretical conceptualisation of urban space which serves as a first ground for squatters’ place-making practice.

4. The Lefebvrian Space

4.1. Henri Lefebvre

French thinker of the twentieth century, renowned author of *La Révolution Urbaine* and *La Production de l’Espace*, Henri Lefebvre may be considered the pioneer of the squatting ideology. Despite his intellectual eclecticism—reflected in a widely diverse work encompassing philosophy, sociology, politics, anthropology and geography—his thought is held together by a resolute commitment to the project of imagining and accomplishing radical change in human society.⁵¹ Inspired by intellectuals such as Marx, Hegel, Nietzsche, and Heidegger, Lefebvre’s political and intellectual ideal pursued a twofold aim. Not only did he yearn to offer a sharp critique of society—thereby paving the way for an alternative social model, namely “a possible world beyond capitalism, the state, and consumer society,”⁵² he also relentlessly strove for a more holistic understanding of social life, one that embraced multiple aspects of the human experience.⁵³ Foregrounding the notion of the urban space as a ‘lived space’ was arguably crucial to “apprehend human life as a complex whole and avoid reducing our understanding of experience to small fractions of life, such as class status, gender, race, income, consumer habits, marital status, and so on.”⁵⁴

What Lefebvre advocates for is a new understanding of the city, in which the urban space is an all embracing, overarching ‘whole’, a kaleidoscopic multitude of drives, identities and networks not reducible to economic imperatives. This new idea suggests a broader, nonconforming understanding of the intrinsic potentiality of space; an entity located beyond market and state. The root of Lefebvre’s inquiry into l’espace lies in his book *La Production de l’Espace*. Written in the aftermath of the May 1968’s countercultural movements, the book has been referred to by his author with the French word ‘spatialisation’,⁵⁵ meaning an analysis of the relation between spatial order and urban place-making. Here, Lefebvre analytically defines the urban space as “perceived through involvement in ‘social practices’, conceived in ‘representations’ of that space, and lived through the association of images and symbols with specific ‘representational spaces’.”⁵⁶

The practical implications of this theoretical definition are glaring. The urban space embodies an *oeuvre*, an ongoing and collective work of art, created, used, and reshaped by its dwellers;⁵⁷ a social arena which can

⁴⁶ Martínez Lopez, “The Squatters’ Movement in Europe,” 871.

⁴⁷ Squatting Europe Collective, *Squatting in Europe*, 36.

⁴⁸ Shields, “Spatialisations,” 26.

⁴⁹ “Rhizome (philosophy)” *Wikipedia*, 14 May 2018, [https://en.wikipedia.org/wiki/Rhizome_\(philosophy\)](https://en.wikipedia.org/wiki/Rhizome_(philosophy)).

⁵⁰ Martínez, “The Squatters’ Movement,” 381.

⁵¹ Purcell, “Excavating Lefebvre,” 144.

⁵² *Ibid.*, 144.

⁵³ *Ibid.*, 146.

⁵⁴ *Ibid.*, 146.

⁵⁵ Shields, “Spatialisations,” 27.

⁵⁶ *Ibid.*, 28.

⁵⁷ Dellenbaugh et al., *Urban Commons*, 16.

or rather *must* be reclaimed by its spectators. Intervening in the space is a legitimate right of the urban dwellers, the citizens, who are entitled of the “right to the city”.

4.2. Right to the City

“The right to the city is like a cry and a demand...a transformed and renewed right to urban life”⁵⁸ states Lefebvre in “Writings on Cities”⁵⁹. Near the end of his life, working with a group of activists and scholars in Naverrenx, France Lefebvre wrote an essay that outlines his project for radical politics. In 1968, *Le Droit à la Ville* was published. The book holds a fundamental relevance in the field of urban studies, furthermore laying the foundation for squatters’ practice of urban renewal. The opening is emblematic. the citizenry, argues Lefebvre, are entitled to various rights: right to information, to difference, to self-management; and the right to the city. Because the city belongs to those who inhabit it, the right to the city is far more than the individual freedom to urban spaces: it is a right to change ourselves by changing the city, that is, according to the sociologist and Lefebvre’s scholar David Harvey, “one of the most precious yet most neglected of our human rights”.⁶⁰

Lefebvre’s interest in the sphere of rights may seem odd, at a first glance. Heir of the Marxist school of thoughts—which tends to ignore questions of citizenship and rights as part of a liberal-democratic and, as such, inherently bourgeois project—Lefebvre slightly distances himself from his model. Nonetheless, he yearns to recapture the revolutionary potential of what is called ‘rights. The right to the city is not intended, like in the neoliberal framework, as a political goal towards an egalitarian society; it is rather a beginning, a point of departure for a political struggle. A vigorous cry and a legitimate demand, indeed. Due to its grassroots-driven ambition, the Lefebvrian motto immediately had a worldwide resonance. One of the earliest initiatives for the right to the city sprang up in Brazil, where organisations among the metropolitan favelas began to advocate a right to the city for slum dwellers.⁶¹ In Europe, the right to the city has been accomplished through various arts of spatialisation. Squatting is one of those.

Ultimate expression of a perpetual struggle, European squatting is a grassroots response to the Lefebvrian project, a radical attempt to move beyond state and market, and to achieve thoroughgoing political awakening and democracy. Becoming democratic, according the social scientist Mark Purcell, is an open-ended process, an aeonian⁶² struggle. It is both a personal and a collective endeavor: it primarily requires citizenry continually to cease being the political spectator and decisively to become the political actor; afterwards, individually to reject heteronomy and passivity and to engage collectively in the political process of becoming democratic together.⁶³ Arguably, democracy is a reality in the European squats. The slogan on the main facade of Casaloca squat firstly portrays the democratic essence of Casaloca motto: “Our home, the entire world, our law; freedom”.⁶⁴

Willing to welcome the entire world in their home, the squatters make ‘freedom’ the leitmotiv of their place-making practices. Freedom, however, does not entail chaotic anarchism. A systematic and rigorous decision-making model is necessary; ‘our law’, indeed. During Casaloca’s weekly meetings—the so called “Collettivo” —the decision-making process follows rhizomatic patters, based upon horizontal consensus. Only when unanimity is not reached, no decision is taken and the matters under discussion are momentarily suspended to be tackled later.⁶⁵

When the community goes freely and democratically engage in the collectives, it is usually to discuss how the space should be self-managed—*autogéré*, to adopt a Lefebvrian term. Usually translated as “self-management,” the very significance of *autogestion* is rooted in its primordial use. Originally the notion referred to workers in a firm who take control of the means of production and manage it themselves,⁶⁶ autogestion here refers to a radical attack on the roots of the capitalist system; it insists on bottom-up decision making and on the decentralisation of control to autonomous local units. Autogestion is a pivotal concept in the

⁵⁸ Purcell, “Excavating Lefebvre,” 102.

⁵⁹ Henri Lefebvre, *Writing on Cities* (Blackwell, Cambridge, 1996).

⁶⁰ David Harvey, *Rebel Cities: From the Right to the City to the Urban Revolution* (London: Verso, 2013), 4.

⁶¹ Purcell, “Excavating Lefebvre,” 142.

⁶² From ancient Greek αἰώνιος eternal + -an, aeonian means eternal; everlasting.” *Oxford Dictionaries*, “Aeonian,” <https://en.oxforddictionaries.com/definition/aeonian>.

⁶³ Purcell, “Excavating Lefebvre,” 314.

⁶⁴ In Italian “la nostra patria, il mondo intero, la nostra legge; la libertà”, translation by author.

⁶⁵ Squatting Europe Collective, *Squatting in Europe*, 94.

⁶⁶ Purcell, “Excavating Lefebvre,” 147.

ROG Factory. Here, around 15 organised collectives and 15 active individuals engage in the assembly, which, following the principle of direct-democracy in decision making,⁶⁷ is the main political body of the squat. Against a production of space triggered by property ownership, autogestion entails the de-alienation and, consequently, the re-appropriation of the urban. Because the city belongs to those who inhabit it, dwellers must reclaim, re-appropriate and thereby de-alienate the urban space, reintegrating it into the web of social connections.⁶⁸ As an answer to the cry of “right to the city!”, ROG squatters take the urban space as their own, they reclaim what is rightfully theirs.

As it has been resolutely stated in their first press release (2006), “as long as city council doesn’t implement a clear strategy to solve the problem of these empty decaying premises, we self-initiatively wish to open it to all individuals and groups, for the realisation of independent production of cultural and social content.”⁶⁹ After ten years of working in precarious conditions, regenerating the area and producing cultural content in public interest, the ROG community has become legitimately entitled in the eyes of the municipality to use and manage the property even if it does not legal possess it.⁷⁰ Appropriation becomes a way to rethink the concept of legitimate ownership; it is an act of reorientation. It reorients the city away from its role of engine of capital accumulation and it renders it a constitutive element in the web of cooperative social relations.⁷¹

The right to the city represents a landmark for conservational squatting place-making practice. By taking over void properties, squatters experience a political awakening; by rightfully reclaiming and re-appropriating the urban, they participate in the city. Although Lefebvre’s motto is undeniably embraced, the theoretical assumption underlying the squatters’ ideology has transcended the Lefebvrian thought. Because Lefebvre’s notion of the urban is tied to a particular temporality⁷²—namely, the industrial city of Fordist’s capitalist production—it might prove to be only partially relevant in today’s multifaceted, post-Fordist Europe. A novel theorisation has been implicitly developed by conservational squatters, urban scholars and like-minded activists, not only to better comprehend the current narrative of urban politics, but also to make urban practices such as squatting embrace a new pragmatism. Going ‘beyond Lefebvre’ is then necessary. It is pivotal to understand how space has been given meaning, and how the grassroots, bottom-up practice of squatting is making Europe a different place to live.

5. Beyond Lefebvre

5.1. Towards a New Definition

Lefebvre’s urban is a reclaimed, re-appropriated, and lived space. Squatters’ urban is not only a reclaimed, re-appropriated, and lived space; it is also a space which is made ‘place’ and transformed by human interaction. Space produces society *and* society produces space: by engaging with space, urban squatters use and transform everyday landscapes in the enduring process of place-making. That is why, while taking up the Lefebvrian ideology, the squatted urban acquires a new meaning far beyond its original framework, enriched by new theoretical concepts. Studies on the commons, on spatial relations of solidarity, and on politicised scenes are reshaping the activated the urban space on a theoretical level. The result, in practice, is manifest in the squats: here, space is transformed in an arena of encounters, in a platform for personal exploration,⁷³ where identities are forged, and networks of solidarities perpetuated. Ultimately, squats become spaces *of* Europe, and *for* Europe.

5.2. Re-conceptualizing the Urban Space: Commons, Solidarity and Inclusion

The logic of the commons—defined as “the collective and horizontal stewardship over shared resources and social practices that are maintained by communities in a sustainable manner”⁷⁴ — is intrinsically embedded in the squatting practice. Examples of commons have existed in Europe for many centuries. In medieval England, the common was a piece of land termed ‘manor’ which was owned by the lord of the

⁶⁷ Nova, “Tovarna Rog.”

⁶⁸ Purcell, “Excavating Lefebvre,” 49.

⁶⁹ Nova, “Tovarna Rog.”

⁷⁰ Ibid.

⁷¹ Purcell, “Excavating Lefebvre,” 149.

⁷² Shields, “Spatialisations,” 30.

⁷³ Bliss, “What Squatting Can Teach Us.”

⁷⁴ Commons Network, “About the Commons,” <http://www.commonsnetwork.org/about-the-commons/>.

manor but over which certain classes held right to access and use. Squats can be considered today's manors, where sets of norms to collectively and sustainably manage shared resources are developed and preserved.

Although the commons has no definitional reality in the neoliberal ideology, James Quilligan, analyst and activist working with the principle of the 'common heritage of mankind',⁷⁵ argues that the root of the commons paradoxically lies in the neoliberal framework: "The core principles of production and management in these commons are actually idealised by neoliberalism—i.e., spontaneous, self-regulating freedom (through markets) and rule-based equality (as enforced by the state)."⁷⁶ Nevertheless, he adds, when "consumers choose to become co-producers of goods and services through their own commons, however, their mutual, integrative work transcends the premises of neoliberalism. It's evident that the freedom and equality expressed through a commons does not result from privatisation, centralised institutions or the top tiers of a social hierarchy."⁷⁷ It does derive, instead, from those values of human cooperation, communitarism and voluntary collective action which, going beyond state and market, resulting in communities of responsibility and solidarity. This is the case of the squats. Those relations of solidarity and mutual exchange, which are primarily fueled through collective occupation, are further preserved during the communal practice of maintenance and repair.

The exercise of repairing, decorating and knowledge-sharing in the squatting movement, indeed, does not represent a purely hands-on activity; it is a ritual, an emotional practice which facilitates alternative connections among the squatters and, crucially, with the space itself. As pointed out by Alexander Vasudevan, historical geographer, in his seminal work *Metropolitan Preoccupations*⁷⁸, the practice of space-making incarnates a sensorial experience: it consists in the process of investing mental or emotional energy in a person, object or idea.⁷⁹ For the inhabitants of the Rhino squat in Geneva, Switzerland, occupying wasted spaces reflects the opportunity to "invest in new spaces; to create space together; to enjoy".⁸⁰

Symbolised by its giant red horn hung on the facade on the outside of the building,⁸¹ Rhino squat⁸² was born in 1989 as an autonomous space, a sustainable alternative to dominant lifestyles and capitalistic culture. Rhino inhabitants created a space for an independent cinema, music, bar and restaurant, besides providing a home for around 70 people. It reunited different types of urban dwellers: for young artists, as well as for the socially vulnerable working class, Rhino represents not only a roof over their head, but also a chance of being part of an otherwise unaccessible culturally creative scene⁸³ and a space of creative expression. The walls of the squat are the frame for squatters' artistic flair; the facades, canvas for squatters' protest art.⁸⁴ These art works are characterised by their portability and disposability; they are intrinsically politicised, inherently—and even intentionally—ephemeral.⁸⁵ They are commons; neither authored nor owned, they explicitly challenge the bourgeois concepts of ownership and property.

⁷⁵ "The common heritage of mankind is a principle of international law which holds that defined territorial areas and elements of humanity's common heritage (cultural and natural) should be held in trust for future generations and be protected from exploitation by individual nation states or corporations". "Common Heritage of Mankind," *Wikipedia*, 3 May 2018, https://en.wikipedia.org/wiki/Common_heritage_of_mankind.

⁷⁶ James Quilligan, "Why Distinguish Commons Goods from Public Goods?," in *The Wealth of the Commons. A world Beyond Market & State*, ed. David Bollier and Silke Helfrich (Amherst: The Commons Strategies Group, 2012), 73-82, 73.

⁷⁷ *Ibid.*, 74.

⁷⁸ Alexander Vasudevan, *Metropolitan Preoccupations. The Spatial Politics of Squatting in Berlin*, Rgs-Ibg Book Series (Chichester, West Sussex, UK: Wiley/Blackwell, 2016).

⁷⁹ David M. Bell, "Occupation from Below: Squatting Within, Against and Beyond," *City* 20, no. 3 (2016), 507-11.

⁸⁰ Anonymous leaflet, Squatting Europe Collective.

⁸¹ Rn, "Swiss Squatters?," *SquatterCityBlog*, 3 June 2005, <http://squattercity.blogspot.it/2005/06/swiss-squatters.html>.

⁸² Rhino is an acronym for "Restons les Habitants des Immeubles que Nous Occupons" (translated as: let's stay in the house we live in).

⁸³ Squatting Europe Collective, *Squatting in Europe*.

⁸⁴ Vehicle of expression and representation, protest art is expression of messages civil disobedience.

⁸⁵ "Rhino (Squat)," *Wikipedia*, 23 January 2017, [https://en.wikipedia.org/wiki/RHINO_\(squat\)](https://en.wikipedia.org/wiki/RHINO_(squat)).



Pic. 2: Protest Art on the facade of a French squat. Source: Wikipedia: Squat à Paris-59, rue de Rivoli.

By using decoration to oppose the spatial language of gentrification,⁸⁶ squatters act as urban players “for whom urban spaces is something to be discovered, squatted, conquered”.⁸⁷ The urban space becomes a hub of new experimental geographies where, as a Rhino activist has said, “you develop that kind of relation to which you could call responsibility. You know where the cables run, the sounds of the environment, the people, it is all interconnected”.⁸⁸ The urban space then represents an opportunity for an “idiorhythmic community” —a community wherein each person can live at their own pace—⁸⁹ to explore new identities and intimacies, a cradle of encounters where identities are shaped, and networks of solidarities perpetuated—from below.

The concept of solidarities, crucially tackled by the human geographer David Featherstone, is pivotal in the squatters’ experience for two main reasons. On the one hand, because it is forged through the activists’ political struggle, it is an indispensable component of the process of politicisation. On the other hand, solidarities are perpetual community-fuels. They transform the space in an arena of encounters, where a sense of community and togetherness triumph over self-interest.

It is not a contingency that Featherstone tackles solidarity as a plural noun: if bonds connect together members of one squat, relations with other communities could also be tessellated. In this very case, transnational networks of solidarities come about. The project “Cafè Rebelde Zapatista” in Casaloca clearly illustrates how solidarities enrich the space of a new meaning, thereby embracing the socio-cultural dynamism of today’s world.

In collaboration with other local organisations, the squat cooperates with Zapatista co-ops coffee producers.⁹⁰ Since 2002, coffee importation from the Los Altos region, in Mexico, has started. Once arrived in Italy, the coffee is roasted, grind, parceled and delivered across the country by local distributors. Remarkably, during the last few years, the coffee has been manufactured in the prison of Turin—thereby facilitating the detainees’ professional reorientation. The proceeds from the sale cover the expenses of transportation and manufacture and are further invested in autonomous educational and medical projects

⁸⁶ Bell, “Occupation from Below,” 509.

⁸⁷ *Ibid.*, 509.

⁸⁸ *Ibid.*, 509.

⁸⁹ Aguilera, “The Squatters’ Movement in Europe.”

⁹⁰ The Zapatista Army of National Liberation (Ejército Zapatista de Liberación Nacional, EZLN) is a left-wing revolutionary political and militant group based in Chiapas, the southernmost state of Mexico. Their action started in 1994 with protests against economic policies that, arguably, would negatively affect Mexico’s indigenous population. The insurgency later developed into a forceful political movement that advocated for Mexico’s disenfranchised Indians. *Encyclopaedia Britannica*, “Zapatista National Liberation Army,” 23 June 2017, <https://www.britannica.com/topic/Zapatista-National-Liberation-Army>.

in the Mexican Zapatista communities.⁹¹ The Caf  Rebelde Zapatista initiative represents a glaring example of how squats could be more than just occupied spaces. By connecting three different geographical and social realities—Milan, Turin and Chiapas—Casaloca becomes an incubator of solidarity, conviviality and creativity, where the political is deeply intertwined to the intimate, the personal to the communal. Here, boundaries are rethought, identities tessellated, and daily lives reshaped through sustainable patterns.

Transformed by the commons and continuously fueled by transnational networks of solidarities, the empty urban is re-brought into life by the squatters, thereby becoming what Leach and Haunss⁹² termed “a socialized scene”.⁹³ Defining it as a network of free spaces encompassing multiple subcultures and/or countercultures,⁹⁴ Leach and Haunss hold that “a scene is *simultaneously a network of people* who share a common identity and a common set of subcultural or countercultural beliefs, values, norms, and convictions *as well as a network of physical spaces* where members of that group are known to congregate”.⁹⁵ Although capturing the intrinsic essence of squats as a spatial mosaic of identities, this definition of social scene could be seen as problematic. The idea that, arguably, a scene is a stable entity whose boundaries are constantly in flux,⁹⁶ suggests that such scenes would work as identity *markers*, rather than as identity *makers*.

It is undeniable: where there is an inclusivity there that may also be exclusivity—and much has been written about the debatable inclusiveness of European squats. Marco, an activist in the anarchistic *Eurodusnie* collective in Leiden, the Netherlands, criticised the Dutch squats for being exclusive scenes: ‘fenced’ communities which base their ontological reasoning on the chasm between us—the squatters—and them—the others.⁹⁷ Undeniably, a tension between two extremes—gentrification on one hand, exclusiveness on the other—permeates the logic of squatting, representing a dangerously precarious equilibrium. Even though squatting means drawing a narrow line between a “ghetto mentality” and a “possible normalization as social enterprises”,⁹⁸ it has been argued that “[the squatters] seek to create space—both literally and figuratively—for the less ‘desirable’ denizens of urban life—the homeless, the skaters, the goths and punks, the kids hanging out—those, in general, who do not have consumerism as their main reason for participation in the city”.⁹⁹ With these words, the sociologist Kimberly Creasap challenges the concept of social scene as an enclosed ghetto. Admittedly, this very notion would raise questions of how, when, and by whom symbolic boundaries are drawn to signify who is an ‘insider’ or ‘outsider’.¹⁰⁰ On the contrary, squats appear to be open-ended scenes, they are works-in-progress. Being the product of rituals (e.g. direct action, maintenance, discussions, etc) and prefigurative practices (like cooking together, or planning activities), the squats are constantly fueled by their goers. Squats are never permanent, but rather temporal; always coming and going—and, as such, they are ambitiously inclusive.

By reclaiming the urban space, squatters challenge gendered divisions of physical and affective labour; by transforming the urban space, squatters create a socialised scene where dominant patterns are questioned; new lifeworlds are created, and identities woven. In Casaloca, Rhino and ROG, people, art and ideas mingle.

Ateliers, workshops, shelters, language classes, galleries, skate-park, and bike-repairing are established. The space embodies the opportunity to find solutions on how to live in today’s Europe as a migrant, refugee or precarious worker.¹⁰¹ It also offers the opportunity, however, to make a different Europe, beyond state and market or institutional patterns; and, ultimately to shape this Europe, from below.

6. Conclusion

Much has been written about urban squatting. Perhaps due to the heterogeneity of this place-making practice, however, little research has been produced on the link between squatting and space. This paper intended to pursue this very last aim, investigating how the notion of urban space has been re-conceptualised

⁹¹ Valeria Pecorelli, *Spazi liberati in citt : i centri sociali. Una storia di resistenza costruttiva tra autonomia e solidarietà* (Loughborough University, 2015), 291.

⁹² Respectively anthropologist and political scientist.

⁹³ Darcy K. Leach and Sebastian Haunss, “Scenes and Social Movements,” in *Culture, Social Movements and Protest*, ed. Hank Johnston (Ashgate Publishers, 2009), 255-276.

⁹⁴ Kimberly Creasap, “Social Movement Scenes: Place-Based Politics and Everyday Resistance,” *Sociology Compass* 6, no. 2 (2012), 182-91.

⁹⁵ Leach and Haunss, “Scenes and Social Movements,” 5.

⁹⁶ Creasap, “Social Movement Scenes,” 187.

⁹⁷ Pruijt, “The Logic of Urban Squatting,” 14.

⁹⁸ *Ibid.*, 14.

⁹⁹ Creasap, “Social Movement Scenes,” 185.

¹⁰⁰ *Ibid.*, 187.

¹⁰¹ “Second Home,” *Autonoma Tovarna Rog*, 16 December 2017, <http://atrog.org/en/places/second-home>.

to serve as a ground for conservational squatter's place-making practice. In order to answer this question, theories, definitions, notions, and examples have been combined and discussed through a triangulation of qualitative research methodologies (grounded theory and qualitative content analysis). The result is an intricate, multi-layered research scenario: albeit disorganised in appearance, it is inherently rhizomatic—just like the phenomenon that it depicts.

Having tackled the definition of conservational squatters elaborated by Pruijt, it has been argued that the Lefebvrian motto “right to the city” represents the theoretical foundation of conservational squatting. Right to the city is “a vigorous cry and a legitimate demand”, it is the right to change the city, and to change ourselves by changing the city. Echoing Lefebvre, squatters reclaim the urban, and re-appropriate of its ‘wasted’ spaces. Their perpetual struggle, however, has transcended Lefebvre. Not only is the urban something to be reclaimed and re-appropriated; the city also has to be transformed, in order to embrace and even to welcome the challenges of today's multi-faceted Europe.

Squatting, as an art of spatialisation, then becomes a sensorial experience. Everyday practices from Casaloca, Rhino and ROG are paradigmatic of this sensorial transformation. Here, the abandoned space is revived through rituals and collective DIY practices; the urban becomes a commons, an arena of encounters, a platform for personal exploration where identities are forged and networks of solidarities nourished.

Squatting, however, is not just a sustainable response to a need. It also represents a way of doing, and, maybe more importantly, a way of *being*. By challenging the exploitative strategies of Neo-liberal urban-planning in particular,¹⁰² the status quo of whatever is mainstream and dominant in general, the occupation of void spaces incarnates ways of *being in* Europe and tools to *make* Europe, differently. If space belongs to those who inhabit it, then Europe belongs to—and is in—its dwellers.

¹⁰² Andrzej Zieleniec, “A Review of ‘the Squatters’ Movement in Europe: Commons and Autonomy as Alternatives to Capitalism’, by Squatting Europe Kollektive,” *International Journal of Housing Policy* 15, no. 3 (2015), 373-75.

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The Rescaling of German Statehood in the Context of the So-called “Migration Crisis” of 2015 and 2016

Magdalena Kohl

1. Introduction

Germany is unquestionably a country of immigration. Figures on foreign population in Germany show a steady increase over the last ten years. The European Financial and Sovereign Debt Crisis of the early 2000’s as well as the freedom of movement within the European Union can be named as contributing factors in this development. However, the so-called “migration crisis”¹ of 2015 and 2016 caused another growth of the figures. The numbers rose from around seven per cent in the year 2014 to twelve per cent in the year 2016.²

German towns and cities are directly and immediately faced with the practical matters resulting from the high influx of newcomers. They are responsible for providing initial aid and care for refugees and asylum seekers and for integrating them into society on a long term.³ Formulating responses to migration poses a challenge for cities from this viewpoint. However, this is also seen as an opportunity to foster diversity and cultural exchange. Especially the association of German cities and towns, the *Deutscher Städtetag* (in the following also shortly referred to as ‘association’), states that the “migration crisis” had shown a need for the capacity of municipalities to mobilise resources on a short-term to perform its duties for the better of all citizens.⁴ The question that arises against this background is whether the increased migration to Germany created a momentum for the urban scale to recalibrate its position within the German state scalar organisation.

Various aspects of the position of cities within global politics and economics are discussed within Urban and Global Studies.⁵ Scholars following a first line of argumentation forecast the demise of the national state due to processes of globalisation and Europeanisation. In contrast, a second line of argumentation argues for a fundamental transformation of statehood rather than its eradication.⁶ Many of these transformational approaches take either the national or supranational level as starting point. Even though following the transformational reasoning, this research focuses the urban scale and its actors and representatives to understand how the scope of urban policies and urban responses to current societal and political issues is renegotiated. The question addressed is formulated as follows: To which extent did the German association of cities and towns, the *Deutscher Städtetag*, use the momentum of the so-called “migration crisis” in 2015 and 2016 to engage in rescaling processes of German statehood? Sub-questions with regard to the probable answers to rescaling activities and tendencies are formulated throughout the following discussion of this question to collect hints for long-term developments and trends. Particularly the formulation of the residence obligation, which obligates asylum seekers living in Germany to stay within the city that they are residing at and hence registered at and that was first formulated in the integration law

¹ The terms “refugee crisis” and “migration crisis” to describe the increased income of refugees and migrants to Europe within the last three years is understood as problematic in this research. It negatively discriminates a vulnerable group of people that already is exposed to discrimination in many cases. The term suggests that the refugees themselves are causing a critical situation, which conceals the implication of their home countries and of other decision makers throughout the world. Nevertheless, the term is widely used in popular and academic debates to describe the influx of migrants to Europe within the last years. For want of a better term it will be applied in quotation marks in this contribution.

² Statistisches Bundesamt, “Pressemitteilungen - Ausländische Bevölkerung Wächst Im Jahr 2017 Um 5,8 %,” 12 April 2018, https://www.destatis.de/DE/PresseService/Presse/Pressemitteilungen/2018/04/PD18_133_12521.html;jsessionid=90259DF54EB5A943B7D0F23FE91C781B.InternetLive1.

³ Stefan Anton, *Flüchtlinge vor Ort in die Gesellschaft integrieren: Anforderungen für Kommunen und Lösungsansätze*, Beiträge des Deutschen Städtetages zur Stadtpolitik, Band 109 (Berlin Köln: Deutscher Städtetag, 2016).

⁴ *Ibid.*, 5–6.

⁵ The literary debate on the role of cities within global politics and economics is not taken into further consideration here. An entry point into the discussion can be the works of Saskia Sassen such as Saskia Sassen, *The Global City: New York, London, Tokyo* (Princeton: Princeton University Press, 2001); and Saskia Sassen, *Global Networks, Linked Cities* (London: Routledge, 2002). Other recommended contributions are: Patrick le Galès, *European Cities: Social Conflicts and Governance* (New York: Oxford University Press, 2002) and Benjamin R. Barber, *If Mayors Ruled the World: Dysfunctional Nations, Rising Cities* (New Haven: Yale University Press, 2013).

⁶ Neil Brenner, *New State Spaces: Urban Governance and the Rescaling of Statehood* (Oxford/New York: Oxford University Press, 2004), 1.

of August 2016 is used as a focal point within this contribution, representing one possible example of the manifestation of rescaling processes.

For purposes of a better understanding of the presented analysis, first an overview of the position of the urban scale within the German state system is given. In this context, the German association of cities and towns, the *Städtetag* is introduced as an important representative of the urban scale. Subsequently, the existing theory on the rescaling of statehood is explored. A special focus is thereby set on the works of urban theorist Neil Brenner. In this context the hypotheses on an assumed rescaling of German statehood are introduced. Then they are examined in a comprehensive analysis using a ‘Process Tracing’ (PT) inspired approach. A concluding critical discussion of the results of the analysis allows drawing conclusions on probable recalibrations of the German state scalar organisation. Furthermore, tendencies contributing to a possible rescaling of German statehood are made visible in this context. On this basis further hypotheses on the position of cities within the space of the German state that can inspire and inform future research are formulated.

2. The German Association of Cities and Towns within the Federal German State System

The German state system constitutes a federal structure. This is established by a multitude of levels developing vertical and horizontal manifestations and relations.⁷ The scale is thereby understood as the space and scope within which the influence and action of these given level materialises. The interconnected system of these scales that emerges in parallel to the federal structure is understood as defining a state scalar system. This research focuses on the relations and interactions of – and between – the national and federal state scale as well as the urban scale. The emphasis is thus set on the exploration of the hierarchical organisation of the German state scalar system along the vertical axis and its possible recalibration. *Recalibrations of this system are thereby understood as reconfigurations or renegotiations of the space and scope in which the influence and power of a given level becomes manifest.*⁸

The Basic Law for the Federal Republic of Germany, the *Grundgesetz* (in the following also referred to as GG) lays out the responsibilities of these different scales and their relations to one another, which is why they are not discussed in detail here.⁹ The relationships between the federal government and the federal states as well as their successive reforms are widely discussed in the academic and public discourse.¹⁰ The position of subordinated scales such as the urban one and their evolving relations to the federal government and the federal states, however, have been mostly left unattended.¹¹ This is why this research shall explore the urban scale and its position within the German state-scalar organisation further.

To locate the urban scale within the multiscale German state system, a basic understanding of its position as defined in law is an indispensable starting point for an analysis focusing on the rescaling processes. Generally, the urban scale is located at the lower level of the German scalar organisation and thus, municipalities mainly perform duties assigned to them by superordinate scales, which significantly determines their scope of action.¹² In Germany, towns and cities lie within the responsibility of the federal states. They define the framework conditions for the cities’ administrative nature and fields of activity as well as their institutional structure. They play an important role in the (re-)distribution of municipal finances.¹³ On the national level, in contrast, solely general principles regarding the urban scale are laid out. Here, especially article 28 of the GG, defining the principle of local self-governance of municipalities and touching upon the financial endowment of cities, is of relevance.¹⁴

Due to the varying federal state rulings, divergent demographics and the different capacities of urban spaces to attract investments and to create job and leisure opportunities, cities are equipped differently for

⁷ The extensive discussion of the German federalism lies beyond the scope of this research, which is why only some key aspects that are important in the context of rescaling processes are taken up within the present study.

⁸ Brenner, *New State Spaces*; Roland Sturm, *Föderalismus in Deutschland*, Beiträge zur Politik und Zeitgeschichte (Opladen: Leske + Budrich, 2001), 8.

⁹ See, inter alia, articles 20.1, 30, and 70-74 GG.

¹⁰ Nathalie Behnke, “Stand Und Perspektiven der Förderalismusforschung,” ed. Bundeszentrale für politische Bildung, *Aus Politik Und Zeitgeschichte*, no. 65. Jahrgang. 28-30/2015 (2015), 9–11.

¹¹ Ralf Kleinfeld, “Politikwissenschaft und Kommunalpolitik in Deutschland: Ein Forschungsüberblick,” in *Kommunalpolitik*, Grundwissen Politik (Wiesbaden: VS Verlag für Sozialwissenschaften, 1996), 18.

¹² The concrete competences and responsibilities of German municipalities are mainly laid out in articles 28, 84, 85, 91, 104, 106, and 108 of the GG.

¹³ Hans-Georg Wehling and Andreas Kost, “Kommunalpolitik in der Bundesrepublik Deutschland — eine Einführung,” in *Kommunalpolitik in den deutschen Ländern* (Wiesbaden: VS Verlag für Sozialwissenschaften, 2003), 7.

¹⁴ *Ibid.*, 7.

the tasks and responsibilities they perform. Also, the rapid digitalisation and globalisation contribute to growing differences among cities.¹⁵ In addition, broader challenges such as the integration of migrants and refugees, taken a closer look at in this research, defy cities. In order to find solutions to those problems urban entities are working together closely.¹⁶ The largest association of cities organising the interests of municipalities in Germany is the *Deutscher Städtetag*.

The origins of the *Städtetag* date back to the early 20th century. Nowadays it unites the majority of German towns and cities. The association understands itself as “the voice of Germany’s cities” and represent their interests vis-à-vis the federal government, the federal states and other entities, such as the European Union or non-governmental organisations.¹⁷ The *Städtetag* furthermore advises its member cities on topics that are relevant to municipal policies.¹⁸ The activity of the *Städtetag* thus extends along both axes of the German state system, attempting to influence decision-making processes at various levels, which is why it is understood as an important mediating or intermediary actor within the state scalar organisation in Germany. By basing its work on the mentioned article 28 of the GG the association is understood as having a genuine interest in re-negotiating their member cities’ scope of action and increasing their flexibility to act. This is why the organisation has been chosen as entry point for the study of the possible repositioning of the scope of urban policies and actions and thus the urban scale within the German state space.

3. Towards a Theoretical Approach to the Rescaling of German Statehood

Even though the state scalar organisation as being based on the responsibilities of different hierarchical levels is laid out in German law, it is expected to undergo constant changes and renegotiations that enable the state and other entities and scales to react to changing societal and political influences and conditions. Thus, the German state space is understood as an evolving process rather than a fixed condition. The conceptualisation of state space as “on-going processes of change” corresponds with the spatial approach to statehood presented by Neil Brenner.¹⁹

The US-American urban theorist has been investigating the transformation of modern states since the mid-1990s.²⁰ In his 2004 publication *New State Spaces. Urban Governance and the Rescaling of Statehood* he is the first one to clearly define and theorise rescaling processes and the underlying mechanisms. Urban spaces are shown to be ‘key sites of contemporary state institutional and spatial restructuring’.²¹ The special attention given to urban spaces in Brenner’s work is the reason why it is chosen as a theoretical framework for this research. Building upon Brenner’s findings, this analysis examines whether the *Städtetag* was engaged in rescaling activities during the ‘migration-crisis’ that either enhanced or diminished the urban scale within the German state system. It is thus investigated, if the association engaged in a renegotiation of the scope and space in which urban migration policies became influential or manifest.

Drawing on the French sociologist Lefèbvre’s ideas about the social production of space, Brenner argues that scalar arrangements might be unsettled when socio-political forces are having an ‘influence on institutional structures, borders or functions of administrative units’.²² Accordingly, it is assumed that the increased migration in 2015 and 2016 had an impact on the scales constituting the German state space and their regulatory and political activities. It is further assumed that windows of opportunity opened up for various actors to engage in rescaling processes.

The first ones to integrate Brenner’s approach into migration studies were the researchers Nina Glick Schiller and Ayşe Çağlar. In their work *Locating Migration: Rescaling Cities and Migrants* they focus on the pathways established by migrants in cities that are differently positioned within globalisation processes.²³

¹⁵ Bundeszentrale für Politische Bildung, ed., “Kommunalpolitik,” *Informationen zur politischen Bildung / izpb*, no. 333 2/2017 (2017), 7.

¹⁶ *Ibid.*, 3.

¹⁷ Deutscher Städtetag, ed., “Association of German Cities - the Voice of Germany’s Cities,” 2018, http://www.staedtetag.de/imperia/md/content/dst/veroeffentlichungen/sonstige/dst-flyer_english_2018.pdf.

¹⁸ *Ibid.*

¹⁹ cf. Brenner, *New State Spaces*, 70–74.

²⁰ In the formulation of his theoretical approach Brenner mainly focuses on the rescaling of statehood under contemporary capitalism. This research does not primarily focus on the effects of capitalism on the herein investigated recalibrations of German statehood. Even if the capitalist shaping of the German state is an important contextual factor it is not particularly looked at since that would go beyond the scope and interest of this research.

²¹ Brenner, *New State Spaces*, 2.

²² *Ibid.*, 75–78; cf. Henri Lefèbvre, *The Production of Space* (Oxford: Blackwell, 1991).

²³ Nina Glick Schiller and Ayşe Çağlar, eds., *Locating Migration: Rescaling Cities and Migrants* (Ithaca, NY: Cornell University Press, 2015).

They thus concentrate on identifying the role of migrants as scale makers. Scale makers are thereby understood as actors that contribute to establishing and (re-) defining the scope of actions and policies. Thus, scale makers decide about the space in which these are applied. The present research, in contrast, focuses on the windows of opportunity created through migration that allowed actors representing different levels that are usually confined to act at given scale, such as the *Städtetag* representing the urban level, to engage in rescaling processes.

Brenner further argues that varying actors at the different scales can influence, modify, and transform state spatial configuration.²⁴ The analysis will clarify whether the *Städtetag* is one of these actors. The *Städtetag* repeatedly emphasises challenges and opportunities created for cities in the course of the “migration-crisis”. One of the main challenges described is the uneven distribution of newcomers among towns and cities. This is seen as problematic especially against the background of the already described fractures between more or less powerful, attractive and economically strong cities.²⁵ As stated by other experts many migrants are moving to bigger cities and metropolitan areas. Those movements are influenced not only by a city’s attractiveness, but also by job opportunities and the migrant communities already present in these cities. As a consequence, many newcomers are moving to urban agglomerations in the West of Germany. This is perceived as problematic especially due to limited absorption capacities of local housing and labour markets that could act as barriers to successful integration when overstretched.²⁶

According to the *Städtetag* some of the cities that became popular destinations for migrants got close to their breaking point during the “migration crisis”.²⁷ The association identifies the former lack of a residence obligation for asylum seekers in the frame of the *Königssteiner Schlüssel* to be a reason for this.²⁸ Such a residence obligation is formulated for the first time in the German integration law of August 2016. In the frame of this research, this specific ruling and the discussions on its formulation is emphasised in order to assess whether the national level responded to the *Städtetag*’s activities aimed at recalibrating the scalar organisation of the German state space. This also allows to draw conclusions on whether the activities of the association can not only be identified as struggles for influence and power going beyond the usual (urban) scale of their actions but also allow to discover whether the rescaling tendencies even became manifest in state projects or strategies.

Basing his explanations on Bob Jessop’s strategic relational approach to state theory, Brenner argues that the organisational coherence, operational cohesion, and functional unity of the state are not pre-given.²⁹ In contrast, state space is established by state spatial projects focusing on the state’s own territorial and scalar configuration and state spatial strategies focusing on geographies of state intervention into socio-economic life.³⁰ Both actively contribute to the production and transformation of state spatiality. Therefore, rescaling processes are only clearly existent when translated into corresponding projects and strategies.

The opening of windows of opportunities in the course of the “migration-crisis” in 2015 and 2016 in Germany and their possible exploitation by the *Städtetag* as well as the possible response of the superordinate scales are understood as a causal sequence of events. In order to identify possible rescaling tendencies, the underlying processes and mechanisms are assessed using a Process Tracing-inspired approach that is further explained in the following section.

4. A Methodological Framework for the Analysis of the Rescaling of German Statehood

4.1. The General Approach of Process Tracing

The methodological approach of Process Tracing was first developed in the fields of psychology and usability studies. Political scientists Alexander L. George and Andrew Bennett significantly contributed to the introduction of PT to Social Sciences. They stipulate that “[t]he general method of Process Tracing is to

²⁴ Brenner, *New State Spaces*, 94.

²⁵ Anton, *Flüchtlinge vor Ort in die Gesellschaft integrieren*, 8-13.

²⁶ Nadine Körner-Blätgen and Dr Gabriele Sturm, “Internationale Migration in deutsche Großstädte,” ed. Bundesinstitut für Bau-, Stadt- und Raumforschung im Bundesamt für Bauwesen und Raumordnung, in *BBSR-Analysen KOMPAKT* (2015), 24.

²⁷ Anton, *Flüchtlinge vor Ort in die Gesellschaft integrieren*, 14.

²⁸ The so-called “Königsteiner Schlüssel” was introduced as a distribution formula for research funding with the agreement of Königstein in 1949. Since 1969 it is enshrined in article 91b, 2 GG. Since the reform of federalism of 2006, it is also applied to the initial distribution of refugees and asylum seekers to the different federal states.

²⁹ Brenner, *New State Spaces*, 85; See also Bob Jessop, *State Theory: Putting the Capitalist State in Its Place* (Cambridge: Polity Press, 1990); and Bob Jessop, *The Future of the Capitalist State* (Cambridge: Polity, 2002).

³⁰ Brenner, *New State Spaces*, 89-94.

generate and analyse data on the causal mechanisms, or processes, events, actions, expectations, and other intervening variables, that link putative causes to observed effects.³¹ Accordingly, PT allows researching the temporal sequence of events in which single steps, or *snap-shots*, can be pointed out and made visible.³² Thus, in this research, PT allows focusing the events and steps leading to a possible recalibration of the German state system.

PT cannot be understood as a single method, but rather as a collective term for different methodological approaches. Beach and Pedersen provide one of the most detailed overviews of these, which present an excellent guide for conduct analyses using PT. Based on their theory-testing approach a hypothesis-testing approach is developed here. It allows to evaluate the above-formulated hypotheses in regard to their validity and explanatory power.³³

4.2. Methodological Considerations

Analyses using PT require a multitude of preliminary methodological considerations. In a first instance, the starting point and outcome of the process under investigation have to be defined. The point of departure of this research is the above-described vertical state scalar organisation that is laid out in German law. The potential result of the investigated process is understood as a rescaled scalar organisation of German state space. Such a reconfiguration would show in a redefinition of the urban scale. With the focus on the formulation of the residence obligation against the backdrop of the ‘migration-crisis,’ the investigation period is confined to the time span between spring 2015 and summer 2016.³⁴

The analysis thus aims at shedding light on the rescaling processes, the mechanisms and actors operating in it and shall also evaluate the actual outcome. It is assessed whether the presumed rescaling privileges a single scale rather than distributing activities among multiple spatial scales.³⁵ It is, however, important to note, that there is little likelihood for the urban scale and its representative, the *StädteTag*, to gain factual supremacy over the federal states and the federal government. As Brenner argues, there can be no unidirectional processes “in which a single scale (...) is replacing the national scale as the primary level of political-economic coordination.”³⁶ This research is instead expected to render tendencies of the recalibration of the German state scalar organisation visible.³⁷ As a result of the rather recent character of the events under investigation, this research is mainly directed at collecting and summarising evidence to make trends and tendencies visible that could provoke rescaling processes on a long-term.

Process Tracing approaches allow investigating who knew what at which point in time. In addition, reactions to these facts by different actors and their interactions throughout time can be taken into account.³⁸ The basic tool of this analysis therefore is a timeline that builds on material published by representatives of the various German scales throughout the “migration-crisis”.³⁹ First crucial moments, which Beach and Pedersen call “snap-shots” were identified with regard to the research interest within the established timeline.⁴⁰ Following a mapping approach relevant documents providing information on these moments such as official press releases, statements, resolutions, notes, meeting protocols, and speeches have been identified and chosen as corpus of this analysis. However, it has to be stated, that the research process underlying an analysis using PT is an open one that gathers information in a snowball system until no new information can be gathered. To distinguish relevant material from less useful texts, the above-named documents were scanned for information related to the research problem and the date of publication.

³¹ Andrew Bennett and Alexander L. George, “Process Tracing in Case Study Research,” MacArthur Foundation Workshop on Case Study Methods, 1997.

³² David Collier, “Understanding Process Tracing,” *Political Science & Politics* 44, no. 4 (2011), 824.

³³ cf. Derek Beach and Rasmus B. Pedersen, “Process Tracing Methods: Foundations and Guidelines,” (The University of Michigan Press, 2013), 14–15.

³⁴ As already mentioned in the introduction of this paper, the years 2015 and 2016 represent the high-peak of migration to Germany within the last ten years. Furthermore, the negotiation of the residence obligation can be confined to Spring 2015 to August 2016, when the integration law was adopted.

³⁵ Brenner, *New State Spaces*, 97.

³⁶ *Ibid.*, 3.

³⁷ cf. *Ibid.*

³⁸ cf. Andrew Bennett, “Process Tracing and Causal Inference,” in *Rethinking Social Inquiry: Diverse Tools, Shared Standards*, ed. Henry E. Brady, Second edition. (Lanham: Rowman & Littlefield Publishers, 2010), 2–3.

³⁹ An overview of the timeline created for the purpose of the conducted analysis is to be found in the annex. An overview of the primary data assessed in the context of the analysis is to be found added to the bibliography.

⁴⁰ Derek Beach, “Process Tracing Methods,” (Oxford: Oxford University Press, 2013), 55.

The chosen documents were then assessed in regard to their content to search for the evidence necessary to prove (or disprove) the assumed rescaling processes and the presumed engagement of the *Städtetag*.

4.3. Conceptualisation and Operationalisation of the Rescaling Process

The causal processes linking the above-described starting point and outcome are seen as a two-step process in this research. Whereas the first part is defined through the actions of the *Städtetag* as one representative of the urban scale, the second part is understood as reaction or response by the superordinate scales. The second part, thus, particularly assesses the actions of actors on the national level and the federal state level. The conceptualisation of the rescaling process as a two-step mechanism allows setting the focus on the interplay of the different scales. In this regard it has to be noted that Brenner points to the fact that rescaling processes can provoke uneven and discontinuous restructuring processes. This means that not all dimensions of the state spatial structure change simultaneously.⁴¹ “[...] Processes of state spatial restructuring may [...] be understood as a continual ‘layering’ of successive rounds of state regulation within a constantly evolving mosaic of state spatiality.”⁴² Hence, several successive rounds of state spatial regulation can take place. Therefore, the conceptualisation of the assessed rescaling process in two steps is to be considered as a simplification made for analytical purposes. The focus on the case-specific and thus the empirical level in the analysis allows redirecting the focus again on the circularity of the described processes.

Another indispensable preparatory step for the analysis is the formulation of observable manifestations and evidence that is to be found in the frame of the analysis to prove the existence of the different parts of the assumed rescaling process.⁴³ This contributes to sharpening the focus and also the validity of the analysis. The formulation of these presuppositions that are deduced from the above-described theoretical and contextual background are presented in linkage with the actual findings of the analysis in the next part of this text to allow a more comprehensive presentation of the different analytical steps.

Conclusions are drawn following Bayesian theory.⁴⁴ Hence, sources and evidence found are only taken into account if they can be identified as being “relevant”. The relevancy is given, when the evidence proving a consequential fact makes the researched action more probable than it would have been without the evidence.⁴⁵ Beach and Pedersen describe four kinds of evidence that are considered to assess the content of the analysed material. “Pattern evidence,” which relates to predictions of statistical patterns in the evidence found, is not expected in this research due to the nature of the examined material. More important are “sequence evidence,” which proves the temporal and spatial chronology of events, “trace evidence,” which is present when the mere existence of a certain material proves a part of the hypothesised causal relationship and lastly “account evidence” that refers to the content of the material.⁴⁶ The presence or absence of evidence for the existence of the different parts of the presumed causal mechanism will allow drawing conclusions on the probable rescaling of German statehood.

5. Analysing the Rescaling of German Statehood: Finding Case-specific Evidence

5.1. Examining Part One of the Causal Mechanism

Within the assumed two parts of the rescaling process, smaller steps can be distinguished in the analysis. The first part, the activities of the *Städtetag*, entails the opening of windows of opportunity as well as their recognition and exploitation by the association. Supplementary to the theoretical and contextual assumptions made on the possibilities to engage in rescaling processes, the analysis further explores the mentioned windows of opportunity on the case-specific level. The analysis is especially interested in the *Städtetag*'s possible recognition and exploitation of these. It is not assumed that it directly refers to them. The association is rather expected to point to a change of context for urban policies and activities or transformed influences on municipal responsibilities and duties. Hence, mainly account evidence would have to be present. Also sequence evidences proving that the *Städtetag*'s recognition of the chances to engage in rescaling processes happened at the beginning of the period under investigation would have to be found.

⁴¹ Brenner, *New State Spaces*, 107–10.

⁴² *Ibid.*, 198.

⁴³ cf. Beach and Pedersen, “Process Tracing Methods: Foundations and Guidelines,” 14 f.

⁴⁴ The Bayesian theory also known as Bayes’ rule or theorem describes the probability of an event, based on prior knowledge of conditions that are assumed to be related to an event.

⁴⁵ U.S. Federal Rule of Evidence 401 as quoted in Beach and Pedersen, “Process Tracing Methods: Foundations and Guidelines,” 99.

⁴⁶ Beach and Pedersen, “Process Tracing Methods: Foundations and Guidelines,” 99.

To substantiate the exploitation of the windows of opportunity by the *Städtetag*, mainly account evidence presenting, inter alia, calls for adjustments and changes along the multiscale organisation of the German state and lobby activities in regard to that are expected.

In the vast majority of the documents of the *Städtetag* that were assessed in the frame of the analysis, the *Städtetag* points to the challenges that cities are facing in the context of the increased migration to Germany. Especially in the earlier publications, the *Städtetag* expresses the necessity for (financial) support from the national and federal state level to better deal with the increased migration to urban spaces.⁴⁷ The urgency of this request is not only expressed in the high number and frequency of statements and documents issued especially in the year 2015 that follow this line of argumentation, but also by the increased use of words such as “rapid,” “quick,” “urgent,” and “immediately”⁴⁸ in this context. The association furthermore repeatedly emphasises that some cities are close to reaching a breaking point. In the aftermath of the high peak of the income of migrants to Germany in summer 2015 the president of the *Städtetag* Eva Lohse states: “The cities are working at the limit and have to create more and more emergency shelters and interim solutions out of thin air.”⁴⁹ The *Städtetag* further develops on this in October of the same year:

‘An increasing number of asylum seekers and refugees cause a persistent pressure to act on the municipal level. The cities do what they can to receive refugees and politically persecuted persons and to care for them. Regular procedures are however meeting limits or are no longer applicable due to the number of arriving people.’⁵⁰

In the context of describing the emerging challenges the association frequently refers to the commitment of the cities to the initial reception and the integration of migrants. The utterance “[c]ities know how to integrate”⁵¹ is used consistently to emphasise the knowledge and experience that cities have with integrating migrants into society. In one of their documents, the *Städtetag* argues with the proximity of cities to their citizens for the valuable contribution to integration and migration policies and thereby starts developing the vision of cities as important participants in discussions on related topics:

‘The cities as entities that are closest to citizens are aware of their responsibility to assure social peace and cohesion within society. They are very committed to promoting the identification of the people with their homes and the togetherness within the urban society.’⁵²

In this respect it is noted that the association increasingly does not only ask for rapid assistance, but also respect of the federal state and national level for their work and experience in tackling the issue of migration. In June 2015, the *Städtetag* argues the following:

‘If the federal government and the federal states are holding so-called asylum summits and are discussing a topic that lies mainly within the operational responsibility of the municipalities – after all, the success of integration is determined in cities and municipalities –, if the commission on federal financial relations that is enshrined in the coalition agreement, of which we would be a part of is not called for, but instead it is negotiated in different rounds without us, then there is a lack of respect.’⁵³

⁴⁷ Temporal indications given in this report in regard to statements, declarations and actions and documents are referring to the period under investigation.

⁴⁸ In the following citations taken from the material assessed are presented as own translations within the text. The German original is added in footnotes. Originals in this case: “rasch”, “schnell”, “dringend”, and “umgehend”.

⁴⁹ “Die Städte arbeiten am Anschlag und müssen immer mehr Notunterkünfte und Übergangslösungen aus dem Boden stampfen,” Deutscher Städtetag, 29 October 2015.

⁵⁰ “Steigende Asyl- und Flüchtlingszahlen verursachen einen anhaltend hohen Handlungsdruck auf kommunaler Ebene. Die Kommunen tun, was sie können, um Flüchtlinge und politisch Verfolgte unterzubringen und zu versorgen. Reguläre Abläufe stoßen allerdings inzwischen angesichts der Zahl der ankommenden Menschen häufig an Grenzen oder können nicht mehr eingehalten werden,” Deutscher Städtetag, 29 October 2015.

⁵¹ “Städte können Integration”.

⁵² “Die Städte sind sich als bürgernächste Ebene ihrer Verantwortung bewusst, den sozialen Frieden, und Zusammenhalt in den Städten zu sichern. Sie sind mit großem Engagement dabei, die Identifikation der Menschen mit ihrer Heimat und das Miteinander in der Stadtgesellschaft zu fördern,” Deutscher Städtetag, 11 June 2015.

⁵³ “Wenn Bund und Länder sogenannte Asylgipfel abhalten und dort ein Thema behandeln, dessen operative Zuständigkeit überwiegend bei den Kommunen liegt – schließlich wird über Wohl und Wehe der Integration in den Städten und Gemeinden entschieden –, wenn die im Koalitionsvertrag vereinbarte Kommission zu den Bund-Länder-Finanzbeziehungen, bei der wir dabei wären, nicht einberufen wird, sondern stattdessen in verschiedenen Zirkeln ohne uns gesprochen wird, dann fehlt es an Respekt,” Deutscher Städtetag, 10 June 2015.

It explains that it understands cities and the *Städtetag* as its representative as equal partners. The recognition as such by the national and federal state level strengthens its position in the discussion on migration. This development from presenting cities as burdened with the challenges of migration to showing them as important partners with valuable knowledge in the field can be interpreted as account evidence for the presence and recognition of windows of opportunity by the *Städtetag*.

The association repeatedly refers to the urban scale, the federal state scale and the national one as a “community of responsibility”⁵⁴ and thereby emphasises the need it sees for these different scales to work together. Over time, the *Städtetag* moves away from rather vague requests for help and proposes and supports specific suggestions for a better support of cities in responding to migration; one of which is the residence obligation. This change in rhetoric and type of requests vis-à-vis the national and the federal state level points to account evidence as the association indeed tries to exploit the existing windows of opportunity.

Further indications for the *Städtetag*'s active engagement in rescaling processes are direct interactions in the form of meetings with state and federal state officials. According to the association, it discussed asylum and migration policies with the chancellor, Angela Merkel, and several federal state representatives on 11 June 2015. The association frames this meeting as a first step towards more recognition of the urban scale. In a report on a successive meeting with chancellor Merkel, Federal Minister for Special Affairs Peter Altmaier and Federal Minister of the Interior Thomas de Maizière on 22 September 2015, the *Städtetag* comments: “The constructive and open exchange of ideas happened in a good atmosphere”.⁵⁵ It thereby creates the image of an exchange on eyesight that allows assuming that the association was accepted as a negotiation partner. Furthermore, the *Städtetag* declares that especially the national level showed willingness to negotiate with them and to implement some of the *Städtetag*'s proposals on migration policies. To which extent this has been the case is explored in more detail in the next part of this analysis.

5.2. Examining Part Two of the Causal Mechanism

The second part of the causal mechanism is defined as the action of the national and the federal state scale. The analysis not only assesses whether and to which extent the representatives of these scales responded to the actions of the *Städtetag*, but also the possible development of related state projects and strategies. The focal point is the formulation of the residence obligation. To prove a reaction to the association's actions direct interaction between both sides is a precondition. First hints for this interaction have already been found in the context of the previous analytical step. These interactions are explored further in this part. To substantiate the assumptions with case-specific findings sequence evidence is of high importance. Equally so, account evidence is expected to provide necessary insights and indications.

As already mentioned, the *Städtetag* over time started connecting its claims for support with specific proposals for measurements to guarantee this support. One of these was the residence obligation that was increasingly referred to from the early 2016 by the *Städtetag*. The association understands it as a tool allowing cities to better tackle migration since it could prevent the uneven distribution of migrants among cities and thus ensure better initial reception and integration. In an answer to a parliamentary question in December 2015 it was clearly stated: “The federal government examines to which extent residence obligations are legally possible for recognised refugees or rather people granted subsidiary protection”.⁵⁶ While it becomes clear based on the assessed material that the government discussed proposals for a potential residence obligations the emergence of such an idea cannot be clearly traced back to the association's activities. The missing of a sequence evidence in this case shows that that the formulation of the residence obligation cannot be clearly defined as response to the *Städtetag*'s activity. However, the analysis shows that the *Städtetag* still had several possibilities to take influence on it. The association thus can be understood as again using a window of opportunity rather than creating own activities. The *Städtetag* is thus rather responsive than active in regard to the discussions on the residence obligation.

The first reading of the legislative draft of the integration law entailing the residence obligation in the *Bundestag* took place on 3 June 2016. The debate on the residence obligation shows that it was strongly supported by the coalition parties, whereas it was criticised as creating a barrier against integration and

⁵⁴ “Verantwortungsgemeinschaft.”

⁵⁵ “Der konstruktive und offene Gedankenaustausch fand in guter Atmosphäre statt,” Deutscher Städtetag, 22 September 2015.

⁵⁶ “Die Bundesregierung prüft, inwieweit Wohnsitzauflagen für anerkannte Flüchtlinge bzw. subsidiär Schutzberechtigte rechtlich möglich sind,” Deutscher Bundestag, printed material 18/7181.

marginalising newcomers by opposition parties.⁵⁷ The coalition parties furthermore advanced the residence obligation in clear connection to the clear demand for it by the urban level. This, however, does not allow drawing conclusions on the direct reference to the *Städtetag*'s activities since the association is never directly referred to. Nevertheless, there is a clear trace and account evidence for the ongoing lobbying of the *Städtetag* for the residence obligation within the legislative procedure: The association spoke at the hearing of the responsible Committee, the "Labour and Social Affairs" Committee, on 8 June 2016.⁵⁸ There it clearly formulated its position in regard to the residence obligation stating that it would present a necessary relief for German cities. The on-going publication on statements of the *Städtetag* on the topic and its interaction with the "Labour and Social Affairs" Committee is understood as trace evidence for the circularity of the assumed recalibration processes.

In the first reading of the draft law in the *Bundesrat* on 17 June 2016 representatives of various federal states refer to the "community of responsibility"⁵⁹ that also the *Städtetag* calls upon repeatedly. Interestingly, some representatives especially refer to necessary common decisions with the urban scale that were demanded by the *Städtetag*. A direct link cannot be established. However, the opinion of members of the *Bundesrat* on the residence obligation is generally similarly wide-spread as in the *Bundestag*. Whereas some regard it as a valuable tool to better distribute newcomers, others understand it as interference with the freedom of movement. The renewed rise of publications of the *Städtetag* on the residence obligation in the summer 2016 can be understood as a response to those mixed voices.

After the publication of the recommended resolution by the "Labour and Social Affairs" Committee on 6 June 2016, the second and third reading of the draft law took place in the *Bundestag* on 7 June 2016. Similarly, to the first reading, the opinions on the residence obligation were positive among the coalition parties and negative among the opposition parties. This session of the *Bundestag* nevertheless is interesting in regard to very clear references made to the claims of the urban scale. Josip Juratovic (SPD) stated: 'Federal states and cities asked urgently for more specific control methods. They want to provide better care for refugees, but also exonerate themselves in parts. They now get the opportunity to do so'.⁶⁰ This, then, is also a reference to the claims made by the *Städtetag*. At the same time, though, no direct linkages based on evidence can be established. The integration law and thus the new ruling on the residence obligation were accepted in this third reading of the draft law in the *Bundestag*.

5.3. Summary and Critical Discussion of the Findings

The analysis investigated the assumed rescaling of German statehood in the context of the so-called migration crisis. The above-formulated hypotheses could be partly confirmed in the frame of the analysis. The first part of the analysis focusing on the opening and recognition of windows of opportunity and the exploitation of these by the *Städtetag* substantiates the existence of the assumed windows of opportunity and their recognition by the *Städtetag* with account evidence. The argumentation of the association allows for conclusions on their willingness to exploit these windows of opportunities. Based on sequence and account evidence, it can be stated that the *Städtetag* used the momentum of the "refugee crisis" to enhance the importance and influence of the urban scale with regard to the federal state and the national scale. The analysis, however, does not allow drawing a final conclusion on the question whether the association mainly pursues own institutional interests or is only committed to the claims and goals of the municipal level.

The second part of the analysis clearly shows that the *Städtetag* exploited the windows of opportunity successfully in the sense that it managed to represent the claims and opinions of the urban scale on the residence obligation vis-à-vis the superordinate scales in a way that they are recognised by these. Different account evidence was found for this. However, it must be noted, that it stays rather responsive than being a driving force in the discussions. The rulings formulated on the residence obligation in the integration law therefore cannot be understood as an answer to the *Städtetag* aiming at rescaling processes. Thus, the second part of the hypotheses formulated above can be verified only partly. One could assume that the *Städtetag* lobbies for a possible recalibration of the state scalar system by positioning the urban scale in a better

⁵⁷ The terms 'coalition' and 'opposition parties' refer to the parties that were represented in the 18. German *Bundestag*. The Coalition was formed by the Christian Democrats (CDU / CSU), and the Social Democrats (SPD). The Opposition was made up by the Greens (Bündnis 90/ Die Grünen), the Left (Die Linke), and independent parliamentarians.

⁵⁸ Deutscher Bundestag, printed material 18/9090.

⁵⁹ "Verantwortungsgemeinschaft," Deutscher Bundesrat, Plenary Protocol 946.

⁶⁰ "Länder und Städte baten dringend um gezieltere Steuerungsmöglichkeiten. Sie möchten Flüchtlinge besser versorgen, aber sich stellenweise auch entlasten. Diese Möglichkeit bekommen sie jetzt," Deutscher Bundestag, Plenary Protocol 18/174.

negotiation system. Yet, whether these tendencies could develop in rescaling processes in a long term would have to be explored in further research.

In order to better judge the conclusions drawn in the frame of this analysis in regard to their validity, the results need to be critically evaluated. Regarding the material that builds the foundation of the analysis it can be stated that solely primary sources were used. One of the most important criteria of selection in regard to the material was the date of publication that had to lie within the assessed period of time. This allows for the collection of authentic information. Through this and the use of different kinds of texts such as press releases, resolutions, speeches, and legal texts a comprehensive and veridical mapping of the time period assessed could be carried out. A weak point might be the rather open choice of data. A more pointed selection of data could however only be made in a bigger research in which more data can be processed

As already stated before, the conclusions drawn within this analysis are based on Bayesian theory. This does not only allow for the evaluation of evidence found, but also allows testing the validity of the final results. The testing method used here is based on the explanations of van Evera.⁶¹ It takes both, the expected and the found observable manifestations and the corresponding evidences into account. Generally, the evidences that support the previously expected observable manifestations are understood as supporting the previously formulated hypotheses. Consequently, the probability to verify a hypothesis increases with the evidence found.

In this research, no contra-factual investigations were made. Thus, the results of the analysis solely pass the so-called “smoking-gun test”, which is applied when the predictions made are unambiguous but also not certain, which holds true for the predictions made in this research. The passing of the test proves that the prediction is true. If the test is not passed, however, the prediction cannot be disproven.⁶² Consequently, the assumptions made in the hypotheses regarding the opening of windows of opportunity and their exploitation and recognition through the *Städtetag* can be considered as proven. The parts of the hypotheses focusing on the response of the superordinate scales to these activities and the formulation for resulting state spatial projects and or strategies in which the rescaling tendencies become manifest cannot be proven. However, they cannot be disproven either. Further research on this second part of the assumed causal mechanism would have to explore this part of the hypothesis further.

6. Conclusions and Outlook

The aim of this research was to evaluate to which extent the German association of cities and towns, the *Deutscher Städtetag*, used the momentum of the so-called migration crisis in 2015 and 2016 to engage in rescaling processes of German state space. The analysis showed that the *Städtetag* did recognise the windows of opportunity for a possible recalibration of the German state scalar organisation created in the course of the “migration crisis”. It contributed to presenting the urban scale as an important and equal partner for negotiations on asylum-, refugee, and integration policies. These activities have been identified as contributing to rescaling tendencies within the analysis. Thus, it was shown that a change in the socio-political context in which national state spaces are produced can enable different actors representing specific scales to engage in rescaling processes.

Overall this analysis contributed to the development of a more spatial approach to the German federal state space by focusing on the urban scale that has so far been rather neglected in the literature. By making rescaling tendencies within the German state scalar organisation visible, a new understanding for the relations of the assessed scales is developed that can inspire further research in the field.

In this research, no final conclusion on the responses to these activities and tendencies of actors representing other scales could be drawn. Especially the manifestation of possible recalibrations of the German state space in state spatial projects and strategies should be further explored in future research.

Even though the urban scale was positioned in a more advantageous position within the time period under investigation, no statements regarding a possible long-term relocation of the urban scale can be made. Based on Brenner’s explanations and the analysis conducted, it is expected that constant rescaling tendencies provoked by different societal and political influences perpetually change the state scalar organisation of the German state. These developments are moreover expected to proceed asymmetrically in regard to different policy areas and fields of activities. Further investigations would have to examine these assumptions. Especially the integration of migrants into the German society is still debated controversially within society

⁶¹ cf. Stephen van Evera, *Guide to Methods for Students of Political Science* (Ithaca, NY: Cornell University Press, 1997), 30 ff.

⁶² *Ibid.*, 31 f.

and politics. Therefore, it can be assumed that further rescaling tendencies could be provoked in this context, providing fruitful grounds for future research.

Especially within the second part of the analysis it became apparent that the *Städtetag* assessed here as representative of the urban scale is not the only (institutional) body recognising the opening of windows of opportunities to engage in rescaling processes in the context of the migration crisis. Further research on related topics would have to take other representatives of the different scales into account to create a more comprehensive picture of the recalibration of the German state scalar system.

In this context, it can be stated that also investigations focusing on the horizontal relations between and within the herein assessed scales could contribute to more insights into rescaling processes. A research project focusing on this aspect would, for example, allow to take party political interests and intra- or inter-institutional struggles into account that have not been looked at in this research.

Moreover, spatial research building upon the theories developed in urban studies and global studies on the position of urban spaces in the world that were mentioned in the beginning of this text would be considered a valuable advancement of the ideas presented here. At the edges of the analysis, it became apparent that the urban scale also significantly interacts with the European level. The exploration of the relations of, for instance, the European scale as a scale that is superordinate to the national one and the urban scale would not only allow drawing further conclusions on the recalibration of the national state space but also on the recalibration of the spatial organisation of other entities such as the European Union. Such research would particularly uncover interesting insights with regard to the notion of a “Europe of Regions”.

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8. Annex: Table 1 Timeline

(Own research, based on primary sources listed in the bibliography)

| Date | Urban Scale | National Scale | Federal State scale | Other |
|------------------------|---|--|---------------------|--|
| 24.02.15 / 26.02.15 | „Deutschland braucht leistungsfähige Städte – Investitionskraft stärken“ „Städte engagieren sich für Integration von Flüchtlingen“ Demand for financial support | | | |
| 10.06.15 | Respect of federal government / states is required President Maly: „Wenn Bund und Länder sogenannte Asylgipfel abhalten und dort ein Thema behandeln, dessen operative Zuständigkeit überwiegend bei den Kommunen liegt – schließlich wird über Wohl und Wehe der Integration in den Städten und Gemeinden entschieden -, wenn die im Koalitionsvertrag vereinbarte Kommission zu den Bund-Länder- Finanzbeziehungen, bei der wir dabei wären, nicht einberufen wird, sondern stattdessen in verschiedenen Zirkeln ohne uns gesprochen wird, dann fehlt es an Respekt. Aktuell gibt es nun wenigstens einen Lichtblick, der uns freut. Wir sind eingeladen, morgen an einer Besprechungen der Bundeskanzlerin mit den Ländern zu Asyl- und Flüchtlingspolitik teilzunehmen.“ | | | |
| 11.06.15 | Meeting representatives of the <i>Städtetag</i> with representatives of federal states and the chancellor Merkel | | | |
| 16.07.15 | Press release: important commitment of cities, residence obligation | | | |
| 21.09.15 | Meeting of representatives of the <i>Städtetag</i> with chancellor Merkel and Ministers Altmaier and de Maizière | | | |
| 28.12.15 | | Federal government considers residence obligation (answer to parliamentary question) | | |
| 11.01.16 | | Again: Statement: Coalition considers residence obligation | | |
| 12.01.16 | President Lohse appreciates consideration of residence obligation by grand coalition | | | |
| 24.02.16 | President Lohse demands to set limit to migration to Germany, faster asylum procedures Resolution, inter alia, on residence obligation should be considered | | | |
| 01.03.16 | President Lohse appreciates ECJ judgement on residence obligation that was already earlier considered by Federal government | | | ECJ judgement on legitimacy of residence obligations (C- 443/14, C- 444/14) -> preliminary ruling, two cases submitted by Federal Administrative Court in August / September 2014 |

| | | | | |
|----------|---|--|--|--|
| 13.04.16 | | Coalition Committee agrees on key points of a possible integration law | | |
| 14.04.16 | President Lohse appreciates agreement on key points by coalition committee | | | |
| 20.04.16 | Resolution of committee on, inter alia, Integration in Cities, Financial Relations, Residence Obligation | | | |
| | “Integration happens in Cities” Once again call to consider residence obligation | | | |
| 22.04.16 | President Lohse calls for a residence obligation | Presentation of a common integration concept (No reference to cities / <i>Städtetag</i> / But: residence obligation for better distribution) | | |
| 25.05.16 | Lohse: <i>Städtetag</i> appreciates declaration, answers to needs of cities, federal states have to implement | Federal cabinet decides on draft of an integration law, includes residence obligation “Declaration of Meseberg on integration” (“Fördern und Fordern”, residence obligation for better distribution) | | |
| 31.05.16 | | Draft integration law of CDU/ CSU and SPD (coalition parties / governing parties) (Printed material 18/8615) | | |
| 03.06.16 | | <p>1st reading draft integration law (printed material 18/8615) in the <i>Bundestag</i>, Session 174</p> <ul style="list-style-type: none"> • Minister of the Interior de Mezière: residence of obligation as tool for federal states (not referring to cities / <i>Städtetag</i>) • Criticism of Opposition: residence obligation as a tool to marginalise newcomers, pushing them into areas without perspective • Coalition parties: residence obligation as important tool to avoid ghettoisation, better possibilities for regulation (not referring to cities), “Verantwortungsgemeinschaft”, useful for cities (avoid overload in metropolitan areas) • Karl Schiewerling (CDU): “Kommunen, Länder und der Bund [...] müssen zusammenarbeiten. Deswegen haben wir in dieser Frage eine gemeinsame Aufgabe.” • But also: Sebastian Hartmann (SPD): „Bundesebene nimmt seine Verantwortung wahr“ -> responsibility of the national level | | |

| | | | | |
|----------|---|--|---|--|
| | | First Session of the main responsible Committee (Labour and Social Affairs) – public hearing is agreed upon | | |
| 08.06.16 | | Public Hearing of the Labour and Social Affairs Committee on draft integration law: -> Advocacy groups, experts, inter alia, <i>Städtetag</i> Hearing of the <i>Städtetag</i> : <ul style="list-style-type: none"> • Generally appreciates draft, special focus on some measures, inter alia, residence obligation (allows to better regulate migration) • Emphasis on the federal states: need to develop reasonable distribution mechanism, <i>in consultation</i> with cities • Cooperation of the different scales is positively mentioned | | |
| 17.06.16 | | | 1 st Reading of the draft integration law in the <i>Bundesrat</i> , Session 946 <ul style="list-style-type: none"> • Increased migration as challenge for the national, federal and urban scale, “Verantwortungsgemeinschaft” • Integration happens in cities <i>and</i> federal states • Financial support from the federal government is requested • Partly doubts about residence obligation regarding state interventions – interference in freedom of movement, but still purposeful • Necessity of residence obligation for more equal distribution (direct referring to urban scale), integration <p>Mostly discussed: technical details (date)</p> | |
| 20.06.16 | | Legislative proposal integration law of Federal Government (Printed material 18/8829) Hearing of the responsible Labour and Social Affairs committee – divided response of experts | | |
| 22.06.16 | Sitting Nr. 216 of the main committee: calling for federal states to quickly implement residence obligation | Comment on the opinion of the <i>Bundesrat</i> (printed material 18/8883) | | |
| 23.06.16 | Resolution of main committee on residence obligation, calls to clarify financial relations in regard to integration | | | |

| | | | | |
|----------|--|---|--|---|
| 06.07.16 | | Final discussion on draft integration law in Labour and Social Affairs committee, recommended resolution, Absent on amended version | | |
| 07.07.16 | | <p>2nd and 3rd Reading of the draft integration law (printed material 18/8615) in the <i>Bundestag</i>, Session 183</p> <ul style="list-style-type: none"> Coalition Parties: Commitment of Cities is acknowledged, residence obligation is important to better distribute newcomers among bigger and smaller cities, making integration in municipalities possible, principle of proportionality, answering to calls for help of municipalities, necessary tool to better control migration to cities Josip Juratovic (SPD): Länder und Kommunen baten dringend um gezieltere Steuerungsmöglichkeiten. Sie möchten Flüchtlinge besser versorgen, aber sich stellenweise auch entlasten. Diese Möglichkeit bekommen sie jetzt.” Opposition: criticising law as exclusionary, residence obligation as contrary to freedom of movement and barrier for integration rather than facilitating it <p>Draft is accepted with the votes of the coalition parties against the ones of the opposition parties</p> <p>Context: Own drafts of the coalition</p> <p>Not taken into account: critics of churches, NGOs, welfare organisations</p> | | |
| 08.07.16 | | | 2 nd Reading of the draft integration law in the <i>Bundesrat</i> , Session 947 | |
| | | | No additional opinions (in regard to first reading) | |
| 31.07.16 | | Decision on the Integration law | | |
| 06.08.16 | | | | Integration law enters into force, amended by regulation on integration |

Breaking Down Borders? Cultural and Linguistic Diversity in the European Border Breakers Awards 2004-2018

Angela Medendorp

1. Introduction

Ever since the Maastricht Treaty, culture has taken up a prominent spot on the European agenda. According to the Treaty, it is the EU's aim to contribute to the flowering of Member State culture as well as to bring common cultural heritage to the fore.¹ To further these goals, the EU has set aside 1.46 billion euros in its current budget (until 2020) for its Creative Europe programme (part of the Directorate-General for Education, Youth, Sport and Culture of the European Commission). Creative Europe funds and runs numerous cultural projects within the EU; the prize for European popular music, the aptly-named European Border Breakers Awards (EBBAs), is one such project.

The EBBAs appear to be a fitting example of a way that the European space is reordered through policy. Started in 2004, the EBBA awards ceremony was first held in Lisbon, before moving to the city of Groningen, the Netherlands in 2009. It is now typically held at the start of the annual music festival Eurosonic/Noorderslag, where artists as well as music fans from all over Europe gather for what many call the start of the year for pop music. The awards (ten each year) are given to beginning artists from ten different countries that are Creative Europe participants (this includes several non-EU countries), who have had their first successful hit in more than one European country in the past year. The winners are selected on the basis of airplay, sales, and live performances on festivals.

The EBBAs, according to the organisation itself, aim to support European artists and 'highlight Europe's great cultural and linguistic diversity in popular music,'² and in doing so, the programme seems to fulfil the EU's two cultural goals of the Maastricht Treaty: highlighting national culture (by electing winners from different countries who in turn are assumed to represent their national cultures) as well as European common culture (by rewarding international success). However, superficially skimming through the previous EBBA winners uncovers a few issues, raising the suspicion that the EBBAs might not be fulfilling their goals at all: many of the winners sing exclusively in English (thereby significantly limiting the amount of linguistic diversity), some countries appear far more successful than others (thereby significantly limiting the amount of cultural diversity), and the selection of winners is dependent on so many variables that it is incomprehensible at best. To gain a better understanding of linguistic and cultural diversity in the context of the EBBAs, a more elaborate investigation is due. The present paper will thus attempt to answer the following question: to what extent do the European Border Breakers Awards showcase cultural and linguistic diversity in Europe and what are the possible consequences for (the promotion of) European culture?

Looking into the selection procedure and analysing the winners of the past fifteen years (2004-2018) should show exactly how accurate the abovementioned suspicion (i.e. that the EBBAs are not fulfilling their goals) is. In doing so, this paper attempts to answer the research question using both quantitative and qualitative elements. The quantitative approach will provide an analysis of the EBBA winners by determining the number and share of winners per country/national culture and per performance language. The qualitative approach will support this analysis by offering an insight into the selection procedure of EBBA winners and hypothesizes how this selection procedure may influence linguistic and cultural diversity among the EBBA winners.

It is important to note that this paper thus restricts the analysis of cultural diversity purely to geographical, national culture. That is to say: an artist of a certain nationality will be regarded as, in a way, expressing the respective country's national culture. This view makes it impossible to account for transnational cultural movements and expressions. While this limits the analysis, there are a couple of arguments for employing this national lens: historical sociologist Anthony Smith states that transnational culture has gained momentum in an increasingly interconnected world, but at the same time maintains that national cultures are still 'dividing the world resoundingly,' thereby arguing for the salience of national

¹ Article 151 TEU.

² "This is EBBA," European Border Breakers Awards, <https://www.europeanborderbreakersawards.eu/en/info/>.

culture.³ Moreover, the national view is justified in this instance because national, geography-bound diversity is precisely the sort of cultural diversity that the European Commission is trying to control for by making sure that the ten winners each hail from different countries within the Union.

Establishing an overview of winners per participating country over a longer period of time will thus be an appropriate way to analyse the amount of diversity in national cultures that the EBBAs have produced over the last decade and a half. The data in the overview will be further examined using Stirling's factors for assessing diversity in society.⁴ Stirling's factors are chosen specifically because they provide a simple yet sophisticated way of approaching a highly complex phenomenon. Stirling's factors for diversity consist of variety (in this case: how many different cultures are represented?), balance (how balanced is the representation of different national cultures?), and disparity (i.e. how similar/dissimilar are the different national cultures represented?). These same three factors will be discussed in the context of linguistic diversity. Together, the analysis of the three factors should make it possible to make some claims about cultural diversity in EBBA winners, thus providing an answer to the research question. While this paper will not engage with Stirling's mathematical index, it will instead assess the factors textually.

At the time of writing there were no studies on the EBBAs available, making this paper the first of its kind. For that reasons, findings in this paper should provide an important contribution in developing a more sophisticated understanding of the EBBAs.

To provide the results of this paper with sufficient context, this paper will commence with a literature review, drawing from works written by academics and professionals, focussing on three main points, all of which help interpret the results from the data evaluation from different perspectives. First of all, the development of the area of European cultural policy, the existence (emergence?) of a European culture, and the role that European institutions have played in this over the past few decades. Special attention will be given to the more recent concept of cultural diplomacy, something which can be seen at work within the EBBAs as well. Second, to contextualise the claim that certain countries are disproportionately dominant within the EBBAs, a section will be devoted to the West-East (economic) power divide in Europe and the European Union. It is no secret that Western European countries are generally in an economically superior position to (Central) Eastern European countries. This economic power potentially gives them certain advantages when it comes to the export of culture and the development of the music industry. Looking further into this divide will hopefully provide a useful frame for the results of this paper. Third point of focus is the linguistic situation in Europe and the position of English as Europe's dominant language. Despite the EU's efforts to preserve linguistic diversity in Europe, the spread of English seems unstoppable at times. What is lost in this development? Is it something that the EU is actively combatting? Formulating tentative answers to these questions will provide yet another avenue of interpretation.

After the presentation and discussion of the results, one last section is left. In an unanticipated move, the European Commission put out a call in February 2018 for the restructuring of the EBBAs for the years 2019-2021. This paper will thus have the exclusive opportunity to analyse this call to see what changes Creative Europe intends to make and what effect these changes might have on cultural and linguistic diversity in future editions.

2. European Cultural Policy

As mentioned above, European cultural policy was formally introduced when the Maastricht Treaty was signed in 1992, and it has become more intense and programmatic ever since (especially after the Lisbon Treaty of 2007).⁵ Before then, culture was not considered a priority, with cooperation mainly focused on the political and economic spheres. Moreover, the EU simply did not have any competences in the field of culture. The European Member States, potentially afraid that their own culture would be overlooked in the EU's attempts to create a unified Europe, were continuously stressing the principle of subsidiarity (and are still doing this today, on some occasions).⁶ This does not mean that policy in other fields did not have any cultural impact at all: Olivier Audéoud, who is an expert on EU policy, shows that economic measures such

³ Anthony D. Smith, "Towards a Global Culture?," *Theory, Culture and Society* 7 (1990), 188.

⁴ Andy Stirling, "A General Framework for Analysing Diversity in Science, Technology and Society," *Journal of the Royal Society Interface* 4, no. 15 (2007), 712.

⁵ Annabelle-Littoz-Monnet, "Agenda-Setting Dynamics at the EU Level: The Case of the EU Cultural Policy," *European Integration* 34, no. 5 (2012), 512.

⁶ Jeff Edmund Katcherian, "Unraveling the Paradox: Competence and the Failure of Subsidiarity in the European Union," *Political and Legal Anthropology Review* 35, no. 2 (2012), 279.

as the free movement of people and products have had a significant impact on cultural output in Europe as well.⁷

When discussing European cultural policy, it is important to know what *culture* actually entails. Culture is a concept that is widely discussed, and many definitions have been proffered by academics from different fields. The EU, very conveniently, has not made a choice, leaving the term undefined. However, academics appear to have agreed that culture is multifaceted, and that any definition should therefore contain multiple elements. A good example of such a definition is drafted by sociologist Williams, who describes culture as (1) ‘the independent and abstract noun which generates a process of intellectual, spiritual and aesthetic development,’ (2) ‘the independent noun, whether used generally or specifically, which indicates a particular way of life,’ and (3) ‘the independent and abstract noun which describes the works and practices of intellectual and especially artistic creativity.’⁸

European cultural policy, in turn, has been defined as a consciously deceived instrument to build a cultural identity for the European Union,⁹ and a way to further integration in Europe.¹⁰ It has several dimensions, including sponsorship and subsidies, exchange programmes like ERASMUS, but also a set of other initiatives, such as the EBBAs, the Cinema of Europe, or the European Youth Orchestra, all mainly relating to Williams’s third definition. However, there is attention for his second definition as well: take for instance the initiatives concerning cultural heritage, such as the European Heritage Label and the 2018 Year of Cultural Heritage. Creative Europe’s largest programme, the European Capitals of Culture, combines the two, placing artistic performances in particular national or regional cultural settings.

While it may seem fairly clear to the EU, not everyone agrees that *European* culture, i.e. a particular way of life, or a number of artistic and intellectual works and practices that is decidedly European, exists. They posit that there are too many differences between the European countries to form a cultural unity. Others argue that while European culture does exist, it is not nearly as all-encompassing as the EU would like to present it to be. Sociologist Neil Fligstein is a defender of the latter camp. He argues that certain elements of European culture are emerging but that many of these elements seem to be influenced by American culture.¹¹ And if that is the case, how European can this culture really be said to be? Historian Benjamin Martin takes a critical stance as well. Arguing that the “sharedness” of European culture is mostly based on common history (think of the Roman era and the Enlightenment) and that this idea of a common history only emerged in the 1920s and 1930s (as a reaction to the Soviet and American superpowers), he states that, following historian Hobsbawm,¹² common European culture is an invented tradition rather than an actual thing in and of itself.¹³

The EU has a vested interest in proving these scholars wrong. Not only is it using its cultural programme to create a sense of cohesion within the existing European member states, it has also been employing this programme to create alliances with other nations. It is this practice of *cultural diplomacy* that makes it so significant that the EBBAs were launched in 2004, the same year that ten new countries were to make their entrance into the EU. Introducing the EBBAs might in this context be a way of introducing old and new member states to each other’s cultures.

Later, the EU has only expanded its efforts: several countries that are part of the Eastern Neighbourhood have joined Creative Europe’s cultural programme, with the most recent additions being Armenia and, pending the agreement with the European Commission, Kosovo.¹⁴ A couple of years ago (2016), the European Cultural Diplomacy Platform was launched, which has the aim to ‘enhance the European Union’s

⁷ Olivier Audéoud, “Study on the Mobility and Free Movement of People and Products in the Cultural Sector,” Study No. DG EAC/08/00, 2000.

⁸ Raymon Williams, “Culture,” in *Keywords: A Vocabulary of Culture and Society*, (Oxford: Oxford University Press, 1976), 90.

⁹ Monica Sassatelli, “Imagined Europe – The Shaping of a European Cultural Identity through EU Cultural Policy,” *European Journal of Social Theory* 5, no. 4 (2002), 436.

¹⁰ Juan M. Delgado Moreira, “Cohesion and Citizenship in EU Cultural Policy,” *Journal of Common Market Studies* 38, no. 3 (2000), 450.

¹¹ Neil Fligstein, “What is European Society?,” in *Euroclash: The EU, European Identity, and the Future of Europe* (Oxford: Oxford University Press, 2008), 165-207.

¹² Eric Hobsbawm and Terrence Ranger, *The Invention of Tradition*, (Cambridge: Cambridge University Press, 1992).

¹³ Benjamin G. Martin, “European Culture is an Invented Tradition,” 31 January 2017, <https://qz.com/895131/european-culture-is-an-invented-tradition/>.

¹⁴ European Commission Education, Culture and Audiovisual Executive Agency, “Eligibility of Organisations from non-EU Countries,” 22 March 2018, https://eacea.ec.europa.eu/sites/eacea-site/files/22032018-eligible-countries_en.pdf.

engagement with third countries and their citizens.¹⁵ For the EBBA this has a few concrete consequences: the number of countries that are eligible for an award is steadily increasing. As a result, the number of eligible artists rises as well. To ensure a selection that is fair and consistent with the programme's aims, it becomes ever more important that the procedure of selecting EBBA winners is comprehensible and transparent.

Before coming back to this, the next section of this paper will explore another important facet: the power dynamics between the European nations and their possible consequences for understanding the EBBA's.

3. EU Economic Power Dynamics

Power is a concept that might be just as complex, if not more so, than culture. A prominent conceptualisation of power today is the model of power as domination.¹⁶ This model focuses on the idea of "power over". This might be power over others/things/decisions, et cetera. "Power over" can be explained as follows: one party can get another to do things they otherwise would not do. It can also be much subtler: one party, by reinforcing and promoting certain practices and values, creates an environment in which the range of topics that could be raised by another party are significantly limited.¹⁷ Political and social theorist Steven Lukes adds one more variety of power: one party prevents another from recognising their own interests.¹⁸ Looking at the EU and its member states then, raises the following question: who is it that holds the power?

In theory, the member states of the EU have similar amounts of power within the Union. The most sensitive issues (such as accession of new members) are decided by unanimous voting and qualified majority voting in other areas has made it such that there always has to be a certain balance between the number of Member States supporting a decision and the number of EU citizens represented by these countries. This mechanism has prevented countries with a large population from acquiring a disproportional amount of power and essentially side-lining the smaller countries within the EU.

In practice however, there are few people who would argue that Germany and Slovenia are equally influential and powerful when it comes to European matters. Within the EU, there is still a certain (political) power hierarchy. Political magazine *Politico* published such a hierarchy,¹⁹ looking at internal and diplomatic strength of Member States and candidate countries, scoring them all on set criteria. The article concluded that Germany, the United Kingdom, France, Italy, and the Netherlands are the top influencers in Brussels. This article, though not entirely uncontested, does show something very interesting: the most powerful countries have all (apart from the UK) been founding members of the European Economic Community (the precursor of the EU), have relatively stable economies, and they are all part of Western Europe.

Apart from order of accession, there is other data supporting an East-West divide within the EU. Net contributors to the EU budget of 2016 were overwhelmingly Western European countries, showing the same top five as *Politico's* power ranking, interestingly enough. Eastern European countries were often net recipients.²⁰ Western European countries are thus actively financing Eastern European countries through the EU budget (and this financial disbalance appears to be a main cause for Euroscepticism in Western Europe).

This division between net contributors and net recipients can easily be explained: Western European countries generally have a higher GDP per capita, which means that they are able to contribute relatively more to the EU budget whilst requiring relatively little financial assistance. And partly as a result of this financial imbalance, Western Europe seems to have gained the majority of decision-making power, allowing it, for instance, to outvote four Eastern European Member States in the much-contested 2015 migration vote on the relocation of 120,000 refugees across the continent.²¹ It should be noted however, that the

¹⁵ European Commission Service for Foreign Policy Instruments, "New European Cultural Diplomacy Platform Launched," 31 March 2016, http://ec.europa.eu/dgs/fpi/announcements/news/20160401_1_en.htm.

¹⁶ Michael Karlberg, "The Power of Discourse and the Discourse of Power: Pursuing Peace Through Discourse Intervention," *International Journal of Peace Studies* 10, no. 1 (2005), 2.

¹⁷ Peter Bachrach and Morton Baratz, *Power and Poverty, Theory and Practice* (New York: Oxford University Press, 1970), 7.

¹⁸ Steven Lukes, *Power: A Radical View* (London: MacMillan, 1974).

¹⁹ Ryan Heath, "Power Matrix: Ranking Europe's Leaders and Ambassadors," *Politico*, 14 April 2017, <https://www.politico.eu/interactive/power-matrix-charting-the-eu-players-by-country-european-council-national-capitals-leaders-ambassadors/>.

²⁰ Mehreen Khan, "Four Big Battles over the EU Budget," *Financial Times*, 9 January 2018, <https://www.ft.com/content/77117570-f521-11e7-88f7-5465a6ce1a00>.

²¹ Votes on sensitive topics like migration would normally be unanimous. However, when it became apparent that there was no possibility to reach a consensus, it was decided (by Germany and France, mostly) that the vote would be taken by means of

European *institutions* have their own agenda, which (even though it is fed and influenced by the European member states) need not always be identical to its main influencers'. In fact, the EU institutions have always tried to maintain a neutral image.

Having assessed that there is a certain level of economic and political power disparity between the EU member states, what about cultural power? In a sense, it is related to economic power. A country with a strong economy will be able to invest more in its culture, thereby giving it more opportunities to showcase and export this culture internationally.

To artists and performers dealing with the popular music industry, financial resources are vital. In a world where reaching an international audience through the internet has become easier than ever, investment in marketing can make all the difference. Moreover, a bigger budget means that there is more money to support artists, invest in production, etc. This creates the expectation that member states with a strong economy (i.e. Western European countries, generally), that have been shown to invest more money in the music industry and its related marketing²² would be able to provide better conditions for their artists to achieve international success (and, by extension, win an EBBA). This expectation is in line with economists Moon, Barnett and Lim's statement that countries with strong economies are dominant exporters in the international music trade network.²³ However, it is one of the EBBA's goals to promote cultural diversity within Europe, which means that, ideally, winners would be representing as many different (national) cultures as possible. This creates a tight balance that the organisers must somehow navigate, and the degree to which they accomplish this will be vital to cultural diversity within the EBBA's.

The next section will look at the last facet that will be vital to this paper: linguistic diversity. By examining this concept in a European context, it will be possible to come to a more complex understanding of the results of the quantitative analysis.

4. Linguistic Diversity and English Dominance in Europe

Compared to other continents, Europe has relatively few languages. If one takes linguistic diversity to mean just the number of languages spoken in a territory, this would mean that Europe is less linguistically diverse than South America or South East Asia, for example. The above is not the only definition of linguistic diversity, though. The linguist Clinton Robinson takes it to be based on 'the percentage of the population speaking any single language [in a given territory]'.²⁴ A territory where the largest language is spoken by a small proportion of the population would be regarded as very linguistically diverse.

Looking at linguistic diversity in this way explains why certain academics view the spread of English as a threat to linguistic diversity in Europe, some going even so far as to call it a form of linguistic imperialism.²⁵ After all, the larger the proportion of the population that speaks English, the less linguistically diverse Europe will be.

A couple of arguments for the promotion of linguistic diversity are laid down by linguist Tove Skutnabb-Kangas in a report for the Council of Europe.²⁶ First she mentions the heritage and biodiversity arguments. Linguistic diversity appears to be inherently linked to biodiversity.²⁷ Where linguistic diversity is high, so is biodiversity, generally speaking. Preserving biodiversity might thus be achieved by encouraging linguistic diversity.²⁸ Secondly, she presents the economic argument. In a society in which human intelligence is quickly replaced by technology, creativity is becoming more and more important. Since multilingualism is

qualified majority voting instead: Slovakia, Romania, Hungary and the Czech Republic lost the vote. For more information on the refugee relocation vote, see: Ian Traynor and Patrick Kingsley, "EU Governments Push Through Divisive Deal to Share 120,000 Refugees," 22 September 2015, <https://www.theguardian.com/world/2015/sep/22/eu-governments-divisive-quotas-deal-share-120000-refugees>.

²² *The Economy of Culture in Europe*, Study prepared for the European Commission, 2006, http://ec.europa.eu/assets/eac/culture/library/studies/cultural-economy_en.pdf.

²³ Shin-II Moon, George Barnett and Yon Soo Lin, "The Structure of International Music Flows Using Network Analysis," *New Media and Society* 12, no. 3 (2010), 394.

²⁴ Clinton D. W. Robinson, "Where Minorities are in the Majority: Language Dynamics Amidst High Linguistic Diversity," In *Case Studies in Minority Languages*, ed. K. de Bot, AILA Review 10, 54.

²⁵ Robert Phillipson, *Linguistic Imperialism* (Oxford: Oxford University Press, 1992).

²⁶ Tove Skutnabb-Kangas, *Why Should Linguistic Diversity Be Maintained and Supported in Europe? Some Arguments*, 2002.

²⁷ D. Harmon, "The Status of the World's Languages as Reported in the Ethnologue," *Southwest Journal of Linguistics* 14, no. 1/2 (1995), 1-28.

²⁸ Victoria Tauli-Corpuz, "The Importance of Indigenous Peoples in Biodiversity Conservation," *UN Annual Review* 2008, <http://siteresources.worldbank.org/EXTENVMAT/Resources/3011350-1271279658247/VP1-TauliCorpuz.pdf>.

often associated with enhanced creative thinking and flexibility,²⁹ this would be a good argument for retaining and promoting linguistic diversity. And of course, all of this is not even addressing the social and emotional functions that having a native, own, language may have for both individuals and groups.³⁰

The EU, to a certain extent,³¹ has subscribed to these notions, initiating policy meant to stimulate its citizens to learn languages other than their native language or English. The ‘mother tongue plus two’ initiative, which advocates that everyone should strive to learn two languages besides their mother tongue, is a good example of this. There are also several initiatives aimed at the promotion and preservation of Europe’s smallest languages, usually minority languages. Moreover, with Brexit on the horizon, some more negative attitudes towards English can be observed within the Union. One of the most important spokespeople of the EU, president of the European Commission Jean-Claude Juncker, openly expressed his scepticism of English, declaring that English is losing importance during his 2018 *State of the Union* speech. Meanwhile, however, the data appear to contradict him. In secondary schools across the continent 97% of pupils are receiving English education, with 79% of them starting their education at the primary school level.³² With numbers this high, the usage of English as a lingua franca in Europe is likely to only increase over time.

In the music industry, where international success is often the main goal, it is then unsurprising that English features prominently. This is corroborated by communication theorists Marc Verboord and Amanda Branderello, whose longitudinal study indicated that music featuring the use of English was more likely to be traded internationally.³³ A report written for the European Music Organisation stipulates that the only European artists with a real chance at an international breakthrough are those performing in English, yet even they appear to have a lot of difficulties trying to compete with the American artists who are dominating airplay everywhere.³⁴ The European Border Breakers Awards would then appear to be the perfect way to give struggling European artists a chance. Whether the EBBA have been effective at doing so will be examined in the next section.

5. The EBBA Dissected

This section will provide an up-close look at the selection procedure for the European Border Breakers Awards as well as the cultural and linguistic diversity of the winners in previous years (2004-2018). After a short presentation of the results, a section analysing the most outcomes and their likely consequences will follow.

5.1. Selection Procedure

The official EBBA website quotes three criteria upon which EBBA winners are selected: airplay, sales, and the number of live performances in Europe.³⁵ Whether these factors are weighed equally is not revealed. A further investigation shows that especially the European Border Breakers Chart (which preceded the EBBA) is important.³⁶ The European Border Breakers Chart, compiled by Radiomonitor, provides a ranking of international hit singles by European artists (these do not necessarily need to be first successes) and are based on data gathered from 49 radio stations across Europe (1-3 per eligible country) and any available streaming data.

²⁹ Guillaume Fürst, “Multilingualism and Creativity: A Multivariate Approach,” *Journal of Multilingual and Multicultural Development* 39, no. 4 (2018), 341-355.

³⁰ John Edwards, *Minority Languages and Group Identity: Cases and Categories* (Amsterdam/Philadelphia: John Benjamins, 2010).

³¹ For an extensive overview of the ways that Europe has dealt with linguistic diversity from as early as 1794, please see Robert Moore, “From Revolutionary Monolingualism to Reactionary Multilingualism: Top-down Discourses of Linguistic Diversity in Europe, 1794-present,” *Language and Communication* 44 (2015), 19-30.

³² “Britain is Leaving the EU, but Its Language Will Stay,” *The Economist*, 13 May 2017, <https://www.economist.com/news/europe/21721861-despite-jean-claude-junckers-joke-anglophones-should-rest-easy-britain-leaving-eu-its>.

³³ Marc Verboord and Amanda Branderello, “The Globalization of Popular Music, 1960-2010: A Multilevel Analysis of Music Flows,” *Communication Research* 45, no. 4 (2018), 615.

³⁴ Emmanuel Legrand, *Monitoring the Cross-Border Circulation of European Music Repertoire within the European Union*, 2012,

³⁵ “This is EBBA,” European Border Breakers Awards, <https://www.europeanborderbreakersawards.eu/en/info/>.

³⁶ Current and previous versions of the European Border Breakers Chart can be found at <http://www.europeanborderbreakerschart.eu/>.

The next source for data cited by the organisation is Nielsen Music Control Research. This worldwide market leader when it comes to music data collection monitors radio airplay, online streaming and consumer behaviour, going even so far as to track in-store sales. The data provided by Nielsen are quite likely to be the most extensive and all-encompassing, but since Nielsen is a commercial player, the data are not freely accessible. One other source that is acknowledged is the European Broadcasting Union and its allied radio stations. These stations (all public, national stations) are in many cases also data suppliers for Radiomonitor and the European Border Breakers Chart, so they are likely to provide very similar, if not identical, data.

The last source mentioned that is important when it comes to live performances in particular is the European Talent Exchange Programme. With festivals from all over Europe participating, their task is to provide information on which artists performed at which festival. It seems to be the appearance itself rather than relative success or venue size that counts here.

All in all then, the data upon which the winners of the EBBAs are decided seem to be collected and communicated by trustworthy sources. While data on airplay seem a little biased to public national radio stations, this bias might still be balanced by the airplay and sales data from Nielsen, which include a much wider range of radio stations and consumers. The European Border Breakers Charts and data from the European Talent Exchange Programme are publicly accessible, aiding transparency. However, one question remains. There is absolutely no statement on the record that explains the process that transforms these data points into actual EBBA winners. Is there an algorithm in place or are there still human choices being made? And, if there is human involvement, who exactly is making these decisions? These are questions that have as of yet gone unanswered.

5.2. Previous Winners: Linguistic Diversity

Table 1 shows the number of EBBA winners per performance language as well as the relative percentage per language. In the past fifteen editions, there have been 148 winners (two editions saw nine winners instead of ten). In the case that a winner was performing in more than one language (this occurred twice) both were scored to be worth 0.5.

As can be gathered from the data in Table 1, the EBBA winners represent twelve different languages, which indicates some variety, yet given the number of languages spoken on the European continent, there is a significant number of languages that is not featured at all. Moreover, nearly 80 per cent of EBBA winners perform in English, which shows the severe imbalance within the languages. The twelve languages do represent a number of different language families, meaning that the languages are relatively dissimilar. However, due to English's majority share, variety and dissimilarity are pushed to the background. Considering this and previous definitions of linguistic diversity, it would be safe to say that the EBBAs have not been very linguistically diverse over the past fifteen years.

| Language | Number of winners | Percentage (rounded to one decimal) |
|--------------|-------------------|-------------------------------------|
| English | 118 | 79.7 |
| French | 6 | 4.1 |
| German | 5 | 3.4 |
| Spanish | 4 | 2.7 |
| Portuguese | 3 | 2 |
| Instrumental | 3 | 2 |
| Italian | 2 | 1.4 |
| Polish | 2 | 1.4 |
| Gibberish | 1 | 0.7 |
| Persian | 1 | 0.7 |
| Icelandic | 1 | 0.7 |
| Albanian | 1 | 0.7 |
| Irish | 0.5 | 0.3 |
| Swedish | 0.5 | 0.3 |
| Total | 148 | 100.1 |

Table 1. EBBA winners 2004-2018 per performance language (List of winners acquired through www.europeanborderbreakerawards.eu. Performance language determined by author)

5.3. Previous Winners: Cultural Diversity

Lastly, the previous winners will be examined from the perspective of cultural diversity. As previously mentioned, this cultural diversity will be examined through a national lens. Creating an overview of the number of winners per participating country makes it possible to assess the amount of diversity in national cultures presented through the EBBA. Table 2 provides the exact number of winners per country. Figure 1 presents the same data in the form of a map to aid visualisation and includes the substantial number of countries that have never won an EBBA.

Keeping Stirling's factors of variety, balance, and disparity in mind, the map in Figure 1 (as well as the data in Table 2) show a number of things. Looking at variety, there are artists from 23 countries that have won an EBBA. While this shows that there is clearly some level of variety among the winners, it also illustrates that artists from a significant number of countries have not won an EBBA in the past fifteen years. Looking at balance, it is undeniable that some countries are much better represented than others. Whereas artists from some countries have been able to win sixteen times within fifteen editions (2009 saw two Danish, French and British winners for a hitherto unexplained reason), other countries have struggled to win just once. Looking at disparity, it becomes obvious that all of the most successful countries are located in Western Europe. While there are certainly cultural differences between these countries, they are commonly regarded as relatively similar due to their shared history, amongst others.³⁷

³⁷ Pankaj Ghemawat, *World 3.0: Global Prosperity and How to Achieve It* (Boston: Harvard Business Review Press, 2011): 55.

| Country | Number of winners | | |
|----------------|-------------------|--------------|------------|
| France | 16 | Italy | 4 |
| United Kingdom | 16 | Portugal | 4 |
| Germany | 14 | Poland | 3 |
| Sweden | 13 | Estonia | 2 |
| Denmark | 12 | Romania | 2 |
| Ireland | 11 | Iceland | 2 |
| Belgium | 10 | Hungary | 1 |
| Netherlands | 9 | Greece | 1 |
| Spain | 7 | Latvia | 1 |
| Austria | 6 | Albania | 1 |
| Norway | 6 | Bulgaria | 1 |
| Finland | 5 | Total | 148 |

Table 2. Number of EBBA winners per country, 2004-2018 (Data on nationality acquired through www.europeanborderbreakerawards.eu)

Taking this all together then, it would appear that diversity among national cultures is relatively weak: while there is some variety (which is in part provided by the fact that the Commission requires that the winners are from different countries), there is severe misbalance, with the most successful countries being relatively similar. Since it is primarily countries with a strong economy that have performed well in the EBBAs, the number of winners per country was tested against the nation's GDP per capita,³⁸ showing a slight positive correlation ($r = 0.435$). Grouping the countries in Western and Eastern Europe however, showed a perfect positive correlation with the groups' combined GDPs.³⁹

One issue that should be considered and which slightly impacts the analysis is that not all countries have been eligible for all editions of the EBBAs. Some countries became member states of the EU after 2004 (such as Croatia) and some third-countries joined Creative Europe's cultural programme later as well. Correcting for this would likely make the contrast less extreme. Nevertheless, it cannot be denied that the most successful countries are overwhelmingly Western/Northern European countries with strong economies, and even those (Central) Eastern European countries that have been part of the EU since the inception of the EBBAs have been relatively unsuccessful in every edition.

Additionally, it is important to mention once again that this analysis has only approached cultural diversity from a geographical, national point of view, thereby making it impossible to take expressions of transnational or regional culture into account. However, given that the Commission has explicitly attempted to create (national) cultural diversity within the EBBA awards, it can be concluded that rather than highlighting the many different national cultures among the participating countries, the selection criterion has largely served to repeatedly highlight the same national cultures, thereby decreasing the amount of cultural diversity portrayed over time.

³⁸ Data on GDP and GDP per capita (2017) were obtained via the International Monetary Fund: http://www.imf.org/external/datamapper/NGDPDPC@WEO/OEMDC/ADVEC/WEO_WORLD.

³⁹ Because of the relatively small number of data points, these results were unfortunately not found to be statistically significant.

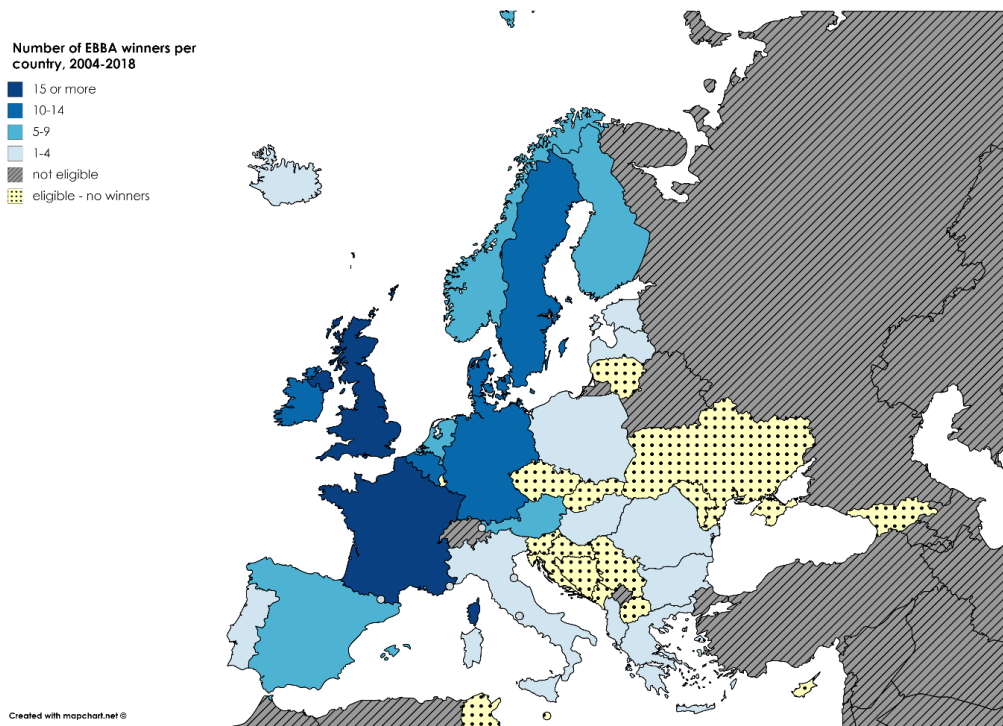


Figure 1: Number of EBBA winners per country, 2004-2018 (Data on nationality acquired through www.europeanborderbreakerawards.eu. Map by author)

5.4. Implications

Looking at previous winners then, the EBBAs seem to have been significantly lacking when it comes to both cultural and linguistic diversity. The most successful countries all have strong economies and are located in Western and Northern Europe exclusively, confirming the expectation that financial power would amount to a greater number of EBBA winners. Whilst winning more EBBAs might not immediately grant these countries even more power within the EU, it does reinforce the image of them as main influencers and, at times, the “face” of Europe, thereby emphasising their position once more.

Because relatively unsuccessful countries at the EBBAs do not gain the opportunity to showcase their music and national culture, the EBBAs might actually be indirectly working to increase the (cultural) gap between Western and Eastern Europe. Moreover, by disproportionately rewarding displays of Western European culture, the EBBAs are reinforcing a hierarchy of culture, which does not match with the Union’s values of equality.

English is such a dominant language in the contest that only eleven other languages have been featured in the last fifteen years, meaning that many other languages have gotten no exposure at all. As a result then, the idea of English as the European lingua franca and the default mode of communication and performance – is only strengthened. While it was not examined in detail here, the prominence of English is also a factor that may help explain the difference between Western and Eastern European artists when it comes to success at the EBBAs. Since English proficiency tends to be higher in Western Europe, it is possible that this enhanced ability to speak and understand English leads to a stronger and more popular output of music performed in English.⁴⁰ Taking this together, it is not surprising that the UK is the biggest winner of all: the fact that they won the greatest number of awards so far (it is uncertain whether the UK will continue to participate in Creative Europe after Brexit), may be in part due to the fact that UK participants are native speakers of English.

Part of the cause for this English prominence is likely to be sought in the selection procedure. With a heavy focus on radio airplay (in a time in which radio seems to have become less important than ever), the choices made by a few select radio stations can have a significant impact on the selection of the winners. These radio stations, despite being mostly public stations, still have one primary goal: to attract as many

⁴⁰ Education First, “EF English Proficiency Index,” *ef.com*, <https://www.ef.com/epi/>.

listeners as possible. These days it appears that English and Western (European) music are the most effective tools to do so.⁴¹ Even though radio is not the only or decisive factor; after all, part of the selection procedure is reliant on streaming data and sales, but those are heavily influenced by marketing (and, once again, radio airplay) Thus, the countries with the largest sum of money at their disposal often dominate here as well, and it is very clearly reflected in the results.

This selection procedure has made the EBBAs an effective way to reward the most successful European acts, but that also appears to be the entire extent of its reach. The past fifteen years have proven that a selection procedure based on airplay and sales is simply not the best way to promote linguistic *or* cultural diversity within Europe and it severely diminishes the impact of the EBBAs as a tool of European cultural policy, since it only reinforces an image that has already been quite prevalent now and in the past.

It seems like the European Commission has also realised that it may be time to make a few changes to the EBBAs. In the beginning of 2018, it put out a call for organisers for the European Music Awards between 2019-2021. This plan will be examined in more detail in the following section.

6. Changing Things Up: EBBA 2.0

In the abovementioned document, the Commission sets out objectives and requirements for the organisation of the ‘EU prize for popular and contemporary music’, as it is officially called.⁴² This section will list and analyse the changes the Commission intends to make to the programme and the consequences these changes might have for cultural and linguistic diversity in particular. Firstly, the Commission has the intention to adapt the prize to work better with digital platforms. This will be taken into account in the selection procedure, but also when promoting the winners across Europe. Secondly, the selection process will be altered so as to reflect both qualitative and quantitative data. This means that professional recommendations will likely play a bigger role than before, when there was no clear evidence of human interaction with the selection procedure. Thirdly, the basic criteria will remain the same: there will be ten winners each year (though more or less winners could be acceptable if it were well-argued), and each of them should be from different countries. Interestingly enough, the Commission states that it requires linguistic balance only ‘in so far as possible’. This shows that linguistic diversity is likely not its highest priority when it comes to renewing the awards. Fourthly, the name of the awards will change. The Commission requires a name that includes the terms ‘Europe/European’, ‘music’, and ‘awards’.⁴³ While this is a combination that yields relatively few results, one thing is certain: 2018 will have been the last year featuring the EBBAs by their original name. Finally, the awards will remain linked to the city of Groningen and Eurosonic/Noorderslag. While this was unsure in the beginning, renewed support from the city and the province (100.000 euros each per year) mean that Groningen will still be the central city for the next three years.⁴⁴ Along with the 500.000 euros annually invested by the Commission, this brings the prospective budget for the 2019 edition to 700.000 euros.

Depending on the organiser’s input then, the renewed EBBAs are quite likely to be the same in essence, yet branded differently. In doing so, the Commission may be able to reach a new audience (while loss of the EBBA brand may at the same time alienate others). A selection procedure that relies more heavily on experts might be beneficial for artists from Eastern European countries and third countries who might not receive as much airplay but still produce qualitatively good music. Especially if the expert panel contains professionals from different areas in Europe, the renewed selection procedure might lead to a more even geographic/cultural spread of winners in future editions.

The fact that the Commission is not placing much priority on linguistic diversity though, is more worrisome, because it directly contradicts much of the EU’s language-related policies. By communicating this quite explicitly to prospective organisers, any future edition of the awards is still very likely to feature English prominently, making it once again impossible for artists performing in other languages to find a place within the competition.

⁴¹ For a more elaborate overview of airplay per country in the EU, supporting this claim further, please see Emmanuel Legrand, *Monitoring the Cross-Border Circulation*.

⁴² Creative Europe, “Call for Proposals – EAC/S26/2017”, https://ec.europa.eu/programmes/creative-europe/sites/creative-europe/files/eac-2018-00032-00-00-en-rev-00_final.pdf.

⁴³ As of 2019 the new name is Music Moves Europe Talent Award: <https://musicmoveseuropetalentawards.eu/winners/>.

⁴⁴ “Stad en Provincie Binden EU Music Prize Langer aan Eurosonic/Noorderslag,” *Dagblad van het Noorden*, 17 April 2018, <http://www.dvhn.nl/groningen/Stad-en-provincie-binden-EU-Music-Prize-langer-aan-EurosonicNoorderslag-23099246.html>.

However, many of the eventual implications still depend on the details. While the Commission has communicated a vision and some basic requirements for the awards, it has been very careful to leave the details to the prospective organisers. The new organiser will thus have a significant say when it comes to the form of the new awards as well as the ways it will be promoted to the public.

7. Conclusion

All in all then, the EBBAs of the past fifteen years have been culturally and linguistically diverse to only a marginal extent. The winners hail predominantly from the economically stronger Western/Northern European countries, reinforcing the East-West divide that is already present when it comes to for instance the political and the economic dimensions. Moreover, the fact that nearly 80 per cent of the winners perform in English might be a good reflection of the European music industry today, but it also has adverse effects on artists performing in other languages, in the sense that it makes it nearly impossible for these artists to reach a wider audience through the EBBAs. Lastly, the selection procedure of the winners has been relatively obscure. While the selection criteria for winning an award are announced and in certain cases the data are publicly available, it still remains a secret who or what makes the final decision.

The third countries that have joined the Creative Europe programme and the EBBAs have not been particularly successful either. By not making them an active part of the programme (up until now the winners have mostly been promoted in the winning countries of that year),⁴⁵ a valuable part of cultural diplomacy is lost.

Taking these results together leads to the conclusion that the EBBAs have not been a particularly helpful tool in the promotion of the diversity of European culture. Rather, they have created an image of European culture that is predominantly Western and predominantly English: reinforcing what is often already seen as the status quo.

When this investigation into the EBBAs was first started, it was not yet known that the 2018 edition of the EBBAs would also be the last. The updated version of the awards as described by the Commission in a call for prospective organisers has a couple of positive aspects: firstly, more involvement with digital platforms will hopefully attract a new and younger audience and will give different data points for the selection procedure, diminishing the importance of radio. Secondly, the addition of professionals who are part of the selection procedure might have a positive effect on the cultural diversity of the winners.

The fact that the Commission announced in its call that it was interested in linguistic diversity 'in so far as possible' is a decidedly more negative aspect. Future editions of the awards are still likely to feature many winners performing in English and because of this the organisers are missing out on the opportunity to highlight the many different European languages.

Of course, this paper has not been able to shed light on all there is to say about the EBBAs. Future research might therefore focus on awareness and perception of the EBBAs and the work of Creative Europe in the participating countries, a dimension which has unfortunately not been incorporated here. This research does raise the suspicion that the EBBAs have had difficulties reaching an audience that is geographically spread, perhaps because the EBBAs have always been linked to the city of Groningen (Netherlands). In order to shed some more light on this, a more extensive study is in order.

In any case, the EBBAs (in their current form) have been able to reward some of the most successful artists of the past decades, calling attention to European performers, all of whom face the challenge of competing with their counterparts in the US. However, by rewarding those performing in English and coming from the rich Western and Northern European countries disproportionately, the EBBAs have projected an image that lacks both cultural and linguistic diversity, directly opposing some of the goals and values of the Union. The proposed changes might make a slight improvement to this image, but there is a good chance that the European prize for popular music will still suffer from some fatal flaws.

⁴⁵ "Promotion of the Winners of the European Border Breakers Awards (EBBA) 2018," 10 May 2017, https://ec.europa.eu/programmes/creative-europe/calls/promotion-winners-european-border-breakers-awards-2018_en.

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EU's Enforcement of Solidarity: A Case Study of the 'Emergency Relocation Scheme' during the European Migration Crisis

Juliane Olliger

1. Introduction

The European Union (EU) is internationally respected for its unity grounded on shared philosophies and ideologies. The question where Europe is, is therefore often answered by referring to its belief system and aspiration. Europe is said to be where its core values hold and its goals are pursued.¹ But what happens if some of those values are at danger? How can the EU persist if its member states drift apart ideologically? Solving this dilemma has always been one of the EU's biggest challenges and until today no consensus exists on how to best promote a united thinking and acting of member states.

One of the EU's core values, which often causes controversy and is at the centre of the European debate on ideology is *solidarity*.² As stated in the Treaty of Lisbon in Article 2.3 the EU is supposed to 'promote economic, social and territorial cohesion, and solidarity among Member States'.³ Yet, here solidarity is a rather vague construct and not clearly defined. While in the past, solidarity meant a sentiment of unity and team spirit, it nowadays means active sharing of responsibility and solidary performance of member states.⁴

What this means in reality is often difficult to grasp, especially in moments of crisis. During European crisis member state solidarity is weak and national interest seem to predominate. The question of how to promote solidarity arises at that point quickly and until today the EU has not found a solution for this.

In the case of one of the biggest European crisis of the last years – the migration crisis in 2015 – the EU nonetheless took clear action to respond to the lack of solidarity between member states. President of the European Commission Jean-Claude Juncker stated in September 2016 that the EU needed to stick to its values and should 'answer the migration crisis with solidarity and the heart'.⁵ Because this vocal plea for more solidarity and the sharing of responsibility was not prosperous, the EU adapted another approach to ensure a fair and equal allocation of refugees across all its member states. Enforcement of solidarity became the new strategy. Amidst criticism and strong resistance from especially eastern European countries, the EU began to adapt different political and legal mechanisms, forcing its member states to act in solidarity and share responsibility over the incoming refugees.

In the case of the *European relocation-system* this enforcement of solidarity meant the fair relocation of refugees from Greece and Italy to other EU member states, which were capable of processing their asylum requests.⁶ As this case has exemplary character it is the focus of this research, and *solidarity* is therefore defined and measured as the *number of accepted relocations*.

The *political mechanisms* to enforce this accepting of relocations or so called solidarity was the creation of an 'emergency relocation scheme' in September 2015.⁷ This provisional measure was supposed to take off pressure of Greece and Italy by ensuring the relocation of 160 000 of refugees residing on their soil to other EU member states. A relocation quota was created, which calculated the number of refugees every member state would have to accept over a period of two years. Even if those obligations were not included in the

¹ Mosaiikki Ry, "European Parliament in Plain Language – Values," *Mosaiikki Ry* – Information campaign of the European Parliament, 2018, <https://europarlamenti.info/en/values-and-objectives/values/>.

² European Union, "Goals and Values of the EU," European Union, 2018, https://europa.eu/european-union/about-eu/eu-in-brief_en#goals-and-values-of-the-eu.

³ *Official Journal of the European Union*, "Treaty of Lisbon (2007/C 306/01) – Article 2," *Official Journal of the European Union* 50 (2007), 1.

⁴ Alexandra Pimor, "Solidarity Was a Founding Principle of the European Unity – It Must Remain So," *The Conversation*, 24 March 2017,

<http://theconversation.com/solidarity-was-a-founding-principle-of-european-unity-it-must-remain-so-74580>.

⁵ Aleksandra Eriksson, "Learn to Love Migrant Quotas, Juncker Tells Eastern EU," *Euobserver*, 28 September 2016, <https://euobserver.com/migration/135257>.

⁶ *Official Journal of the European Union*, "Council Decision (EU) 2015/1601," *Official Journal of the European Union* 248 (2015), 80.

⁷ *Ibid.*, 1.

EU's original migration policy – the Dublin III Regulations⁸ – they became legally binding after a majority vote on Council Regulations (EU) 2015/1601⁹ and (EU) 2015/1523.¹⁰ EU countries were therefore obligated to follow the ‘emergency relocation scheme’, which is why this research understands it as the first mechanism to enforce solidarity.

Because this *political solidarity-enforcement-mechanism* was not as prosperous as hoped and member states resisted to obey it, legal mechanisms to enforce the relocation quota were introduced. In September and December 2017 the Court of Justice of the European Union (CJEU) proved the validity of the ‘emergency relocation scheme’ by rejecting the claim of the joint case C-643/15 and C-647/15¹¹ and adopting a new law case against resisting member states.¹² More specifically, the CJEU rejected Slovakia and Hungary's claim that the ‘emergency relocation scheme’ should be annulled due to its lack of a legal basis, procedural errors and inappropriate objectives. The CJEU referred hereby to articles 12.2, 68 and 78.2 & 3 of the *Treaty on the Functioning of the European Union* and Article 21 of the *Charter of Fundamental Rights on the EU*,¹³ which allow provisional emergency mechanisms in times of extreme crisis. In the newly adapted law case the European Council sued the Czech Republic, Hungary and Poland directly, for not following their obligations stemming from the ‘emergency relocation scheme’.¹⁴ Even though the ruling in this case is expected only in summer 2020, it still exemplifies the European Council's hard stance in this debate and makes the mentioned court cases *legal solidarity-enforcement-mechanisms*.

However, the effectiveness of enforcing solidary acceptance of refugee relocations in different EU member states remains questioned. Especially *legal* enforcing of solidarity sounds contradictory, and scholars disagree if punishment can enhance compliance.¹⁵ Still, as sustaining the European core value of *solidarity* is crucial in international politics, this research focuses on exactly this and tries to deepen the knowledge on mechanisms of solidarity enforcement. To this end, *political* and *legal* solidarity-enforcement-mechanisms will be analysed for their effectiveness. Consequently, this paper asks: did the EU's political and legal enforcement of solidarity increase its member states' acceptance of refugee relocations?

Different hypotheses to this question are possible. The socio-psychological theory of ‘Forced Compliance’¹⁶ assumes that forcing an individual to do a disliked task will lead to the individual's change of beliefs to prevent cognitive dissonance. Hence, threat and legal pressure could be effective to promote policy compliance and relocation solidarity. Etzioni's ‘Compliance Theory’¹⁷ disagrees with this and suggests that compliance is closely linked to different forms of involvement, which have different consequences. His theory leads to the hypothesis that threat – such as legal pressure – cannot force moral involvement and would therefore be inefficient in promoting relocation solidarity. Whether one of these theories holds in the case of the ‘emergency relocation scheme’, or if another theoretical explanation must be considered, will be discussed at the end of this research.

⁸ Official Journal of the European Union, “Dublin III Regulations (Regulation No. 604/2013),” *Official Journal of the European Union* 180 (2013), 31.

⁹ Official Journal of the European Union, “Council Decision (EU) 2015/1601”, 1.

¹⁰ Official Journal of the European Union, “Council Decision (EU) 2015/1523,” *Official Journal of the European Union* 239 (2015), 146.

¹¹ Court of Justice of the European Union, “Judgement in Joint Cases C-643/15 and C-647/15 Slovakia and Hungary v Council,” Court of Justice of the European Union, Press Release no. 91/17, 2017. <http://curia.europa.eu/juris/document/document.jsf?text=&docid=193230&doclang=EN>.

¹² European Commission, “Relocation: Commission Refers the Czech Republic, Hungary and Poland to the Court of Justice,” European Commission, Press Release, 7 December 2017.

¹³ European Council on Refugees and Exiles, “CJEU - Joined Cases C-643/15 and C-647/15 Slovak Republic and Hungary v Council of the European Union, 6 September 2017,” EDAL-European Database of Asylum, 2017.

¹⁴ <https://www.asylumlawdatabase.eu/en/content/cjeu-joined-cases-c-64315-and-c-64715-slovak-republic-and-hungary-v-council-european-union-6>.

¹⁵ European Commission, “Relocation: Commission Refers the Czech Republic.”

¹⁶ Fred C. Lunenburg, “Compliance Theory and Organizational Effectiveness,” *International Journal of Scholarly Academic Intellectual Diversity* 14, no. 1 (2012), 1-4.; Fabien Girandola, “Double Forced Compliance and Cognitive Dissonance Theory,” *The Journal of Social Psychology* 137 (2010), 594-605.

¹⁷ Girandola, “Double Forced Compliance.”

¹⁸ Lunenburg, “Compliance Theory and Organizational Effectiveness”, 2.

2. Background

2.1. Legal Basis for European Solidarity

European solidarity is a rather complex construct, due to the diversity of EU member states, the scope of European issues and continuously changing political, economic and social circumstances. Solidarity as a European core value is already mentioned in the Treaty of Lisbon - the EU's constitutional basis - in article 2.3. Here the treaty states that the EU 'shall promote economic, social and territorial cohesion, and solidarity among Member States'.¹⁸ This clause consequently calls for a *support system* of EU member states and specifies different situations, in which this support should hold. Article 3a.3 of the Treaty of Lisbon further states that

[p]ursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties. The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.¹⁹

This clause expands the call for solidarity in different fields to the actual obligation of *solidary action* such as cooperation and assistance. The concept of European solidarity is clearly explained and described as a commitment to action and not a voluntary option.

In the context of migration and the refugee crisis, solidarity of European member states is defined in an even more straight-forward way. Even though in this context the obligation for solidarity is widely discussed, the EU took a clear position on this matter. In the section 'Policies and Border Checks, asylum and immigration' of the Treaty of Lisbon the need for solidarity and shared support between EU member states is clearly described as an obligation. As direct as in no other section of the treaty, article 63b states that

[t]he policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle.²⁰

2.2. Theories on Solidarity

Official definitions of solidarity are, however, rather vague. The *Cambridge Dictionary* defines solidarity as an 'agreement between and support for the members of a group', while the *Law Dictionary* defines solidarity as 'a term given to the situation where a group of people will band together for the performance of a contract'. Reoccurring in all definitions is the idea that solidarity is based on some kind of shared belief system and expresses itself in reciprocal support and performance of a group.

Attempting to explain political solidarity in the context of globalization, Habermas proposes the idea of *cosmopolitan solidarity*.²¹ For him this solidarity is an attempt to fill "solidaric" and "integrative gaps", created by globalization and internationalization of different groups. According to Habermas, this solidarity requires a *moral* and *legal* understanding of the situation. Ferguson adds to this the need for *ethical solidarity* as a way to fully close the gaps of globalization and make cosmopolitan solidarity work.²² Interesting within this context is Gesthuizen, Savelkoul and Scheeper's research on in-group solidarity and its characteristics.²³ Besides finding that education had a positive effect on solidarity, they found that *ethnic diversity* did not weaken, nor strengthen the solidarity within a group, as was assumed beforehand. This could be especially important when looking at solidarity in a multicultural society, such as the EU, which is often criticized for being too complex and diverse for true solidarity.

¹⁸ Official Journal of the European Union, "Treaty of Lisbon (2007/C 306/01) – Article 2", 1.

¹⁹ Official Journal of the European Union, "Treaty of Lisbon (2007/C 306/01) – Article 3a," *Official Journal of the European Union* 50 (2007), 1.

²⁰ Official Journal of the European Union, "Treaty of Lisbon (2007/C 306/01) – Article 63b." *Official Journal of the European Union* 50 (2007), 1.

²¹ Jason Todd Ferguson, "Cosmopolitan Solidarity: Social-Political Integration in the Era of Globalization," (PhD Dissertation, Purdue University, 2004).

²² *Ibid.*

²³ Maurice Gesthuizen, Michael Savelkoul and Peer Scheepers, "Ethnic Diversity and Dimensions of In-Group Solidarity," in *Social Conflict within and between Groups*, ed. Carsten K.W. de Dreu (New York: Psychology Press, 2014), 75.

2.3. Theories on the Promotion of Solidarity

Creating solidarity between different parties is nonetheless a difficult task, which concerned mankind for decades. Confucius already argued that a ‘harmonious society’²⁴ is led by virtue and the emperors longing for perfection but could not be forced by punishment. The idea of forcing a group into a feeling of belonging, solidarity and sharing of responsibility would therefore only work naturally. Durkheim’s theory on the creation of solidarity is somehow similar to this, but differentiates between two different forms of solidarity.²⁵ Durkheim describes *mechanical solidarity* as a form of solidarity based on similarities and ideologies, which was common in past times such as the time of industrialisation. For him this form of solidarity is functioning and will lead to successful group achievements. Durkheim’s *organic solidarity* is on the other hand described as a modern form of solidarity, based on interdependence of group members. According to Durkheim this solidarity works only partly and can create conflict. Hence, not only the existence of solidarity, but also the form of solidarity between different EU member states seems to be important when looking at the bigger picture of solidarity enforcement.

Diverse theories on *compliance* give further input to this discussion. As suggested by ‘Forced Compliance Theory’,²⁶ compliance is closely linked to beliefs and values. In the case of forced compliance and fulfilment of a disliked task – such as the acceptance of refugee relocations – this fulfilment will automatically lead to a change of beliefs and values. ‘Cognitive Dissonance Theory’²⁷ – a related construct – explains this with the human preference to keep beliefs about an action and the action itself consistent. Hence, if the action is unavoidable the beliefs about the action will change in favour of it, to justify its performance. This theory therefore implies that legal forcing to accept refugee relocations, will create positive beliefs about those relocations to avoid disagreements between beliefs and actions. Etzioni’s understanding of compliance and its characteristics is vastly different to this.²⁸ Etzioni suggests that different types of compliance exist – which each lead to different forms of involvement. *Coercive* or forced compliance would hereby lead to ‘alienative involvement’ and reactions of hostility, *utilitarian compliance* to ‘calculated involvement’ with regard to cost and benefits and *normative compliance* to a deep ‘moral involvement’. For Etzioni different forms of compliance can be combined, but forcing and the use of coercive compliance would hinder the development of moral involvement. Hence, in his opinion the approach to enforce solidarity through legal mechanisms would be ineffective and would not strengthen solidarity but rather create hostility.

Enforcing solidary compliance of *national states* to *international regulations* is an especially tricky and multidimensional task. European member state solidarity during the migration crisis is, for example, assumed to be closely connected to media and national propaganda. Countries, in which governing parties sympathize publicly with populist movements, such as Hungary or Poland, seem to be less interested in sharing responsibility for refugees and solidarity with other EU member states.²⁹ While Duvén explains this with his theory of a solidarity created by propaganda,³⁰ John Berry from Queen’s University, suggests that public policy making plays a major role in creating solidarity in such a context.³¹ Policymaking and societies’ goodwill would foster integration and shape the political landscape of a country, which according to Berry serves the establishment of a social solidarity best.

The variety of theories on solidarity itself and ways of promoting it explains why this research is of such crucial importance. Until today no consensus exists on how to enforce an important European value, such as solidarity. This research helps to understand mechanisms that might solve this conundrum.

²⁴ Gordon Sammut and Alex Gillespie, “Editorial: Cultural Encounters and Social Solidarity,” *Papers on Social Representations* 20 (2011), 1.1.

²⁵ Emile Durkheim, “Social Solidarity,” *Social Theory Re-wired* (Routledge), 2016, <http://routledgesoc.com/category/profile-tags/social-solidarity>.

²⁶ Girandola, “Double Forced Compliance,” 2.

²⁷ Ibid.

²⁸ Lunenburg, “Compliance Theory and Organizational Effectiveness,” 2.

²⁹ Steven Erlanger, “In Eastern Europe, Populism Lives, Widening a Split in the E.U.,” *The New York Times*, 28 November 2017, <https://www.nytimes.com/2017/11/28/world/europe/populism-eastern-europe.html>.

³⁰ Sammut and Gillespie, “Editorial: Cultural Encounters and Social Solidarity,” 4.

³¹ John W. Berry, “Integration and Multiculturalism: Ways Towards Social Solidarity,” *Papers on Social Representations* 20 (2011), 2.1 – 2.21.

3. Method

3.1. Type of Analysis

This research focuses on the EU's approach to enforce solidarity during the refugee crisis, in the case of the 'emergency relocation scheme'. More precisely, it asks whether the EU's political and legal enforcement of solidarity increased its member states' acceptance of refugee relocations. The acceptance of relocations will be hereby understood as member state solidarity. The mentioned definitions of solidarity in the Treaty of Lisbon³² serve as a basis here for. Analysis of collected statistics on relocations and results from an extensive literature review are used to conclude and answer the research question.

3.2. Operationalisation of Variables

In the case of the 'emergency relocation scheme' the EU's mechanisms of enforcing solidarity were of political and legal nature. *Political* enforcement of solidarity was the creation of the 'emergency relocation scheme' through EU Council Decisions (EU) 2015/1523³³ and (EU) 2015/2691.³⁴ Those decisions were meant to benefit Greece and Italy and stipulated a relocation of 160 000 asylum seekers. The decisions were officially adapted after a majority vote in September 2015 and were set to be binding, even for the four countries – the Czech Republic, Hungary, Romania and Slovakia – that voted against the decision.³⁵ The relocation scheme was set to be in practice for two years until September 2017.

The *legal* mechanisms of enforcing solidarity were two lawsuits of the European Council against diverse EU member states. The EU member states which were directly involved in those lawsuits – the Czech Republic, Hungary, Poland and Slovakia – form the focus of this analysis. The reason Romania is not part of the further analysis, besides voting against the emergency relocation scheme, is that it was not directly affected by the legal mechanism of enforcing solidarity. Including it in this analysis would bias the results. Hence, only the Czech Republic, Hungary, Poland and Slovakia are analysed independently to give a clearer picture of their behaviour before and after the solidary enforcement. The first lawsuit was the joint case of Slovakia and Hungary against the European Council (C-634/15).³⁶ During this case Slovakia and Hungary sued the European Council for wrongly enforcing the 'emergency relocation scheme'. The CJEU rejected this claim in September 2017 and therewith strengthened the legal validity of the EU's relocation policy. The second court case is the ongoing case of the European Council against the Czech Republic, Poland and Hungary.³⁷ In this law suit the European Council sued member states that did not follow their obligations of the relocation quota. Even though the CJEU has not ruled yet, this lawsuit increases the legal pressure on all member states opposing the 'relocation policies' and is therefore an important instrument to obtain member state solidarity. In summary, *political* and *legal solidarity enforcements* are the independent variables of this study, whose variations are expected to influence the measured variable.

The measured variable is, as mentioned, *member state solidarity* or so-called *acceptance of refugee relocations*. The consequences of political and legal solidarity enforcement are being analysed as exact as possible. Taking the difficulty of measuring their long-term effects into account, their time frame of measurement is clearly defined during the research to compare the two constructs directly. The number of accepted relocations during the time of the political-solidarity-enforcement – from September 2015 to September 2017 – constitutes *politically enforced solidarity*. The number of accepted relocations during the legal-solidarity-enforcement – from September 2017 to April 2018 – constitutes *legally enforced solidarity*.

3.3. Method of Analysis

To compare and measure the dependent variable of solidarity, data on refugee relocations was collected. To this end, official press-releases of the European Commission were consulted. The gathered data was sorted and arranged in different tables, stating the number of relocations per country (*Appendix A, Table 1*) the proportions of required and accepted relocations (*Appendix A, Table 2*) and the monthly number of relocations of four specifically chosen countries (*Appendix A, Table 3*). When analysing the general situation

³² Official Journal of the European Union, "Treaty of Lisbon (2007/C306/01)," 1.

³³ Official Journal of the European Union, "Council Decision (EU) 2015/1523," 2.

³⁴ Official Journal of the European Union, "Council Decision (EU) 2015/1601," 1.

³⁵ European Council on Refugees and Exiles, "CJEU - Joined Cases C-643/15 and C-647/15 Slovak Republic and Hungary v. Council of the European Union," 6 September 2017, 2.

³⁶ Court of Justice of the European Union, "Judgement in Joined Cases C-643/15 and C-647/15," 2.

³⁷ European Commission, "Relocation: Commission Refers the Czech Republic, Hungary and Poland to the Court of Justice," 2.

of *accepted relocations* in relation to *required relocations*, acceptance-rates per country, month and on average were compared. The rates were divided in rates during political-solidarity-enforcement and legal-solidarity-enforcement. A bar-graph of the general trend and the acceptance rates was created (*Figure 1*).

The four countries which were directly affected by the legal solidary enforcement – the CJEU lawsuits – were analysed with especial caution. The Czech Republic, Hungary, Poland and Slovakia were seen as examples of resisting member states and were analysed and explained independently. While analysing them, their acceptance rates per country, month and on average were compared with regard to political and legal solidarity enforcement. Additionally, pie-charts of their acceptance proportions were created (*Figure 2*) and data on their monthly acceptance of refugee relocations was taken into account.

4. Results

4.1. General Situation of Relocations

In general, results show that during the period of *political-solidarity-enforcement* (September 2015 – September 2017) more refugee relocations were accepted than during the period of *legal solidarity enforcement* (September 2017 – April 2018) (*Appendix A, Table 1*).

During the political-solidarity-enforcement countries accepted on average 59.24 % of the required relocations, while during the legal-solidarity-enforcement on average only 10.03 % of required relocations were accepted (*Appendix A, Table 2*). The monthly acceptance-rates showed similar results. During the political-solidarity-enforcement a monthly average acceptance-rate of 2.47 % of the required relocations was found (*Appendix A, Table 2*). During the legal-solidarity-enforcement a monthly acceptance-rate of only 1.43 % was found (*Appendix A, Table 2*). Thus, the relocations during the *legal-solidarity-enforcement* were only 57.89 % of the relocations during the *political-solidarity-enforcement*, and led to an average of 1.04 % less accepted relocations per months and country.

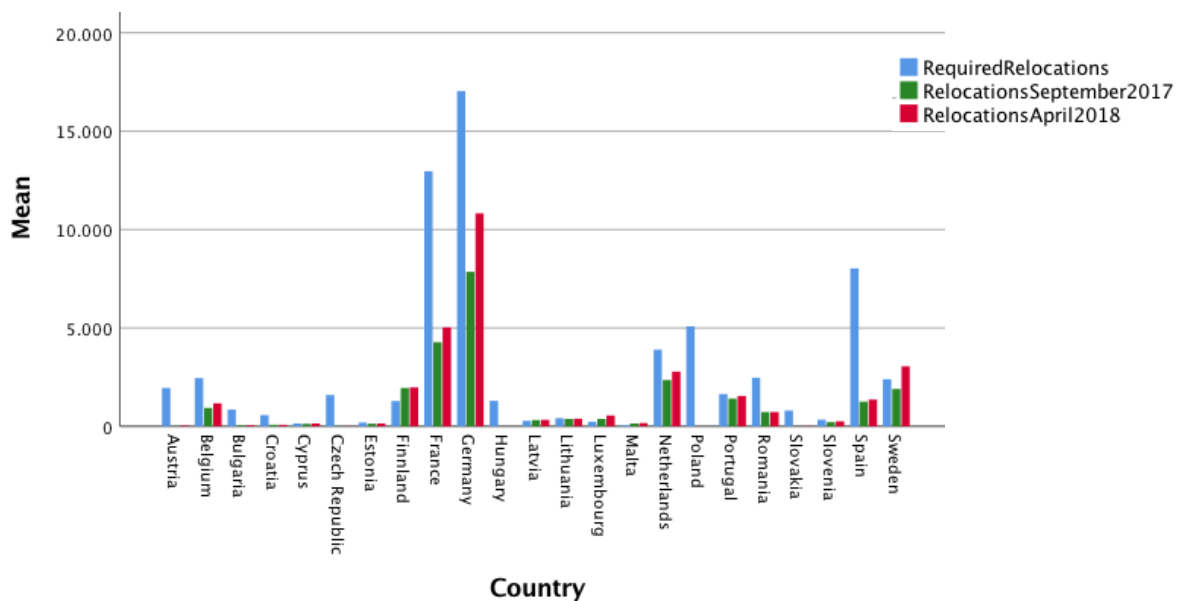


Figure 1: Number of required and accepted relocations per country

Discrepancies between the acceptance-rates of relocations in different countries were found to be enormous. Some countries outnumbered their requirements of relocations, while others barely fulfilled them. Finland (153.97 %), Latvia (184.7 %), Luxembourg (231.65 %), Malta (236.62 %) and Sweden (127.16 %) received more relocations than they were required to and had an average acceptance-rate of over 100 % in April 2018 (*Appendix A, Table 2*). At the same time Austria (2.2 %), Bulgaria (5.87 %), the Czech Republic (0.75 %), Hungary (0 %), Poland (0 %) and Slovakia (2 %) received less than 10 % of their required relocations (*Appendix A, Table 2*). *Figure 1* illustrates these large discrepancies. The bar-graph shows the countries differences between the *required* and *accepted* relocations in September 2017 and April 2018.

4.2. Relocation Situation in the Czech Republic, Hungary, Poland and Slovakia

The analyses of the countries, which were directly involved in the legal procedures showed similar patterns of relocation acceptances. All countries accepted only little to no relocations during the period of *political-solidarity-enforcement* (September 2015 – September 2017) and did not increase their relocations during the period of *legal-solidarity-enforcement* (September 2017 to April 2018) (*Appendix A, Table 1*).

Slovakia accepted 3 refugee relocations between August and September of 2016, 6 more relocations between November and December of 2016 and 7 more relocations between March and April of 2017 (*Appendix A, Table 3*). This total of 16 accepted relocations makes a relocation acceptance-rate of 2 % during the *political-solidarity-enforcement* and 0 % during the *legal-solidarity-enforcement* (*Appendix A, Table 1 & 2*). The Czech Republic accepted 12 refugee relocations between March and April of 2017 (*Appendix A, Table 3*). This is a relocation acceptance-rate of 0.75 % during the *political-solidarity-enforcement* and 0 % during the *legal-solidarity-enforcement* (*Appendix A, Table 1, 2*). Hungary accepted no refugee relocations at all (*Appendix A, Table 3*). Hence, its relocation acceptance-rate is 0 % for the time of *political* and *legal solidarity-enforcement* (*Appendix A, Table 2*). Similarly, Poland accepted no refugee relocations (*Appendix A, Table 3*). Its relocation acceptance-rate was therefore also 0 % for the time of *political* and *legal solidarity-enforcement* (*Appendix A, Table 2*).

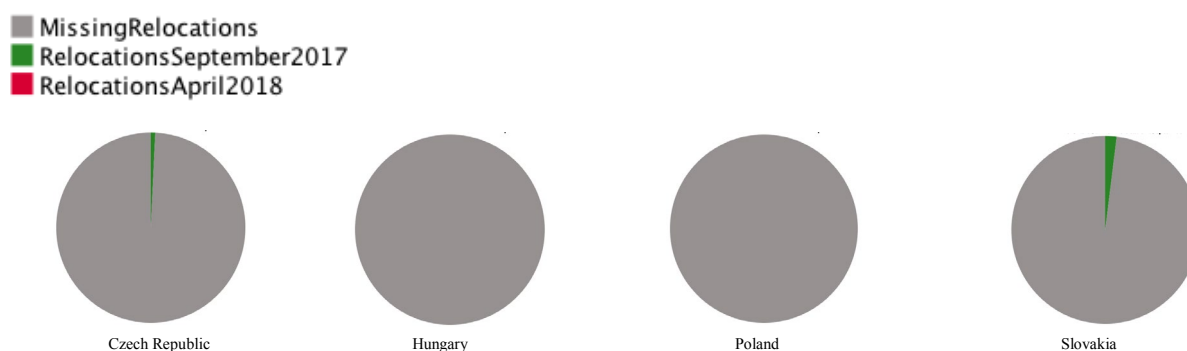


Figure 2: Proportions of the accepted missing relocations compared to the required in the Czech Republic, Hungary, Poland, and Slovakia

Figure 2 visualises those proportions. The pie-charts show what percentage of the required relocations was accepted until September 2017 and from September 2017 to August 2018, and what percentage is still missing. It can be seen that neither the *political-solidarity-enforcement* until September 2017, nor the *legal-solidarity-enforcement* until April 2018 had a significant impact and all four countries are still missing an enormous amount of accepted relocations.

5. Discussion

The research question – did the EU’s political and legal enforcement of solidarity increase its member states acceptance of refugee relocations? – can be answered by the two major findings of this study. First the research showed that political-solidarity-enforcement led to an increase of refugee relocations in countries, which were predisposed for this. Second it showed that legal-solidarity-enforcement within those member states that resisted was ineffective.

Undecided and supportive countries were receptive to political mechanisms of enforcing acceptance of relocations and kept this solidary behaviour even after the termination of binding Council Regulations (EU) 2015/1601 and (EU) 2015/1523. Whether ensuing legal solidarity enforcements had an influence on this cannot be answered. Critical countries were however not receptive to both political and legal solidarity-enforcement, as shown with the example of the Czech Republic, Hungary, Poland and Slovakia. Even if those countries were the direct target of the legal enforcement mechanisms, they did not give up their resistance and did not accept any significant refugee relocations until today.

While those findings failed to confirm the ‘Forced Compliance Theory’, which hypothesized a functioning of solidarity-enforcement – *political* and *legal* – they could provide evidence for the hypothesis based on Etzioni’s ‘Theory of Compliance’. Etzioni’s theory posits that different forms of compliance are

related to different forms of involvement. For him, enforcement using threats of punishment – such as legal enforcement – leads to *coercive compliance*, which is closely linked to hostility. Only if the punishment is consistent and worse than the costs of obeying the disliked policy, this form of enforcement works. As the EU's punishment of the member states disobeying the 'emergency relocation scheme' is still unclear, this could explain why *critical member states* resist and respond with hostility instead of solidarity. Etzioni's *normative compliance*, a form of compliance based on strong moral involvement and with long-lasting commitment could further explain the solidarity of undecided and supporting countries. As forcing *coercive compliance* hinders the development of this moral and long-lasting form of involvement, the ineffectiveness of legal-solidarity-enforcements within resistant countries could be explained further. Panke adds to this idea that the effectiveness of the Court of Justice of the European Union is not only dependent on compliance instruments but also on the characteristics of the discussed issue, the scope of the problem, and the fit of domestic ideas.³⁸ Hence, the conditions surrounding the situation of solidarity enforcement and refugee relocations are strongly influential as well.

According to Durkheim the existing form of solidarity is hereby of big importance.³⁹ He explains the different effects enforcement had on undecided, supportive or critical countries, with differences between prosperous *mechanic* and fluctuating *organic solidarity*. For him those different forms of solidarity have different consequences and are based on different assumptions. To understand this, it has to be recalled that the EU is not a fixed construct and is based on different constructs – on ideologies such as responsibility for refugees⁴⁰ – or on interdependence of member states in issues such as freedom of movement or security.⁴¹ As different member states favour different aspects of those basic assumptions, their prioritizing of importance can vary. This means that especially in times of a crisis, member states focus on different aspects and have different motives to engage in European issues. Member states which are supporting the 'emergency relocation scheme' are hereby likely to do so based on their shared values and feeling of being responsible. According to Durkheim this means that their solidarity is *mechanic*, which explains why enforcing their solidarity is more effective. Etzioni's *moral involvement* comes really close to this construct of *mechanic solidarity* and thereby gives rather support for the idea of a strong solidarity based on beliefs, similarities and morals. Member states that oppose the 'emergency relocation scheme' are however lacking this similar ideology and are connected to the EU through their international interdependence and its consequences. An example is the interdependence of EU member states during the mobilization of refugees from south to north Europe. Hungary, for instance, claimed that Germany's 'welcoming culture' created a massive migrant movement through Hungarian territory, which influenced Hungary's every-day-life dramatically.⁴² According to Durkheim, this feeling of solidarity is more *organic* and prone to create conflicts.⁴³ This could explain why solidarity enforcement techniques were not successful for those member states that viewed the refugee relocation from an interdependent but not moral perspective.

The mentioned idea of Berry can also be brought in line with the research findings and concepts of *coercive compliance* and *mechanic solidarity*. Berry's theory that policy-making and sufficient goodwill of the society are able to promote solidarity gives evidence for the found effectiveness of *political-solidarity-enforcement*.⁴⁴ *Coercive compliance* and the results of the ineffectiveness of *legal-solidarity-enforcement* could additionally be explained by the rather old, but still popular philosophy of Confucius. As mentioned, this philosophy states that the use of pressure and punishment is ineffective in forcing people and achieving long term results.⁴⁵

Besides the question of the *effectiveness* of solidarity enforcement, the question of its *consequences* is important. Enforcing solidarity in member states that are indecisive or even supportive of the promoted ideologies can work, but enforcing solidarity in resistant member states can be dangerous. Looking at the current political situation within the EU, it can be asked if the European migration policy and the attempt

³⁸ Diana Panke, *The Effectiveness of the European Court of Justice: Why Reluctant States Comply* (Manchester: Manchester University Press, 2010).

³⁹ Durkheim, "Social Solidarity," 4.

⁴⁰ Official Journal of the European Union, "Treaty of Lisbon (2007/C306/01)," 1.

⁴¹ Heather Grabbe, "Europeans' Love-Hate Relationship with Interdependence," *openDemocracy*, 25 March 2013, <https://www.opendemocracy.net/en/europeans-love-hate-relationship-with-interdependence/>.

⁴² Rebecca Staudenmaier, "Hungary's Orban Tells Germany: 'You Wanted the Migrants, We Didn't'," *Deutsche Welle*, 10 January 2018, <https://www.infomigrants.net/en/post/6937/hungary-s-orban-tells-germany-you-wanted-the-migrants-we-didn-t>.

⁴³ Durkheim, "Social Solidarity," 4.

⁴⁴ Berry, "Integration and Multiculturalism: Ways Towards Social Solidarity," 5.

⁴⁵ Sammut and Gillespie, "Editorial: Cultural Encounters and Social Solidarity," 4.

to enforce it might have had more negative consequences than positive ones. Hungarian Prime Minister Viktor Orbán has already declared that his country will continue to resist following the EU's 'emergency relocation scheme' and fight the CJEU's ruling.⁴⁶ Media further talks of a rise of nationalism in Hungary and Poland⁴⁷ and national interests seem to overweight the calls for European solidarity and union during the migration crisis. Even if those phenomena are certainly not only caused by the EU's political or legal solidarity-enforcement, they might influence the conflict and push resistance and the feeling of unfairness even further. Duven's idea that propaganda binds members together can therefore also be understood from a different perspective.⁴⁸ Propaganda does not necessarily need to promote solidarity but can also promote the opposite of solidarity. If propaganda, as in the case of Hungary and Poland, is refusing the sharing of responsibility and emphasises the need of independence this weakens the idea of solidarity, especially when propaganda can make use of allegedly unjust court rulings.

Lastly, the large discrepancies among relocation acceptance rates of single member states should not be forgotten when concluding about the effectiveness of *political* or *legal* solidarity-enforcement. Even though it was expected that countries supporting the EU migration policy such as Belgium, Germany, Greece, France, Italy, Luxembourg and Sweden would follow their relocation obligations more diligently than opposing countries, the observed extreme differences were not expected.⁴⁹ The phenomenon of acceptance rates of over 100 % and under 10 % across EU member states started a debate about the functioning and fairness of the 'emergency relocation scheme'. In light of those drastic differences some of the statements of the European Commission should be reviewed and seen with caution. Statements such as the announcement of EU Migration Commissioner Avramopoulos should leave one – especially after looking at this research's findings – thoughtful: 'With the EU relocation scheme successfully coming to an end, we have made enormous progress on relocation over the past two years. This shows that responsibility can be successfully shared within the EU.'⁵⁰

6. Strengths and Limitations

6.1. Strengths

A major strength of this study is its big data-set and its analysis of almost all EU member states, involved in the EU 'emergency relocation scheme'. Data of refugee relocations of 23 countries over a period of 2,5 years was collected and compared, which allows a good understanding of the general situation.

Another advantage of this study is its use of two different forms of solidarity enforcement. Even if they are influencing each other, as a successful *political-solidarity-enforcement* makes *legal-solidarity-enforcement* less necessary, this gives a clear picture of the different effects and consequences of both mechanisms separately.

6.2. Limitations

The most important limitation of this research is its inability to generalise. As this study focused on a case study of one specific 'emergency scheme' during one specific crisis, this is not fully generalisable to other situations. The background of a crisis, countries differing interests and the changing international politics are always influential and make other situations not comparable. Additionally, it is a drawback that this research focused only on the *quantitative* perspective of solidarity – namely its numbers or relocations. Evaluating the effectiveness of every policy is however only possible if also *qualitative* aspects are accounted for. Future research could therefore focus on treatment of refugees or the organisation of the relocation process and thereby add important value to this study's findings.

⁴⁶ Holly Ellyatt and Willem Marx, "Hungary Blasts EU as 'Very Irresponsible' over Its Handling of Migration," *CNBC*, 19 March 2018, <https://www.cnbc.com/2018/03/19/hungary-blasts-eu-over-migration-says-its-very-irresponsible.html>.

⁴⁷ Stephen Pogany, "Europe's Illiberal States: Why Hungary and Poland are Turning Away from Constitutional Democracy," *The Conversation*, 4 January 2018, <https://theconversation.com/europes-illiberal-states-why-hungary-and-poland-are-turning-away-from-constitutional-democracy-89622>.

⁴⁸ Sammut and Gillespie, "Editorial: Cultural Encounters and Social Solidarity," 4.

⁴⁹ European Council on Refugees and Exiles, "CJEU - Joined Cases C-643/15 and C-647/15," 2.

⁵⁰ European Commission, "Relocation: EU Solidarity between Member States," European Commission, Press Release, 14 November 2017.

7. Conclusion

This research adds crucial understanding to the EU's approach to promote – or enforce – a key value, such as *member state solidarity*, in times of crisis. The major findings are that *political* forcing of undecided or supporting member states was effective in increasing the acceptance of relocations, but *legal* forcing of the remaining resisting member states was ineffective. Hence, for undecided and supporting countries *political-solidarity-enforcement* worked, while for resisting countries neither *political*, nor *legal solidarity-enforcement* had an effect.

Even if those findings are not generalisable to other European values or crisis, they still have important implications. First, they exemplify how complex the concept of European solidarity is and that enforcing it is not as straightforward as hoped for. Different types of solidarity – *mechanic* and *organic* – seem to exist and member states have different motivations to prioritise one over the other.⁵¹ Enforcement of member state-solidarity therefore only functions to a certain extent and does not change the resistance of critical countries. Second, they show how torn apart EU member states are when it comes to refugee policies. Different states have different approaches to solve the migration crisis and the EU's attempt to promote a unified attitude is not easy. Lastly the findings show how important shared values, such as solidarity, are with regard to the functioning of the European Union. As Etzioni's 'Compliance Theory' suggests, are shared values and morals more effective in creating compliance than pressure and cost-benefit calculations. Political and legal pressure alone seem inefficient. This finding is especially important when coming back to the question 'Where is Europe?'. If Europe is where its values hold – what happens if values are not shared anymore and enforcing them fails? Questions like that need to be asked and answered to ensure Europe's unity even in times of crisis.

⁵¹ Durkheim, "Social Solidarity," 4.

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9. Annex: Data of the number of refugee relocations

Table 1: Number of refugee relocations per country⁵²

| Country | Required Relocations as per 'emergency relocation scheme' | All accepted Relocations in September 2017 | All accepted Relocations in April 2018 |
|----------------|---|--|--|
| Austria | 1953 | 15 | 43 |
| Belgium | 2448 | 936 | 1171 |
| Bulgaria | 852 | 50 | 60 |
| Croatia | 568 | 78 | 82 |
| Cyprus | 147 | 130 | 143 |
| Czech Republic | 1591 | 12 | 12 |
| Estonia | 199 | 141 | 147 |
| Finland | 1286 | 1951 | 1980 |
| France | 12962 | 4278 | 5029 |
| Germany | 17036 | 7852 | 10825 |
| Hungary | 1294 | 0 | 0 |
| Latvia | 281 | 321 | 328 |
| Lithuania | 416 | 382 | 384 |
| Luxembourg | 237 | 382 | 549 |
| Malta | 71 | 148 | 168 |
| Netherlands | 3900 | 2357 | 2775 |
| Poland | 5082 | 0 | 0 |
| Portugal | 1642 | 1415 | 1548 |
| Romania | 2475 | 727 | 728 |
| Slovakia | 802 | 16 | 16 |
| Slovenia | 337 | 217 | 253 |
| Spain | 8023 | 1257 | 1359 |
| Sweden | 2397 | 1903 | 3048 |

⁵² European Commission, "State of Play – Relocation En," European Commission, 30 April 2018, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_relocation_en.pdf; European Commission, "Relocation and Resettlement – 6 September 2017," European Commission, 6 September 2017, https://ec.europa.eu/search/?queryText=Relocation+and+Resettlement+September+2017&query_source=europa_default&filterSource=europa_default&swlang=en&more_options_language=en&more_options_f_formats=&more_options_date=; Official Journal of the European Union, "Council Decision (EU) 2015/1601," *Official Journal of the European Union* 248 (2015), 80-94.

Table 2: Proportions of the accepted relocations in relation to the required relocations, per country

| Country | Percentage of accepted relocations from September 2015 to September 2017 | | Percentage of newly accepted relocations from September 2017 to April 2018 | |
|----------------|--|-------------|--|-------------|
| | % | % per month | % | % per month |
| Austria | 0.77 | 0.03 | 1.43 | 0.20 |
| Belgium | 38.24 | 1.59 | 9.59 | 1.37 |
| Bulgaria | 5.87 | 0.24 | 1.17 | 0.17 |
| Croatia | 13.73 | 0.57 | 0.7 | 0.1 |
| Cyprus | 88.44 | 3.69 | 8.84 | 1.26 |
| Czech Republic | 0.75 | 0.03 | 0 | 0 |
| Estonia | 70.85 | 2.95 | 3.02 | 0.43 |
| Finland | 151.71 | 6.32 | 2.26 | 0.32 |
| France | 33.00 | 1.38 | 5.8 | 0.82 |
| Germany | 46.09 | 1.92 | 17.45 | 2.49 |
| Hungary | 0 | 0 | 0 | 0 |
| Latvia | 114.23 | 4.76 | 2.5 | 0.36 |
| Lithuania | 91.83 | 3.83 | 0.48 | 0.07 |
| Luxembourg | 161.18 | 6.72 | 70.47 | 10.07 |
| Malta | 208.45 | 8.69 | 28.17 | 4.02 |
| Netherlands | 60.44 | 2.52 | 10,71 | 1.53 |
| Poland | 0 | 0 | 0 | 0 |
| Portugal | 86.18 | 3.59 | 8.1 | 1.16 |
| Romania | 29.37 | 1.22 | 0.4 | 0.06 |
| Slovakia | 2.00 | 0.08 | 0 | 0 |
| Slovenia | 64.39 | 2.68 | 10.68 | 1.53 |
| Spain | 15.67 | 0.65 | 1.27 | 0.18 |
| Sweden | 79.39 | 3.31 | 47.77 | 6.82 |
| Total Average: | 59.24 | 2.47 | 10.04 | 1.43 |

Table 3: Number of accepted relocations in the Czech Republic, Hungary, Poland and Slovakia per months⁵³

| Month/Year | Czech Republic | Hungary | Poland | Slovakia |
|------------|----------------|---------|--------|----------|
| 09/2015 | 0 | 0 | 0 | 0 |
| 10/2015 | 0 | 0 | 0 | 0 |
| 11/2015 | 0 | 0 | 0 | 0 |
| 12/2015 | 0 | 0 | 0 | 0 |
| 01/2016 | 0 | 0 | 0 | 0 |
| 02/2016 | 0 | 0 | 0 | 0 |
| 03/2016 | 0 | 0 | 0 | 0 |
| 04/2016 | 0 | 0 | 0 | 0 |
| 05/2016 | 0 | 0 | 0 | 0 |
| 06/2016 | 0 | 0 | 0 | 0 |
| 07/2016 | 0 | 0 | 0 | 0 |
| 08/2016 | n.a. | n.a. | n.a. | n.a. |
| 09/2016 | 0 | 0 | 0 | 3 |
| 10/2016 | 0 | 0 | 0 | 3 |
| 11/2016 | n.a. | n.a. | n.a. | n.a. |
| 12/2016 | 0 | 0 | 0 | 9 |
| 01/2017 | 0 | 0 | 0 | 9 |
| 02/2017 | 0 | 0 | 0 | 9 |
| 03/2017 | n.a. | n.a. | n.a. | n.a. |
| 04/2017 | 12 | 0 | 0 | 16 |
| 05/2017 | 12 | 0 | 0 | 16 |
| 06/2017 | 12 | 0 | 0 | 16 |
| 07/2017 | 12 | 0 | 0 | 16 |
| 08/2017 | 12 | 0 | 0 | 16 |
| 09/2017 | 12 | 0 | 0 | 16 |
| 10/2017 | 12 | 0 | 0 | 16 |
| 11/2017 | 12 | 0 | 0 | 16 |
| 12/2017 | 12 | 0 | 0 | 16 |
| 01/2018 | 12 | 0 | 0 | 16 |
| 02/2018 | 12 | 0 | 0 | 16 |
| 03/2018 | 12 | 0 | 0 | 16 |
| 04/2018 | 12 | 0 | 0 | 16 |

*n.a.= data not available

⁵³ European Commission, "Relocation and Resettlement – Factsheets En," *Migration and Home Affairs*, https://ec.europa.eu/home-affairs/what-we-do/policies/european-agenda-migration/background-information_en.

The ‘Risk of Inhuman and Degrading Treatment’ as a Reason to Limit the Principle of Mutual Recognition on which the European Arrest Warrant is Built

Giorgia Spolverato

1. Introduction

Europe is a place of safeguard for (European) citizens’ rights, especially their human rights, but today, many threats are undermining European solemn commitment to respect and protect these rights. In the current context of fear of terrorism and crime, the states of the European Union (EU) are willing to cooperate in order to better face such threats to public security.¹

The creation of the Area of Freedom, Security and Justice (AFSJ) at the end of the 1990s² aimed at replacing national practices in the field of justice with a more European approach; that is to say, based on cooperation among EU member states. The integration process so far witnessed the extension and the strengthening of pan-European principles and values, which represent Europe and bring it everywhere. They may have the dimension of a practice, a rule, a belief, a dream, a concept and so on, but Europe is there, encapsulated in every dimension of reality.

If Europe is everywhere, one could certainly affirm that it is also in the cross-border cooperation against crime among the member states of the block. Europe is in the protection of prisoners’ right; even though every state has its own rules and laws on detention and detainees’ administration, European standards managed to break into the system.

Following this premise, one could also sustain that through the institutionalisation of European international organisations, such as the European Union and the Council of Europe, European values are not only concepts, they are not only on paper anymore. Instead, they have acquired a concrete and spatial dimension, for instance in places of detention. And yet, all that glitters is not gold. Integration among EU member states led to the weakening of the protection of human rights, particularly as these have been overlooked in favour of the respect of some other fundamental principles of the EU, as in the case of the principle of mutual recognition.

The aim of this paper is to explain the existing incompatibility between the principle of mutual recognition and the protection from the risk of inhuman and degrading treatment, both promoted by the European Union, when applying the European Arrest Warrant and how such incompatibility has been addressed.

Mutual recognition is one of the ways in which integration and cooperation among member states is strengthened but sometimes it clashes with the EU’s commitment to the protection of its citizens’ human rights. A balance between the desire to maintain a powerful supranational entity, in which borders are not an obstacle in the fight against crime, and a real protection of human rights has to be found in the EU system in order to guarantee a long life of such a community based *-inter alia-* on the correct functioning of the cross-border cooperation and human rights’ protection. In other words, to be able to continue claiming safeguarding European citizens’ rights, the Union should *reorder* its practices and institutions.

In the Tampere European Council conclusions of October 1999, EU member states were asked to replace the formal extradition procedure of the time,³ because it was considered too complex and subject to delays, with a simpler mechanism of persons’ transfer in respect of the principles set out in article 6 of

¹ Jan Zielonka, “The Remaking of the EU’s Borders and the Images of European Architecture,” *Journal of European Integration* 39, no. 5 (2017), 643; Joanna Apap and Sergio Carrera, “Judicial Cooperation in Criminal Matters-European Arrest Warrant—A Good Testing Ground for Mutual Recognition in an Enlarged EU?,” *CEPS Policy Briefs*, no. 46 (2004), 2.

² Art. 67(3) TFEU. The AFSJ was introduced by the Treaty of Amsterdam (1999).

³ The former extradition mechanism in the European Union was based on the European Convention on Extradition 1957 and Additional Protocol to the European Convention on Extradition 1975.

the TEU.⁴ In order to do so, the European Council promoted the role of the principle of mutual recognition as “the cornerstone of judicial co-operation in both civil and criminal matters.”⁵

In the field of judicial cooperation, the principle of mutual recognition is based on the principle of mutual trust among EU member states and entails that “a decision taken by an authority in one member state may be accepted as it stands in another state.”⁶ The precept has been set forth in the Treaties, particularly in article 67 (3), (4) and article 82 (1) TFEU. In 1998, the UK presidency underlined the relevance of the principle of mutual recognition – one of the objectives of the AFSJ – in the cross-border fight against crime.⁷

To answer the concerns of the Council related to cross-border cooperation among member states, in 2001, the European Commission proposed the European Arrest Warrant (EAW) as a new tool for the regulation of the surrender procedure of convicts within EU territory.⁸ The EAW was approved by EU member states in less than three months and was finally adopted in 2002,⁹ following the anxiety generated by the attack on the Twin Towers and the necessity of ensuring the “free movement of judicial decision[s]” in pre-sentenced and final decision situations.¹⁰ The EAW entered into force officially on 1 January 2004.

The EAW-Framework Decision (FD), due to its nature, did not need ratification by each member state but is legally binding for the 28 of them, with each member state having to adopt national measures to implement it.¹¹

2. Methodology

As a result of the European Union Court of Justice’s (CJEU) judgment in the joined cases *Aranyosi* and *Căldăraru*,¹² a scenario, in which the EAW-FD is amended in favour of the protection of human rights of felons, opened. Indeed, even though the CJEU remarked the importance of the principle of mutual recognition on which the EAW is built, it allowed EU member states – only under specific conditions – to refuse the surrender of a prisoner to another EU country where his/her fundamental rights might be jeopardised.

In order to identify the conflict between mutual recognition and human rights’ protection arising from the implementation of the European Arrest Warrant, the meaning of the principle of mutual recognition and the origins of the EAW as a “new” tool for the cooperation among EU member states in criminal matters will be reconstructed. This will be followed by the analysis of the CJEU’s final judgment in the joined cases *Aranyosi* and *Căldăraru* and by a brief overview of previous positions adopted by the CJEU and by some of its Advocates General on the issue.

To draw the theoretical framework and to give a legislative perspective to this paper, I perused primary sources from the European Union’s institutions, such as directives, reports, recommendations and

⁴ Tampere European Council, Presidency Conclusions, 15 and 16 October 1999, para. 35, http://www.europarl.europa.eu/summits/tam_en.htm#c.

⁵ *Ibid.*, para. 33. The importance of the principle of mutual recognition and the harmonization of national laws in the Area of Freedom, Security and Justice are also underlined by article 82 (1) TFEU.

⁶ European Commission, “Commission Communication to the Council and the European Parliament - Mutual Recognition of Final Decisions in Criminal Matters COM/2000/0495 Final,” <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52000DC0495>.

⁷ Cardiff European Summit, Presidency Conclusions, 15 and 16 June 1998, SN 150/98, para. 39, http://www.europarl.europa.eu/summits/car1_en.htm.

⁸ European Commission, “Commission Proposal for a Council FD on the EAW and the surrender procedures between MSs,” COM/2001/522, <http://ec.europa.eu/transparency/regdoc/rep/1/2001/EN/1-2001-522-EN-F1-1.Pdf>.

⁹ Susie Alegre and Marisa Leaf, “Mutual Recognition in European Judicial Cooperation: A Step Too Far Too Soon? Case Study—the European Arrest Warrant,” *European Law Journal* 10, no. 2 (2004), 202; JHA Council meeting on 6 and 7 December, “Council Framework Decision on the European Arrest Warrant and Surrender Procedures between Member States,” COPEN 79 CATS 50, Brussels, 10 December 2001.

¹⁰ In this respect see: Apap and Carrera, “Judicial Cooperation in Criminal Matters,” 3; Alegre and Leaf, “Mutual Recognition in European Judicial Cooperation,” 202; Massimo Fichera, “The European Arrest Warrant and the Sovereign State: A Marriage of Convenience?” *European Law Journal* 15, no. 1 (2009), 72. On the urgency of cross-border measures to fight against terrorism: European Council, “Conclusions adopted by the Council (Justice and Home Affairs),” Brussels: European Union, SN 3926/6/01, REV 6, para. 2; “Conclusions and Plan for Action of the Extraordinary European Council Meeting,” SN 140/01, Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the Surrender Procedures between Member States, 2002 O.J. L190/1, preamble, recital 5, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002F0584:en:HTML>.

¹¹ *Ibid.*, art. 34(1) and (2).

¹² Joined Cases C-404/15 and C-659/15 PPU, *Pál Aranyosi and Robert Căldăraru*, EU:C:2016:198.

resolutions from the European Commission, the European Parliament and the European Council. Case law of the CJEU has been taken into account as well, in order to clarify the different positions that the court took over time with regard to the clash between the principle of mutual recognition and the protection of human rights of detained persons.

In addition, primary sources from another European international organisation, the Council of Europe (CoE), have been deeply examined because of the commitment to the protection of human rights of its bodies. Indeed, two of these – the European Court of Human Rights (ECtHR) and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) – constantly advocate for the compliance with certain minimum standards in detention facilities across Europe. The ECtHR is the designated institution for the defence and supervision of the correct application of the European Convention of Human Rights (ECHR). The CPT, in turn, is the operative control body which visits some places of detention of CoE member states and produces *ad hoc* individual reports in addition to annual general reports. The documents of the CPT have been of great relevance to the current paper because they summarise and offer overviews on common problems identified across European states in relation to detention centres and compliance with European rules and standards. As for other sources from the CoE, the European Committee on Crime Problems' "White Paper on Prison Overcrowding" has also largely contributed to drawing a general picture of detention conditions in states of the European block.

The contribution of secondary sources to my paper was highly relevant as well: I found many essays and commentaries written by European law and human rights experts, who examine in depth the EAW-Framework Decision and identify criticisms and uncertainties deriving from the measure itself. In addition, scholarly opinions gave me proper knowledge of the different doctrines existing around the topic of prisoner fundamental rights' and allowed me to establish a position on this issue. Scholars' contrasting visions about the introduction of a new ground of refusal of the EAW offered me the chance to compare benefits and drawbacks of the eventual choice of introducing a new ground of refusal of the EAW based on the detainee human rights' protection.

To provide a quantitative nuance to my paper, I have also benefitted from a questionnaire submitted by the EU Commission to EU member states, which shows trends related to the issue and the implementation of the EAW in 2015.¹³

3. Data

In spite of the fact that the EAW has been implemented for more than ten years, there are not too many statistics and data on its functioning; therefore, the creation of a database for collecting and analysing such data is highly suggested.¹⁴

The European Commission is the responsible body for the gathering and the publication of quantitative information related to the use of the EAW by the EU member states; from the "Replies to questionnaire on quantitative information on the practical operation of the European arrest warrant" of 2015 emerges that in 2005 the total number of EAW issued was 6.894 and this grew markedly to 16.144 in 2015. In 2015, Poland accounted for the highest quantity of issued arrest warrants (2.390) followed by Denmark (2.237).¹⁵ Conversely, in the same year, the lowest number of EAW was issued by Malta. Data refers to the year 2015 because the Commission received the answer to the questionnaire by all of the 28 EU member states for the first time that year and because it is the last official report on the EAW available online.

3.1. Grounds for Refusal of a European Arrest Warrant

The EAW is the first and the most important measure in the field of European criminal law based on the principle of mutual recognition and it supposes a "high level of confidence between member states."¹⁶ The tool has been defined by article 1(1) of the EAW-FD as a "judicial decision issued by a member state with a view to the arrest and surrender by another member state of a requested person, for the purposes of

¹³ See: Commission Staff Working Document, "Replies to Questionnaire on Quantitative Information on the Practical Operation of the European Arrest Warrant - Year 2015," https://e-justice.europa.eu/content_european_arrest_warrant-90-en.do.

¹⁴ Anne Weyembergh et al., "Critical Assessment of the Existing European Arrest Warrant Framework Decision Research Paper," (Brussels: European Union, 2013), I-51.

¹⁵ Commission Staff Working Document, "Replies to Questionnaire," *supra* note 15.

¹⁶ Fichera, "The European Arrest Warrant," 71 and Evgenia Ralli, "The Principle of Mutual Recognition Based on Mutual Trust and the Respect for Fundamental Rights: The Case of the Framework Decision on the European Arrest Warrant," *European Law Institute* (2017), 3.

conducting a criminal prosecution or executing a custodial sentence or detention order.”¹⁷ The issuing state can ask for the surrender of a convict for acts punishable according to its own domestic legislation for which it provides a maximum of at least one year in prison, or when the person has already been sentenced to a prison term of at least four months. The FD also provides a non-exhaustive list of crimes – such as terrorism, illicit trade in human organs and tissue, rape, forgery of means of payment, etc. – for which the request of the EAW should be pursued without the double criminality verification.¹⁸

Even though judicial cooperation among EU member states is limited in case of “serious and persistent breach by a member state of the principles set out in Article 6(1) of the Treaty on European Union”,¹⁹ the EAW system has been largely criticised as being unable to protect fundamental rights efficiently.²⁰ One of the main controversial issues that arise from the implementation of the new extradition tool is the conflict between the principle of mutual recognition, on which the EAW and the entire AFSJ is based, and the protection of individuals’ fundamental rights. Such a problem emerges because the FD lists the mandatory (article 3) and optional (article 4) grounds for which the executing state could refuse the implementation of a warrant, but it does not explicitly include the violation of fundamental rights as a ground for refusal. Although article 5 EAW-FD includes some conditions under which the execution of the warrant may be refused, none of these makes explicit reference to the protection of human rights as a reason to refuse the surrender.

The FD negotiations resulted in the rather vague statement contained in article 1(3), which can be seen as a compromise between the principle of mutual recognition vis-à-vis human rights protection.²¹ The provision declares that the “Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.”²² To specify even more, article 6 TEU prescribes the obligation of the European Union to recognise and respect the “rights, freedoms and principles” contained in the EU Charter of Fundamental Rights (CFR).²³ The same provision guarantees to the CFR the same legal value as the Treaties, that means that the entrance into force of the Lisbon Treaty in 2009 and, above all, the insertion of this specific provision is intended to enhance the protection of fundamental rights in EU law.²⁴ Following this path of a progressive higher relevance of human rights’ protection within the EU legal system, another step forward has been made by the EU legislator, especially for the safeguarding of the rights of defendants and victims.²⁵ It included, in the second part of article 6 TEU, the possibility for the Union to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such a provision is supported by the so-called “clause of coherence”,²⁶ whereby the scope of the rights contained in the CFR, which correspond to the ones guaranteed by the ECHR, “shall be the same as those laid down by the said Convention.”²⁷

¹⁷ European Council, “Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the Surrender Procedures Between Member States,” (2002/584/JHA), article 1(1).

¹⁸ 2002/584/JHA, preamble, rec. 6, 10; art. 1(1), (2); art. 2(1), (2) and (3). For the argument that abandoning the double criminality verification could result in a situation in which the executing State must arrest and surrender an individual for conduct which is not an offence under its domestic law, please refer to Anne Pieter van der Mei, “The European Arrest Warrant System: Recent Developments in the Case Law of the Court of Justice,” *Maastricht Journal of European and Comparative Law* 24, no. 6 (2017), 896. For other offences, the verification that the act for which an individual is requested by the issuing state is “punishable” according to its own jurisdiction is a non-negotiable condition under which the EAW is permitted.

¹⁹ 2002/584/JHA, preamble, rec. 10.

²⁰ Van der Mei, “The European Arrest Warrant System,” 903.

²¹ Elena E. Popa, “The Clash between Fundamental Rights, Mutual Recognition & Public Security. Recent Developments in the CJEU’s Case Law in the Field of AFSJ,” BA Thesis. (The Hague: Haagse Hoogeschool, 2017), 27; Nina Marlene Schallmoser, “The European Arrest Warrant and Fundamental Rights: Risks of Violation of Fundamental Rights through the EU Framework Decision in Light of the ECHR,” *European Journal of Crime, Criminal Law and Criminal Justice* 22, no. 2 (2014), 160.

²² 2002/584/JHA, art. 1 (3).

²³ European Union, *Charter of Fundamental Rights of the European Union, Adopted by the European Parliament, the Council of Ministers and the European Commission on 7 December 2000 and Entered into Force with the Treaty of Lisbon in 2009*, http://www.europarl.europa.eu/charter/pdf/text_en.pdf.

²⁴ Theodore Konstadinides and Noreen O’Meara, “Rebalancing Judicial Protection in Criminal Matters after Lisbon and Stockholm,” in *EU Security and Justice Law: After Lisbon and Stockholm*, ed. D. A. Arcarazo and C. C. Murphy (Hart Publishing, 2014), 17.

²⁵ *Ibid.*, 2.

²⁶ Schallmoser, “The European Arrest Warrant and Fundamental Rights,” 139.

²⁷ CFR, art. 52 (3); Explanations relating to the charter of fundamental rights (2007/C 303/02) art. 52 (3).

4. Finding a Balance between Human Rights' Protection and the EAW – the Joined Cases *Aranyosi and Căldăraru*

In the midst of this context characterised by, on the one side, an always stronger necessity for safeguarding human rights and, on the other side, the need for quick and reliable cooperation among EU member states in the fight against crime, where can the EAW be placed? Are these two desires compatible?

To answer this question, it is necessary to understand the opinion of the CJEU as the European institution dedicated to the interpretation of EU legislation and its compatibility with EU treaties.²⁸ During the first cases in which the Court had to judge on the EAW-FD, it stated that a breach of individuals' fundamental rights cannot be accepted as a justification for not implementing a European Arrest Warrant; thus, the EU member states are obliged to act according to the Framework Decision in order to fulfil the principle of mutual recognition. Therefore, only the appeal of the executing state on the grounds provided by articles 3 and 4 of the FD allows the non-execution of the warrant at stake.²⁹

The position of the CJEU has been contradicted by the European Parliament that expressed its concerns regarding the lack of an explicit ground for refusal of an arrest warrant when the human rights of the surrendered person are involved.³⁰

Only lately, the CJEU admitted the existence of “exceptional circumstances” in which the principle is not absolute and thus can be limited.³¹ According to what the Court stated in *Opinion 2/13* on the Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the principle of mutual recognition and the protection of human rights are two cornerstones of the European Union, so they must be balanced against each other according to the circumstances. Therefore, the Court recognises that mutual recognition must be restricted when it is not granted that European Union member states are complying with EU law and with fundamental rights recognised by EU law.

The joined cases *Aranyosi and Căldăraru* (2016) compose the first case in which the CJEU had to cope directly with fundamental right violations during the implementation of the EAW.³² Mr. Aranyosi, a Hungarian national, was requested by Hungary for two counts of burglary.³³ Because his location was unknown, the District Court of Miskolc issued an alert for Mr. Aranyosi in the Schengen Information System (SIS).³⁴ He was arrested and put in pre-trial detention on 14 January 2015 in Bremen (Germany).³⁵ The Public Prosecutor of Bremen, worried about the detention conditions in Hungarian prisons which do not satisfy the minimum European standards,³⁶ asked the Hungarian District Court (Miskolci járásbíróság) in which facility Mr. Aranyosi would be detained in case he was surrendered.³⁷ Since that was still unknown, there was no proof that he would not have been subjected to torture or inhuman and degrading treatment; for this very reason, Aranyosi's lawyer opposed the surrender request, stating that, since the Court of Miskolc had not specified the correctional facility, it would be impossible to verify that its conditions were respecting minimum European standards.³⁸ The concerns of the lawyer did not come gratuitously; indeed,

²⁸ The preliminary ruling is a procedure, regulated by article 267 of the TFEU, which enables National Courts to submit questions to the CJEU on the interpretation or validity of EU law, specific to a case in their vicinity. The main goal of the procedure is to promote a more uniform application of EU law in all member states.

²⁹ Case C-388/08 PPU, *Leymann and Pustovarov*, EU: C:2008:669, para. 51.

³⁰ European Parliament, “Parliament Report with Recommendations to the Commission on the review of the European Arrest Warrant 2013/2109(INL),” 28 January 2014, F(i), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2014-0039+0+DOC+XML+V0//EN>.

³¹ European Court of Justice, “Opinion 2/13 of the Court on the Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms,” EU:C:2014:2454, para 191.

³² Koen Bovend'Eerd, “The Joined Cases *Aranyosi and Căldăraru*: A New Limit to the Mutual Trust Presumption in the Area of Freedom, Security, and Justice?,” *Utrecht Journal of International and European Law* 32, no. 83 (2016), 113; Marta Muñoz de Morales Romero, “Dime Cómo Son Tus Cárcels y Ya Veré Yo Si Coopero”. Los Casos *Căldăraru y Aranyosi* Como Nueva Forma de Entender El Principio de Reconocimiento Mutuo,” *InDret*, no. 1 (2017) and Szilárd Gáspár-Szilágyi, “Joined Cases *Aranyosi and Căldăraru*: Converging Human Rights Standards, Mutual Trust and a New Ground for Postponing a European Arrest Warrant,” *European Journal of Crime, Criminal Law and Criminal Justice* 24, no. 2–3 (2016), 199.

³³ *Aranyosi and Căldăraru*, paras. 30–38.

³⁴ In accordance with art. 9 of the EAW-FD.

³⁵ *Aranyosi and Căldăraru*, para. 32.

³⁶ For an overview of European standards: European Parliament, “Prison Conditions in the Member States: Selected European Standards and Best Practices,” Brussels, 2017.

³⁷ *Aranyosi and Căldăraru*, para. 34.

³⁸ *Ibid.*, para. 39.

a wide number of ECtHR cases and reports from the CPT,³⁹ following on-site periodic visits and *ad hoc* visits between 2009 and 2015,⁴⁰ suggested that there were high possibilities for Mr. Aranyosi to be exposed, if surrendered to Hungary, to detention conditions in obvious violation of article 3 ECHR, article 4 CFR and the general principles included in article 6 TEU.

On the other side, Mr. Căldăraru, a Romanian national, was sentenced to a custodial sentence of 1 year and 8 months on 16 April 2015 for driving without a license. The alert issued in the SIS by the Romanian Court of First Instance in Făgăraş (Judecătoria Făgăraş) had made his arrest possible by the Bremen authorities on 8 November 2015. Also in this case, the facility in which the individual would have been detained had not been designated on time by the Judecătoria Făgăraş and, just as in the *Aranyosi* case, the Hanseatische Oberlandesgericht Bremen (Higher Regional Court of Bremen) was concerned about the detention conditions in Romanian prisons. Indeed, they were declared in violation of article 3 ECHR, article 4 CFR, and general principles enshrined in Article 6 TEU because of their small, dirty and overcrowded cells, lack of heating and of warm water for showering.⁴¹ In addition, the Hanseatisches Oberlandesgericht in Bremen referred to the CPT's conclusion – based on visits to Romanian detention centres between 5-17 June 2014 – that correctional facilities in Romania were overcrowded.⁴²

In absence of a ground for refusal in cases in which the surrendered person might be subjected to human rights' infringements and since detention conditions that do not meet minimum standard requirements are considered as inflicting inhuman and degrading treatment to detainees,⁴³ the Higher General Court of Bremen doubted the execution of the EAWs issued by Hungary and Romania and decided to refer both cases to the CJEU for a preliminary ruling concerning the Framework Decision.⁴⁴ The German Court formulated its question in order to understand if article 1(3) of the EAW-FD should have been interpreted as meaning that the executing judicial authority must refuse the surrender of the requested person against an issuing state of which the detention conditions are proved to be in violation of article 4 of the CFR.

In its ruling activity the Court considered relevant factors such as: (i) the “exceptional circumstances” in which the principles of mutual trust and recognition can be limited; (ii) article 1(3) of the EAW Framework Decision which subordinates the extradition tool to the respect of fundamental rights contained in the CFR and, above all, (iii) the absolute and non-derogable nature of the prohibition of inhuman and degrading treatment as stated in article 3 ECHR and article 4 of the CFR. The CJEU affirmed that “the consequence of the execution of such a warrant must not be that that individual suffers inhuman or degrading treatment.”⁴⁵

On 5 April 2016, on the occasion of the joined cases *Aranyosi and Căldăraru*, the CJEU stated that:

‘where there is objective, reliable, specific and properly updated evidence with respect to detention conditions in the issuing member state that demonstrates that there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people, or which may affect certain places of detention, [...] [t]he executing judicial authority must postpone its decision on the surrender of the individual concerned until it obtains the supplementary information that allows it to discount the existence of such a risk. If the existence of that risk

³⁹ After having received approximately 450 similar cases for inhuman detention conditions in Hungarian facilities, the ECtHR ruled about prison conditions in the pilot case *Varga and Others v. Hungary*, Judgment of 10 March 2015, Application N° 14097/12, 45135/12, 73712/12, 34001/13, 44055/13 and 64586/13.

⁴⁰ The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) is a specialised independent monitoring body of places of detention, it is part of the Council of Europe. For the CPT reports on the detention conditions in Hungarian correctional facilities, see <https://www.coe.int/en/web/cpt/hungary>.

⁴¹ *Ibid.*, paras. 47-60. The CJEU refers to the ECtHR's judgments of 10 June 2014: *Voicu v Romania*, (No 22015/10); *Bujorean v Romania*, (No 13054/12); *Constantin Aurelian Burlacu v Romania*, (No 51318/12); and *Mibai Laurențiu Marin v Romania*, (No 79857/12).

⁴² *Aranyosi and Căldăraru*, para. 61. The CJEU refers to the following report: European Committee for the Prevention of Torture, “Rapport au Gouvernement de la Roumanie Relatif à la Visite Effectuée en Roumanie par le Comité Européen pour la Prévention de la Torture et des Peines ou Traitements Inhumains ou Dégradants (CPT) du 5 au 17 Juin 2014,” 24 September 2015, CPT/Inf (2015), <https://www.coe.int/bg/web/cpt/romania>.

⁴³ In the pilot case *Varga and Others v. Hungary*, the ECtHR established that there is a violation of Article 3 when a detainee disposes of less than three square metres of personal space and that it is aggravated by lack of ventilation and lighting, lack of outdoor exercise and poor sanitary and hygiene conditions; the point is also considered by Popa, “The Clash between Fundamental Rights, Mutual Recognition & Public Security,” 12-13 and Lina Panella, “Mandato Di Arresto Europeo e Protezione Dei Diritti Umani: Problemi Irrisolti e ‘Incoraggianti’ Sviluppi Giurisprudenziali,” *Freedom, Security & Justice: European Legal Studies*, no. 3 (2017), 25-26.

⁴⁴ *Aranyosi and Căldăraru*, para. 63.

⁴⁵ *Ibid.*, paras. 82-88.

cannot be discounted within a reasonable time, the executing judicial authority must decide whether the surrender procedure should be brought to an end.⁴⁶

Trying to find a balance between the principle of mutual recognition and the protection of fundamental rights of the requested person,⁴⁷ the position of the CJEU can be considered a breakthrough from the past.⁴⁸ Indeed, it moved from its previous approach, in which it protected the effectiveness of mutual recognition among member states, to favour a more balanced perspective towards stronger human rights' protection.⁴⁹

Nevertheless, the Court has not gone too far with its judgment. Indeed, according to its reasoning, stating a higher position of fundamental rights over mutual trust would have undermined the principle itself and would have run against the text of the EAW Framework Decision. For this reason, instead of a new ground for refusal, it preferred to introduce a "less drastic" ground of mandatory postponement of the execution of an arrest warrant in case of potential breach of fundamental rights in the issuing state.⁵⁰

5. The Debate on the Future of the EAW-FD

Due to the fact that the CJEU did not seize the opportunity of the joined cases to interpret article 1(3) FD as if installing a *de facto* ground for refusal in the case of possible inhuman and degrading treatment, rather providing a not too well-defined ground for postponement,⁵¹ one of the main current concerns is whether an explicit ground for refusal based on human rights' protection should or should not be inserted into the EAW-FD. The necessity to amend the FD stems from the fact that the same issue of risk of inhuman and degrading treatment will surely stir up again in the future since unsatisfactory prison conditions do not affect only Hungary and Romania. In fact, other countries such as Italy, Greece and Belgium have been scolded by the CJEU and other international organisations for not respecting minimum European standards on prison conditions.⁵²

The positions of the institutions in this debate are contrasting: since the initial proposal, the European Commission has retained that the EAW is subject to the rights contained in the ECHR and in the CFR,⁵³ even though the FD does not contain an explicit ground for refusal regarding the protection of human rights. It has also added that the compliance with fundamental rights, as required by article 1(3) of the FD, results in a *de facto* ground for refusal, at least as far as infringement of fundamental rights caused by inadequate detention conditions is concerned.⁵⁴ In addition, in 2017, the Commission published a "Handbook on how to issue and execute a European arrest warrant",⁵⁵ in which it stated that, despite the lack of a specific provision to refuse the execution of a warrant in case of a breach of individuals' fundamental rights in the issuing member states, a combined reading of article 1(3) together with recitals 12 and 13 of the EAW-FD constitute an obligation to respect fundamental rights in the EAW's context.

To the contrary, the European Parliament, due to its concerns about "unacceptable conditions in a number of detention facilities across the Union and the impact that this has on the fundamental rights of the individuals concerned", requested the Commission to submit legislative proposals providing for "a

⁴⁶ Ibid., para. 104.

⁴⁷ Panella, "Mandato Di Arresto Europeo e Protezione Dei Diritti Umani," 26. The author defines the CJEU's ruling as a compromise between the respect for mutual recognition and human rights' protection.

⁴⁸ Van der Mei, "The European Arrest Warrant System," 899.

⁴⁹ Ralli, "The Principle of Mutual Recognition," 5.

⁵⁰ Gáspár-Szilágyi, "Joined Cases Aranyosi and Căldăraru," 211.

⁵¹ Some mechanisms have been criticized to cause uncertainty in the field, such as the case of the two-step test introduced by the CJEU in the case *Aranyosi and Căldăraru* and of the vague definition of the "judicial authority" which conducts such test, as well as of the contradiction of the possibility of postponement of a warrant in case of risk of breach of human rights but impossibility to refuse it for the same reasons. Moreover, it is not clear if the new ground of postponement of the EAW only refers to art. 4 of the EU Charter or also to other fundamental rights. See Van der Mei, "The European Arrest Warrant System," 886 and Bovend'Eerdt, "The Joined Cases Aranyosi and Căldăraru," 118.

⁵² De Morales Romero, "Dime Cómo Son Tus Cárceles.," CPT annual reports (<https://www.coe.int/en/web/cpt/annual-reports>) and public statements (<https://www.coe.int/en/web/cpt/public-statements>); Council of Europe, European Committee on Crime Problems, "White Paper on Prison Overcrowding," Strasbourg, 2016.

⁵³ European Commission, "Commission Proposal for a Council FD on the EAW", *supra note 9*, art. 26.

⁵⁴ European Commission, "Report to the European Parliament and the Council on the Implementation Since 2007 of the Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the Surrender Procedures between Member States, SEC/2011/430 final, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52011DC0175>.

⁵⁵ European Commission, *Handbook on how to Issue and Execute a European Arrest Warrant*, COM/2017/6389 final, 46. This position also recalls the judgment of the ECHR in *Soering v UK* Series A, Application no 161 (1989), which established an evaluation on a case-by-case basis when the obligation to extradite and fundamental rights' protection have to be weighed.

mandatory refusal ground where there are substantial grounds to believe that the execution of the measure would be incompatible with the executing member state's obligation in accordance with Article 6 of the TEU and the Charter.”⁵⁶ In 2011 already, the European Parliament argued that detention conditions which do not meet the standards required by the Council of Europe's European Prison Rules,⁵⁷ could be a reason for denying the transfer of prisoners.⁵⁸

As for the position of the CJEU with regard to the possibility of introducing a new ground for refusal based on fundamental rights' protection, it is important to remember its previous approaches when it had to deal with the protection of such rights in the context of the EAW. For a long time, the Court had given priority to the effectiveness of the principle of mutual recognition over safeguarding human rights; indeed, as already mentioned, in the case of *Leymann and Pustovarov* (2008),⁵⁹ the CJEU clearly stated that EU member states are obliged to act upon a European Arrest Warrant in order to fulfil the principle of mutual recognition and can only refuse to execute a warrant for reasons included in articles 3 and 4 of the EAW-FD (mandatory and optional grounds). In *Radu* (2013) the Court widened its view recognising that the execution of a warrant may be subjected to the conditions laid down in article 5 of the FD.⁶⁰ In *Melloni* (2013) the Court stated that the responding state could not rely on its higher level of protection of fundamental rights in order to refuse the request, because it would “undermine the principles of mutual trust and recognition [...] and, therefore, compromise the efficacy of the FD.”⁶¹

In spite of that, there have been some counter-tendencies in the ruling activity of the Court, indeed in *Radu*, Advocate General (AG) Sharpston, putting forward a comparison between the circumstances regulated by the EAW and the ones related to asylum seekers, disciplined by the Dublin Regulation,⁶² stated that:

‘the competent judicial authority of the State executing a European arrest warrant can refuse the request for surrender [...] where it is shown that the human rights of the person whose surrender is requested have been infringed, or will be infringed, as part of or following the surrender process.’⁶³

Advocate General Sharpston based her view on some interpretations of the FD given by other AGs of the Court.⁶⁴ More specifically, her position aligns with the Opinion of Advocate General Cruz Villalón's in the *I.B.* case, in which he considered that the protection of fundamental rights and freedoms is the premise which legitimates the existence and development of the AFSJ; indeed, it is stated in recitals 10, 12, 13 and 14, and in Article 1(3).⁶⁵ Among other opinions considered by AG Sharpston to formulate her position,⁶⁶ the opinion of Advocate General Mengozzi in the *João Pedro Lopes Da Silva Jorge* case plays an important role.⁶⁷ He suggested a “human-rights oriented” interpretation of the principle of mutual recognition when it has to be applied to the cooperation among EU member states in criminal matters.⁶⁸

Eventually, following the introduction by the CJEU of a ground for postponing the execution of a warrant in case of “real risk of inhuman or degrading treatment”,⁶⁹ it can be said that a step towards a broad protection of detainees' human rights had been made, even though it cannot be considered completely satisfying because it does not include a proper ground for refusal for human rights' protection. Concerning

⁵⁶ European Parliament, “Parliament Report with recommendations to the Commission,” F (ix), *supra* note 33.

⁵⁷ Council of Europe: Committee of Ministers, “Recommendation (2006)2 of the Committee of Ministers to Member States on the European Prison Rules,” 11 January 2006.

⁵⁸ European Parliament, “Parliament Resolution on Detention Conditions in the EU 2011/2897(RSP), B7-0687/2011,” para. 6, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+B7-2011-0687+0+DOC+XML+V0//EN>.

⁵⁹ *Leymann and Pustovarov*, para. 51.

⁶⁰ C-396/11, *Ciprian Vasile Radu*, EU: C:2013:39, paras. 36-42.

⁶¹ C-399/11, *Stefano Melloni v. Ministero Fiscale*, EU: C:2013:107, paras. 61-64.

⁶² European Union law adopted in 2003, which establishes the criteria and mechanisms for determining the member state responsible for examining an asylum application lodged in one of the member states by a third-country national.

⁶³ Opinion of Advocate General Sharpston, *Ciprian Vasile Radu*, Case C-396/11, 2012, para. 97.

⁶⁴ *Ibid.*, para. 71.

⁶⁵ Opinion of Advocate General Cruz Villalón, *I.B. v Conseil des ministres*, Case C- 306/09, 2010, para. 43.

⁶⁶ See Opinion of Advocate General Bot, *Wolzenburg*, Case C-123/08, 2009, paras. 148, 151 and *Mantello*, Case C-261/09, 2010, paras. 87-88.

⁶⁷ Opinion of Advocate General Mengozzi, *João Pedro Lopes da Silva Jorge*, Case C-42/11, 2012, para. 28.

⁶⁸ Panella, “Mandato Di Arresto Europeo e Protezione Dei Diritti Umani,” 24.

⁶⁹ *Aranyosi and Căldăraru*.

the ruling in the joined cases *Aranyosi* and *Căldăraru*, the opinion of AG Bot is relevant: he denies the interpretation of article 1(3) of the EAW-FD as a ground for non-execution of an arrest warrant.⁷⁰ The AG also stated that, giving to article 1(3) the meaning of a non-execution ground signifies not only overcoming the European legislator's will,⁷¹ but also going against previous CJEU's hearings.⁷²

Referring to CJEU's *Opinion 2/13*, he argued that the very phrasing of the provision expresses the principle of mutual trust and not a non-execution ground of the warrant.⁷³ Indeed, his main concern regards the fact that allowing the executing authority to check if the issuing authority complies with the fundamental rights' protection as required within the EU would undermine mutual confidence among member states.⁷⁴ Moreover, if prison overcrowding is the reason why an always higher number of executing member states will not accept to surrender a requested person in an issuing state, the EAW would be paralysed. At the same time, he affirmed that reducing prison overcrowding in one member state only to increase it in another is a not solution.⁷⁵

Contrary to what AG Sharpston suggested in *Radu*, AG Bot also supported his opposition to the introduction of a new ground for refusal based on human rights protection averring that the same mechanism the Court established for the Common European Asylum System on occasion of the *N.S. and others* case cannot be applied in the EAW system because, in the text of the measure, no reference is made to the person "surrendered."⁷⁶

It can be argued that Bot's conclusions go against the hierarchy of EU law, provided by article 6 TEU, according to which the EU CFR – and therefore the prevalence of the respect of fundamental rights over the implementation of secondary EU legislation – has the same legal value as the Treaties. Bot's position in the case has also been considered a "defeat" to the aim of ensuring the respect of fundamental rights in the AFSJ.⁷⁷

Simultaneously, there are many opinions in favour of the introduction of a new ground for refusal for the execution of the EAW in case of risk of inhuman and degrading treatment. These viewpoints are founded on the assumption that even though the FD contains certain provisions referring to the commitment of the EAW to the respect of human rights, those are not binding enough. The main critique addressed at article 1(3), which requires that the compliance with fundamental rights and principles stated in article 6 TEU not be modified by the FD, claims that it only provides obligation to the respect of human rights for the national legal authority of the EU member states, without considering such commitment from the EU as a whole.⁷⁸ For this reason, according to J. Apap – Policy Analyst with the External Policies Unit of the Members' Research Service at the European Parliamentary Research Service – and S. Carrera – Senior Research Fellow and Head of Justice and Home Affairs Programme at the Centre for European Policy Studies (CEPS) – the protection of the surrendered person is not entirely guaranteed by the mentioning of article 6 TEU in the FD.⁷⁹ Therefore, a new ground for refusal should be included in the text of the FD.

Even though a combined reading of article 1(3), recital 10, 12, 13 of the EAW-FD and article 51 of the EU Charter of Fundamental Rights establishes a clear hierarchy of EU legislation and results in strengthening the commitment to the respect of human rights from member states,⁸⁰ the necessity to introduce an explicit ground for the non-execution of a European warrant in protection of fundamental

⁷⁰ Opinion of Advocate General Bot, *Pal Aranyosi* and *Robert Căldăraru*, Joined cases C-404/15 and C-659/15 PPU, 2016, para. 69.

⁷¹ Who haven't provided an explicit non-execution ground as the ones listed in art. 3 and art. 4 of the EAW-FD.

⁷² Opinion of Advocate General Bot, *Aranyosi* and *Căldăraru*, paras 80-81, 92-93.

⁷³ *Ibid.*, paras. 75-78.

⁷⁴ *Ibid.*, para 109.

⁷⁵ *Ibid.*, para 126.

⁷⁶ Opinion of Advocate General Bot, *Aranyosi* and *Căldăraru*, paras 90-91; Joined Cases C-411/10 and C-493/10, *N.S. and others*, EU:C:2011:865, para. 106. In *N.S.* the CJEU established that the extradition procedure must be prohibited when systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in the issuing state would result in a real risk of inhuman and degrading treatment of the individuals concern.

⁷⁷ Gáspár-Szilágyi, "Joined Cases Aranyosi and Căldăraru," 205.

⁷⁸ Schallmoser, "The European Arrest Warrant and Fundamental Rights," 16; Cian C. Murphy, *The European Evidence Warrant: Mutual Recognition and Mutual (Dis)Trust?*, in *Crime Within the Area of Freedom, Security and Justice: a European Public Order*, eds. Christina Eckes and Theodora Konstadinides (Cambridge: Cambridge University Press, 2011), 20, where "the warrants ultimately rely on national law enforcement authorities to act in a manner that respects human rights and the operation of the legislation is not subject to any system of oversight in EU law."

⁷⁹ Apap and Carrera, "Judicial Cooperation in Criminal Matters-European Arrest Warrant," 13.

⁸⁰ Weyembergh et al., "Critical Assessment of the Existing European Arrest Warrant," I-10; Panella, "Mandato Di Arresto Europeo e Protezione Dei Diritti Umani," 10; De Morales Romero, "Dime Cómo Son Tus Cárceles y Ya Veré Yo Si Coopero'."

rights is still felt.⁸¹ One of the main reasons for that is fundamental rights' protection, which comes from a broad and systemic interpretation of the FD. The latter does not fully guarantee the safeguarding of the requested individuals.⁸²

Furthermore, the fact that the FD includes some grounds of refusal means that mutual recognition is not prescribed in an absolute way; indeed, articles 3 and 4 of the directive do list some reasons that allow the non-execution of an EAW.

6. Conclusion

Human rights' protection and mutual recognition are two principles recognised by the EU. Both of them are fragile and paramount to the functioning of the Union. The automaticity of the EAW, provided to ensure mutual recognition among member states, has presented challenges related to the ability of a state to refuse the execution of a warrant when it is incompatible with the protection of individuals' human rights.⁸³ In fact, the high level of mutual trust among the states in the criminal field is based on the presumption that certain standards on human dignity and human rights' protection are equally respected across the European Union.⁸⁴ The cross-border fight against crime seems even more impelling in recent times due to the change in the type of public security threats, but this urgency cannot be the reason to downgrade and neglect human rights' protection within the EU legal system.

Since the Treaty of Westphalia (1648), national borders are intended to protect a certain territory and to guarantee security. Borders establish where the sovereignty of a state starts and where it ends. At the same time, the European Union is a supranational entity which tries to invert this tendency. With the advent of the EU, shared sovereignty and transnational governance have become new key notions.⁸⁵ Indeed, the main objective of the AFSJ is to render the EU territory a common space without internal borders, in which security, citizen rights and free movement are granted over everything else, but this will not be possible if there is no trust among EU member states. To enhance judicial cooperation, states are required to lower their defences so the borders which divide them would be less marked. At the same time, "blind" and trustful cooperation is only possible in a context where human rights enjoy the same recognition in every country. Consequently, the nation-state conception of sovereignty would not be overcome until certain EU standards and principles are effectively respected by its member states. Therefore, the promotion of a better understanding of fundamental rights in Europe and the development of a positive attitude towards European physical and legislative dimension by member states – who should consider it as a guarantee instead of a limit – would only be a benefit to European cross-border cooperation against crime.

⁸¹ See for instance, Weyembergh et al., "Critical Assessment of the Existing European Arrest Warrant," I-13; De Morales Romero, "Dime Cómo Son Tus Cárceles y Ya Veré Yo Si Coopero'."

⁸² Apap and Carrera, "Judicial Cooperation in Criminal Matters-European Arrest Warrant," 7.

⁸³ Valsamis Mitsilegas, "The Limits of Mutual Trust in Europe's Area of Freedom, Security and Justice: From Automatic Inter-State Cooperation to the Slow Emergence of the Individual," *Yearbook of European Law* 31, no. 1 (2012), 325.

⁸⁴ 2002/584/JHA, preamble, rec. 10.

⁸⁵ Jan Zielonka, "The Remaking of the EU's Borders," 643.

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